

him. The Subordinate Judge accepted this view. The District Judge of Broach and the Division Bench at Bombay [532] rejected it, but apparently upon the ground that payment of the *lago* was prohibited by the Act of 1844, and therefore illegal, and that the Court would not be instrumental in carrying out a contract designed to defeat the intention of the Legislature. The Act, however, simply abolished cesses on trades. If the parties who before the Act were legally liable to the payment had chosen to continue it afterwards as a voluntary contribution, they would have been quite at liberty to do so. The real answer to this part of the argument is that there is nothing whatever in the nature of a trust to be found in the transaction or to be inferred from the course of business. There is not the slightest evidence that the respondents accepted the position of trustees for the plaintiff, or consented to receive moneys for his use. The cotton sellers may or may not have a valid claim against the cotton buyers in respect of so much of the *walthar* as may appear to be attributable to, or connected with, the *lago*; but such claim, if valid, cannot give any right to the representatives of the plaintiff against persons who undertook no obligation towards the plaintiff.

Their Lordships, therefore, will humbly advise Her Majesty that these appeals ought to be dismissed.

The appellants will pay the costs of the appeals.

Solicitors for the appellants: Messrs. T. L. Wilson & Co.

Solicitors for the respondents: Messrs. Payne and Lalley.

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Before Mr. Justice Farran.

KAIKHUSRU NAOROJI KABRAJI (Plaintiff) v. JEHANGIR
BYRAMJI MURZBAN AND ANOTHER (Defendants).*

[9th and 10th June, 1890.]

Defamation—Defamatory statement made by one newspaper copied into another and commented upon as untrue—Repetition of libel—Malice.

A certain newspaper called the *Rajya Bhakta* published a false and defamatory statement of the plaintiff. More than a month afterwards the defendants published an article in their newspaper, the *Jam-e-Jamshed*, calling attention to the statement made in the *Rajya Bhakta* and repeating it. The article, however, declared that the said statement was "evidently [533] false." It pointed out that the defendants were the first to raise an outcry against it; that they had expected the plaintiff to take notice of it, but that as he had not done so they published that intimation to the public. The plaintiff sued the defendants for libel. He alleged that he had not taken any notice of the original statement in the *Rajya Bhakta*, as that paper was an obscure print not generally read in the Parsi community to which both he and the defendants belonged. He complained that the defendants had maliciously repeated and called attention to the libel in their paper for the purpose of giving it a wide circulation, and that their assertion of its untruth was made merely in order to protect themselves. The defendants pleaded that the article in their paper was not defamatory, and denied malice.

* Suit No. 579 of 1889.

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Held, that, reading the article as a whole, and in its natural sense, and taking it in connection with previous articles appearing in the defendants' paper with reference to the plaintiff, it was in itself defamatory of the plaintiff.

SUIT for libel. The plaintiff was the editor of the *Rast Gofiar* newspaper. The defendants were the proprietors and second defendant was the editor of the *Jam-e-Jamshed* newspaper. The plaintiff and the defendants were Parsis. Both the said newspapers were published in Bombay and had a large circulation among the Parsi community there.

The plaintiff stated that a certain newspaper called the *Rajya Bhakta* had, on the 11th June, 1889, published an article in which it was alleged that he (the plaintiff) had asked the Bhavnagar Darbar for Rs. 30,000 for the marriage of his daughter. He alleged that the said article was false and malicious, but that as the said newspaper was an obscure print not generally read by Parsis, he had not considered it worth while to take any notice of the said article. He complained, however, that the defendants, who had long had a spite against him, for the purpose of giving a wide circulation to the said false and malicious libel had in their issue of the 19th July, 1889, published an article calling attention to the article in the *Rajya Bhakta* and repeating the false and defamatory statement that he (the plaintiff) had asked for money from a native prince for the marriage of his daughter.

