and relatives. It was admitted that a large number of these cards addressed by him had been posted to all sorts of persons promiscuously.

[248] On 10th August 1903 Rajendra Lal Mitra, the second petitioner, received a number of these cards from Sarat Chundra, and at his request posted them at the Bhadu Post Office. One of them was sent to E. H. DaCosta, an Assistant in the Revenue and Agricultural Department of the Government of India, who received it at Simla on the 12th August, and forwarded it to the postal authorities to take any action in the matter they might consider proper. The two accused were subsequently charged under s. 61 of the Post Office Act, before the Deputy Magistrate of Baraset, and upon conviction were sentenced to fines of Rs. 50 and Rs. 25, respectively.

The petitioners then moved the High Court to set aside the conviction and sentence passed upon them, mainly on the grounds that the post cards were circulated by the petitioners in good faith, without any criminal intention, and fully believing in the efficacy of the medicine; and that their intention was to do good to the suffering public.

Babu *Rajendra Chandra Chakravarti*, for the petitioners.

AMEER ALI AND PRATT, JJ. The petitioners have been convicted under section 61 of the Indian Post Office Act, 1898, of sending by post a post-card containing language of an obscene character. In *Queen* v. *Hicklin* (1) it was laid down that "the test of obscenity is this, whether the tendency of the matter is to deprave and corrupt the minds of those who are open to immoral influences, and into whose hands the publication may fall." That case was followed in *Empress of India* v. *Indaram* (2) and *Queen-Empress* v. *Parashram Yeshvant* (3). Applying that test to the language of the post-card in the present case, we think it is distinctly obscene and we accordingly reject this application for revision.

Application refused.

---

32 C. 249 (=8 C. W. N. 885.)

[249] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

RADHA RAMAN GHOSE *v.* BALIRAM RAM.*
[21st July, 1904.]

Partnership property, dispute relating to the management of—Criminal Procedure Code (Act V of 1898), s. 145—Possession as managing partner.

A dispute between partners claiming exclusive possession of the partnership property, as managers, is outside the purview of s. 145 of the Criminal Procedure Code.

[Ref. 10 C. W. N. 1088=4 Cr. L. J. 215; 63 I. C. 321; (S. 145 not for joint property); Fol. 35 Cal. 767; 31 Bom. 45; Ref. 32 Cal. 253 (Inherent Jurisdiction to set aside *ex parte* order).]

RULE granted to the petitioner, Radha Raman Ghose.

The first and second parties were partners in a colliery business called the Nandi Coal Association, having a four-anna and twelve-anna share therein respectively. By a deed executed in 1896 Baldeo Ram, one

---

* Criminal Revision, No. 709 of 1904, against the order of E. H. Berthoud, Subdivisional Officer of Raniganj, dated June 17, 1904.

(1) (1868) L. R. 3 Q. B. 360, 371.
(2) (1881) I. L. R. 3 All. 837.
(3) (1895) I. L. R. 20 Bom. 193.

1904
JULY 21.

CRIMINAL REVISION.

32 C. 249=8 C. W. N. 885.

of the partners, was appointed to the management of the colliery. On the 1st December, 1902, a revised deed of partnership was drawn up whereby the petitioner, Radha Raman Ghose, and Siu Chand Ghose, a member of the second party, were appointed joint managers for the working of the colliery. Disputes having arisen between them, proceedings under s. 145 of the Criminal Procedure Code were ultimately instituted on the 4th May, 1904, by the Sub-divisional Officer of Raniganj against Radha Raman Ghose as the first party, and Siu Chand and the other partners as second party; and written statements were filed by them.

The first party alleged that he was virtually the manager of the colliery, but after his illness he used to instruct Siu Chand how the management should be carried on, and the latter merely carried out his orders, receiving pay as a servant of the firm : that having found that Siu Chand was mismanaging the business ; he took over the management under his control in November 1903, and appointed one Purna Chunder Banerji as manager instead, but Siu Chand, who was staying in the colliery premises, went on acting in opposition to the new manager, and collected men for [250] the purpose of forcibly ousting him. He prayed that the second party might be prohibited from interfering with his management, and should be bound down to keep the peace.

