

APPELLATE CRIMINAL.

Before Justice Sir George Knox.

EMPEROR v. HARRIS.*

1917
November, 22.

Act No. XLV of 1830 (*Indian Penal Code*), sections 403 and 22—*Criminal misappropriation*—"Movable property"—Letter addressed to one person retained by another.

A letter addressed to W was handed by a postman to W, who was at the time in a room in the occupation of H. W read the letter, and put it on a table in the room and left it there. H took the letter, and subsequently attempted to file it as an exhibit attached to an affidavit made by him in a suit for judicial separation between W and his wife, for the purpose, as he afterwards stated, "of strengthening Mrs. W's case and of improving his own position." The Court, however, refused to receive the letter. *Held* that in the circumstances H could not be convicted of dishonest misappropriation of property with respect to his retention of the letter. *Quære* whether the letter could be regarded as "movable property" within the meaning of section 22 of the Indian Penal Code.

THE facts of this case were briefly as follows :—

The appellant Harris was a guest in the house of one Williamson. One day when Williamson was talking to Harris in the room occupied by the latter a letter was handed to him by a postman. This letter Williamson read, and then apparently left it on the table in Harris' room. What happened after is not quite clear, but subsequently Harris had occasion to file an affidavit in a suit for judicial separation between Williamson and his wife. To this affidavit Harris attempted to append the letter in question as an exhibit, but the court refused to accept it. According to Harris' account, his object in tending the letter was "to strengthen Mrs. Williamson's case and to improve his own position." In respect of his retention of this letter a case was instituted against Harris under section 403 of the Indian Penal Code, and he was convicted and sentenced. He thereupon appealed to the High Court.

Babu *Satya Chandra Mukerji*, for the appellant.

Mr. *J. M. Banerji*, (for Government Pleader) for the Crown.

KNOX, J.—Harris has been convicted under section 403 of the Indian Penal Code of criminal misappropriation of property. The judgement under which he has been convicted says that the

* Criminal Appeal No. 834 of 1917, from an order of T. Sican, City Magistrate of Lucknow, dated the 25th of September, 1917.

1917

EMPEROR
v.
HARRIS.

property misappropriated is a letter which is on the record and which is marked Exhibit B. This is the only property regarding which any decision is to be arrived at in this appeal. Exhibit B is a letter [which undoubtedly does no credit to the person who wrote it and would have been far better unwritten. But with that I am not concerned in the present appeal. I have only to decide the questions (1) whether the said letter is *property* within the meaning of the Indian Penal Code, (2) if it is property, whether it has been criminally misappropriated by Harris. The letter is admitted to be a letter addressed to Williamson, the complainant in the present case. It is also admitted that this letter first came into evidence, so far as this case is concerned, in a room occupied by Harris within the house in which for the time being Williamson was residing and Harris residing with Williamson as a guest. Harris was for the time being occupying the particular room. A postman is said to have brought the letter Exhibit B into this room. Williamson says that on receipt of the letter he placed it in a drawer of his writing table. The learned Magistrate has, however, thrown such doubt upon the evidence given by Williamson in the case that it is impossible to act upon it in a criminal case. The prosecution were therefore compelled to fall back upon the statement made by Harris himself regarding this matter and to contend that according to that statement the letter was Williamson's property, was handed over to Williamson, who threw it on a table at which he and Harris were standing or seated, and it next appeared in a court at Bareilly in the pocket of Harris. Harris attempted to have the letter filed in a case then pending between Mrs. Williamson and Williamson for judicial separation. The letter was handed by Harris to the Judge, who, however, refused to receive it and returned it to Harris. This, it is argued, amounted to a retention of property, the property of Williamson, and that retention was done with the intention of causing wrongful gain or wrongful loss.

I have considerable doubts myself as to whether the letter under the circumstances stated by Harris in his statement was property within the meaning of the Indian Penal Code. It would be difficult to hold that an envelope thrown by the owner

of the envelope into a waste paper basket and picked up or carried away by another person would be property within the meaning of that Code. To throw more light on this it is well to look to the actual terms used by Harris in this connection. If Harris is to be convicted on his own statement, that statement must be taken as a whole and with its natural meaning. Harris says that Williamson read the letter and placed it on Harris' table, that Williamson was drunk at the time and after an interval left the letter on the table and that Harris felt justified in his own interest as also in the interests of Mrs. Williamson to attach it to his (Harris') affidavit so as to strengthen her case, and *improve his own position*, whatever these last words may amount to. I have already said that I have considerable doubt as to whether a letter of this kind and under these circumstances comes within the [meaning of "movable property" as used in the Indian Penal Code. Assuming for the moment that it does, the next point which is to be considered is whether the evidence has established that Harris dishonestly misappropriated or converted to his own use this letter. Proof of dishonest misappropriation or conversion to the use of the accused is as essential an ingredient as any other ingredient for an offence under section 403 of the Indian Penal Code. I have heard Harris, who conducted his own case, and also the learned Government Pleader. I have also considered the evidence on the record. I have not to consider whether Harris converted the letter to the use of Mrs. Williamson. It must be a conversion to his own use, and the only evidence which bears on this rests upon the words used by Harris "I attached the letter to my affidavit so as to improve my own position." Had this been explained by Harris elsewhere in his statement, or had there been any evidence on the record explaining these words, the matter might have been different. I hold that these words standing by themselves are not sufficient to establish a conversion of the letter to the use of Harris.

It may be necessary to add something as regards dishonest misappropriation. With reference to this it is necessary to consider whether it has been established that wrongful gain or wrongful loss was intended to be caused. With regard to wrongful gain it appears to me from the definition given in

1917

EMPEROR
v.
HARRIS.

1917

EMPEROR
v.
HARRIS.

section 23 of the Indian Penal Code that "gain by unlawful means" is gain to Harris and that we have not to consider gain to Mrs. Williamson or to anyone else. I am unable to hold that when Harris picked up the letter, he had any intention to cause wrongful gain within the meaning of section 23 of the Indian Penal Code, and I think it would be stretching the definition of wrongful loss if I were to hold that Harris, by picking up this letter and attaching it to his affidavit, which, according to him he was then preparing, and by keeping it afterwards until he produced it in a court at Bareilly, was causing wrongful loss within the meaning of section 23. I hold it to be no part of my judgement that I should go, as the court below did, into the moral aspect of this case. I have only to consider whether the offence of which Harris has been found guilty is established against him by the evidence. Holding that it is not, I set aside the conviction and sentence passed [by the City Magistrate of Lucknow, and direct that the fine or any part thereof, if realized, be returned to Harris.

Conviction set aside.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Chavan Banerji.

SHEO PRASAD SINGH (JUDGMENT-DEBTER) v. PREMNA KUNWAR
(DECREE-HOLDER).*

Civil Procedure Code (1908), section 104; order XXI, rules 90 and 92; order XLIII, rule 1 (j)—Execution of decree—Sale in execution—Application to set aside sale rejected—Appeal.

Under order XXI, rule 90, of the Code of Civil Procedure, 1908, an application may be made to set aside a sale held in execution of a decree, upon the ground, amongst others, of fraud in the publication or conduct of the sale, and if this application is refused under rule 92, an appeal lies under order XLIII, rule 1, clause (j); but no second appeal is allowed from the order of the appellate court.

THE facts, so far as they are material for the purpose of this report, were as follows:—The respondent held a decree for sale against the appellant and his son, and in execution thereof

* First Appeal No. 77 of 1917, from an order of G. C. Badhwar, District Judge of Ghazipur, dated the 30th of March, 1917.