expanded mode of expressing the same idea. Our decision on this point is supported by the case of *Kherodemoney* v. *Doorgamoney*[1] which cannot, we think, be substantially distinguished from it."

We, therefore, hold that the suit was not barred by limitation.

There is no dispute as to the property to which the plaintiffs, as representing the original plaintiff Saraswatibai, are entitled.

We reverse the decree of the lower appellate Court and declare that the appellants are entitled to recover the sanmortgage-bond, Exhibit 84, and all the mortgage-bonds and personal bonds and documents relating to the undisposed of and unexhausted residue of Jethabhai's estate. Order that respondent 2 do retain one bond of the nominal-value of Rs. 100 for delivering to the *Vyatipat* institution. Order that the respondents 1 and 2, if and when required so to do by the appellants, do assign to them the said bonds and documents at the appellants' expense. Decree that respondent 1 do pay Rs. 81-7-0, that respondent 2 do pay Rs. 107-11-3, and that respondents 1 and 2 do pay Rs. 60 to the appellants. Decree that first and second respondents do pay the costs throughout of appellants and third respondent.

Decree reversed.

G. B. R.

CRIMINAL APPELLATE.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

EMPEROR *v.* SHANKAR SHRIKRISHNA DEV.*

1910.
July 12.

Press Act (XXV of 1867), sections 4, 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Penal Code (Act XLV of 1860), section 124A—Sedition—Intention.

The accused made a declaration under Act XXV of 1867, section 4, that he was the owner of a press called "The Atmaram Press". Beyond this, he took

* Criminal Appeal No. 117 of 1910.

(1) (1878) 4 Cal. 455.

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no part in the management of the press, which was carried on by another person. A book styled "Ek Shloki Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion. It also contained seditious passages scattered among discussions of religious matters. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was convicted of the offence punishable under section 124A of the Indian Penal Code, 1860, as publisher of the book. On appeal,

Held, by *Chandavarkar, J.*, that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, a reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to him.

Held, by *Heaton, J.*, that before the accused could be convicted under section 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection; and that the evidence fell very short of proving the intention.

Per CHANDAVARKAR, J.:—A declaration made under section 4 of the Press Act, is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved. Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it.

APPEAL from conviction and sentence recorded by K. R. Bomanji, District Magistrate of West Khandesh.

The accused Shankar S. Deo made a declaration under section 4 of the Press Act, 1867, that he was the owner of a printing press called the "Atmaram Press". As a matter of fact, he took no part in the management of the press, which was looked after by another person.

At this press, a book styled "Ek Shloki Gita" was published. It was written by one Keshav Narayan Damle. The book purported to be an extended commentary on a single verse from the *Bhagvad Gita*. The author of the book was a Sanyasi: and the book itself consisted of religious and philosophical discussions interspersed with seditious passages.

It was not shown at the trial that the accused had ever read the book or was aware of its contents. The accused was, upon these facts, tried of an offence of publishing a seditious book, under section 124A of the Indian Penal Code, and was convicted and sentenced to undergo simple imprisonment for two months and to pay a fine of Rs. 200. He was convicted on the following grounds :—

Now as regards the accused No. 2. That he is one of the owners of the press and has made a declaration to that effect is not denied. He pleads that he took no part in the management of it. Now it must be remembered that this accused is one of the leading pleaders in Dhulia, so that he cannot say he had not more than the ordinary man's knowledge of the responsibility of his position.

If a man makes a declaration under section 4 of the Press Act of 1867 that he is the owner, what does the declaration amount to? The learned pleaders on both sides have not been able to help me with any cases decided on this point. There are no doubt under sections 5 and 7 of the Act but not under section 4. It is contended on behalf of No. 2 that unless it can be proved that the accused had read the book and knew it to be seditious, then and then only can he be held liable. Sections 5 and 7 of the Press Act apply to newspapers and not to books. But if the owner of a press prints a book which is seditious, is he liable or not? In Tilak's case quoted at I. L. R. 22 Bombay, page 129, Justice Strachey accepted the ruling of the Chief Justice of Calcutta that a man who uses any printed matter in any way for the purpose of exciting feelings of disaffection is liable under section 124A whether he is the actual author or not. Looking to the wording of section 124A, Indian Penal Code, I must hold that a man who causes seditious matter to be printed, uses words which would create disaffection or attempts to do so and must be held responsible for his conduct. Even the so-called informal manager of the press owned by the accused No. 2 has admitted that if the accused had directed that the book was not to be printed he would have had to follow his order. I must hold then that the responsibility for printing the work must lie with the owner who made the declaration, and he cannot say that the author and he alone must be held responsible.

It might be urged that the accused No. 2 did not read the book. If so, it seems to me that he failed to do what he ought to have done and cannot escape the responsibility of his position on the ground of his own neglect. A good deal has been said about the difference in the wording of the declaration under sections 4 and 5. The reason is obvious. In the case of a book the author's name appears on the book or is registered, in the case of a newspaper or periodical the writer's name very often is not disclosed.