The second party submitted that Siu Chand had been appointed sub-manager during the life-time of Baldeo, and continued to manage the business even after the second deed of partnership, while Radha Raman never took part in the management, but being heavily involved he had become desirous of having the management and resources of the colliery exclusively in his own hands ; that he sent Siu Chand to Calcutta to look after a case, and during his absence went to the colliery and occupied the business premises on the 19th April, 1904, with the aid of the police : that prior to such date he, the first party, had never been in possession ; that they, the second party, were entitled to hold possession of the colliery premises, and that the business would be ruined if the first party were allowed to retain possession and to have the management thereof. They accordingly prayed to be kept in possession as they were before the 19th April.

After evidence had been recorded, the first party filed an application before the Magistrate to drop the proceedings under s. 145 of the Criminal Procedure Code. The order of the Magistrate upon the petition was in substance as follows :—

" The arguments raised in support of the petition are to the effect : (i) that the parties are partners jointly owning the disputed property, which is undivided : (ii) that as partners they have all a right to take part in the managership of the property : (iii) that what is really contended for is not so much the possession of the property as its management, and the possession of a manager is not such as is contemplated by s. 145, Civil Procedure Code.

Of these points the first is the important one, and a number of rulings have been quoted in its support. I have been through these rulings, of which the most important are—*Tarujan Bibee* v. *Asamuddi Bepare* (1), *Denomoni Chowdhrani* v. *Mozaffar Ali Khan* (2), and *Krista Alhadini Dasi* v. *Radha Syam Panday* (3).

In my opinion, it is quite clear from the plaints and written statements of the two parties that both parties claim exclusive possession of the property in dispute ; the fact that both parties have a right to a share in the property does not concern me. I am concerned with possession only. Nor in my opinion do the parties claim possession as managers but as proprietors. As, therefore, both parties claim exclusive

(1) (1900) 4 C. W. N. 426.
(2) (1900) 5 C. W. N. 105.
(3) (1902) 7 C. W. N. 118.

possession of the entire property, not of an undivided share thereof, as proprietors, I am of opinion that the present proceedings will stand. I therefore reject the [251] petition of the first party and order the second party to adduce evidence of possession of the disputed property."

1904
JULY 21.

CRIMINAL
REVISION.

32 C. 249=8
C. W. N. 885.

The petitioner, thereupon, obtained this rule on the District Magistrate and the opposite party to show cause why the proceedings under s. 145 of the Criminal Procedure Code, pending before the Sub-divisional Officer, should not be set aside, on the ground that the section was inapplicable in the circumstances of the case.

Mr. *Jackson*, Mr. *Donogh*, Babu *Digambar Chatterjee* and Babu *Jyotindra Nath Ghosh*, for the petitioner.

Mr. *P. L. Roy* and Babu *Shibaprosanna Bhattacharjee*, for the opposite party.

PRATT AND HANDLEY, JJ. The first party, Radha Raman Ghose, is owner of a four-anna share and the second party of the remaining 12 annas of a colliery known as the Nandi Coal Association Colliery. The partnership was formed in 1896, and under the terms of the deed of partnership one Baldeo Ram was appointed manager, but this arrangement was altered by a revised partnership deed dated 1st December 1902 in which Radha Raman Ghose, first party, was appointed manager jointly with Siu Chand Ghose of the second party. It is contended by the second party that Radha Raman Ghose never exercised the *de facto* management, and only recently got possession by *ruse* whereas Radha Raman avers that he has been the virtual manager under the second deed of partnership and that Siu Chand is only a paid servant acting under his instructions.

In this state of things the Sub-Inspector of Raniganj reported that the second party were likely to cause a breach of the peace in attempting to forcibly oust the first party, and he recommended that an injunction should be issued on the second party under section 144 of the Criminal Procedure Code, and that proceedings should also be taken against them under section 107 of the Code. The Sub-Divisional Magistrate acted on this recommendation, and in addition drew up proceedings under section 145 of the Code.

