

1905

ABDUL
GHANI
v.
MUHAMMAD
FASIH.

parties to the appeal and complete justice could not be done without having them before the Court. Under the circumstances of the case they were to all intents and purposes appellants in the lower appellate Court. The objections under section 561 were preferred not only against these other defendants, the co-respondents of the plaintiff, but also against the appellant. As the Court of first instance had made a decree jointly against all the defendants, and, as we have already said, the appellate Court could not do complete justice between all the parties without opening up the whole case, we hold that this is one of the exceptional cases in which the plaintiff respondent could be allowed to prefer objections under section 561 as against his co-respondents. As the Court on the appeal of one of the defendants could have varied or set aside the decree in favour of all the defendants, it seems to us to be just and equitable that it should also have the power upon objections taken by the plaintiff to vary the decree against all the defendants. This case is similar to the case of *Mahomed Ameer v. Prankishore Deb* (1). The case of *Kallu v. Manni* (2), to which the learned vakil for the appellant invited our attention, is distinguishable. In our judgment the appeal has no force. Accordingly we dismiss it with costs.

Appeal dismissed.

1905
July 6.

REVISIONAL CRIMINAL.

Before Mr. Justice Richards.

EMPEROR v. DOST MUHAMMAD.*

Criminal Procedure Code, section 133—Order for removal of obstruction on public land—Defence raising question of title—Procedure.

When in a matter under section 133 of the Code of Criminal Procedure the person called upon to show cause raises a question of title it is for the trying Magistrate to decide whether the question so raised is raised *bonâ fide*. But the trying Magistrate ought not to go further and decide whether the title set up does or does not exist.

* Criminal Revision No. 286 of 1905.

(1) (1874) 21 W. R., 338.

(2) (1900) I. L. R., 23 All., 93.

1905

 EMPEROR
 v.
 DOST
 MUHAMMAD.

IN this case one Dost Muhammad was called upon, under section 133 of the Code of Criminal Procedure, to show cause why some steps and a wall of a mosque, said to be an encroachment on some Government land, should not be pulled down. Dost Muhammad showed cause, and pleaded title in himself to the land on which the alleged encroachments were constructed. The District Magistrate considered the question of title rather on its merits than with regard to the *bona fides* of the claim, and, finding that Dost Muhammad had not made out the title set up by him, made his order absolute. Dost Muhammad applied to the Sessions Judge to revise the Magistrate's order, but his application was dismissed. He thereupon made a further application in revision to the High Court.

Babu Satya Chandra Mukerji, for the applicant.

The Assistant Government Advocate (Mr. W. K. Porter), for the Crown.

RICHARDS, J.—This is an application by way of revision against the order of the Sessions Judge of Mainpuri refusing to revise an order of the District Magistrate of Mainpuri, dated the 24th of March 1905, for the removal of some alleged encroachments upon alleged Government land. The order purported to be made under section 133 of the Code of Criminal Procedure. Dost Muhammad set up a case that the property was not Government property, but was his. It is quite clear that it is not open to any person illegally causing obstruction to public property to set up a bogus question of title for the purpose of ousting the jurisdiction of a Magistrate, and it is equally clear that, notwithstanding the raising of such a question, the Magistrate is entitled to hear the case sufficiently to enable him to make up his mind whether or not a *bona fide* question of title is raised. If, however, a *bona fide* question of title is raised, that is, if the party accused has an honest belief that he has a title, the Magistrate ought not to proceed with the case, but he should leave the matter to be decided by the Civil Court. In the present case the Magistrate has not found that no *bona fide* question of title was raised. On the contrary, he seems to me to have heard the evidence fully and to have decided, not on the *bona fides* of Dost Muhammad in raising the question of title,

1905

EMPEROR
v.
DOST
MUHAMMAD.

but the question of title itself. This he ought not to have done. I accordingly think that the application should be allowed, and I allow the same accordingly, and set aside the two orders referred to above.

1905
July 8.

Before Mr. Justice Banerji.

EMPEROR v. HARI SINGH.*

Act No. XLV of 1860 (Indian Penal Code), section 292—Distributing obscene pamphlet—Definition—Intention.

The test of obscenity, with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. *Empress v. Indarman* (1), *Queen-Empress v. Parasuram Yeshwant* (2) and *The Queen v. Hicklin* (3) referred to.

The question whether a publication is or is not obscene is a question of fact.

If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. *Rag. v. Catherecols* (4) and *The King v. Dixon* (5) referred to.

THE facts of this case are as follows :—

One Hari Singh was convicted by the District Magistrate of Agra under section 292 of the Indian Penal Code for circulating a certain obscene pamphlet, or rather broadside, styled "Itr Korani" or "Essence of the Koran." The pamphlet complained of contained, amongst other matters, a series of quotations from the Koran with the author's comments thereon. There were other passages of a more or less objectionable nature, but that more particularly forming the basis of the charge consisted of the quotation of a part of a passage from the Koran relating to the Virgin Mary. The true sense of this passage being in the first place perverted by the incompleteness of the quotation; comments were added which amounted to an attack in a very offensive form upon the doctrine of the Immaculate

* Criminal Revision No. 107 of 1905.

(1) (1881) I. L. R., 3 All., 837.

(3) (1868) L. R., 3 Q. B., 860.

(2) (1895) I. L. R., 20 Bom., 193.

(4) (1835) 2 Lewin, C. C., 237.

(5) (1814) 3 M. and S., 11.