

It was contended by Mr. Ghanasham for the defendant that upon the proper construction of this instrument it must be taken that it was the intention of the parties to make the amount due upon the instalment bond a charge on the lands mortgaged. We do not think it necessary to express a decided opinion on this contention of the defendant, as we think that in any case the right of redemption was made conditional on whatever was due at the time on this instalment bond being paid—a condition which remained none the less unsatisfied, as long as such sum remained "unpaid"—although there might be no longer a bond debt in contemplation of law still in existence owing to a decree having been passed on the bond and although that decree had become barred.

We must, therefore, reverse the decree and send back the case for a fresh decision having regard to the above remarks.

Defendant's costs here and in the Courts below to be paid by plaintiffs.

Decree reversed and case sent back.

18 B. 758.

[758] APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

QUEEN-EMPRESS v. KAHANJI.* [11th December, 1893.]

Penal Code (Act XLV of 1860), ss. 153, 117—Wantonly giving provocation with intent to cause riot—Abetment of riot by the public—Construction.

In August, 1893, a riot took place in Bombay between Hindus and Mussalmans. The excitement caused by the riot had not entirely subsided, when the accused composed and published a poem, giving an account of the outbreak, and incidentally extolling certain classes of the Hindu community, namely the Ghatias and Kamatis, for the brave resistance which they had offered to the Mahomedan rioters. The poem extolled the Ghatias and Kamatis and then followed these lines:—

"May God give glory to you, confer joy on you night and day,
Fight again for your country's good.
Brave, brave are the Kamatis.
Why fear for dying, brother, why fear for dying?
Sooner or later, but only once, a man has to die."

The poem was written in Gujarati, a language not ordinarily spoken by the Ghatias and Kamatis or even by the Mahomedans. It did not appear that any copies of the work were distributed among the people who had taken part in the riot. Nor did any fresh riot take place subsequently to the publication of the work.

The accused were prosecuted and convicted under ss. 117 and 153 of the Indian Penal Code (XLV of 1860) on the ground that the lines quoted above, especially the words "Fight again," were a direct instigation to the Ghatias and Kamatis to renew the disturbances.

Held, that the meaning of the passages complained of was to be gathered from the whole poem. The general spirit of the poem was clearly in favour of peace and reconciliation. It consisted from beginning to end of a lamentation over the riots, and the destruction and death they had caused, and of repeated counsel to peace and harmony between Hindus and Mahomedans. And there was nothing to indicate that the author's intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances. The words "Fight again" were, no doubt, objectionable, but it would not be a proper construction of the words to allow them to override the whole context of the work.

* Criminal Appeal No. 392 of 1893.

1893

DEC. 11.

The composition could not be regarded as an "illegal act," and its publication was not "malignant" or "wanton" within the meaning of s. 153 of the Indian Penal Code.

APPEL-

[R., 26 M. 554 (568) (F.B.)=1 Weir 270.]

LATE

CRIMINAL.

18 B. 758.

APPEAL from the judgment of C. P. Cooper, Chief Presidency Magistrate, in the case of *Queen-Empress v. Kahanji Dharamsingh and others.*

[759] The material facts of this case were as follow :—

On the 11th August, 1893, a riot took place in Bombay between Hindus and Mussalmans. Within a fortnight after the suppression of the riot, but before the excitement caused by the outbreak had subsided, the accused wrote and published a poem, in Gujarati, entitled "The Bombay Dreadful Riot," containing a narrative of the causes and progress of the riot. In the course of this narrative the author incidentally extolled certain classes of the Hindu community, namely the Ghatis and the Kamatis, for the brave resistance which they had offered to the Mahomedan marauders. After much praise of the courage of the Ghatis and Kamatis the poem continued :—

"You are not women, but men. Brave, brave are the Kamatis.
May God give glory to you, confer joy on you day and night,
Fight again for country's good; brave, brave are the Kamati people."

(8th stanza)

"Why fear for dying, brother, why fear for dying?
Sooner or later, but only once, the man has to die;
Either by disease, by destiny, or in the field of battle, there is no living, no,—
To be subject to ignominy, to be counted coward, to take steps backwards,
Than such living death is better, or going to heaven.
To the valiant warrior there is always victory,
Before courage the enemies fly, by suffering salvation is achieved.
By hiding to be counted panic-stricken, and to make the hostile army the bolder."

It did not appear that copies of this poem were distributed among the Ghatis and Kamatis, or that they read the work or heard it read. Nor did any fresh riot occur subsequently to the publication of this pamphlet.

On the 17th September, 1893 a complaint was filed against the accused in the Court of the Chief Presidency Magistrate charging them with offences under ss. 153 and 117 of the Indian Penal Code.

