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fact of a dispute likely to lead to a breach of the peace, being a dispute [968] relating to the possession of land, may not be sufficient to preclude the Magistrate from taking proceedings under section 107 of the Code of Criminal Procedure. It was further held by one of the Judges, who heard that case, that it cannot be held, as a general rule, that by the provisions of the Criminal Procedure Code a Magistrate is deprived of jurisdiction under section 107 of the Code of Criminal Procedure, in a case in which the dispute likely to cause a breach of the peace relates to possession of land.

The same has also been held in the case of *Belagal Rama Charlu* v. *Emperor* (1) in which it has been said that where a defendant has been found by a Magistrate to be in possession of land about which a dispute occurs, the Magistrate is not bound to act under sections 144 and 145, but has a discretion to proceed either under section 107 or under sections 144 and 145 of the Code.

On the strength of this ruling then, we do not think that the proceedings of the Magistrate were illegal or that they should be quashed.

The Rule is accordingly discharged.

Rule discharged.

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32 C. 969 (=3 Cr. L. J. 106.)

[969] CRIMINAL REVISION.

Before Mr. Justice Pargiter and Mr. Justice Woodroffe.

MATILAL PREMSUK *v.* KANHAI LAL DASS.*

[2nd June, 1905.]

Trade-mark—False or counterfeit trade-mark, use of—Penal Code (Act XLV of 1860), ss. 482, 486—Merchandise Marks Act (IV of 1889), s. 6.

K, a merchant of Calcutta, ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta.

The goods were thereupon sold in the market with the labels of the firm of K attached thereto, and were purchased by M, a dealer in piece-goods.

M sold the goods without removing the labels of K, and was convicted under s. 486 of the Penal Code for selling the goods with a counterfeit trade-mark:—

***Held*, that no offence was committed by M either under s 482 or s. 486 of the Penal Code.**

RULE granted to Matilal Premsuk, the accused.

The petitioners of the firm of Matilal Premsuk carried on business as piece-goods merchants in the town of Calcutta. They purchased 13 cases of woollen shawls bearing labels of "K. L. Dass and Sons," from Messrs. Kerr Tarruck & Co., a well-known mercantile firm in Calcutta.

The goods were made in Germany to the order of Kanhai Lal Dass and sons (Kanhai Lal Dass being the complainant), who declined to accept them on the ground that the consignment was overdue. The goods were then forwarded to Kerr Tarruck & Co. with instructions to dispose of them in the market, after removing the trade-mark labels of the said K. L. Dass and Sons therefrom. Kerr Tarruck & Co. sold the goods to the accused, but omitted by mistake, to direct the latter to remove the labels at the time of the sale.

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* Criminal Revision No. 275 of 1905, against the order of D. H. Kingsford, Chief Presidency Magistrate of Calcutta, dated January 27, 1905.

(1) (1902) I. L. R. 26 Mad. 471.

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The complainant finding that the shawls were being sold in the market by the petitioners with the labels of his firm thereon, [970] communicated with his solicitor and after some correspondence between the parties, Messrs. Kerr Tarruck & Co. directed the petitioners to remove K. L. Dass and Sons' labels from the shawls and substitute some other labels in their place.

The petitioners, however, continued to sell the goods with K. L. Dass and Sons' labels as were originally attached to them.

The petitioners were then prosecuted in the Court of the Presidency Magistrates of Calcutta on charges under ss. 482, 486 of the Penal Code and also under s. 6 of the Merchandise Marks Act. The accused were tried by the Chief Presidency Magistrate on those charges and were convicted under s. 486 of the Penal Code, and sentenced to pay a fine of Rs. 50 each, and in default to 7 days' rigorous imprisonment.

The learned Chief Presidency Magistrate was, however, of opinion that the public were not deceived and that the complainant had failed to show that he had suffered any material damage.

Against that conviction and sentence the accused moved the High Court mainly on the ground that by selling the goods with the original labels on, they were not guilty of any criminal act, inasmuch as they sold them in good faith, in their ordinary course of business and without any intention to defraud.

