

1929

DRIGBIJAY  
SINGH  
v.  
BHAGWAN  
DASS.

The appeal is therefore without force and must fail.  
It is accordingly dismissed with costs.

*Appeal dismissed.*

### REVISIONAL CRIMINAL.

*Before Sir Louis Stuart, Knight, Chief Judge.*

1929  
October, 21.

LALA NIHAL CHAND AND OTHERS (APPELLANTS) v. LALA  
JAI RAM DASS (COMPLAINANT-RESPONDENT).\*

*Criminal Procedure Code (Act V of 1898), section 145(1), (2) and (8)—Magistrate dealing with dispute in respect of a sugar factory under section 145(1) and (2) of the Code of Criminal Procedure—Molasses produced by sugar mill, if to be treated as 'produce' within the meaning of section 145(8)—'Produce' under section 145(8) of the Code of Criminal Procedure, if to be confined to what is grown from the ground—Jurisdiction of Magistrate under section 145(1) and (2) to deal with molasses produced from sugar factory.*

The word "produce" in section 145(8) of the Code of Criminal Procedure is not necessarily confined to what is grown from the ground but refers also to a finished article or a semi-finished article made from raw material and molasses produced by sugar mill can fairly be treated as the produce of the mill.

Where, therefore, a Magistrate was dealing with a dispute in respect of land within the meaning of section 145(1) and (2) of the Code of Criminal Procedure and the land consisted of the factory buildings of a sugar mill including certain vats containing molasses he had jurisdiction to take action in respect of the molasses in the vats and as the molasses produce was subject to speedy and natural decay he was justified in ordering its sale and for the proper disposal of the sale proceeds.

Mr. St. G. Jackson, for the applicant.

Messrs. G. H. Thomas and R. P. Varma, for the opposite party.

STUART, J. C. :—The facts are stated in the order of reference. I need only summarise them. The proceedings were under section 145 of the Code of Criminal

\*Criminal Reference No. 51 of 1929.

Procedure. Nihal Chand and Jagannath were the lessees of certain factory buildings. Jai Ram Das was the lessor. The lessor's case was that certain vats containing molasses were not included in the lease. The lessees' case was that these vats were included in the lease. At a certain period it was alleged that there was an apprehension of a breach of the peace. The Superintendent of Police posted a guard to prevent a breach of the peace. Proceedings then took place under section 145 and finally orders were passed which are the subject of this reference. All apprehension of a breach of the peace has now ended, for the lease has come to an end and the lessees have given up possession over every portion of the premises. But what has happened in the meanwhile has been this. Action had to be taken in respect of the molasses in the vats. The Magistrate, treating these molasses as property subject to speedy and natural decay, sold the molasses. The sale proceeds are about Rs. 25,000 which at the present moment are in the hands of the Receiver. The Magistrate went on to order that the sale proceeds should be handed over to Nihal Chand and Jagannath provided they deposited cash security or bank receipts. This order has been attacked on the ground that the Magistrate had no jurisdiction to pass it. I consider that the Magistrate had jurisdiction to pass it. He was dealing with a dispute in respect of land within the meaning of section 145(1) and 145(2). The land in question consisted of the factory buildings including the vats. I can only treat the molasses as the produce of the factory within the meaning of section 145(8). I do not think I am straining the meaning of the word. A sugar-mill produces molasses and the molasses can be fairly called the produce of the mill. In the same way a flour-mill produces flour and I should consider flour to be the produce of a flour mill. The word "produce" is not necessarily confined to what is

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grown from the ground. It refers also in my opinion to a finished article or a semi-finished article made from raw material. In these circumstances the Magistrate's order was justified. The produce was subject to speedy and natural decay so he made an order for its sale. The molasses having been sold it is now to be seen what disposal is to be made of the sale proceeds. As Nihal Chand and Jagannath have been found to have been in possession of the molasses the sale proceeds should ordinarily be made over to them. But the Magistrate has rightly decided that the sale proceeds are only to be made over to them if they give reasonable security. He was dealing with possession only. I know nothing as to the title to the molasses and I have been careful to hear nothing on the subject as that question will have to be decided elsewhere. But it is obvious that if the sale proceeds are handed over to Nihal Chand and Jagannath some security should be taken from them in event of the title to the molasses being found eventually to be with Jai Ram Das. So security must be taken. I do not however consider it proper to take security in cash. In fact such an order has no meaning. Nihal Chand and Jagannath would then take out the amount in cash, and pay the amount back in cash. Fixed deposit receipts would be better. But it appears to me that it will be sufficient if Nihal Chand and Jagannath deposit any recognized Government securities such as War Bonds. They inform me that they are ready to deposit War Bonds and I direct that they may take out the sale proceeds if they deposit War Bonds of the same value and that they shall be permitted to draw interest on these War Bonds as it falls due. I next come to the question of the time during which this deposit should be retained. I am informed by the learned Counsel for Jai Ram Das that he claims a balance against Nihal Chand and Jagannath. He will not require more than a year for the purpose of filing a suit to recover this balance. Of

course he can file a suit whenever he likes within a period of limitation, but I fix this limit, for withdrawal of security. I direct that after a year Nihal Chand and Jagannath may withdraw their security. If the suit has been filed before the year has expired it will be for Jai Ram Das to obtain the orders of the court for further security. It will of course be open to the trial court to pass such orders. I order that the papers be returned with these directions.

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### APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge and  
Mr. Justice Wazir Hasan.

THE LUCKNOW IMPROVEMENT TRUST (DEFENDANT-APPELLANT) v. P. L. JAITLEY & Co. (PLAIN-TIFFS-RESPONDENTS).\*

1929  
October, 30.

*United Provinces Town Improvement Act (VIII of 1919), section 97(1) and (3)—Improvement Trust entering into a contract with plaintiff to do certain work—Suit for money for work done under the contract—Limitation applicable to the suit, whether that prescribed by section 97(3) of United Provinces Improvement Act, 1919, or by the general law—Evidence Act (I of 1872), section 23—Letters marked “without prejudice,” admissibility of, in evidence—Contract reduced to writing—Terms of a contract, ascertainment of—Correspondence preceding contract, if to be looked into to ascertain the terms of the contract.*

Where the plaintiffs brought a suit for the recovery of the money due to them for doing the work of electric installation and fittings in a building of an Improvement Trust which they did under an agreement entered into between them and the Trust held, that it cannot be said that the entering into the agreement which constitutes the main

\*Second Civil Appeal No. 209 of 1929, against the decree of Pandit Tika Ram Misra, Subordinate Judge, Mohanlal Ganj, Lucknow, dated the 26th of February, 1929, reversing the decree of Kunwar Pratap Vikram Shah, 2nd Munsif, Lucknow, dated the 24th of February, 1928, allowing the plaintiff's claim.