The information filed by the Inspector of Police complained that portions of the paragraph were a direct instigation to the Kamatis and Ghatis to riot. The following paragraphs are material :—

"4. I am informed that over hundred copies of the pamphlet were printed, when the words "Fight again," which appear on the last line of the translation [760] from pp. 8 and 9, were altered to the words "Don't be daunted," and several thousand copies of the work were printed as so altered.

"5. I am informed that the work was published on or about the 24th August last when the excitement caused by the riots at Bombay still existed, and large numbers of the work were published, sold, or distributed, and caused, I am informed, considerable irritation amongst Mahomedans."

The Magistrate convicted the accused under ss. 153 and 117 of the Indian Penal Code, and sentenced accused No. 1 to three months' simple imprisonment and a fine of Rs. 201, and accused Nos. 2 and 3 each to pay a fine of Rs. 201.

The Magistrate gave the following reasons for the conviction:—

“The three accused stand charged, firstly, under s. 117 of the Indian Penal Code with abetting the commission of the offence of rioting by more than 10 persons; secondly, under s. 153 of the same Code with wantonly giving provocation, knowing it to be likely that such provocation would cause the offence of rioting to be committed. They all pleaded they had a defence to make. They declined to make any explanation, and left their defences in the hands of their advocates. Those advocates contended that all that the accused had done had been done openly. Their names appeared upon the pamphlet, and the pamphlet contained an account of the riots, with many precepts advocating the restoration of amity and good feeling amongst the two communities; that as to the two stanzas of the poem complained of, they were written at a time of poetic excitement in praise of the Ghatias, and Kamatis, who had shown a bold front at a critical time, but that there was no intention to incite those communities to riot.

“The first stanza exhibits certain acts of the Ghatias and Kamatis during the riots, and states that they overcame or got the better of their enemies, &c. These enemies must, I think, allude to the Mahomedans.

“The second stanza is in praise of a disregard to death: ‘To the valiant warrior there is always victory. Before courage the enemies fly. By concealing themselves the enemy grows bolder, &c.’ At the time when the pamphlets containing these stanzas were publicly being sold in this city, the excitement caused by the riots had not subsided, and there were still strong feelings existing between the two communities of Hindus and Mahomedans. At such a time to have publicly extolled the acts of either of those communities in respect to the part they had taken in these disturbances and riots would most probably have been likely to incite the one community to fresh acts of disturbance or riot, or to provoke the other community to similar acts. It is the duty of every loyal citizen at such a time to be most careful as to what he writes and distributes or causes to be distributed amongst the public or these communities. In this case the accused have gone further than circulating pamphlets containing writings that merely extol the acts of one of these communities taking part in these disturbances, but they have in the last line of the first stanza circulated the line ‘Fight again for your country’s good, bravo, bravo, oh Kamatis,’ and after that line there is the second [761] stanza written in disregard to death,’ that the enemies fly before brave warriors, and concealment encourages the enemy to be bold.’

“I think, looking at these lines, that they do call upon the Kamatis and Ghatias to renew the disturbances or riots.

“The accused must be assumed to have known that the probable result of such publication at such a time would be to incite or instigate the one community to renew the riots or provoke the other community to do so. Coming to that conclusion I must convict all three accused of the offences under both charges. I consider the first accused to be the principal offender. Considering the facts proved in this case I may consider, in inflicting punishment that is provided for the second offence, I am inclined to think the lines were written wantonly. I have also to consider that though no riot or disturbance did take place, still it was a serious offence at the time.”

The accused appealed to the High Court.

Jardine, for the accused.—The pamphlet, which is the subject-matter of the present prosecution, is a history, in verse, of the recent riots in

1893
DEC. 11.
—
APPEL-
LATE
—
CRIMINAL.
—
18 B. 758.

1893
DEC. 11.
—
APPEL-
LATE
CRIMINAL,
—
18 B. 758.

Bombay between Hindus and Mahomedans. Exception is taken to only two lines in the whole poem. It is alleged that the words "Fight again for your country's good; brave, brave, are the Kamatis" are a direct instigation to the Kamatis to commit a fresh riot. The meaning of this passage is to be gathered from the context. The whole poem must be read, and not merely isolated passages. One would not read from the Bible the expression "There is no God" and construe it by itself. You ought to read it in connection with the context; otherwise you would put a most absurd and unnatural construction upon it. In the present case the general spirit of the poem is distinctly in favour of peace and harmony between Hindus and Mussalmans. It condemns the riots from beginning to end. It speaks of the riots as "unprecedented and lamentable." The praise of the Ghatis and Kamatis for withstanding the rioters cannot be construed as an instigation to them to renew the disturbances. It would be far-fetched to suppose that by praising the Kamatis the Mahomedans were provoked to commit acts of violence. The poem praises everybody. It praises the Police, the Military, the Magistracy, the Government,—in short, all who had exerted themselves in putting down the riots. The poem is indeed a panegyric on peace. It is a fair and impartial narrative of the outbreak. It is written in a language not commonly understood by the Ghatis or Kamatis. There is no evidence that [762] any Ghati or Kamati read this book or heard it read. Nor is it alleged that any fresh disturbances took place in consequence of the publication of this poem. The case, therefore, does not fall within s. 153 of the Indian Penal Code.