Mr. *Sinha* (Babu *Dasharathi Sanyal* and Babu *Chandrashekhar Banerjee* with him) for the petitioners. The complainant, having failed to take delivery of the goods in question after indenting them, the home-firm requested Messrs. Kerr Tarruck & Co. to sell them in the market. The petitioners purchased the goods from Messrs. Kerr Tarruck with the trade-mark labels of the complainant, and sold them in their original condition in the ordinary course of business. The question is, whether this amounted to an offence under ss. 482, 486 of the Penal Code or s. 6 of the Merchandise Marks Act. I submit that it did not. It has been found by the Court below that the public were not deceived by this transaction. And besides, the complainant has not shown that he has suffered any material damage. It is clear that the petitioners had no intention to defraud. In these circumstances, the petitioners committed no offence under the Penal Code or the Merchandise Marks Act. The learned Chief [971] Presidency Magistrate ought not to have taken cognizance of this complaint : see *Dowlat Ram* v. *Emperor* (1).

No one appeared to shew cause.

WOODROFFE J. In this case the accused were charged at the instance of the complainants, Messrs. K. L. Dass and Sons, with having committed offences under sections 482 and 486 of the Indian Penal Code, in that they were alleged to have used a false trade-mark and to have sold, and had in possession for sale, goods bearing a counterfeit trade-mark. The accused were convicted of an offence under section 486.

We have read the explanation which the Chief Presidency Magistrate has given shewing cause against the Rule. It is stated that the word " counterfeit " was incorrectly used in his judgment instead of the word " false. " He expresses the opinion that the trade-marks were false within the meaning of section 480 of the Indian Penal Code and that the section which was really applicable to the offence and under which according to

(1) (1905) I. L. R. 32 Cal. 31.

his opinion the accused should have been convicted, was section 482 of the Indian Penal Code.

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In my opinion no offence was committed either under section 482 of the Indian Penal Code or under section 486.

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Accordingly the conviction must be set aside and the Rule will be made absolute. The fine, if paid, will be refunded.

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PARGITER, J. I agree with the judgment of my learned brother. I must add that this is not a case of a false trade-mark, because it does not come within the definition of section 480 of the Indian Penal Code.

Rule absolute.

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32 C. 972.

[972] APPELLATE CIVIL.

Before Mr. Justice Henderson and Mr. Justice Geidt.

JNANADA SUNDARI CHOWDHRANI *v.* ATUL CHANDRA CHAKRAVARTI.*

[29th June, 1905.]

Decree, execution of—Rent—Payment to prevent sale—Bengal Tenancy Act (VIII of 1885), ss. 3, 171.

Where a decree made in a suit for rent was in the main one for rent although it included other sums which were not strictly rent within the meaning of the Bengal Tenancy Act, and in execution thereof the tenure in arrear was ordered to be sold under Chapter XIV of the Act and advertised.

***Held* that the holder of an undertenure liable to be avoided would be justified in making a payment to prevent the sale of the superior tenure, and having made the payment, would be entitled to the rights, which are given to a person, who makes a payment under s. 171 of the Bengal Tenancy Act.**

A lease provided that a certain sum was payable by the tenant direct to the landlord as *malikana* and certain other sums were payable by the tenant for Government revenue and other demands, which the landlord was himself bound to pay:

***Held* that the latter sums, though not actually payable to the landlord were payable for the use and occupation of the land held by the tenant, and might have been made payable to the landlord direct, although for convenience it was arranged that the tenant should pay them for the landlord, and came within the definition of rent in section 3 of the Bengal Tenancy Act.**

APPEAL by the plaintiff Jnanada Sundari Chowdhrani.

The suit out of which the appeal arose was brought on the following allegations.

One Mrs. Catherine Arathoon had on the 10th Falgun 1264 granted a putni lease in respect of certain properties to J. P. Wise according to the terms of which the sum of Rs. 8,500 was payable as the annual permanent malikana rent and the putnidar was bound to pay the Government revenue, the rent of the superior landlord, cesses and dak tax payable in respect of the properties comprised in the putni.

[973] The representatives of Mrs. Catherine Arathoon instituted a rent suit, No. 21 of 1889, against the representatives of the original putnidar and certain purchasers of shares in the putni, for the recovery of the malikana of the putni, &c., and obtained a decree in execution of which the putni property was advertised for sale and the 20th August 1889 was fixed for the sale.

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* Appeal from Original Decree No. 245 of 1903, against the decree of Hari Prasad Das, Subordinate Judge of Mymensingh, dated the 28th March 1903.