The following paragraphs of the plaint set forth the plaintiff's case:—

"5. The plaintiff says that in the said article the defendants pretend that their object in publishing the same is to point out to the plaintiff that when an apparently false libel against him is published, they the defendants are the first to protest against it. The defendants while affecting to state that the said article must be untrue, state that they have been obliged to allude to it, as the plaintiff [534] has not contradicted it, though a month has elapsed since it was published, insinuating that that circumstance leads to the conclusion that the allegation made against the plaintiff was true.

"6. The plaintiff says that the article published by the defendants was published out of malice to the plaintiff and with the object of widely circulating the said false statements against him. The said article has been widely read by the community to which the plaintiff belongs, and the attention of a large number of the plaintiff's friends, acquaintances, co-religionists and others has been called to the allegations made against the plaintiff, which otherwise they would never have heard of, and the plaintiff says he has been thereby much damaged."

The plaintiff claimed Rs. 20,000 as damages.

The following is a translation of the article in the defendants' paper of which the plaintiff complained:—

"Awkward attack on the honour of an editor.

"A short time ago a Hindu Gujarati paper had laid false and defamatory accusation against a late English official in Kathiawar. Government taking prompt notice of it utterly condemned it on its falsehood being known. But this paper does not seem to have learnt a lesson even from that, for it is but a few days since that a number of that paper was placed in our hands, in which appeared such a defamatory, disagreeable, and evidently malicious writing, that we felt there and then that it was not safe for the future to allow that writing to be passed over as it was (*i.e.* unnoticed). This paper writes in plain words and with particular names

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that in a Native State an official has entered, who has done well to himself in addition to his salary. But the public of this city has not much to do with this matter. In the same article a well-known Parsi editor of this city is charged openly with his name that he demanded a sum of money from the above-mentioned native prince for the marriage of his daughter. The actual figure of the sum demanded is also given by the paper. The editor whose name the paper has given is such a name that whatever be our relations with him we assert at once that what the Hindu paper has said must be altogether false. The editor who has been thus shamefully calumniated may himself perhaps consider us to be his opponent or enemy, but we want to point out to him at this opportunity that as our opposition to him is against his public acts so also when low papers published against him apparently false libels we are the first in raising our voice of complaint as a brother journalist and editor.

"The reason why we sat quiet over it all this while is that, as far as we know, our said contemporary is not one that would sit quiet over any stain on his honour. We were certainly expecting that he would promptly take notice of the perpetrator of this vile libel. But no move being made in the matter after the lapse of one month over it, we are compelled to publish this slight allusion to it in the interests of the reputation of the public press. It may even be that the said editor may not have read the article containing this libel.

"It is the duty of all to suppress those irresponsible journals who outrage the reputation of people at their pleasure. It is not advantageous to think that a [535] libelling journal should be cast aside because of low reputation; such imputations are particularly serious in connection with conductors of the press. We hope the Parsi contemporary whom the said Hindu writer has slandered, will take strong notice of the libel taking it in the light of a public cause."

The defendants filed a written statement, of which the following are the material paragraphs :—

"2. The defendants deny that they have for long or at any time had a spite against the plaintiff, or that they consider his paper to be a rival of their paper, or that they for the purpose of giving a wide circulation to the false and malicious rumour in the plaint referred to, published the article.

"3. The defendants crave leave to refer to the said article, and they submit that the same is in no way defamatory of the plaintiff. The defendants deny that there is any insinuation in the said article that the allegations against the plaintiff were true.

"4. The defendants deny that their article was published out of malice to the plaintiff, or with the object of widely circulating the false statement against the plaintiff. The defendants deny that the plaintiff has been at all damaged by their said article."

The only issues raised at the hearing were whether the article was defamatory of the plaintiff, and whether the plaintiff was entitled to any and what damages.