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The accused appealed to the High Court.

Weldon, with *C. A. Rele* and *P. B. Shingne*, for the accused.

The evidence adduced by the prosecution does not establish any intention on the part of the accused to excite disaffection and is not sufficient to support the conviction under section 124A of the Indian Penal Code. The onus of proving that he had knowledge of the seditious character of the book lay on the prosecution. That onus is not discharged.

The mere fact that the accused made a declaration under section 4 of the Press Act, 1867, cannot render him criminally liable for a book published at his press without his knowledge. There is a distinction between section 4 and section 5 of the Act. The latter deals with the case of the printer and publisher of a periodical; whilst the former deals with the proprietor of a press. Section 7 of the Act should be read with section 5 and not with section 4. That section renders the printer and publisher of a periodical liable for its contents. That presumption cannot be drawn against a person making a declaration under section 4 and the prosecution should prove affirmatively that he had the knowledge.

G. S. Rao, Government Pleader, for the Crown.

The accused is the registered proprietor of the press. He has control over the press and is liable for what is going on there. He cannot escape liability by relegating his duties to a manager. The responsibility of printing a book lies with the owner who makes a declaration under section 4 of the Press Act. See *Emperor* v. *Bhaskar*[1]; Odgers on Libel and Slander, pages 439, 440.

CHANDAVARKAR, J. :—The seditious character of the publication called the "Ek Shloki Gita", has not been disputed by Mr. Weldon in arguing this appeal on behalf of his client, who has been convicted by the District Magistrate of West Khandesh under section 124A of the Indian Penal Code. The petitioner made a declaration under section 4 of the press Act XXV of 1867, that he was the owner of a certain Press called the "Atmaram Press", where the book in question was printed. The District

(1) (1906) 30 Bom. 421.

Magistrate has held mainly on the strength of that declaration, and one or two other circumstances, that it must be presumed that the petitioner was aware of the seditious character of the book and that he did take part by its publication in bringing Government into contempt.

A declaration, made under section 4, is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on the person declaring in respect of matters where public interests are involved. Therefore, when a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption I have spoken of as one that may be drawn is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it. By what I am saying, I do not wish it to be understood that registered owners of printing presses, who have made declarations under section 4 of the Act, can lightly escape from the responsibility which they have taken upon their shoulders by means of that declaration. The law would not require an owner to make a declaration for nothing. The object is to create a sense of responsibility, so that if any public mischief occurs owing to any action or conduct of the press, the law can at once know who must *primâ facie* be held responsible for it. While that is so, on the other hand, the Courts should be careful to draw no inference of guilt against the declarant from the mere fact of declaration but must consider the surrounding circumstances and probabilities to enable them to arrive at a conclusion whether the declarant had a hand in the printing and publishing so as to bring him within the operation of section 124A of the Indian Penal Code, where the charge is under that section.

Now, in the present case there is the declaration to start with, and if it had stood alone, I should have presumed the guilt of the appellant, especially when there is the proved fact that the writer of this seditious publication has been his friend. But

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there are other facts and circumstances to be considered, which make it reasonably doubtful whether the appellant had ever read the book, and had acquainted himself with the nature of it either before or after it had been printed. When the writer of the book sent it to the press for printing, he corresponded, not with the present appellant, but with one Randive, the manager, and another person, by name Killedar, also employed in the press. It is true that the writer deposited Rs. 300 with the appellant to defray the expenses of the printing, but from that circumstance it does not necessarily follow that the appellant had read the book or had been informed of its character and contents. After the printing work had been done by the press, the appellant appropriated the whole sum of Rs. 300 towards the printing charges, and then ensued a dispute between the writer and the press. The writer appealed to the appellant and urged that, when he had deposited Rs. 350, it had been understood that Rs. 300 only were to be for the printing charges and that Rs. 50 were to be reserved for the writer's private expenses. The appellant declined to be moved by any consideration of that kind and gave the writer to understand that as it was a purely business transaction, he could not allow his "love" for him as a friend to interfere in a matter of profit and loss concerning the press. Had the appellant been aware of the seditious character of the publication and undertaken its printing in his press with the object of propagating disloyal ideas and fostering a sense of hatred of the Government, it is probable that he would not have adopted this tone of a business man while writing to the writer of the publication and insisted on getting every penny out of the job. That is how it strikes me—unless I must assume that the appellant, having joined the writer in the printing and publication, with sedition as their object, turned round against his own friend. But I do not think we ought to assume that in at least a criminal case, where we have the further fact to consider, and that is with reference to the principal features of the publication. It is not only seditious, but, in my opinion, it is also venomous; and the venom is all the more dangerous because it is presented to the reader in the garb of metaphysics, philosophy, and religion, which so readily appeal even to the