Lang (Advocate-General), for the Crown :—The contents of the pamphlet, as well as the time and circumstances under which it was published, justify the conviction. The work was published about a fortnight after the riots had occurred. The excitement caused by the riots had not then subsided. Public tranquillity had not been fully restored. The two factions still regarded each other with feelings of distrust and suspicion. It was, therefore, highly dangerous to publish a pamphlet like this at such a time. It was calculated to excite the Mahomedans against the Hindus and the Hindus against the Mahomedans. The greater part of the poem is, no doubt, harmless, but there are certain passages which cannot be excused, particularly the lines beginning with "Fight again for your country's good." These words are clearly intended to incite the Kamatis to a fresh riot. They are addressed to the Ghatis and Kamatis; and the way in which they are extolled is calculated to provoke the Mahomedans. The evidence shows that some Mahomedans did get angry on hearing the contents of this pamphlet. The trying Magistrate is, therefore, right in convicting the accused under s. 153 of the Indian Penal Code.

JUDGMENT.

JARDINE, J.—The illegal act with which the prisoner was charged is the instigation of Hindus to attack or fight Mahomedans found in the Gujarati poem, the subject-matter of this case. The defence is that Kahanji had no intention to instigate rioting, and that the words, read with the context, ought not to be construed as instigation, and that, although they may excite Mussalmans to anger, they contain no illegal matter and thus do not bring the case within the words or the mischief of s. 153 of the Penal Code, which section only punishes when the provocation, maliciously or wantonly caused, arises out of doing something which is illegal. The Chief Magistrate convicted Kahanji on both heads of charge, holding

that the last line of the 7th song, which line begins "Fight again," and the 8th [763] song, which immediately follows, and exhorts men to dare to die, "do call upon the Kamatis and Ghatis to renew the disturbances or riots." The Magistrate was also inclined to think that the lines were written wantonly. He found that at the time of publication of the poem there were still strong feelings existing between the Hindus and Mussalmans, and that no riot and disturbance did take place in consequence of the poem. The accused does not dispute that he is the author of the poem, nor that he published it by letting the publishers and printers have his manuscript. The Crown takes no objection to any parts of the poem except the songs numbered 7 and 8, which Mr. Balaji Pandurang translates as follows:—

(7TH SONG)—BANJARA.

"The Banjara leaves me behind and goes away."
(To be sung in this manner.)

Brave, brave (are) the Kamati people,
Praiseworthy truly are the Ghatis—(To be repeated.)
They bathed (their) valiant bodies with blood, never did (they) turn back to see,
(They) broke the riotous *tata* (i.e., wall).
Brave, brave (are) the Kamati people.
Valiants, you were not afraid, you foiled the enemies.

(Original page 9.)

Forthwith you obtained glory; brave, brave (are) the Kamati people.
Strong (are) you, very brave in firmness not deficient.
(You) have buried the enemies; brave, brave (are) the Kamati people.
(You) besmeared yourselves with saffron, with manly zeal;
Forthwith the rioter's spirit was broken; brave, brave (are) the Kamati people.
(You) have blood in you of the Peshwa's times, good descendants of Shri Shivaji.
You are not women, but men; brave, brave (are) the Kamati people.
May God give glory to you, confer joy (on you) night and day.
Don't be afraid for country's good; brave, brave (are) the Kamati people.

(8TH SONG)—PAD.

"When will (you) remember Ram, now,"
(This is the mode of singing.)

Why fear for dying, brother, why fear for dying?—(To be repeated.)
Sooner (or) later, but only once, the man has to die;
(Either) by disease, by destiny (or) in the field of battle, there is no living, no.
—Brother, &c.

To be subject to ignominy, to be counted coward, to take steps backwards,
Than such living death is better, or going to heaven.—Brother, &c.
[764] To the valiant warrior there is always, victory, such everlasting position
(renown) be taken up;

Before courage the enemies fly, by suffering salvation is achieved.—Brother, &c.
By hiding to be counted panic-stricken, and to make the enemies' army the bolder. It being so, as to the body and mind, Kan (the author) says the same are to be sacrificed for others.—Brother, &c.

