

of the tenant in relation to strangers, whose exclusion is aimed at by the law of pre-emption. There is certainly ground for contending that the generality of sections 9 and 12 is not cut down by sections 10 and 11. These sections apply a different rule in the case of villages from that which is applicable in the case of [642] towns and cities. And it may well be that they were not intended to do more, though no doubt the introduction of the expression "village communities" where the expression "villages" would suffice does introduce an element of obscurity. It is not, however, necessary to pursue this subject further or to determine the point, because their Lordships agree with the Chief Court in thinking that the expression "village communities" in the Act of 1878 is not used to denote a village community of the typical sort consisting of members of one family or one clan holding the village lands in common and dividing between them the agricultural lands according to the custom of the village. It seems rather to be used in a popular sense to denote a body of persons bound together by the tie of residence in one and the same village, amenable to the village customs, and subject to the administrative control of the village officers. There seems to be no reason why a village community should be confined to the landowners in the village. In their Lordships' opinion occupancy tenants are members of a village community within the meaning of the Act, and so are all persons in an inferior position who belong to the village, though they may be unconnected with the land and not entitled to any right of pre-emption under the Act of 1878. That was the view of the learned Judges in the Chief Court, and their Lordships see no reason to differ from them.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be dismissed.

Appeal dismissed.

Solicitors for the appellants : *T. L. Wilson & Co.*

1903
FEB. 17.
MARCH 25.

PRIVY
COUNCIL.

30 C. 635=
30 I. A. 89=
7 C. W. N.
498=66 P. R.
1903=30 P.
L. R. 1903.

30 C. 643 (=7 C. W. N. 637.)

[643] CRIMINAL REVISION.

MOTI LAL PAL v. THE CORPORATION OF CALCUTTA.*

[19th May, 1903.]

Adulteration—Mustard oil (as commercially known)—Sale "to the prejudice of purchaser"—Manufacture for sale—Calcutta Municipal Act (Bengal Act III of 1899) s. 495.

Where a Food Inspector purchased samples of mustard oil from the manufactory of the accused, which on analysis were found to be adulterated with *oil* oil, and the accused were convicted under s. 495 of Bengal Act III of 1899:—

Held, that such adulterated oil not being what is commercially known as mustard oil, and the adulteration being to the prejudice of the purchaser, the accused had been rightly convicted.

Baishab Charan Das v. Upendra Nath Mitra (1) distinguished.

[Ref. 46 C. 60]

RULE granted to the petitioner, Moti Lal Pal.

This was a Rule calling upon the District Magistrate of the 24-Per-ganas to show cause why the conviction and sentence ^{passed} on the

* Criminal Revision No. 346 of 1903, against the order of P. N. Mookerjee, Municipal Magistrate of Calcutta, dated Dec. 18, 1902.

(1) (1898) 3 C. W. N. 66.

1903
MAY 19.
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CRIMINAL
REVISION.
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30 C. 643=
7 C.W.N. 637.

petitioner should not be set aside on the ground that, having found that the oil sold was an article of commerce, it was incumbent on the Magistrate to find whether or not it was an article commercially known as mustard oil before he could determine the guilt or innocence of the petitioner; and also it was incumbent on him to find whether or not the article sold, even if it was adulterated, was adulterated to the prejudice of the purchaser.

A Food Inspector employed under the Municipal Corporation of Calcutta purchased two samples of mustard oil from the manufactory of the petitioner. These were, upon analysis, found to be adulterated with *til* oil. The petitioner alleged that a small quantity of some hard seed like *til*, ground nut, or poppy was always [644] mixed with the mustard seed for the purpose of expressing all the oil from that seed; the proportion being one seer of the hard seed to one maund of the mustard seed.

The petitioner was convicted and fined under s. 495 of the Calcutta Municipal Act (B. C. III of 1899) by the Municipal Magistrate of Calcutta, and on appeal to the Sessions Judge of the 24-Perganas the conviction was upheld on the 27th February 1903.

Mr. Hill (Babu Dwarkanath Mitra with him) for the petitioner. In this case the petitioner has been convicted and fined under s. 495 of the Calcutta Municipal Act for selling to a Food Inspector mustard oil, which on analysis was found to be adulterated with *til* oil. In the case of *Baishtab Charan Das v. Upendra Nath Mitra* (1) it was held that what was commercially known as mustard oil was ordinarily prepared in the same manner as the sample oil which on analysis was found to have been adulterated by a mixture of oil from certain other seeds. This mixed oil is an article of commerce; so is pure mustard oil. If a man wants pure mustard oil, he goes to the particular place where it is sold; if he wants what is ordinarily known as mustard oil, he goes to the bazar. No one goes to the bazar to get pure mustard oil. S. 495 of the Calcutta Municipal Act is identical with s. 6 of the 'Sale of Food and Drugs Act' (38 and 39 Vict., C. 63) under which it has been held that the sale must be to the prejudice of the purchaser. If a man knows that there are two kinds of oil—one pure at a high price, the other impure or adulterated at a lower price, and he deliberately purchases the inferior article at the lower price, knowing it is adulterated, it cannot be said that he is prejudiced, because he knows what he is getting. *Til* oil is also an article of food and nutritious, and is used in the manufacture of sweets; the *til* seed is much dearer in price than mustard seed. In the jail a hand-mill is used, but there time and labour are of no object. Yule & Co. at first extract as much oil as they can in the ordinary way, and then they use hydraulic pressure by which they are able to extract all the oil. The ordinary manufacturer uses steam, and he is not able get more than a certain quantity of oil, as the mustard seed becomes [645] reduced into a jelly-like mass and cannot be pressed any more. In order to prevent this, a harder seed is put with the mustard seed, which gives a better resistance and enables the manufacturer to extract a greater quantity of the oil from the mustard seed.

