

CRIMINAL REVISION.

Before Mr. Justice Cawdy and Mr. Justice Fulton.

RADHA KRISHNA JOSHI (ORIGINAL COMPLAINANT), APPLICANT, v.
 KISSONLAL SHRIDHAR (ORIGINAL DEFENDANT), OPPONENT.*

1901.
 November 25

Trade mark—Trade description—Title of a book—Unauthorized publication—Indian Penal Code (Act XLV of 1860), sections 478, 482—Merchandise Marks Act (IV of 1889), sections 4, 6.

The complainant, as a descendant of one Shri Chandu, had for many years prepared calendars bearing the name of "Shri Chandu Panchang" at Jodhpur and had sent each year a copy of such calendar to publishers in different parts of India, and from the copy so furnished these publishers issued and published calendars bearing the name "Shri Chandu Panchang," thus denoting them as calendars prepared in Jodhpur by the descendants of Chandu. The defendant, a publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the out-side, although the calendar was not prepared by the descendants of Shri Chandu. The complainant thereupon filed an information against the defendant under section 482 of the Indian Penal Code (Act XLV of 1860) and section 6 of the Merchandise Marks Act (IV of 1889).

Held, (1) that the defendant had committed no offence under section 482 of the Indian Penal Code (Act XLV of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade mark" given in section 478 of the Code;

(2) That the defendant's act did not fall under section 6 of the Merchandise Marks Act (IV of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized.

APPLICATION under section 485 of the Criminal Procedure Code, 1898, for the revision of an order made by T. J. Stranganan, Acting Chief Presidency Magistrate, dismissing the applicant's complaint.

On 10th September, 1901, the applicant (complainant) filed an information in the Court of the Acting Chief Presidency Magistrate against the defendant, charging him under section 482 of the Indian Penal Code (XLV of 1860) and section 6 of the Merchandise Marks Act (IV of 1889) with using a false trade mark and a false trade description.

It appeared that the applicant (complainant) was himself

* Criminal Revision No. 133 of 1901.

1901.

RADHA
KRISHNA
vs.
KISSONLAL

a descendant and was the constituted attorney of the other descendants of one Joshi Shri Chandu, who had a high reputation in India as an astronomer and an astrologer about 300 years ago. His descendants, in order to perpetuate his name, had for many years prepared calendars at Jodhpur bearing the name of "*Shri Chandu Panchang*" and had supplied copies each year to publishers in different parts of India, and from the copy so furnished these publishers issued and published calendars bearing the name of "*Shri Chandu Panchang.*" The defendant, who was a publisher in Bombay, had hitherto been supplied with a copy from Jodhpur and had issued and published calendars compiled from it.

In the beginning of 1901 the applicant decided not to supply the defendant with a copy of the calendars then issued and he called upon the defendant not to print or publish any other calendar under the name of "*Shri Chandu Panchang.*"

Notwithstanding this notice, the defendant did print and publish a calendar under the name of "*Shri Chandu Panchang.*"

Thereupon the applicant filed the information as above stated. The case came on for hearing on the 23rd September, 1901, when the Magistrate without taking any evidence dismissed the complaint, recording the following reasons :

Inasmuch as complainant has never applied the name "*Shri Chandu*" to any property at all, the charges under the Penal Code must fail. The accused will be discharged in respect of the charge under section 482, Indian Penal Code, under the provisions of section 253 (2) of the Criminal Procedure Code.

With regard to the charge under section 6 of Act IV of 1889, the complainant seeks to bring his case under section 4 (2), *i.e.*, he alleges that "*Shri Chandu*" is a false name. Unfortunately, however, for this contention the complainant has never dealt in calendars. All he has done has been to give leave to various persons to apply the name "*Shri Chandu*" to their productions. It seems to me, then, that complainant is not a person carrying on business in connection with goods of the same description as accused. The accused must therefore be acquitted under section 245 (1), Criminal Procedure Code.

Against this order of acquittal the complainant applied to the High Court under its criminal revisional jurisdiction.

Branson, with Messrs. *Payne, Gilbert, Sayani and Moos*, for the petitioner.

Raihes, with Messrs. *Smetham, Bland and Noble*, for the opponent.

1901.

 RADHA
KRISHNA
v.
KISSONLAL.

CANDY, J.:—We are asked to revise the order of the Presidency Magistrate, who held that on the facts alleged in the information there was no offence disclosed, either under section 482, Indian Penal Code, or under section 6 of the Indian Merchandise Marks Act, 1889.

The Magistrate was of opinion that, as complainant had never applied the name “Shri Chandu” to any property at all, the charge of using any false trade mark must fail; nor could accused be said to have applied a false description to goods, as the complainant had never dealt in calendars.

