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MOORAJEE POONJA v. VISRANJEE VISENJEE.

PETHERAM, C.J.—Held that as no formal notice of abandonment of the appeal had been given, and that as at any time the Registrar might be called upon to issue the notice upon the opposite party, the application was a proper one; and therefore ordered the petition of appeal to be struck off the file for want of prosecution, allowing costs to the applicant.

Rule absolute.

Attorney for applicant: Mr. *Carruthers.*

Attorneys for opposite party: Messrs. *Watkins & Co.*

T. A. P.

CRIMINAL REVISION.

Before Mr. Justice Wilson and Mr. Justice Porter.

1886 *April* 14.

DHARMA DAS GHOSE (PETITIONER) *v.* NUSSERUDDIN (OPPOSITE PARTY).*

Mischief—Penal Code (Act XLV of 1860), *s.* 425—*Revenue sale—Damage done between date of sale and grant of certificate—Wrongful loss to property held under incomplete title.*

The damage contemplated in s. 425 of the Penal Code need not, necessarily, consist in the infringement of an *existing*, present and complete right, but it may be caused by an act done *now* with the intention of defeating and rendering infructuous a right *about to come into existence.*

Any person who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete, or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425.

ONE Dharma Das Ghose was charged before the Deputy Magistrate of Sealdah with having committed mischief under the following circumstances :—

On the 14th December 1885 a small holding held by the accused from Government was sold by the Collector of the 24-Pergunnahs for arrears of revenue, and was purchased by the complainant who, in accordance with the sale law, on the day of sale, had deposited a portion of the purchase-money. The accused

* Criminal Motion No. 140 of 1886, against the order of Moulvi Syud Ameer Hossein, Deputy Magistrate of Sealdah, dated the 8th of February 1886.

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was present at the sale, and knew that the holding had been purchased by the complainant. Previously, however, to the completion of this sale, and prior to the expiry of the 60th day from the sale on which a certificate would have been granted to the complainant, the accused cut down certain fruit trees on this holding, and was thereupon charged with committing the offence above-mentioned. The Deputy Magistrate found the above facts proved against the accused, and found that the accused had the intention to cause wrongful loss to the complainant, who at the time had a prospective proprietory right in the holding, and convicted him under s. 425 of the Penal Code, sentencing him to a fine of Rs. 100, or in default two months' rigorous imprisonment.

On the 29th March 1886 the prisoner obtained a rule from PRINSEP and GRANT, JJ., calling upon the complainant to show cause why the conviction and sentence should not be set aside, on the ground that the act committed by the petitioner did not amount to mischief.

This rule came up for hearing on the 14th April 1886 before WILSON and PORTER, JJ.

Baboo *Umbica Churn Bose*, in support of the rule, contended that the offence was not committed, because at the time when the trees were cut down the legal title to the holding was still in the hands of the accused, the title of the complainant not having become complete, inasmuch as under the sale law the sale could not become complete and final until the expiry of 60 days from the date of sale, and that until the purchaser obtained his certificate of sale, he had not the rights of a proprietor, and could not have suffered any wrongful loss by the action of the accused.

Baboo *Rajendro Nath Bose* showed cause.

The order of the Court (WILSON and PORTER, JJ.) was as follows:—

The question raised in this rule is, whether on the facts found the offence of mischief was committed. [Here followed the facts and the intention with which the act was done, as found by the Deputy Magistrate.]

The offence of mischief is defined in s. 425 of the Indian Penal Code: "Whoever with intent to cause, or knowing that

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he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief." The first explanation to that section is that "it is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed." "It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not." And the second explanation is that, "mischief may be committed by an act affecting property belonging to the person who commits the act." A person therefore who destroys property which at the time belongs to himself with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to anybody else, is guilty of the offence of mischief.

Under Act XI of 1859, after a sale has taken place, and the money is paid, and thirty days have elapsed, and no appeal has been filed, the sale becomes final and conclusive.

The time is now altered by s. 4 of Beng. Act VII of 1868 from thirty to sixty days. Under s. 28 of Act XI of 1859, upon the sale becoming final and conclusive, the sale certificate is to be given, which sale certificate is evidence of title from the date specified in it.

The contention before us is that the offence of mischief was not committed in this case, because at the time when the trees were cut down, the legal title was still in the accused person, and the title of the complainant had not then become final and conclusive. No doubt the complainant's title had not become complete, nor had become final and conclusive, but it appears to us that it would be a great fallacy to say that therefore he had no such interest in the land that an interference with it might cause wrongful loss or damage. Any man who contracts to purchase property and pays in portion of the purchase-money has an interest in such property, though his title may not be complete and his right final and conclusive; and we think it clear that he has such an interest that the destruction of the property may cause wrongful loss or damage to him. On this ground, therefore, we think that mischief has been committed in this case.

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But there is another ground also for holding that the accused is guilty of mischief. The damage contemplated in s. 425 of the Indian Penal Code need not, necessarily, consist in the infringement of an existing, present, and complete right, but it may be caused by an act done now with the intention of defeating and rendering infructuous a right about to come into existence. This is clearly shown by illustration (*d*) to s. 425 itself.

That illustration says:

"*A*, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to *Z*, destroys those effects, with the intention of thereby preventing *Z* from obtaining satisfaction of the debt, and of thus causing damage to *Z*. *A* has committed mischief." A very little alteration in the words makes the case fit the present. *A*, knowing that his property has been sold in satisfaction of a public demand, in order to satisfy that public demand, and that the purchaser's title will, after the lapse of sixty days, become final and conclusive, destroys the fruit trees upon the land with the intention of thereby preventing the purchaser from obtaining the benefit of the purchase he has made, under which his title, now inchoate, will become final, and conclusive after sixty days: *A* has committed mischief.

We think, therefore, that this rule should be discharged.

T. A. P.

Rule discharged.

APPEAL FROM ORIGINAL CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Wilson.

RAM LAL SETT AND ANOTHER (DEFENDANTS) *v.* KANAI LAL SETT AND ANOTHER (PLAINTIFFS.)*

1886 *March* 10.

Hindu Law, Gift—Settlement—Gift to a class—Construction of family settlement—Rule for gift to unborn grandsons.

Where the intention of a donor is to give a gift to two named persons capable of taking that gift, although it is also his intention that other persons unborn at the date of the gift should afterwards come in and share therein, the part of the gift which is capable of taking effect should

* Original Civil Appeal No. 31 of 1885, against the decision of Mr. Justice Pigot, dated 8th September 1885.