An article of commerce means something that can be made and sold at a profit. If the harder seed were not used, the mustard oil could not

(1) (1898) 3 C. W. N. 66.

be sold at a profit and would then cease to be an article of commerce. The case falls within exception (a) of the section.

In *Goulder v. Rook* (1) four cases were considered under the Sale of Food and Drugs Act, 1875, where beer had been sold which contained arsenic. In one case the certificate of the analyst showed that some arsenic was found in the beer; in another case that the beer contained a serious quantity of arsenic. In both these cases there was a conviction under s. 6 of the Sale of Food and Drugs Act of 1875; but on appeal, the certificates were held to be insufficient, and the convictions were quashed, there being nothing to show what ordinary beer should contain, or what was the degree or amount of arsenic found in the beer. In the case of *Goulder v. Rook* (1), the conviction was also under s. 6; arsenious acid was found to the extent of not less than one-eighth of a grain per gallon, and it was proved that that quantity was such as to render the beer injurious to health; that being so, the Court of Appeal affirmed the conviction. We do not know in this case what quantity of *til* oil was found by the analyst, nor is it proved to be injurious to health. In the case of *Smith v. Wisden* (2) a person asked for a pot of marmalade. The grocer sold him a pot of marmalade which was found to contain thirteen *per cent.* of starch glucose. There was no legal standard for the making of marmalade. The glucose to the extent used was not injurious to health. It was held that the sale was not to the prejudice of the purchaser within the meaning of s. 6 of the Sale of Food and Drugs Act, there being no evidence that the article supplied was inferior to the article demanded.

In the present case it is not shown that the oil purchased is inferior to the oil demanded by the purchaser. The adulterated oil is known in the commercial world as mustard oil, and is purchased [646] with such knowledge at a lower price. There can be no prejudice, as the purchaser knows what he is purchasing, and gets what he demands.

Mr. Dunne (Mr. Cotton and Babu Dwarka Nath Chakravarti with him), for the Corporation of Calcutta, shewed cause. If a person asks for mustard oil and gets mustard oil mixed with *til* oil, surely he is prejudiced: he does not get the article he wants. Pure mustard oil is sold at 8 annas a seer, whereas the adulterated oil is sold at 6 annas. But the question is whether by selling the adulterated oil the petitioner is not selling an article which is not of the nature, substance or quality of the article demanded. It is no doubt necessary to look to the purpose for which the oil is used, to determine whether it is prejudicial to the purchaser. *Prima facie*, if a man purchases something as the genuine article, but gets an adulterated mixture, it must be to his prejudice. *Til* seed does not assist the expulsion of oil from the mustard seed. The reason given for adding the *til* seed is not correct. The real reason is that *til* oil is cheaper, and that relatively a greater quantity of oil can be extracted from the *til* seed than from any other kind of seed. If the addition of the *til* oil was any advantage to the purchaser, it would be proclaimed. When a man wishes to purchase mustard oil he expects to get it pure. Whether the adulterated oil is commercially known as mustard oil is for your Lordships to determine upon the evidence adduced. The fact that *til* oil is innocuous does not militate against my contention that it is to the purchaser's prejudice.

Mustard oil is different from the class of articles, such as beer or

1903
MAY 19.
CRIMINAL
REVISION.
30 C 643=
7 C.W.N. 637.

(1) (1901) 2 K. B. 290.

(2) (1901) 85 L. T. R. 760.

1903
MAY 19.
CRIMINAL
REVISION.

30 C. 643=7
C. W. N. 637.

marmalade, which can be made in a number of different ways. It is not found that this admixture was necessary for manufacturing mustard oil. The case does not fall within any of the exceptions to s. 495 of the Municipal Act; and I submit that this Rule should be discharged.

RAMPINI AND HANDLEY, JJ. This is a Rule calling upon the District Magistrate of the 24-Perganas to show cause why the conviction and sentence passed on the accused should not be set aside on the ground that, having found that the oil sold was [647] an article of commerce, it was incumbent on the Magistrate to find whether or not it was an article commercially known as mustard oil before he could determine the guilt or innocence of the petitioner, and also it was incumbent on him to find whether or not the article sold, even if it was adulterated, was adulterated to the prejudice of the purchaser.