The Police Court translator gives a few variations from the above, mostly of no importance. He admitted at the trial that his rendering of the third line of song 7 as "Ye broke through files of rifles" was incorrect. As this translation would seem to imply that the Kamatis and Ghatis came into conflict with the troops who during the riots aided the civil authorities in preserving the public order, it is important to notice that the translation now admitted to be correct makes no allusion to rifle-men, and asserts only that the Kamatis and Ghatis broke through the wall, i.e., I suppose, the serried ranks of the rioters. A police witness examined to show the seditious nature of the poems charged, says the words mean, "You have broken through the row of people who were going to create a

1893
DEC. 11.
—
APPEL-
LATE
CRIMINAL.
—
18 B. 758.

1893
DEC. 11.
—
APPEL-
LATE
CRIMINAL.
—
18 B. 758.

disturbance, So the line cannot be treated now as a praise of men audacious enough to attack the Queen's military forces engaged in the support of the Magistracy and Peace Officers.

The only question on which we have to decide is, whether the language used in the passages on which the Magistrate bases the conviction, does in the sense which fairly belongs to it—the sense that is most natural and obvious—bear the meaning put on it by the Magistrate. We have to look at the circumstances of the case and the occasion and the time. We have to consider the whole poem, giving its proper weight to every part—*Dean of St. Asaph's case* (1) and the *Trial of Mr. Moxon* for blasphemy in publishing Shelley's Works, 2, Townsend's Modern State Trials, at p. 388. Some evidence of police officers has been given about the passages complained of by the Crown to bring the case within the ruling of the *Rex. v. Harvey* (2), by showing that the lines were calculated to stir up the Kamatis and Ghatis to open violence against the Mussalmans in this city. These witnesses admit, as also does the Advocate-General, that much of [765] the poem is unexceptionable. No literary witness, accustomed to deal with poetical productions, has been called; although in such matters poets have no privilege, it is obvious that the construing of a long poem presents greater necessity for care than an ordinary prose publication. Even prose works often present difficulty in ascertaining the real meaning of the writer, as is shown in some of the cases about doctrine in the Church of England decided by the Privy Council (e.g., *Heath v. Burder* (3)). A literary work is seen in different lights by different minds, even minds of culture, as we know by conspicuous instances. See how Erskine (*arguendo*) gives an entirely innocent meaning to the Dialogue between the Gentleman and the Farmer written by Sir William Jones, afterwards the distinguished Orientalist and Judge of the Supreme Court in Bengal—I mean to the suggestions that voters should get arms and learn drill, so as to be able to stand up for law and liberty—suggestions which the Government treated as seditious and prosecuted the Dean of St. Asaph for publishing. Take, again, another matter of public notoriety nearer home: the letter which a former Government of Bombay sent to the learned regents of the University of Bombay, taking exception to Bishop Butler's Analogy of Religion as in some way dangerous to native students. Take likewise Lord Chancellor Eldon's remarks on Lawrence's Lectures on Physiology at the College of Surgeons—*Lawrence v. Smith* (4). These are all prose compositions, and I suppose prose is more readily understood than poetry. No decided cases have been cited; and when we grope through the old reports, we fail to find any which show the process of literary criticism whereby the Judge (it was Lord Eldon) reached the conclusion that a certain poem, such as Southey's *Wat Tyler*, or Byron's *Don Juan* and *Cain*—*Southey v. Sherwood* (5), *Murray v. Benbow* (6)—was so immoral, seditious or blasphemous, that the Court had to refuse to protect the copyright. We, too, might imitate those Judges and simply state our own conclusions; but we have had to examine the drift of the whole of the poem, the subject of the present State trial; and as our estimate is different [766] to that of the Court below, we determine to express in detail the view we take of the work. The whole poem has been read and commented upon by the learned counsel for the appellant, and it becomes our duty to

(1) 21 Howell's State Trials, 847—1002.

(3) 15 Moo. P.C. 1 82.

(5) 2 Meriv. 435.

(2) 2 B. & C. 257—9.

(4) 1 Jac. 471.

(6) 1 Jac. 474 (note).

consider its words and spirit with careful judgment in order to see what the exhortation is and whether it is baneful, and if the other parts of the poem constitute an antidote. For this purpose we have read through the pamphlet, which is in the Gujarati language and is entitled "The Terrible Riot which took place at Bombay." (This poem begins with a statement of the horrors of the riots' dreadful deeds done in spite of the presence of police and troops. This part does not say which community is to blame. Then in the first song, to the tune of 'Lord, now you released the elephant from jeopardy,') the poet takes refuge, as many a psalmist had done, in the mercy of God, and prays for peace, and that the two communities may be reconciled. In the second song the disturbances of the 11th August last are related with spirit and power. The poet tells how from the Jumma Masjid—

"Striking the bell issued forth the rioters uttering by mouth 'Din, Din.'
They gave beatings with clubs, saying many low words.
The Police became utterly unable, they also received beating; from the Fort the great Magistrate camp up; there came many officers."

