1922.

NARU HARI v. TAI.

the second document cannot be read in the sense in which it is argued on behalf of the appellant it should be read by the Court; and it seems to us that the lower appellate Court was right in treating the document as a later and independent transaction conveying the estate, which it does purport to convey, namely, the absolute interest of the daughter in the lands. If that position is accepted, it follows necessarily that the gift by Venai in favour of her granddaughter in 1916 was perfectly valid, and not liable to be challenged by the present plaintiff. We, therefore, affirm the decision of the lower appellate Court and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

CRIMINAL REVISION.

Before Sir Lallubhai A. Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

1922.

October 13.

EMPEROR v. T. K. PITRE AND OTHERS*.

Criminal Procedure Code (Act V of 1898), section 108—Security for good behaviour—Dissemination of seditious matter—Proof of authorship—Mention of the author's name in the book—Mention of author's name in the statement furnished under section 18 of the Press and Registration of Books Act (XXV of 1867)—Declaration under section 1 of the Act—Proof of actual dissemination of seditious matter.

In a proceeding under section 108 of the Criminal Procedure Code against the applicants as the author, printer and publisher, respectively, of a seditious pamphlet, no direct evidence was led to connect the applicants with the pamphlet or its dissemination. The only evidence that was offered was (1) that the pamphlet mentioned the names of the applicants as its author, printer and publisher; (2) a statement furnished under section 18 of the Press and Registration of Books Act stating the above information; and

* Criminal Applications for Revision Nos. 206 to 208 of 1922.

1922.

EMPEROR v. PITRE.

(3) a declaration made under section 4 of the Act mentioning the second applicant as the keeper of the press. Relying on the above evidence the Magistrate bound over the applicants under section 108 of the Criminal Procedure Code. The applicants having applied to the High Court:—

Held, that the evidence adduced was not enough to prove that the first applicant was the author of the pamphlet.

Held, also, that the second applicant was not liable, for, though proved to be the printer of the pamphlet, he was not shown to have had knowledge of its contents.

Held, further, that the third applicant was properly bound over under section 108 of the Criminal Procedure Code, for as the publisher he disseminated or at least abetted the dissemination of seditious matter and he could be presumed to have had knowledge of the contents of the pamphlet.

THESE were applications to revise an order passed by R. S. Pandit, First Class Magistrate at Dharwar confirmed on appeal by C. S. Campbell, District Magistrate of Dharwar.

The three applicants were bound over under the provisions of section 108 of the Criminal Procedure Code, in respect of a seditious pamphlet.

The pamphlet in question contained songs fourteen in number and written in Marathi. The applicant Pitre was stated to be its author, Jathar was alleged to be its printer and Powar its publisher. Five hundred copies of the pamphlet were printed at the press kept by Jathar. Powar also published its translation into Kanarese.

At the trial no direct evidence was adduced to connect any of the applicants with the pamphlet in question. The prosecution produced only three pieces of evidence. First, the pamphlet itself stated on its title page that the applicant Pitre was its author, that it was printed at the Karnatik Printing Press kept by Jathar, and that it was published by Powar. Secondly, there was a declaration made by Jathar under section 4

1922.

EMPEROR v. PITRE.

of the Press and Registration of Books Act stating that he was the owner of the Karnatik Printing Press at Dharwar. Thirdly, the prosecution produced a statement made by Jathar, presumably under section 18 of the Act, stating that the applicants were the author, printer and publisher of the pamphlet.

The Magistrate was of opinion that the above evidence was sufficient to show that the applicants were the author, printer and publisher respectively of the pamphlet; and he bound them down for a period of one year in sums of Rs. 2,500, Rs. 2,000 and Rs. 200, respectively, with one surety each of the like amount.

On appeal, this order was confirmed by the District Magistrate.

The applicants applied to the High Court.

G. S. Rao, and *G. S. Mulgaonkar*, for the applicants.

Kanga, Advocate-General, with *S. S. Patkar*, Government Pleader, for the Crown.