Though I am unable to follow the reasons given by the Presidency Magistrate, I do not think that this is a case in which we should interfere. It seems to me impossible to say that the words “Shri Chandu Panchang” used by various publishers on calendars prepared by descendants of the astrologer Chandu, and which the publishers have from year to year been issuing, are “a mark used for denoting that the goods (calendars) are the manufacture or merchandise of a particular person.” Manufactured by or the merchandise of what particular person? So much for the trade mark. The question of property mark or copy-right does not arise.

Then, as to trade description: to what clause of section 2 of Act IV of 1889 can a reference be made? The words in question are not a statement or other indication as to the mode of manufacturing or producing the calendars. Chandu may have been a famous astrologer 300 years ago, and for many years calendars may have been issued by different publishers bearing his name. But that would not give Chandu’s descendants a right to say that the words are a trade-mark or trade-description, in regard to which the publishers can be criminally prosecuted because they continue to use the words without the consent of the descendants of Chandu.

We return the record and proceedings.

FULTON, J.:—The question involved in this application is whether the allegations in the complaint disclose the offence of

1901.

RADHA
KRISHNA
P.
KISSONLAL.

using a false trade mark or of applying a false trade description.

The complainant states that the present descendants of Shri Chandu used to prepare calendars bearing the name of Shri Chandu Panchang at Jodhpur, and send each year copies of such calendars to the publishers in different parts of India, allowing them to use the name of Shri Chandu Panchang to denote calendars prepared in Jodhpur by the descendants of Chandu. They further say that when such calendars were published under the name of Shri Chandu Panchang the public knew that they were prepared by them and under their authority. Then they go on to state that the defendant has recently used the words "Shri Chandu Panchang" on the outside of a calendar prepared and published by him and not prepared by the descendants of Chandu, and, using the name Shri Chandu Panchang, has been trying to pass off his own work as the work of the descendants of Chandu in order to benefit by the reputation acquired by their calendars.

Looking to the definition of "trade mark" given in section 478, Indian Penal Code, as amended by section 3 of Act IV of 1889, it seems to me impossible to say that the title "Shri Chandu Panchang" comes within that definition. It may be that the descendants of Chandu are the authors of the calendars usually sold under his name and entitled to protection on the principles applied in *Kelly v. Morris*,⁽¹⁾ but it does not appear that they can properly be described as the manufacturers. Assuming that books are "goods" as held in *Kanai Das Bairagi v. Radha Shyam Basack*,⁽²⁾ it cannot, I think, be said that they are "manufactured" by their authors. The word "manufacture" is not a term usually applied to books, but even if it may correctly be applied to the whole process by which books are prepared, it certainly seems impossible to apply it to that portion of the process known as authorship, which, though most important, is ineffectual without printing and publication. Similarly it cannot be argued successfully that these calendars were the "merchandise" of the descendants of Shri Chandu, as it is not alleged that they were ever sold by them. We must construe section 478 in its ordinary grammatical sense, and if this test be applied it will, I think, be

(1) (1865) L. R. 1 Eq. 697.

(2) (1898) 26 Cal. 232.

found that the definition of "trade mark" is not sufficiently elastic to protect the rights of authors. Copyright Acts and the general Civil Law may or may not be sufficient to protect them, but, however this may be, we cannot distort the language of the Penal Code so as to bring within its provisions literary piracy as alleged in this complaint.

Turning next to the definition of "trade description," we are met perhaps with greater difficulty. Mr. Branson for the complainant contended that the name "Shri Chandu Panchang" is a trade description indicative of the mode in which the calendars are manufactured or produced. Eliminating the word "manufactured" as inapplicable, the question remains whether it can fairly be said that the title "Shri Chandu Panchang" indicates the mode in which the calendars were produced. The title of a book doubtless often indicates the author, but does not usually suggest the mode of production. The mode of production surely does not depend either on the fact that a book is the work of a particular author or that its publication has been duly authorized. A pirated edition may be produced in exactly the same mode as an edition properly sanctioned by the author. A garbled edition may perhaps be described as produced in a mode different from a correct edition, inasmuch as the contents are different, but there is not necessarily any difference in the mode of producing an authorized and unauthorized edition which may be word for word the same. Here it is not alleged that the defendant's calendars differ as to text from the complainant's or are compiled on different principles. All that is asserted is that they are unauthorized. This defect, however, does not seem to me to bring the case within the definition under consideration, for I think that if the Legislature had intended to include the unauthorized publication of books in the section relating to the application to goods of false trade descriptions, it would have used language more clearly appropriate for the purpose. If the facts alleged by the complainant are true, the law may give him redress, but his remedy does not appear to be contained either in section 482, Indian Penal Code, or in section 6 of Act IV of 1889.

For these reasons I concur in rejecting the application.

Application rejected.

1901.

RADHA
KRISHNA
v.
KISSONMAL.