

reliance was placed can be of any assistance in view of the law as laid down in such cases as *Mighell v. Sultan of Johore*(1) and *Statham v. Statham and the Gaekwar of Baroda*(2). The point was expressly considered by WILLS, J., in *Mighell v. Sultan of Johore* (1) where the effect of *Duke of Brunswick v. The King of Hanover*(3), explained.

NARAYANAN
MOOTHAJ
v.
THE COCHIN
SIRCAR.
—
TYABJI, J.

For these reasons I think that this petition must be dismissed.

The judgments in Civil Revision Petitions Nos. 511 and 512 of 1912 will follow.

I do not wish to interfere with the order of the Lower Court as to costs; but here the petitioner in each case will pay one-third of the respondent's costs.

[Letters Patent Appeals Nos. 133 to 135 of 1913 filed against this decision were dismissed by OLDFIELD and SADASIVA AYYAR, JJ.]

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Hannay.

RE RAMBILAS AND THREE OTHERS (ACCUSED), PETITIONERS.*

Indian Penal Code (Act XLV of 1860), sec. 405—Criminal Procedure Code (Act V of 1895), ss. 179 and 182—Criminal breach of trust—Hundis sent from Dharapuram—Cashed in Bombay—Jurisdiction.

1914.
October
12 and 21.

The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly. It is only the *intention* which is essential; whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it.

Where, therefore, the accused, brokers in Bombay, were charged in the Court of the Sub-Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis entrusted to them by the complainants, merchants at Dharapuram, for encashment at Bombay,

Held, that the hundis having been cashed and the proceeds misappropriated by the accused in Bombay, the Erode Court had no jurisdiction to try the case.

Ganeshi Lal v. Nand Kishore (1912) I.L.R., 34 All., 487, approved.

Assistant Sessions Judge of North Arcot v. Ramaswami Asari (1914) 26 M.L.J., 235, distinguished.

(1) (1894) 1 Q.B., 149 at pp. 154, 155. (2) (1912) L.R. Pr., 92.

(3) (1848) 2 H.L.C., 1.

* Criminal Revision Case No. 326 of 1914 (Criminal Revision Petition No. 279 of 1914).

Re RAMBILAS. *Queen-Empress v. O'Brien* (1897) I.L.R., 19 All., 111 and *Emperor v. Mahadeo* (1910) I.L.R., 32 All., 397, commented on.

Held, also that, where, as in this case, the complaint clearly charged dishonest misappropriation to accused's own use and not use or disposal in violation of law or contract, the offence fell under the first part of section 405 of the Indian Penal Code and not under the second.

And secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place, not where the contract was made, or should have been performed.

PETITIONS under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the order of M. SUNDARARAJA AYYAR, the Sub-Divisional Magistrate of Erode. The facts, so far as they are material for the purpose of this report, are as follows :—

The complainants are Muhammadan merchants carrying on business at Dharapuram within the jurisdiction of the Court of the Sub-Divisional First Class Magistrate of Erode. They complained in that Court that the accused committed criminal breach of trust in respect of money to the extent of Rs. 8,205-7-9 realised by them on account of certain hundis sent to them for encashment at Bombay and thus committed an offence punishable under section 409, Indian Penal Code.

The pleader for the accused raised the objection that as the offences complained of, viz., cashing and misappropriation were committed outside the Presidency, the Erode Court had no jurisdiction to entertain the complaints and enquire into them.

The Sub-Divisional Magistrate of Erode relying on the ruling in *Queen-Empress v. O'Brien* (1) came to the conclusion that he had jurisdiction to enquire into the complaints and accordingly decided to proceed with the enquiry.

Against that the accused preferred this petition to the High Court.

Dr. S. Swaminathan for the petitioners.

The *Acting Public Prosecutor* for the Crown.

AYLING AND
HANNAWAY, JJ.

JUDGMENT.—Petitioners, who are stated to be brokers carrying on business in the Bombay Presidency, are accused in two cases on the file of the Sub-Divisional Magistrate of Erode. The complaint against them is that they committed criminal breach of trust in respect of the proceeds of certain hundis, entrusted

(1) (1897) I.L.R., 19 All., 111.

to them for encashment by the complainants, merchants of *Re RAMBILAS.*
Dharapuram in the Erode Sub-division.

The question is whether the Erode Sub-Divisional Magistrate has jurisdiction to try the cases.

AYLING AND
HANNAY, JJ.

From the recitals in the complaints, it is clear that the hundis were received and cashed by the accused (petitioners) in Bombay and that the cash proceeds were retained and misappropriated there.

It is conceded in the course of the hearing before us that the accused have been, and still are, residing outside this Presidency: so that section 185 of the Criminal Procedure Code does not apply.

The Sub-Divisional Magistrate has held the cases to fall within his jurisdiction in virtue of section 179 of the Criminal Procedure Code on the ground that the wrongful loss occasioned by accuseds' acts accrued to complainants at their residence and place of business, Dharapuram.