SHAH, AG. C. J. :—These are three revisional applications arising out of proceedings taken against three persons (1) T. K. Pitre, (2) Y. B. Jathar, and (3) N. K. Powar under section 108 of the Code of Criminal Procedure in respect of the Marathi pamphlet marked Exhibit 1C. These proceedings were initiated with the necessary sanction of the Local Government. The opponents were stated to be the author, printer and publisher of the pamphlet in question respectively. As regards No. 3, it was further alleged that he was also the publisher of a similar pamphlet in Kanarese (Exhibit 1D). It was alleged that the pamphlets contained matter, the publication of which would be punishable under section 124A or section 153A of the Indian Penal Code. The first two opponents are not concerned with the Kanarese pamphlet. The subject-matter of

both the pamphlets is substantially the same: and it is not suggested that Exhibit 1D can be differentiated from Exhibit 1C so far as the nature of the contents is concerned. It is, however, contended that the Marathi pamphlet does not contain any matter obnoxious to sections 124A and 153A. It was further contended on behalf of these persons that the prosecution should prove that the persons alleged to be the author, printer and publisher were really the author, printer and publisher of the pamphlet, Exhibit 1C. The prosecution relied on the printed pamphlet itself and upon the statement of the Manager of the Press (Exhibit 2A) submitted to the Collector under section 18 of the Press and Registration of Books Act, XXV of 1867, in proof of the statements as to the authorship, printing and publishing of the pamphlet. The declaration made by Jathar (opponent No. 2) under section 4 of the Act of 1867 was proved. It was admitted on behalf of the opponents by a Purshis that the statement, Exhibit 2A, was signed by the Manager of the Press, and that he was in fact the Manager. The opponents did not expressly deny the allegations as to their being the author, printer and publisher of the pamphlet, but denied being liable under section 108, Criminal Procedure Code, and put the prosecution to the proof of the allegations. The learned Magistrate found on the materials that the pamphlet contained seditious matter or matter the publication of which would be punishable under section 153A, that the opponents were the author, printer and publisher of the pamphlet and as such responsible for the dissemination of such matter. He ordered them to furnish security for good behaviour and the opponents complied with the order: a further order was made against the opponent No. 3 as regards the pamphlet Exhibit 1D.

1922.

EMPEROR v. PITRE.

The opponents appealed to the District Magistrate, but the learned District Magistrate did not allow the argument as to the burden of proof and insufficiency of evidence and held the document in question to contain seditious or otherwise objectionable matter: he accordingly dismissed the appeals. In the applications before us, among other things, it has been argued that the pamphlet does not contain any matter referred to in clauses (*a*) and (*b*) of section 108, Criminal Procedure Code. But we have not considered it necessary to hear the learned Advocate General on this point. Making due allowance for the avowed object of the pamphlet, the occasion for the publication and for the style and exaggeration which may be expected in poetry and taking the pamphlet as a whole, bearing in mind that each song is complete though undoubtedly forming part of the whole series composed for the occasion, I do not think that there is any reason to doubt the correctness of the conclusion of the lower Courts on this point. It will serve no useful purpose to discuss the question in detail.

This brings me to the further points raised by Divan Bahadur Rao on behalf of opponent No. 1. It is urged that there is no evidence to show that he disseminated, or attempted to disseminate or in anywise abetted the dissemination of the objectionable matter and that he was the author of the pamphlet. In connection with these points I may at once state that the fact of his being the author of "Swadeshi Padem" Parts I and II, which were proscribed in 1911 is no evidence of his being the author of this particular pamphlet. I mention this as the learned Advocate-General relied upon it in the course of his argument.

There is no direct evidence of dissemination in this case: but the songs were composed for the Ganpati

festival and it is a fair inference that the agency which arranged for its publication did so with a view to disseminate the matter. The pamphlet itself contains a preface purporting to be written by the Secretary of the "Bal Maruti Sanstha". Whether this is a real or an imaginary institution we do not know: there is no evidence on the point: and looking at the pamphlet as well as the statement of the Manager (Exhibit 2A), it would appear that that was the agency for the dissemination of this matter. I shall presently deal with the question as to opponent No. 1's authorship: but assuming him to be the author, I think something more than mere authorship was necessary to establish his connection with the dissemination, which it is the object of section 108 to prevent. In the absence of any evidence as to any attempt on his part to disseminate, we have to consider whether he in anywise abetted the dissemination of it. I am not sure that mere writing of the matter is sufficient to bring him under the section. Having regard to the view which I take of the point as to his being the author of the pamphlet I do not record any definite finding on this point. At least the prosecution should have given some evidence as to his connection with the actual publication or subsequent dissemination.