average Hindu intellect. At the outset the writer takes a single verse from the *Bhagvad Gita*, where Krishna clinches his whole argument on the subject of devotion to duty with the advice to Arjun to gird himself for war and fight with his enemies. The writer of this publication puts his own gloss on the verse. He explains it to mean that we should make war with ourselves in the faithful discharge of our daily duties. That seems a very innocent gloss, but, as he proceeds, after sixteen pages he brings out his main object in publishing the book in one sentence. He says:—"Swarajya cannot be obtained without victorious war". Having let the venom out in that way, he takes to his philosophical strain again until he comes to page 69 where again a distinctly seditious utterance is found. Thus at fairly long intervals he brings out in the book his libels aimed against the Government and there he intersperses them with his views on philosophy and religion. No reader is likely to detect this dangerous character of the book, unless he reads it carefully through, and follows the somewhat abstruse reasoning, which runs through the pages, with close attention. I do not mean that the philosophy and religion found in the pages are of a solid character or such as to give one a high opinion of the writer's intellectual capacity. But it is a book written deliberately with the object of presenting two faces to the reader—one as a spiritual enlightner and the other as an enemy of the Government. The former is in evidence on every page, the latter comes in occasionally.

In this state of the facts I do not think it would be safe to presume that the appellant was aware of the real nature of the book. The cumulative effect of the surrounding circumstances I have dwelt upon is such as to make it as probable that the appellant had not read the book as that he had known its seditious object. The evidence being thus evenly balanced and equivocal, a reasonable doubt arises as to the guilt of the appellant, the benefit of which must be given to him.

For these reasons the conviction and sentence must be reversed, and the appellant acquitted. The fine, if paid, must be refunded.

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HEATON, J.:—The accused in this case was charged under section 124A of the Indian Penal Code, to put it briefly, with exciting or attempting to excite disaffection. No exciting of disaffection is proved. No attempt has been made to prove it as it very seldom is, in these cases. The substantial charge therefore is one of attempting to excite disaffection. In *Emperor* v. *Ganesh Balvant Modak's* case[1] which came before us, some time ago, we held that an attempt to do a thing must necessarily involve some intention; for a man cannot be said to attempt to do that which he has absolutely no knowledge of doing, and no intention to do. Applying that principle here it is impossible to convict the appellant under section 124A, unless we find that he had an intention of exciting disaffection. The evidence has been considered by the Magistrate and he came to the conclusion that there was this intention. This conclusion he reached by a series of presumptions; a method to which I know of no objection on principle, but one which needs careful treatment in practice. To me it seems that the evidence falls very far short of proving intention even by a process of presumptions. It does seem to be true that the appellant took some active part in the negotiations with the author of the book, and certainly had knowledge that that book was being printed at the press, of which he was the registered proprietor. But the established facts show that the press printed the book at the cost, for the benefit and on account of the author; and they do not suggest that the book was one which would be read on behalf of the press proprietors, before it was printed. If however the book were obviously a seditious publication, and were one, the sedition in which would be patent even to a casual reader, the condition of things in this case would be very different from what it is. But we have here a book of considerable length, a book that I should imagine is very hard reading. It deals with philosophical and religious questions. No doubt sedition is there, but it is occasional, and it is interspersed in one or two sentences in one place, and one or two sentences at another, frequently at long intervals. It would take very careful reading of that book to enable the reader to realise that he was perusing

(1) (1909) 34 Bom. 378.

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a seditious publication. That being so I am not prepared to go anywhere near the length of presuming that the accused had any knowledge whatever that the book which was being printed at his press was a seditious publication. Finding myself unable to make that presumption, it seems to me that I am bound to agree with the conclusion that he must be acquitted of the charge on which he has been tried.

Conviction set aside.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

EMPEROR *v.* MULSHANKAR HARINAND BHAT.*

1910. *August* 11.

Presidency Towns Insolvency (Act III of 1909), sections 17, 103 and 104—Adjudged insolvent—Criminal proceedings against the involvent—Penal Code (Act XLV of 1860), section 421—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—"Suit or other legal proceeding," interpretation of.

A person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act, 1909; and was adjudicated an insolvent. Ten days later, a creditor of the insolvent, without having obtained any sanction from the Insolvent Debtors Court, filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under section 421 of the Indian Penal Code, 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint.

Held, that the Magistrate's jurisdiction to try the insolvent for an offence under section 421 of the Indian Penal Code, 1860, was not taken away by any thing contained in the Presidency Towns Insolvency Act, 1909.

The expression "or other legal proceeding" in section 17 of the Presidency Towns Insolvency Act, 1909, coming after the word "suit", a word of more limited application, must be construed on the principle of *ejusdem generis*. It, therefore, includes only proceedings of a civil nature.

THIS was an application for revision of an order passed by Chunilal H. Setalvad, Acting Third Presidency Magistrate of Bombay.

* Criminal Application for Revision No. 177 of 1910.