The singer then tells how in spite of the presence of these officers the work of destruction went on, fifteen beautiful temples being made desolate and many people injured and shops looted. The triumphant rioters went on unchecked:—

"A madam was struck down—horses and carriages were stopped.
They outraged the modesty of Kamati women
So vengeance took hold of Kamatis; their hate was immeasurable."

This is the climax and crisis of the riots. These outrages caused the Kamatis to rise with big clubs, and the riots increased, and even when the troops used their arms, the riots broke out again somewhere else. The poet here shows the police and military at their wits' end in the dreadful storm, and mentions many appalling incidents and the suffering and fear which ensued when the arm of authority was weakened. He tells us how Her Majesty the Empress telegraphed next day, Saturday: "Resort to best measures to restore peace without making delay;" and how at last "the mighty riot began to subside" when Mr. Brewin, of the [767] police, had secured the Bandora butchers and taken their knives away. The poet uses many images to show how on that Friday and Friday night and Saturday, Bombay became desolate like a cremation ground overrun by the raging streams and proud swelling waves of riot and plunder, lust and murder.

In the third song the scene changes: the pious poet begins by thanking God for the mercy vouchsafed. Like the Rakshasas in the Ramayana of old, the wicked have been struck down. "The storm went on infinitely; it looked exceedingly fearful. They came to an untimely end the great wicked thereby. The world heartily hooted." Then after considering the causes of these outbreaks the mournful muse bewails the widows and children of the men murdered in the riots.

In song 5, to the air "A great calamity has happened in the Kali age," the writer in more warlike language appears to me to treat the Ghatis as restoring order by resisting the marauders while the other Hindus sat trembling and afraid. Mosques and *durgas* were burnt in retaliation: and,

"People like cats who were very timid,
Killed the enemy without restraint."

The sixth song describes the flight to Hindus out of Bombay and the levelling of ranks in the general fear. Braggart fellows became meek

1893
DEC. 11.
—
APPEL-
LATE
CRIMINAL.
—
18 B. 758.

1893 and hid in corners, and the Mahajans put their pride on one side and
 DEC. 11. said humble words. Then, in contrast to these faint-hearted castes,
 —men of Gujarati castes,—song 7 begins to extol the courage of the
 APPEL- humbler Kamatis and Ghatīs. The gist of the ode is that these people by
 LATE standing up and fighting the victorious marauders checked the rioting
 CRIMINAL. which had defied the police and the Magistrates. The eighth song
 — expresses the philosophic and poetical view of death. The ninth is set to
 18 B. 758. the tune "Let all march to conquer, the bugles sound," but one is surprised
 to find that this trumpet call is a signal for peace. The song begins "Instantly
 make union." The brave are repeatedly warned that there is no benefit
 in fighting; and it is pointed out that the oppressive and unjust will be
 punished by the criminal law. Mussalmans and Hindus being but
 two halves of the same seed, the poet, turning slightly metaphysical,
 [768] condemns fighting altogether. Kindness and love seem to him, as
 they did to Shelley, the cure for the fearful evils of the world. By a
 natural transition the poet in the tenth song, to the air "It is light,
 remember thou the deity Shri Ganesh," triumphs in the victory of the
 Crown and the law over the miscreants—

Silly foolish people, those great sinful rioters;

By infliction of punishment they were suppressed by the valiant British."

So the faces of people bloom again like the lotus flower, and the darkness
 of quarrel having ceased, and the sun of union arisen, Bombay shines
 again in undimmed glory. In the eleventh song the poet, seemingly
 discouraged, implores the Lord of the Universe, the supporter of life,
 to save the people by creating peace and amity; and in the twelfth and last
 song the poem ends with a eulogy of the worthy Lakhmidas, the wise son
 of Khimji.

