

1904
JULY 18.
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APPELLATE
CIVIL.
—
32 C. 243.

them. The case must therefore go back for the determination of those issues in the case including the issue as to the reasonableness of the notice.

[246] The defendant then appealed under s. 15 of the Letters Patent. Babu Golab Chandor Sarkar and Babu Sarat Chandra Dutt, for the appellant.

Babu Joy Gopal Ghose, for the respondents.

MACLEAN, C. J. We think that, upon the plaintiffs' own statement in their plaint, the agreement between the parties amounted to a lease within the definition of the term as given in section 105 of the Transfer of Property Act. According to the agreement the defendant was not to pay rent but, instead of rent, he was to give his services as a family doctor to the plaintiffs. If it be once established that the bargain between the parties amounted to a lease, it must be regarded as a lease of immoveable property for some purpose other than agricultural or manufacturing purposes, in which case it must be deemed to be a 'lease from month to month' terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Admittedly, such a notice was not given in this case, and the plaintiff's action must, therefore, fail and be dismissed with costs. The appeal is accordingly allowed with costs.

BODILLY AND MOOKERJEE, JJ. concurred.

Appeal allowed.

32 C. 247 (= 1 Cr. L. J. 201.)

[247] CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

SARAT CHANDRA GHOSE v. KING-EMPEROR.*

[21st March, 1904.]

Obscene Post-Cards—Post-Cards containing obscene advertisement—Post Office Act (VI of 1898) ss. 20, 61.

Transmission by post of printed post-cards containing an advertisement of a patent medicine, in language of an obscene character, is an offence within ss. 20 and 61 of the Post Office Act (VI of 1898).

The Queen v. Hicklin (1), Empress of India v. Indraman (2), and Queen-Empress v. Parashram Yeshvant (3) relied upon.

PETITION by Sarat Chandra Ghose and Rajendra Lal Mitra.

The first petitioner, Sarat Chandra Ghose, was the proprietor of the Alexandra Chemical Works at Baraset, 24-Parganas, and a vendor of patent medicines. He had several, ordinary post cards printed, which contained an advertisement extolling the efficacy of a specific, called the "Angels' health restoring food," in the increase of sexual power and the prevention of premature decay due to the enervating effects of local debility. It described in indecent terms the process of nature through which this end would be attained by his medicine, and promised even to the old the enjoyment of the pleasures of youth. It invited correspondence under an assurance of its being kept strictly confidential, and requested the recipient to circulate the cards amongst his friends

* Criminal Motion No. 884 of 1904, against the order of Charu Chandra Chatterji Deputy Magistrate of Barasat, dated Dec. 23, 1903.

(1) (1868) L. R. 3 Q. B. 360.

(3) (1896) I. L. R. 20 Bom. 193.

(2) (1881) I. L. R. 3 All. 637.

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. Hacklin* (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 Yeshwant* (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. 85 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, Sub-divisional Officer of Raniganj, dated June 17, 1904.

(1) (1868) L. R. 3 Q. B. 860, 371.
(2) (1881) I. L. R. 3 All. 887.

(3) (1895) I. L. R. 20 Bom. 193.

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