

rights of the several co-sharers. For the purpose of distribution of profits a hypothetical rent is in a case like the present fixed upon the *sir* land, and all the co-sharers share in this hypothetical rent. It is quite clear that if the proprietary body were the proprietors of the *sir* prior to the sale, the particular co-sharer who sells his proprietary rights cannot transfer anything more than his own share. In other words, he is not entitled to sell the whole proprietary title in the land which he held as *sir*. We think it logically follows that as soon as the co-sharer ceases to be a co-sharer and becomes an ex-proprietary tenant of his *sir*, he becomes the tenant of all the co-sharers in the *patti* including the purchaser of his share. The plaintiffs were therefore entitled to share in the rent payable by the defendants 2 to 4. It is to be noted that this is not a case where the vendor is really the sole owner of the proprietary title in the lands which he holds as *sir*. There are some such cases. We dismiss the appeal with costs.

*Appeal dismissed.*

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## REVISIONAL CRIMINAL.

*Before Mr. Justice Muhammad Rafiq.*

LANGRIDGE v. ATKINS.\*

*Criminal Procedure Code, section 179—Jurisdiction—Place where consequence of act ensued—Act No. XLV of 1860 (Indian Penal Code), section 406—Criminal breach of trust.*

*Held* that the loss caused to the person beneficially entitled to property through a criminal breach of trust is a consequence which completes the offence, and a prosecution will therefore lie at the place where such loss occurred.

*Queen-Empress v. O'Brien* (1) and *Emperor v. Mahadeo* (2) followed. *Babu Lal v. Ghansham Das* (3), *Ganesh Lal v. Nurd Kishore* (4) and *Sirdar Meru v. Jethabhai Amirbhai* (5) distinguished. *Nirbho Ram v. Kallu Ram* (6) dissented from.

The facts of this case were briefly as follows. Two persons of the names of Atkins and Langridge, both married, lived at Cawnpore. Atkins owned a machine and Langridge, under an agreement with Atkins, helped Atkins to work it and was remunerated by a share in the profits. Atkins fell ill at Cawnpore in 1911 and

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\* Criminal Revision No. 681 of 1912 from an order of W. F. Kirton, Sessions Judge of Cawnpore, dated the 19th of August, 1912.

(1) (1896) I. L. R., 19 All., 111.

(4) (1912) I. L. R., 34 All., 487.

(2) (1910) I. L. R., 32 All., 377.

(5) (1906) 8 Bom. L. R., 513.

(3) Weekly Notes, 1908, p. 175.

(6) (1901) 4 O. C., 375.

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died there in January 1912, leaving by will all his property to his wife. During his illness Langridge had, with Atkins' permission, taken the machine to some place in Madras to be worked at a fair for their common benefit. Langridge neither returned the machine to Mrs. Atkins nor did he account for any profits made out of it. Mrs. Atkins therefore filed a complaint against Langridge in Cawnpore. The present application was to set aside the proceedings against Langridge upon the ground that the courts at Cawnpore had no jurisdiction.

Mr. *E. A. Howard*, for the applicant.

Mr. *C. Dillon*, for the opposite party.

Babu *Lalit Mohan Banerji* (for the Assistant Government Advocate), for the Crown.

MUHAMMAD RAFIQ, J.—This is an application in revision which raises a point of jurisdiction. The applicant, George Langridge, contends that the Cantonment Magistrate of Cawnpore has no jurisdiction to try him on a charge under section 406 of the Indian Penal Code. According to the case for the prosecution, the applicant and Atkins, the husband of the opposite party, were in the service of the East Indian Railway in 1911, and both resided with their wives in Cawnpore. The two men were friends, and they decided to improve their prospects by leaving the railway service and touring the country with an American machine called the "American Circling Wave." Atkins supplied the money for the machine, and he went with the applicant to Bombay in October, 1911, and took delivery of it. The applicant was to serve as an assistant of Atkins, and was to get part of the profits as his remuneration. Atkins remained in Bombay for about three months. He fell ill and died there on the 23rd of January, 1912. Before his death he executed a will of all his property in favour of his wife, Mrs. Atkins. During his illness he permitted the applicant to take the machine to some place in Madras to work it there during a fair for their mutual benefit. A few days after the death of Atkins, the applicant presented an agreement in writing to Mrs. Atkins for signature, claiming half the machine. Mrs. Atkins refused to sign the said agreement and denied the title of the applicant to any part of the machine. The applicant then went away without returning the machine to Mrs. Atkins or rendering to her any account of the profits made before or after the death of her

husband. She filed a complaint in the court of the Cantonment Magistrate of Cawnpore against the applicant, under section 406 of the Indian Penal Code. Mrs. Langridge, the wife of the applicant, also filed a complaint against him under the maintenance section in the same court. The applicant was arrested on the two warrants and taken to Cawnpore. He objected to the jurisdiction of the Cantonment Magistrate to try him on the charge of criminal breach of trust on the ground that the offence, if committed at all, was committed outside Cawnpore and in fact outside the United Provinces. The objection was overruled. The applicant preferred a revision to the court of Session which was rejected. He has come up in revision to this Court and repeats his objection. It is argued by the learned counsel for him that section 179 of the Code of Criminal Procedure, under which the Cantonment Magistrate appropriates the jurisdiction to himself, and with whom the Judge has agreed, is inapplicable to the present case. The applicant has done no criminal act within the jurisdiction of the Cawnpore courts, nor has any consequence ensued modifying or completing such act within the jurisdiction of those courts. The alleged criminal breach of trust was admittedly committed outside Cawnpore; and as under the law the offence was completed as soon as the dishonest misappropriation or conversion of the machine or the profits had taken place, there was no consequence of the said misappropriation left to modify or complete the offence with which the applicant stands charged. In support of this contention the following cases are cited:—*Babu Lal v. Ghansham Das* (1); *Ganeshi Lal v. Nand Kishore* (2), *Sirdar Meru v. Jethabhai Amirbhai* (3) and *Nirbhe Ram v. Kallu Ram* (4). For Mrs. Atkins it is contended that the jurisdiction of a criminal court is determined by the allegations made in the complaints filed before it. In her complaint she stated that the applicant was a mere agent in charge of the machine in question, permitted to exhibit it at various places for her and her husband's benefit and was bound to return it and to account to her for the profits at her place of residence, i. e., at Cawnpore. His failure to do so gives the courts at Cawnpore jurisdiction to try him on her complaint. It is admitted that the words "and of any consequence which has ensued" in

