

CRIMINAL APPELLATE.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Caspersz.

ASHRUF ALI

v.

EMPEROR.*

1909
July 22.

Opium, illegal possession of—Opium Act (I of 1878) s. 9 (c)—Possession of railway receipt for an undelivered parcel of contraband opium.

The possession of a railway receipt relating to an undelivered parcel of contraband opium lying in a railway office, under circumstances showing knowledge of its contents, constitutes possession of the opium within section 9, clause (c) of the Opium Act.

Kashi Nath Bania v. Emperor (1) discussed and followed.

THE appellant Ashruf Ali was tried and convicted by the Chief Presidency Magistrate, on the 22nd April 1909, under Act I of 1878, sections 9 and 10 of being in illegal possession of opium, and sentenced to a fine of Rs. 500 and in default to six months' rigorous imprisonment.

On 7th February 1909, the appellant, it was found, gave one Yad Ali a railway receipt for a parcel despatched from Madhubani to Calcutta, and asked him to send a trustworthy coolie to take delivery of it at the Howrah station. The receipt, which was dated the 4th February, purported to bear the names of Bachoo as consignor and Emam Sarif as consignee, and described the contents of the package covered by it as "one tin of ghee." It bore an endorsement in favour of a coolie, named Durgai, signed by one Akhin Sarif. On the following day the appellant went to Yad Ali and inquired about the parcel, and was informed by the latter that the coolie went to the Howrah station but did not find it there, and that he had gone to the East Indian Railway Parcels Office in Chowringhee Road for it.

* Criminal Appeal No. 484 of 1909, against the order of T. Thornhill, Chief Presidency Magistrate, Calcutta, dated April 23, 1909.

(1) (1905) I. L. R. 32 Calc. 557.

In the meantime an Excise Sub-Inspector, upon receiving certain information, went to the Parcels Office and saw Durgai there with the receipt awaiting delivery. He took the receipt from him and obtained delivery of the package which, on being opened, was found to contain 20 seers of contraband opium. The Excise Officer then arrested Durgai who stated that he had got the receipt from Yad Ali, whereupon they went to the latter's shop and questioned him, and he immediately admitted having-given the receipt to the coolie, but explained that he had received it from the appellant Ashruf. The appellant on being asked by the Excise Sub-Inspector about the receipt denied all knowledge of it, and contradicted the story of Yad Ali, but he was arrested and put on trial before the Chief Presidency Magistrate. It was contended for the defence that Yad Ali was the real culprit, and that the evidence of the witnesses who corroborated his story was false and concocted, but the Magistrate found possession of the receipt with the appellant and convicted him.

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Mr. Asghur (Babu Mannatha Nath Mookerjee with him), for the appellant, argued on the facts that Yad Ali, who had been previously convicted under the Opium Act, was the guilty party, and that he now attempted to throw the blame on the appellant. The Court must determine the nature of the possession in the case: *Crown v. Kyte* (1). The case of *Kashi Nath Bania v. Emperor* (2) is distinguishable, as the accused there was the consignee himself and the receipt was discovered in his box. In this case the receipt was not found with Ashruf nor did he ever have possession of the opium.

Mr. Orr, for the Crown. The view of the facts taken by the Magistrate is correct. The receipt was in the appellant's possession, and his denial of it proves his knowledge of the contents of the parcel. He is, therefore, liable under the law as being in possession of the opium? *Kashi Nath Bania v. Emperor* (2).

(1) (1882) I. L. R. 9 Calc. 223.

(2) (1905) I. L. R. 32 Calc. 557.

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JENKINS C.J. AND CASPERSZ J. On the facts we are in agreement with the learned Magistrate, for we hold with him that the accused was in possession of the railway receipt. The question then arises whether that constitutes possession of the opium to which the railway receipt relates, so as to be an offence within section 9 of the Opium Act (I of 1878). If unfettered by authority, I should have been disposed to hold that there was no such possession, for, as I read the Act, it relates to possession of opium, and not of a receipt for the opium. However, there is a decision of this Court by which we are bound, *Kashi Nath Bania v. Emperor* (1), in which, on facts not fairly distinguishable from the present, it was held that possession of the railway receipt was possession of opium within the meaning of the section. It appears to me that this decision overlooks the distinction between "possession" and the "right to possession." But there the decision stands, and we are bound by it. We, therefore, dismiss this appeal.

E. H. M.

Appeal dismissed.

(1) (1905) I. L. R. 32 Calc. 557.

MATRIMONIAL JURISDICTION.

Before Mr. Justice Harington.

BOWEN v. BOWEN.*

1909
 Aug. 10.

Divorce—Alimony pendente lite, application for, after decree nisi—Indian Divorce Act (IV of 1869) s. 36.

Notwithstanding a decree *nisi* for dissolution of marriage, on the ground of the wife's adultery, the Court has power, under section 36 of the Indian Divorce Act, to order alimony *pendente lite* for the period between decree *nisi* and decree absolute.

Dunn v. Dunn (1) considered.

THIS was an application by the wife, against whom a decree *nisi* (2) for dissolution of marriage had been made, for an order for alimony, until the decree should be made absolute. τ

On the 7th January 1909, Mr. Bowen filed a petition for dissolution of marriage on the ground of his wife's adultery,

* Application in Original Civil Suit No. 1 of 1909.

(1) (1888) L. R. 13 P. D. 91.

(2) (1909) I. L. R. 36 Calc. 874.