As regards the question whether he composed these songs, I think it is a circumstance against him that he has not expressly denied the authorship. But the procedure applicable to these proceedings under section 108 is that prescribed for warrant cases except that a charge need not be framed: this is clear from section 117 (2). The prosecution has to establish the truth of the information: and the person against whom an order requiring security for good behaviour is sought is entitled to take up the position which the opponent No. 1 has taken up. It may not be frank or fair on his

1922.

EMPEROR v. PITRE.

part to do so: and it is possible that it might have been avoided in the trial Court if sufficient attention had been paid to the importance of the point. But I am unable to say that the argument urged by Mr. Rao is not open to him on these proceedings. There is practically no evidence that the opponent No. 1 is the author of this pamphlet. His name appears as the author on the title page and the first and the last songs show that one Trivikram is the ostensible author thereof as that name occurs there. Whether that Trivikram is an assumed name or represents the opponent-Trivikram does not appear. The pamphlet is relied upon as evidence of the fact that he is the author: but there is no presumption as regards a book such as we have before us that the person whose name appears as the author is the author thereof. Further, the statement of the Manager, Exhibit 2A, which is relied upon as evidence, is no evidence of the fact. It is doubtful whether this statement is made in pursuance of any rules under Act XXV of 1867. In 1868 a provision was made for it under the rules: but the rules of 1868 and 1871 are now superseded by Notifications published in 1891, which were issued after the Amending Act X of 1890 (see Local Rules and Orders under Enactments applying to Bombay, Vol. I, pages 54 and 55). The practice, however, of getting the statement from the Manager of the press seems to have been continued thereafter. Assuming, without deciding, that the statement was made under the rules framed under the Act, it is clear that section 18 only provides for keeping a separate catalogue of books showing, so far as may be practicable, the particulars mentioned in the section. The object is not to get any independent proof of the facts but to show in a separate register certain information which would be and could be gathered from the publication itself. The use of the expression "so far as may be

practicable" shows that it is not necessary that in all cases the information as to all the particulars should be available. The effect of getting the statement from the manager would be merely to facilitate the keeping of a catalogue of books, which the officer mentioned in the section is required to keep and to reduce the ministerial work of the officer concerned. But the section does not provide for such a statement and I do not see how such a statement can be treated as evidence of the facts stated therein. The name of the author would be published by the press on information furnished to the Manager by the publisher: and his statement cannot carry the case any further even taking it as evidence in the case. The Manager should have been examined to show whether he had any knowledge of the fact. The statement by itself would be insufficient to indicate such knowledge.

It seems to me, therefore, that on the present record it is not possible to hold it proved that the opponent No. 1 is the author of the pamphlet. There is no statutory obligation on the press to publish the name of the author as there is to publish the names of the printer and the publisher under section 3 of the Act. The finding of the lower Courts appears to me to be based upon materials which must be held to be insufficient for the purpose of establishing the fact. It may be a technical point in a sense but it is one the benefit of of which cannot be reasonably denied to the opponent.

As regards opponent No. 2, he is the keeper of the press: and his name appears as the printer of the pamphlet as required by section 3 of the Act. In view of the statement of the Manager, it is clear under the circumstances that he is rightly held to be the printer of the pamphlet. In the absence of any evidence on his part to show that the name of the printer has been wrongly printed, the statement of the Manager would

1922.