Inverarity and Russell, for plaintiff.—This is a case in which the libel complained of consists of the repetition of a libel. The statement, in the defendants' paper, of the untruth of the libel which it repeated and published is merely added by the defendants in the hope that it would protect them in case legal proceedings were taken against them by the plaintiff. The

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parties have been on bad terms for many years. The original articles were, no doubt, libellous; but the plaintiff took no notice of them, as the paper did not circulate among Parsis. If the defendants had really wished to vindicate the plaintiff, they would first have written privately to him—*Hunt v. Algar* (1).

Macpherson (Acting Advocate-General), *Lang* and *P. M. Mehta*, for defendants.—The plaintiff is sensitive: the parties are rival editors and are jealous, but the defendants have no bad feeling to plaintiff. No evidence has been given which shows malice: *Odgers on Slander*, pp, 92, 97, 98. There is no covert insinuation in the article complained of.

JUDGMENT.

[536] FARRAN, J.—The parties to this suit are Parsis. In a Gujarati newspaper called the *Rajya Bhakta*, published on the 11th June, 1889, there appeared an article, in which it is stated that there was a public rumour that Mr. Kabraji, who is the editor of the *Rast Gofdar* newspaper and the plaintiff in this case, had demanded Rs. 30,000 from the Bhavanagar Darbar for the marriage of his daughter. The article calls on the plaintiff to give a distinct denial of the rumour in his own newspaper, and states that, in the absence of that being done, the public, and especially the Bhavnagar public, would not fail to form a very poor opinion of him. The sting of this allegation lies in the fact that the *Rast Gofdar* is said to be the organ of the Bhavnagar Darbar. The article thus concludes:—

“It is the *Rast* itself that has given us the cause to write so much, because the *Rast*, in its issue of Sunday last, having beaten the drum (in praise) of this State, has, in accordance with its innate nature, taken into its hands the task of slandering the independence of native papers.”

The innuendo is obvious; and it was admitted at the trial that the article was libellous. There was no foundation whatever for the charge against the plaintiff. This was clearly established for the plaintiff and admitted by the defendants in this case. The plaintiff saw the above article about a week after its publication, but after consulting his friends resolved to take no notice of it, at the *Rajya Bhakta* was a paper of no reputation, and with a small circulation, and none amongst Parsis. It does not appear that it has a single Parsi subscriber.

The defendants were the proprietors of the *Jam-e-Jamshed*, which is also a Gujarati newspaper, but has, unlike the *Rajya Bhakta*, a large circulation amongst Parsis—at least half its subscribers being of that race. On the 19th July, 1889, an article was published in the *Jam-e-Jamshed*, and it is in respect of that article that the present suit is filed. The plaintiff complains that it is a libel upon him, injurious to him as a journalist, and that it was maliciously written by the defendants to injure and annoy him.

[537] All these allegations are traversed by the defendants. It becomes necessary, therefore, to determine the first issue—whether the article is defamatory of the plaintiff? The article is headed, “A rude attack upon the reputation of an editor.” It is unnecessary to set it out at length. Referring to the *Rajya Bhakta*, though not by name, it says that certain false charges had been made in it (the *Rajya Bhakta*) against an English officer, had been enquired into by Government and found to

be false, and that the paper had been treated with contempt, but that the paper had not taken counsel therefrom; for in a copy of the same paper (alluding to the article of the 11th June) "we saw a writing which was so calumnious and unpleasant, and apparently malicious, that at the same time we believed that it was not safe for the future to allow the same to pass away unnoticed just as it was." The article in question then refers without comment to a charge made in the *Rajya Bhakta* against an officer in the service of a Native State which, it considers, would not interest its readers, and proceeds:—