The facts are that a Food Inspector, Dr. P. C. Lahiri, purchased two samples of mustard oil from the accused's manufactory. On analysis they were found to be adulterated with *til* oil. The accused was then tried and convicted under section 495 of the Bengal Act III of 1899 and sentenced to pay a fine of Rs. 200. On appeal to the Sessions Judge the conviction was affirmed, but the fine reduced to Rs. 50. The accused then obtained the Rule set forth above.

It is not denied that the mustard oil in question was adulterated. It is admitted that it is the practice of the applicant and other native manufacturers in Calcutta to adulterate the mustard oil they manufacture not only with *til* oil, but with other adulterants, such as *surguja*, ground nuts and poppy seed. The defence is,—

(i) that this is necessary for the purpose of expressing all the oil from the mustard seed;

(ii) that the product is what is commercially known as mustard oil; and

(iii) that the adulteration is not to the prejudice of the purchaser.

The first of these pleas is manifestly untrue. It is proved in this case that both at the Alipore Jail, where the oil is expressed by hand-labour and in Messrs. Andrew Yule & Co.'s oil-mill at Howrah, where machinery is used for the purpose, mustard oil is manufactured without the use of any hard seed to assist in expressing the oil. The evidence on this point adduced on behalf of the accused is, as found by the Magistrate, entirely unreliable. One witness, Hem Chunder Bose, who has worked a steam oil-mill for seven or eight years, says:—"Mustard alone will not give any oil"—a most palpable falsehood. Then, as the Magistrate points out,—“if the millers say that they want some hard seed to stiffen the mustard, the *til*, which is the softest of all adulterants, [648] is the least desirable, yet it is the most largely used. The only reason is that it gives relatively more oil, and the millers want to save expense and increase profits.”

The next point is whether the adulterated oil is what is commercially known as mustard oil. This the defence also entirely fails to prove. The witnesses who appear for the defence are many of them persons interested in mills who have a motive for supporting the defence in this contention. There is no evidence to the effect that what the public want and expect to get when they ask for mustard oil is the adulterated oil which the accused and other native manufacturers sell. The Food Inspector in this case asked for mustard oil and had a right to get it. On the other hand, Mr. Gibson of the Howrah Mills has

stated that "the pure quality is the commercial mustard oil," and the seventh witness for the defence, an owner of two mills, "says that mustard oil is the pure quality." This seems to us to be beyond all doubt the truth. As the Magistrate says,— "Mustard oil, ghee, milk, etc., have a certain signification, and when a person demands that article, he has a right to be supplied with that article and nothing else." If, when a purchaser asked for mustard oil, he were to be given adulterated mustard oil, and this were held to be no offence under the Municipal Act, then the adulteration would increase in quantity. Any adulterant might be used and the quantity would be increased, so that soon in mustard oil so-called, the mustard oil would be conspicuous, if not for its entire absence, yet for its presence in only a very small degree.

The third plea raised for the defence is that the purchaser is not prejudiced by the adulteration. But in our opinion he must be prejudiced. Mustard oil is used for cooking purposes and for external application. If it is adulterated, it becomes less suitable for these purposes. The more it is adulterated, the less it possesses the qualities for which it is purchased. Then the use of the adulterants is clearly for the purpose of increasing the bulk of the oil and the profit of the manufacturer. This must be to the prejudice of the purchaser, particularly when, as in this case, he is charged the same price as he would have had to pay for pure mustard oil.

[649] The case of *Baishtab Charan Das v. Upendra Nath Mitra* (1) has been cited. In that case there was no evidence produced to rebut the evidence adduced by the defence to the effect that what is commercially known as mustard oil is the adulterated oil. In this case such evidence has been produced and has been relied on by the lower Court with manifest propriety.

For these reasons we discharge the Rule.

Rule discharged.

30 C. 649 (=7 C. W. N. 562.)

ORIGINAL CIVIL.

HARIDAS KHANDELWAL v. KALUMULL.* [1st May, 1903].

Contract—Breach of Contract—Resale, right of—Contract Act (IX of 1872) s. 107—Inferiority in quality—Right to reject—Proprietary right, exercise of—Damages.

Unless there is something in the contract to the contrary, a buyer cannot be compelled to take goods with an allowance for inferiority in quality. But if the right to reject the goods as being of an inferior quality is not exercised by the defendant when the goods are tendered, but a right of a proprietary character in respect of the goods is exercised by directing delivery to be made to third parties, then the defendant accepts the goods; and if they remain in the possession of the plaintiff, then he has a lien upon them, and he is entitled, under s. 107 of the Contract Act, to resell the goods and recover as damages the difference between the contract price and the price at the resale.

ORIGINAL SUIT.

The plaintiff instituted this suit in the Court of Small Causes, Calcutta, for the recovery of Rs. 2,021 as damages and costs by reason of the defendant's failure to take delivery of 50 chests of [650] shellac,

* Small Cause Court Transfer Suit No. 16 of 1902.

(1) (1898) 3 C. W. N. 66.