EMPEROR v. PITRE.

be sufficient. The press has to comply with the statutory requirements of section 3 and the Manager of the press would have direct personal knowledge as to whether it was printed in his press or not. I have no hesitation in rejecting the argument urged on behalf of opponent No. 2 that he is not shown to be the printer. I also reject the argument urged on his behalf that he is not shown to have disseminated this matter. By printing the matter he undoubtedly abetted the dissemination of it. The point, which presents difficulty in his case, is that he is not shown to have any knowledge of the matter published. He has stated as follows:—"Mine is a big press in the Karnatik and it is managed by an independent staff such as a Manager, clerks and others, and it is not possible for me to scrutinize personally every detail of the concern". Both sides have relied upon the observations in *Emperor* v. *Shankar Shrikrishna Dev*[1] the opponent No. 2 contending that some proof of his knowledge of the contents is necessary, the Crown contending that the declaration under section 4 of the Act is *prima facie* proof of his knowledge, and that it was for opponent No. 2 to prove the contrary. I have read the judgments in *Emperor* v. *Shankar*[1] carefully and I think that the point must be decided on the facts of this case. I do not think that the declaration under section 4 of the Act is evidence of his knowledge of the contents, though it is a fact which along with other evidence in the case must be considered in deciding the question of fact. His name appears as the printer, as representing the press under section 3 of the Act. I am unable, however, to accept the view that the fact of his being the keeper of the press and the printer of the pamphlet by itself implies any knowledge of the contents. In *Emperor* v. *Shankar*[1] the printer was charged under

[1] (1910) 35 Bom. 55.

section 124 A, Indian Penal Code. Here he is proceeded against under section 108, Criminal Procedure Code. But that makes no difference as to the necessity of proof of the knowledge of the contents. Here the pamphlet is small: and any one actually seeing it would not find it difficult to know its contents, as was the case in *Emperor* v. *Shankar*[1].

The Manager, who must have undoubtedly known of this having been printed in the press, would know its contents having regard to the nature, size and subject-matter of the pamphlet. The keeper of the press and the printer, however, may not know the contents. I think that some evidence which would indicate a knowledge of the contents on his part was necessary. The examination of the Manager might have settled this matter one way or the other. But as it is I am not satisfied that there is any evidence to support a finding as to his knowledge of the contents which seems to me to be necessary. There is no provision in the Act as to the presumption to be drawn from a declaration made under section 4 and from the names of the printer and publisher printed under section 3, as there is under section 7 as regards declarations made under section 5 of the Act. The knowledge of the contents so far as necessary has to be proved like any other fact.

As regards accused No. 3 it is clear that his name appears as the publisher: this is in accordance with the requirements of section 3. The Manager would have to inquire as to who the publisher is, in order to comply with the provisions of section 3; and under the circumstances his statement (Exhibit 2A) may be taken as sufficient proof of the fact that he is the publisher.

If he is the publisher he disseminated or at least abetted the dissemination of the objectionable matter

[1] (1910) 35 Bom. 55.

1922.

EMPEROR v. PITRE.

and in the case of publisher, there is no reason to think that he would not have the necessary knowledge of its contents.

I would, therefore, make the rule absolute and set aside the order so far as it relates to original opponents Nos. 1 and 2, (Pitre and Jathar), and discharge the rule as to opponent No. 3 (Powar).

This is not a satisfactory result as the persons who may be far more responsible than opponent No. 3 are not reached, while a young and poor student suffers probably for the acts of some other persons: but on the evidence as it stands it seems to me to be unavoidable. It is not unlikely, however, that the proceedings may have the desired effect on the persons connected with the dissemination of the objectionable matter contained in this pamphlet.

CRUMP, J. :—I am constrained to say that in this case matters which might and ought to have been established by direct evidence have been allowed to rest on dubious presumptions, and to this alone is attributable the difficulty we have experienced in coming to a decision. That the two pamphlets before us contain matter punishable under section 124A or section 153A is to me clear and the point is whether each of these accused is shown to have disseminated or attempted to disseminate or to have in anywise abetted the dissemination of these pamphlets. There is no evidence of dissemination. We do not know what was done with the pamphlets. No one is called who purchased one or saw one purchased, or even saw one in the hands of any member of the public. But in my opinion it is reasonable to presume that they were printed for the purpose of dissemination, and any one who knowingly assisted in the printing of these pamphlets, or indeed in their publication may well be held to be within the

words " or in anywise abets the dissemination of such matter ".