"In the same article, a charge, mentioning the name, has been laid against a well-known Parsi editor of this place to the effect that he, for the purpose of getting his daughter married, demanded a sum of money from the above-named native Raja. The figure representing this sum is also mentioned by the man of the above paper. The name of the editor of this (the said) paper is such a name that, in spite of whatever relations there may exist between us and himself, we at once say that the statements made in the above Hindu paper must necessarily be utterly false. The editor who is thus vilified in a shameful manner may perhaps consider us as his enemy or his rival, but by this opportunity we wish to point out to him that just as our rivalry with him is in connection with his public actions and affairs, so in precisely the same way when low papers write evidently false libels against him, as a contemporary fellow-writer, and also as an editor, we are the first to raise our outcry of complaint. Hitherto we remained silent for this reason, namely, that our abovenamed contemporary, so far as we know, is not the person likely to sit quiet and to let any stigma whatever to be put upon his reputation. We certainly expected that he would take immediate notice of this vile libeller against [538] him. But although nearly one month has elapsed since this occurrence, yet, owing to, no movement whatever having been made, we are compelled, for the sake of the reputation of public newspapers, to make known this slight intimation to the public (more literally, to publish this hint). It may perhaps also be the case that the abovenamed editor may not have read the facts of this libel.

The concluding paragraph of the article contends that all people are bound to put down libellous papers, and that such ought not to be left in oblivion, because they are low, and urges the Parsi contemporary, who has been vilified by the Hindu writer, to take severe notice of this calumny, considering it to be a public business.

The effect manifestly of this article appearing in a paper like the *Jam-e-Jamshed* would be to make known to the whole Parsi community the facts of the charge—a serious one to a journalist—which the *Rajya Bhakta* had made against the plaintiff—a fact which would otherwise have been unknown to them or known but to few. This is a grave responsibility for a public writer to assume without at least satisfying himself by proof that the charge is unfounded, and laying that proof before his readers, so that the antidote may immediately follow the poison. But in this case, the writer, instead of supplying his readers with an antidote, inserts a paragraph wholly unnecessary to effect any of the objects which he professes to have had in view when writing, and states that the plaintiff was not a man who would quietly sit still under any stigma for nearly a month. Whatever may be the object which the defendants had in view in publishing that paragraph, I can come to no other conclusion than that the readers for whom it was penned would read it as intending to convey a doubt of

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the plaintiff's absolute blamelessness in the matter, and not the less so because it is followed by a suggestion that "perhaps" the plaintiff may not have read the libel. It is true that the article refers to the charge as a libel, and an evidently false libel, and states that the name of the editor charged is such that the statements made in the Hindu paper must necessarily be utterly false, "but the weight which the readers of the *Jam-e-Jamshed* might otherwise be led to attach to these expressions would be much lessened [539] by the consideration that, for years past the *Jam-e-Jamshed* had been writing of the plaintiffs in opprobrious terms and calling him by offensive names. A series of articles from that paper have been put in. I select two of them as exemplifying my meaning. In exhibit F—for which defendant, K. M. Shroff, is directly responsible—It is said of the plaintiff in regard to his conduct to a rich young man of this city: "Alas? How a man makes a sacrifice of his best virtues for his avarice and puts himself in a disagreeable position. Now, who is the religious impostor?" This was in October, 1883. Exhibit C—of which the defendant, Jehangir B. Murzban, is the writer—begins thus, referring to the plaintiff:—"What is all this mystery? The *Rast Gofdar* and Jehangir Murzban. The boil of some old standing ripened, and from within it there slowly oozed a noxious matter. It burst at last, and the stench thereof has become diffused through the whole circle of friends." This was in January, 1889. The issues of the intermediate years are graced from time to time with similar journalistic amenities towards the plaintiff. The disclaimer of belief appearing in the article in question, followed as it is by the passage I have already referred to, would not be likely to be seriously taken by the habitual readers of the *Jam-e-Jamshed*.