The Court cannot safely deal with a production like this without
 remembering the rhetorical forms used by the writer. Poetry often has
 more meaning than prose; read how Addison's Cato was applauded by
 both Whig and Tory. The transitions remind one of those of Dryden in
 Alexander's Feast; of Schiller in the Song of the Bell; of some of the
 Psalms; the attempt is to move by pity and terror; and the prosecu-
 tion urge that the lines beginning "Fight again" and what follows are
 calculated to move to rage and violence, to incite the Ghatīs and Kamatis
 to fire another Troy. Not every poet is as cautious as Addison, of whom
 Johnson says "When Pope brought him the prologue (to the tragedy of
 Cato), which is properly accommodated to the play, there were these
 words: 'Britons arise, be worth like this approved,' meaning nothing
 more than Britons exert and exalt yourselves to the approbation of public
 virtue. Addison was frightened lest he should be thought a promoter of
 insurrection, and the line was altered to "*Britons attend.*" It may be
 conceded that the words "Fight again" are incautious; and this appears
 to have been felt by the publishers, who apparently, without reference to
 the poet, struck these words out after 300 copies (many of which were
 hawked about and sold) had been printed, and substituted the words "Be
 not afraid." But, then, we find the poem from beginning to end consists
 of a lamentation [769] over the riots, and the destruction and death they
 cause, and of repeated prayers for and counsel to peace and harmony
 between Hindus and Mussalmans. The actual words "Fight again" are
 qualified by "for your country's good." Judged by the context and the
 whole spirit of the poem, as well as by ordinary meaning, these qualifying
 words do not necessarily imply wanton outbreak and fighting. The poet

represents the Kamatis and Ghatias as men who when other Hindus, like the Gujarati-speaking castes, were cowering in concealment and confusion after the marauders had caused great loss of life and property, after they had got even so far as the Kamati quarter of the town and even gone so far as to knock down a European lady and outrage the Kamati women, as stated in song 5—as men, I say, who took up their clubs and retaliated vigorously on the hitherto successful invaders. To put the poet's view of this stage of the disturbances in the language of the law, the Kamatis were brave enough to use the right of private defence of the body and of property expressly given by ss. 100 and 103 of the Indian Penal Code: so that the people who had begun the lawless proceedings received a check. Although, as the poet seems to admit, the immediate result of the check was a series of fights, hardly to be controlled by police and troops combined, his sympathies are with the injured, and his expressed desire is the establishment of peace and the enforcement of the law. Supposing the words had been "Fight again, oh Light Horse, oh Police," or "Fight again, oh Magistrates and Justices of the Peace," we could not construe them to mean, fight without lawful orders, or fight without regard to the law at all. The criticism of Mr. Brewin, who thinks that the more amiable sentiments are put in merely to conceal a wicked design to excite bloody tumults again, does not appear justified by the general tenor of the work. Literature furnishes examples of poems wholly written for one object, *e.g.*, Swinburne's Ode on the Insurrection in Crete; and the Gujarati poem, translated in Kinloch Forbes' *Ras Mala*, on the Sutti-burning of the Queens and Concubines at Edur in 1836 on the death of the Maharaja Gambheer Singh. The one is a praise of the insurrection; the other of *suttis*. But the poem before us is far more a history than a praise of valour; the songs 7 and 8 arise [770] incidentally only out of an episode in the story. The latter song about contempt of death expresses sentiments adopted by many poets and religious moralisers in all ages and countries. They are found in the *Bhagavatgita*, and the Shakesperian remark that brave men die but once, and cowards often. That song by itself is not to be condemned, though such sentiments combined at the same moment with a call to fight may conceivably lead to a breach of the public order. Looking at the size of the poem and to the fact that the matter complained of is really contained in only one line thereof, it is right that the accused should have the benefit of such doubt as to the effect as may fairly exist. The improper matter does not, like the obscenity in the Confessional Unmasked—*Reg v. Hicklin* (1)—take up half the book. He appears to have done nothing except write his poem and send it to the press. He is no Tyrtæus singing in front of his men. Nor is the poem written in the tongue of either Kamatis or Ghatias, some only of whom understand Gujarati. It does not appear to have been written for, or read by, these classes of people; the heroism of these humbler castes, who resisting force with force checked the high advancing tide of murder and plunder, is used by the poet as a scornful contrast to the timid Mahajans and others who hid in corners of the house, and sought refuge by flight to Kathiawar, Gujarat and Marwar.