The learned Advocate-General relies on the following matters:—

(i) The pamphlets themselves.

(ii) The declaration under section 3 of Act XXV of 1867.

(iii) The declaration under section 4 of the said Act.

(iv) The written information furnished by the Manager of the press for the purposes of section 18.

It is necessary to consider how far these matters establish the connection of each of these three persons with the objectionable matter and how far such connection goes to show that each of them disseminated, or attempted to disseminate or abetted the dissemination of the seditious matter.

A printed book of itself proves nothing relevant to the present enquiry. There is no presumption that it is written by the man who is described as the author unless it is one of that limited class of books covered by section 87 of the Indian Evidence Act. Were the manuscript before us it would require proof (vide section 67 of the Act). The process of printing does not, so far as I can see, remove that necessity. The declarations under sections 3 and 4 of Act XXV of 1867 may be presumptive proof of these matters which must by the statute be set out in those declarations, but the authorship of the book is not one of those matters. Whether such declarations are evidence against any person other than the person making them may be doubted, but this point need not be considered. The written information given by the Manager of the press is not given in the discharge of any duty for neither the Act nor the Rules under the Act as those Rules

1922.

EMPEROR v. PITRE.

now stand impose any such obligation. It is further open to doubt whether this written information contains anything more than what can be gathered from the book itself. The admission in Exhibit 59 that the Manager's signature is genuine does not carry the matter further. I fail, therefore, to find anything in the case to prove that accused No. 1 wrote the Marathi pamphlet. His connection with these publications or their dissemination is not sought to be proved in any other manner. Whether authorship alone would bring a man within the ambit of section 108 of the Code of Criminal Procedure is a matter on which I reserve my opinion until it is necessary to decide that point.

Accused No. 2 is proved to be "the keeper of the press". That may be presumed from the declaration under section 4 but from that alone I should hesitate to presume that he was aware of the nature of these two publications. In *Emperor* v. *Shankar Shrikrishna Dev*[1] this Court refused to make this presumption. The facts there were that the accused was shown to be a friend of the writer. On the other hand the Court relied on the difficulty of detecting the seditious matter in the work there in question. Here we have the bare declaration. No attendant circumstances are proved to assist our decision. I am not prepared to presume knowledge merely from the fact that accused No. 2 is the keeper of the press. Such a presumption does not necessarily arise from the ordinary course of business. A keeper of a considerable press may not know the contents of each and every book printed at his press. Without details as to the connection of the keeper with the actual business details it is impossible to make any such presumption. I cannot see that the declaration under

[1] (1910) 35 Bom. 55.

1922.

EMPEROR v. PITRE.

section 3 or the written information supplied by the Manager carries the matter any further. Without knowledge a man cannot be guilty of abetment.

As regards accused No. 3 I am prepared to take the declaration under section 3 of Act XXV of 1867 as proof that he is the publisher and a man who assumes that position with reference to seditious matter may fairly be presumed to have abetted the dissemination of such matter even though there is no independent proof of dissemination.

On these grounds I agree with the orders proposed by the learned Chief Justice.

Rule made absolute.

R. R.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

1922.
October 5.

GOPAL BHIMJI AVTE (ORIGINAL PLAINTIFF No. 1), APPELLANT *v.* MANAJI GANUJI PADVAL AND OTHERS (ORIGINAL PLAINTIFF No. 2 AND DEFENDANTS NOS. 2 TO 6), RESPONDENTS*.

Indian Evidence Act (I of 1872), section 108—Death—Presumption of death—Presumption extends to fact of death and not to date of death.

Under section 108 of the Indian Evidence Act, the presumption relates to the fact of death, and has no reference to the date of the death. The date of a person's death must be proved like any other fact by the party who interested in establishing that he died on or before a particular date.

Muhammad Sharif v. *Bande Ali*(1); *Narki* v. *Lal Sahu*(2), followed.

Jayawant v. *Ramchandra*(3), explained.

* Second Appeal No. 856 of 1920.

(1) (1911) 34 All. 36. (2) (1909) 37 Cal. 103

(3) (1915) 40 Bom. 239.