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(1) Weekly Notes, 1908, p. 115.

(3) (1906) 8 Bom. L. R., 513.

(2) (1912) I L. R., 84 All., 487

(4) (1901) 4 O. C. 876.

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section 179 of the Code of Criminal Procedure, refer to a consequence which completes or modifies the act alleged to be an offence. But in criminal breach of trust loss is a necessary consequence and completes the offence. The unlawful retention by the applicant of the machine and profits of its exhibition has entailed loss on Mrs. Atkins at Cawnpore, and hence the courts at Cawnpore have jurisdiction to try him. The learned counsel for Mrs. Atkins relies on the following cases in support of his argument: *Queen-Empress v. O'Brien* (1) and *Emperor v. Mahadeo* (2). Moreover, it is urged that if the applicant's interpretation of section 179 of the Code of Criminal Procedure is allowed, Mrs. Atkins has no remedy. She does not know where the machine was at the time of her husband's death, or at the time she demanded its return, or at what places has the applicant exhibited it. In fact, she could not for a long time trace the address of the applicant and does not know even now where he is concealing the machine. It appears to me that both parties are agreed as to the interpretation of section 179 of the Code of Criminal Procedure. The point of difference between them is whether loss resulting from criminal breach of trust can be said to be such a consequence as completes the offence. This Court, if I have read the rulings rightly, has always held that loss entailed by criminal breach of trust is a consequence that completes the offence. The case of *Queen-Empress v. O'Brien* is directly in point. To the same effect is the case of *Emperor v. Mahadeo*. None of the cases cited for the applicant, with the exception of the Oudh case, helps him. In the case of *Babu Lal v. Ghansham Das* (3) Babu Lal was prosecuted for cheating at the instance of Ghansham Das, in the court of the Joint Magistrate of Aligarh, with regard to the negotiation of certain *hundis*. It was found that as the said *hundis* were neither negotiated in the district of Aligarh, nor was any loss sustained by Ghansham Das on the negotiation of those *hundis*, the Joint Magistrate of Aligarh had no jurisdiction to entertain the complaint. The facts of the case *Ganeshi Lal v. Nand Kishore* (4) were, that the complainant had his principal shop in Cawnpore and a branch shop at Gauriganj, district Sultanpur, in Oudh. The profits made at the latter shop were to be remitted to the principal firm at Cawnpore. The

(1) (1896) I. L. R., 19 All., 111.

(3) Weekly Notes, 1908, p. 115.

(2) (1910) I. L. R., 32 All., 397.

(4) (1912) I. L. R., 34 All., 487.

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accused misappropriated some money of the branch shop. The complainant prosecuted him in Cawnpore on the charge of embezzlement. On an objection by the accused it was held by Mr. Justice Karamat Husain that the Cawnpore court had no jurisdiction. The learned Judge came to that conclusion presumably on the ground that loss was sustained primarily by the branch shop. It was for that reason that he made a distinction between the case before him and that of *Queen-Empress v. O'Brien* (1). He did not differ from the ruling in the case of *O'Brien*, nor did he question the proposition that in a criminal breach of trust loss to the victim was a consequence which completed the offence. In the case of *Sirdar Meru v. Jethabhai Amirbhai* (2) the complainant was assaulted by the accused and his leg broken within the Baroda territory. The complainant was taken to a hospital within the British territory where he was detained for 57 days, during which period he was unable to follow his ordinary pursuits. He originally filed in a British court a complaint against the accused for causing him grievous hurt. The accused raised an objection of want of jurisdiction. It was held that as the offence of causing grievous hurt was complete within the Baroda territory, inasmuch as the leg had been fractured in that territory, the objection of the accused must prevail. This case does not help the applicant at all. It is true that the inability of the complainant to follow his ordinary pursuits was a consequence of the fracture. But that inability did not in that particular case complete or modify the offence of the accused. Had the leg of the complainant not been broken and had an injury been caused which necessitated the complainant's detention in a British hospital for twenty days or more, the decision of the Bombay High Court would, I presume, have been different. According to the definition of grievous hurt inability to follow one's ordinary pursuits for twenty days or more is only one of the tests of grievous hurt, *vide* section 320 of the Indian Penal Code. The Oudh case, as I have already remarked, is in favour of the applicant. But this Court has taken a different view as appears from the cases cited above. I therefore find that the Cantonment Magistrate of Cawnpore has jurisdiction to entertain the complaint against the applicant. The application of the latter fails and is rejected.

*Application rejected.*

(1) (1896) I. L. R., 19 ALL, 111.

(2) (1906) 8 Bom. L. R., 518