We entirely agree with the Magistrate that in the excited state of Hindu and Mahomedan feeling at the time it was the duty of the accused not to publish anything that had even a remote tendency to stir up ill-feeling. We mean a moral duty; not that he has transgressed the

1893
DEC. 11.
—
APPEL-
LATE
CRIMINAL.
—
18 B. 758.

1893 law. Even while acquitting him we do not look upon him as an object
 DEC. 11. of public sympathy; he ought to have been more cautious. We have to
 APPEL- add that there is evidence that the lines complained of made some
 LATE Mahomedans angry, those to whom one of the witnesses read them. But
 CRIMINAL. this fact is hardly relevant to the question whether the accused in
 18 B. 753. publishing the poem did what was illegal. Many sermons and comments
 on the acts or opinions of others, eulogies to and elegies on prominent
 leaders or the mighty dead may be delivered in a legal and peaceable way,
 and yet, especially in factious [771] times, raise much ill-feeling in the
 ranks of the opposite party. Yet this is not generally a reason for
 interference with the liberty of speech or of the press; such interference
 with legal rights would only cause oppression and give increased power to
 faction. People may be angry; but, if they allow themselves through
 anger to commit assaults, they expose themselves to criminal punishment.
 This is the answer of the law to people like the Mussalman witnesses, who
 sat down to hear this poem read, and then thought they did well to be
 angry. Milton shall not be silenced because Salmasius seeks to break his
 head; the peaceful lists of literature have long been open to Whig and Tory,
 Catholic and Protestant, Platonist and Materialist, Roundhead and
 Cavalier, Hindu and Mussalman. On the other hand, to prevent misconcep-
 tion, I must say that the Magistracy may, under s. 144 of the Code of
 Criminal Procedure, in circumstances where the public tranquillity is in
 danger, interdict for the occasion the exercise of legal right, and dis-
 obedience to the order is punishable under s. 188 of the Indian Penal Code.
 We reverse the conviction and sentence and discharge the appellant.

RANADE, J.—The appellant Kahanji with two others was convicted
 under ss. 117 and 153 of the Indian Penal Code by the Chief Presidency
 Magistrate, and sentenced to three months' imprisonment and a fine of
 Rs. 201. The offences with which he stood charged were (1) that of
 abetting the commission of the offence of rioting, in that he composed
 and caused to be published and sold a certain pamphlet extolling certain
 acts committed by Hindu Ghaties and Kamatis, and instigating them to
 fight with the Mahomedans again; and (2) that of wantonly abetting
 the commission of the offence of rioting, in that he composed and
 caused to be published and sold same pamphlet which contained lines
 instigating certain classes of Hindus to attack the Mahomedans, know-
 ing that such a provocation would cause the offence of rioting to be com-
 mitted. The Magistrate was satisfied that the lines on pages 7, and 8 of
 the collection of poems, on which special stress was laid by the prosecution
 called upon the Ghaties and Kamatis to renew the disturbances, and that the
 accused acted wantonly, and that he must be assumed to have known that
 the probable result of the publication at the time would be to instigate
 [772] one community to renew the disturbances, or provoke the other to
 do so. The appellant contends before us that the Magistrate was in error
 in the construction he put upon the lines, and that the pamphlet contained
 nothing which was calculated to instigate a renewal of the riots.

It thus becomes necessary to examine carefully the contents of the
 pamphlet. The prose preface gives a summary of the losses sustained in life
 and property both by the Hindu and Mahomedan communities, who are
 linked together in this place. The first stanza opens with a prayer to god
 Shiva, whose mercy is invoked, and concludes with a wish that venom and
 rage may be put out, and union and peace increase, so that Hindus and
 Mahomedans may be reconciled in mind, and entertain love and friendship
 to one another. In the second stanza, the author professes that his

intention is to write a history of the rise and progress of the riots. In this stanza it is no doubt stated that the riots were commenced by the Mahomedans. This was, however, admitted to be a fact by the chief police officer examined on behalf of the prosecution. In the first half of this stanza, allusion is made to the defilement of Hindu temples, and the fear and trembling which paralyzed the Hindus on Friday afternoon. About the middle of the stanza, it is stated that the modesty of Kamati women was outraged, and this circumstance roused the vengeance of the Kamatis. The latter portion of this stanza makes no distinctive mention of either community, but narrates how the rioters (scoundrels and budmashes) proved too much for the police, and were not brought under control till the military force arrived. In the third stanza, the history of the riots is continued, and the allusions show that the writer had chiefly in view the events of Saturday, when the Hindus successfully outnumbered their Mussalman assailants of the previous day. After mentioning the several causes assigned for the riots, the writer attributes them to mutual animosity of heart. The words apply to both communities, who are told that by "cherishing hatred, no benefit accrues, and that by friendship good happened to each other." The poet expresses a hope that, notwithstanding all that has happened, there is no cause for anxiety if people act prudently and cautiously. The police witnesses admitted that this was good advice. In the 4th [773] stanza there is an appeal made to the rich to give charity, and relieve the poor. No distinctive allusion is made to either community. In the 5th stanza, allusion is specially made to the scenes of plunder and looting, and individual murders which took place after Saturday till the riots ceased. Mention is here made for the first time of the Ghatis who saved their honour by fighting. Mosques and *durgas* are mentioned as having been burnt down by the rioters. The Mahomedans are by implication described as still fighting like desperadoes though outnumbered, while the ere while timid Hindus are stated to have killed the enemy without restraint. In the 6th stanza allusion is made to the help rendered by the rich Hindus to the poor people of their community. Next comes the 7th stanza in which occur the lines to which exception is taken. This stanza was no doubt intended to praise the Ghatis and Kamatis. The translation of one of the lines made by the Police Court translator as stating that the Ghatis and Kamatis broke through the serried array of the rifles was admitted by him to be a mistake in his evidence in Court. This stanza begins with the words "Brave, brave are the Kamati people, praiseworthy truly are the Ghatis," and concludes with the words "Fight again for country's good" in a few hundreds of the first issue or the pamphlet. These last words were altered into "Don't be afraid for country's sake" in the second and larger issue of the same pamphlet. The 8th stanza attempts to give reasons why no fear should be entertained. The reason is that death comes to all men only once, but to them who die in battle there is always victory. In the 9th stanza the chief verse inculcates that "there is no benefit in fighting, brothers reflect." "The law will punish the criminal and the oppressor, and people should not resort to a contrary course of action." "In reconciliation there is superior enjoyment and peace." The exhortation is intended for both communities, who are stated in one couplet to be the two halves of one seed, and the split between them is condemned by the poet, and both are asked "to make one affirmation of union and peace." In the 9th stanza there is again an invocation of God's mercy, and it is stated that "quiet was restored, and temples were reopened, and men's faces began to beam with