We have carefully considered the effect of section 179 of the Criminal Procedure Code read with section 405 of the Indian Penal Code: and are clearly of opinion that it cannot be interpreted as giving jurisdiction to the Erode Sub-Divisional Magistrate to try the present cases. The offence of criminal breach of trust is completed (assuming a preliminary trust) by the misappropriation or conversion of the property (in this case the cash proceeds of the hundis) dishonestly, *i.e.*, with the intention of causing wrongful gain or wrongful loss. It is only the *intention* which is essential. Whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it. The learned Public Prosecutor has drawn our attention to the second part of section 405, which deals with dishonest use or disposal of property in violation of law or contract. He says accused had contracted by letters received at Dharapuram to remit the amounts to the complainants there; and argues that the contract was broken by failure to deliver the money at Dharapuram, and that this fact gives jurisdiction to the Erode Court.

We are unable to follow this reasoning. In the first place the present case falls under the first, and not the second part of the section: the complaint clearly charges dishonest misappropriation to accuseds' own use, and not use or disposal in

Re RAMBILAS. violation of law or contract. Secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place not where the contract was made or should have been performed.

ATLING AND
HANNAY, JJ.

No authority has been quoted in support of this last argument; but the Sub-Divisional Magistrate has based his decision on two rulings of the Allahabad High Court *Queen-Empress v. O'Brien*(1) and *Emperor v. Mahadeo*(2). These cases are undoubtedly in point, and afford some authority in support of his view. We observe that in the first case the Court was proceeding under section 185 of the Criminal Procedure Code: and appears to have been influenced to some extent by considerations of convenience. The second case was decided by a single Judge, who was disposing of a revision petition against a conviction. In declining to interfere, he quoted *Queen-Empress v. O'Brien*(1) and was prepared to follow it, but he also relied on section 182 of the Criminal Procedure Code as giving jurisdiction, and, further, on section 531 of the Criminal Procedure Code as justifying his refusal. This decision certainly adds nothing to the earlier one: and, if the latter is to be taken as an expression of opinion or the strict interpretation of section 179, then with all respect we are unable to follow it.

In a later case—*Ganeshi Lal v. Nand Kishore*(3)—another learned Judge of the same Court, KARAMAT HUSAIN, J., while distinguishing *Queen-Empress v. O'Brien*(1) on the facts, discussed the meaning of section 179 of the Criminal Procedure Code in relation to a similar case to the present one and expressed exactly the same view as we are inclined to adopt. In a still later case *Langridge v. Atkins*(4), another learned Judge (MUHAMMAD RAFIQ, J.) elected to follow *Queen-Empress v. O'Brien*(1) but did not discuss the point apart from the rulings thereupon.

The only case of this Court to which we are referred is *Assistant Sessions Judge of North Arcot v. Ramaswami Asari*(5). This arose out of an application to quash a commitment: and the main point for determination was the applicability of section 188 of the Criminal Procedure Code and the necessity of a certificate from the Political Agent. SPENCER, J., remarked

(1) (1897) I.L.R., 19 All., 111.

(2) (1910) I.L.R., 33 All., 397.

(3) (1912) I.L.R., 34 All., 487.

(4) (1913) I.L.R., 35 All., 29.

(5) (1914) 26 M.L.J., 235.

that the loss occasioned by the breach of trust in that case was a "consequence" within the meaning of section 179 of the Criminal Procedure Code sufficient to give jurisdiction and quoted *Queen-Empress v. O'Brien*(1) and *Langridge v. Atkins*(2) as authority. But the bulk of the judgment of both the learned Judges was devoted to the effect of the want of a certificate and with all respect we do not feel compelled to treat this as a considered ruling on the point binding upon us.

These are all the cases to which we are referred: and we do not think their effect would justify our adopting a different interpretation of section 179 of the Criminal Procedure Code and section 405 of the Indian Penal Code to that which a careful consideration of the sections themselves seems to indicate.

We set aside the order of the Sub-Divisional Magistrate, and direct the discharge of the petitioners.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

G. SESHAMMA (DEFENDANT), APPELLANT,

v.

B. V. SURYANARAYANA AND ANOTHER (PLAINTIFF'S
LEGAL REPRESENTATIVES), RESPONDENTS.*

1913.
October 28.

Civil Procedure Code (Act XIV of 1882), sec. 373—Legal Representative—Abatement of suit—Withdrawal of suit with permission to bring a fresh one—Its effect on the representative not on record.

When a suit has abated against a defendant by reason of his legal representative not having been brought on the record within the time allowed by law and when the plaintiff thereupon withdraws his suit with permission to bring a fresh one, such a permission can only empower him to bring a fresh suit against those defendants who were on the record on the date of the withdrawal and not against the legal representatives of a defendant who was dead at the time of the withdrawal and whose said representatives had either not been brought on the record or had been removed from the record by an appellate order which set aside the order of the First Court bringing them on the record.

Perumal v. Karuppan (1911) 21 M.L.J., 574, dissented from.

(1) (1897) I.L.R., 19 All., 111.

(2) (1913) I.L.R., 35 All., 29.

* Appeal Against Order No. 280 of 1912.