The question we are called upon to decide is whether the latter section is applicable to a case of this nature. The Magistrate [252] has considered the objections under three heads, *viz.*, (*i*) that the parties are partners jointly owning the disputed property; (*ii*) that as partners they have all a right to take part in the management of the partnership business (he should have added, in the absence of any contract to the contrary: see section 253 of the Contract Act); (*iii*) that what is really contended for is not so much the possession of the property as its management, and the possession of a manager is not such as is contemplated by section 145 of the Criminal Procedure Code.

The Magistrate arrived at the following conclusion: " In my opinion it is quite clear from the plaints and written statements of the two parties that both parties claim exclusive possession of the property in dispute. The fact that both parties have a right to a share in the property does not concern me. I am concerned with possession only. Nor in my opinion do the parties claim possession as managers but as proprietors."

Now if the parties do not claim possession as managers, on what can their claim to possession be founded? The partners in a business must jointly own and possess the partnership property. Each has a right to enter the premises and to take a share of the profits. There is no allegation of ouster of possession apart from the question of management.

1904 JULY 21.

CRIMINAL REVISION.

32 C. 249 = 9 C. W. N. 886

If the latter question be left out of consideration, there is really no dispute to be adjudicated on. And if the Magistrate were to declare either party in exclusive possession, it is clear that that party would be worsted in a suit upon title and consequent right of joint possession.

The partners may of course agree to limit their own control of the business by appointing a manager, but in that case the manager becomes the servant of all the partners, and their possession of the land and premises is not taken away by his appointment. Thus it appears that the claim to exclusive possession in this case is quite illusory and meaningless unless it refers to the management only, which is a question outside the purview of section 145 of the Criminal Procedure Code. We, therefore, make the Rule absolute and quash the present proceedings.

Rule absolute.

---

32 C. 253 (=9 C. W. N. 81.)

[253] FULL BENCH.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Ghose, Mr. Justice Rampini, Mr. Justice Stephen and Mr. Justice Mitra.

BIBI TASLIMAN *v.* HARIHAR MAHTO.*
[19th August, 1904.]

Mortgagee—Foreclosure—Sale—Notice to Mortgagor—Transfer of Property Act (IV of 1882), ss. 87, 89—Order absolute for Sale.

Where an order absolute has been made under s. 87 or s. 89 of the Transfer of Property Act without notice to the mortgagor, the Court has an inherent power to deal with an application to set aside the order made *ex parte*, and can set it aside upon a proper case being substantiated.

Tara Pado Ghose v. *Kamini Dassi* (1) dissented from.

[Fol. 10 C. W. N. 306; 31 Bom. 45=8 Bom. L R. 803; 35 Cal. 767: Ref. 2 C. L. J 306; 7 Bom. L. R. 961; 3 N. L. R. 55: Dist. 4 C. L J. 317: Ref. 10 C. L. J. 492=3 I. C. 498; 10 C. L. J. 91; 17 C. W. N. 862.]

REFERENCE to Full Bench by Maclean C. J., and Bodilly and Mookerjee JJ.

The plaintiffs, Harihar Mahto and others, the mortgagees, obtained an *ex-parte* decree on the 29th May 1903, which was made absolute on the same date.

The judgment-debtors, Bibi Tasliman and others, afterwards, on the 8th June 1903, applied under s. 108 of the Code of Civil Procedure for a rehearing and setting aside of the *ex-parte* decree obtained by the plaintiffs on the grounds, (i) that no notice had been given to them by the plaintiffs; (ii) that they had cunningly caused the process to be served clandestinely, so that the defendants would not be able to do anything; (iii) that the account given in the decree was quite wrong; and (iv) that the decree-holders having acted fraudulently, the defendants had suffered loss.

The Subordinate Judge on the 10th June 1903 held that there was no procedure for setting aside an order making a decree absolute, and refused the petition of the judgment-debtors. Against this order they preferred an appeal to the High Court

[254] The appeal came on for hearing before MACLEAN C. J. and BODILLY and MOOKERJEE JJ. Their Lordships having dissented from the

---

* Reference to Full Bench in Appeal from Original Order No. 260 of 1903.

(1) (1901) I. L. R. 29 Cal. 644.