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January, 12.

Before Mr. Justice Chamier and Mr. Justice Piggott.

POTHI RAM AND OTHERS (DEFENDANTS) *v.* ISLAM FATIMA AND OTHERS
(PLAINTIFFS).*

Act No. IX of 1872 (Indian Contract Act), section 27—Agreement in restraint of trade—Mutual agreement between two neighbouring land-owners not to hold cattle markets on the same day.

Held that an agreement entered into by an owner of land with the owner of adjoining land, to the effect that a market for the sale of cattle should not be held on the same day on the lands of both of them, is not an agreement to which the principle of section 27 of the Indian Contract Act, 1872, applies.

THE parties to this case were the owners of two neighbouring villages. A cattle market used to be held in each village on Tuesdays and Saturdays. This identity of days caused mutual loss and recrimination. A settlement was effected, and an agreement was entered into, to the effect that the plaintiff would hold the market in her village on Tuesdays and not on Saturdays, and the defendant would hold it in his on Saturdays and not on Tuesdays. The defendant broke the contract by holding the market on both days. The plaintiff sued for damages. The Munsif dismissed the suit, holding that the contract was void under section 27 of the Indian Contract Act. On appeal the Subordinate Judge reversed this decision and remanded the suit for trial on the merits, holding that the agreement was not in restraint of any trade, profession or business, and that it tended to secure peace and lessen competition and was for the benefit of both parties. The defendant appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants :—

The agreement being in restraint of business is void under the provisions of section 27 of the Indian Contract Act. Any restriction, however partial it may be, is void unless the case falls within the three exceptions mentioned in section 27. If the agreement does not come within those exceptions then no considerations of reasonableness or mutual benefit can make the restraint valid. Whether the restraint be general or partial, unqualified or qualified, if it is in the nature of a restraint of trade or business, it is void; *Madhub Chunder Poramanick v. Raj Coomar Doss* (1), *Shaikh Kalu v. Ram Saran Bhagat* (2). The business which the

* First Appeal No. 176 of 1914, from an order of Guru Prasad Dube, Additional Subordinate Judge of Barcoilly, dated the 1st of September, 1914.

(1) (1874) 22 W. R., 370.

(2) (1909) 18 O. W. N., 288.

agreement is in restraint of is the business of deriving gain or profit from allowing a market to be held on the defendant's land. He derives gain in the shape of rent or tolls for the use and occupation of his land. The word "business" is one of very general import. The use of the word "business of any kind" in section 27 is intended to give the term "business" its widest possible scope. Anything which occupies the time and attention and labour of a man for the purpose of profit is business. Any act having for its object the acquisition of gain comes within the term; *Smith v. Anderson*, (1).

The appeal was summarily dismissed.

CHAMLER and PIGGOTT, JJ.—The question raised by this appeal is the applicability of the principle laid down in section 27 of the Indian Contract Act (IX of 1872) to the circumstances of this particular case. It is alleged that the defendants, who are land-holders, had entered into a contract with certain neighbouring land-holders, as to the holding of markets on their respective lands. The plaintiffs sued for enforcement of this contract and for damages. The first court threw out the case on the finding that the agreement was void, in that it was an agreement restraining the defendants from exercising a lawful profession, trade or business, and that, consequently, it was not necessary to go into any of the other questions raised by the pleadings. The lower appellate court has reversed this decision and remanded the case for trial on the merits. The question is whether the owner of land entering into an agreement with the owner of neighbouring land, to the effect that a market for sale of cattle shall not be held on the same day on the lands of both of them is entering into an agreement which is void under section 27 aforesaid. It seems to us that a landlord who, in return for market tolls or fees, allows a cattle-market to be conducted on his land is not thereby exercising the trade or business of selling cattle. If he is exercising any business at all, he is exercising the business of a land-holder, and the agreement on his part not to allow his land to be used for some particular purpose on some particular day is not an agreement restraining him from exercising his lawful profession, trade or

(1) L. R., (1880) 15 Ch. D., 247 (258).

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business. These considerations are sufficient to dispose of this appeal. It is accordingly dismissed.

Appeal dismissed.

Before Mr. Tudball and Mr. Justice Piggott.

INDAR PAL AND ANOTHER (OBJECTORS) v. THE IMPERIAL BANK

(DECREE-HOLDER)*

Hindu law—Joint Hindu family—Suit against father—Son's position and rights in execution proceedings.

A creditor who has obtained a decree against the father of a joint Hindu family, is entitled to put to sale the family property. The son whose interests are threatened is entitled to an opportunity of contesting both the factum and the nature of the debt, and there is nothing in law to prevent him from coming into court in the execution department and preventing, if possible, on these two grounds the passing of his interest to the auction purchaser. If the points are decided against him, the court in execution can put the property to sale. *Shiam Lal v. Ganeshi Lal* (1) and *Channu Tewari v. Dwarka* (2) followed. *Nanomi Babuains v. Modhun Mohun* (3) referred to.

Per PIGGOTT, J.—A creditor who at first made the sons of his debtor parties to a suit against the latter but subsequently withdrew the suit as against them, would be in no worse position as regards the execution of his decree than he would have occupied if the sons had not been impleaded.

THE facts of this case were as follows :—

One Moti Lal, the father of Indar Pal and Sham Lal, borrowed money on a promissory note from the Imperial Bank, which brought a suit against him making the sons also defendants, but subsequently exempted the sons and obtained a decree against him and attached the joint family property of the judgment-debtor and his sons. The sons put in objections to the effect that part of the attached property had come to them by partition and that it could not be attached as Moti Lal's property. The court below found that the alleged partition was a bogus transaction, and, holding that the joint family property could be attached in execution of the decree against the father, allowed execution to proceed. The objectors, i.e., the sons, appealed.

Dr. Surendra Nath Sen, for the appellants :—

The question is not one of substantive law but one of procedure only. The son may be liable for the father's debt, but a decree

* First Appeal No. 239 of 1913, from an order of A. W. R. Cole, First Additional Judge of Aligarh, dated the 24th of November, 1913.

(1) (1906) I. L. R., 28 All., 288. (2) (1906) 3 A. L. J., 433.

(3) (1885) I. L. R., 13, Cal., 21.