I have, therefore, come to the conclusion, reading the article as a whole and in its natural sense, and taking it in connection with the previous articles appearing in the *Jam-e-Jamshed* with reference to the plaintiff, that it is in itself defamatory of the plaintiff. It has been proved before me that, at the time this article was written, one at least of the defendants—the actual writer of the article—was on very bad terms with the plaintiff, and had been, with intervals of apparent reconciliation, on bad terms with him for many years. This animosity seems to have been a matter of notoriety in the community, at least amongst the friends of the plaintiff and defendants. Before the article was published, the other defendant read it, and it was inserted after consideration between them. I am unable to accept the explanation of the defendant who gave evidence—the other defendant has left it for China, and is not now connected with the paper—to the effect that he inserted the article out of a feeling of friendship for the plaintiff, and desiring to bring about a reconciliation with his old journalistic enemy. The enmity [540] between the plaintiff and the defendant Murzban was not merely in the nature of rivalry or animosity between journalists as such.

There was no justifiable occasion for the publication of the defamatory article which should warrant the Court in awarding merely contemptuous or only nominal damages against the defendants.

I have to consider what actual damages ought to be given. I have found considerable difficulty in coming to a conclusion as to what motive operated in the defendant's mind inducing him to write the article. I am not satisfied, notwithstanding the terms of hostility which prevailed between him and the plaintiff, that he wrote it maliciously, intending to injure the plaintiff in the estimation of his race or as a journalist. I accept

his denial on that head, though I cannot accept his explanation that he wrote it out of friendship and to give the plaintiff an opportunity of clearing himself. The most probable view is that he had a double motive—to force the hand of the plaintiff and compel him to vindicate his character by taking legal proceedings against the *Rajya Bhakta*; and in this way to punish the latter journal for its libellous propensities. The device has succeeded, but an unexpected defendant appears on the record.

“For, 'tis the sport, to have the engineer
Hoist with his own petard.”

I acquit the defendant, therefore, of moral malice in the publication. The plaintiff has suffered no actual damage. This trial and judgment will remove all suspicions and imputations against his character in the eyes of his friends and of the Parsi community, which may have arisen from reading the article complained of. The plaintiff does not ask for large damages. Having regard to all the circumstances of the case, I think Rs. 200 a fair sum to award. The costs, which I direct the defendants to pay, will render the first defendant more cautious in the future in the language which he may employ with reference to the plaintiff. Decree for plaintiff for Rs. 200 and costs.

Attorneys for the plaintiff—Messrs. *Jefferson, Bhaishankar, Dinsha, and Kanga*.

Attorneys for the defendants:—Messrs. *Ardesir, Hormasji, and Dinsha*.

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[541] ORIGINAL CIVIL.

Before Mr. Justice Farran.

GOSVAMI SHRI (*Plaintiff*) v. SHRI GOVARDHANLALJI (*Defendant*).*
[10th May and 12th June, 1890.]

Jurisdiction—*Letters Patent*, 1865, cl. 12—“*Dwell*”—“*Carry on business*”—“*Personally working for gain*.”

The plaintiff claimed to be the *acharya* or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar in the territories of the Maharana of Oodeypore. In 1876 he was deported from the territories of his Highness, and his son, the defendant, had ever since been in charge of the shrine. The plaintiff alleged that at the time of his deportation he had money and valuables at Nathdwar which he had entrusted to his son, the defendant, for safe custody. He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit.

It appeared that the defendant's permanent residence was at Nathdwar, from which he was absent only when on pilgrimage or on tour. He had in Bombay an establishment called a *pedi* in which a *bhandari* or treasurer, a *munim*, and *mehtas* and servants were regularly employed. Into this *pedi* offerings made to the shrine of Shri Nathji by devotees were paid, as also offerings to another shrine at Nathdwar of which the defendant claimed to be the owner, and to a very small extent offerings to the defendant personally as the owner of such shrines. The defendant had similar establishments in other places in the Bombay Presidency. The offerings collected in them were transmitted to the Bombay *pedi* and dealt with there. The moneys from the Bombay *pedi* were transmitted to Nathdwar sometimes by means of *hundis* drawn at Nathdwar on the Bombay *pedi* and

* Suit No. 234 of 1889.