1898

DEC. 11.

APPEAL

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CRIMINAL.

18 B. 758.

1893
DEC. 11.
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APPEL-
LATE
CRIMINAL.
—
18 B. 758.

joy, thanks to the efforts of Government." In the 11th stanza God's aid is invoked [774] for the restoration of peace, and the 12th stanza concludes with the praise of Mr. Lakhmidas Khimji, who, it appears from the evidence, purchased a certain number of copies from the publisher. From this summary of the poem it appears to us clear that the general spirit of the poem, taking all the stanzas together, was clearly in favour of peace and reconciliation. The riots passed through several stages, and the narrative describes the stages separately in the several stanzas. The dominant idea was that Hindus and Mahomedans should not fight with one another, and there is no indication that the intention was to instigate the Hindus, or provoke the Mahomedans to renew the disturbances. The praise of the Ghatris and Kamatis was a rhapsody suggested by the course of events as they took place, and as the writer was a Hindu and a Gujarati, and the Mahomedans were admittedly aggressors in the first instance, such digression was not at all beyond the license allowed to ballad writers and rhapsodists. It appears to us that when the information was first laid before the Magistrate, a translation of the whole pamphlet should have been put in. This was not done, and only translations (subsequently admitted in part to be mistaken) of stanzas 7 and 8 were filed, and the Magistrate's attention was thus not sufficiently drawn to the whole poem. The words "Fight again" used in the first issues were, no doubt, very objectionable, but the mistake was admitted and corrected. When the whole spirit of the poem was decidedly in favour of peace and concord, it would not be a proper construction of the words so incautiously used to allow them to override the whole context of the work. It is also to be noted that the pamphlet was in Gujarati, which was not the spoken language of either Ghatris or Kamatis, nor of the lower classes of Mussalmans either. There is absolutely no evidence to show that the pamphlet was distributed among or read to or by the Ghatris or Kamatis, and the evidence about its distribution among the Mahomedans is also confined to the statements made by Mr. Brewin and one Mussalman charcoal dealer.

We do not think that, taking all these circumstances together, the publication can properly be regarded to be an illegal act as contemplated in s. 153. That section, moreover, requires that the provocation given by the commission of an illegal act must [775] be given malignantly and wantonly. The word wantonly occurs only in this section of the Code, while the word malignantly occurs once again in s. 270, which refers to the wicked spread of infectious poison. "Malignantly" implies certainly a sort of general malice, and very strong evidence must certainly be given to prove this malignity or wantonness in the publication of this pamphlet. In the first draft of the Indian Law Commission's Report, s. 136 stood in place of s. 153 of the present Code, and it only made the offence punishable as such in case a riot occurred in consequence. Admittedly no riot or disturbance took place, or was apprehended by the police in this case. The composition was not, taking the whole of it, an illegal act, and its publication was not malignant or wanton. We do not think the mere chance of a provocation was, under the circumstances, sufficient to justify the conviction under s. 153. The same remark applies to the charge under s. 117. There was no evidence of an abetment of any offence by the public generally, or by more than 10 persons which is necessary to justify a conviction under that section. We accordingly reverse the conviction and sentence passed on the accused Kabanji Dharamsi.

Conviction reversed.