

Gāngārām B. Rele for the petitioner.—The Magistrate's order was wrong. The petitioner being a sub-contractor, and not a person who actually worked, could not be held liable under section 2 of Act XIII of 1859. The Magistrate had no jurisdiction to try the petitioner under that Act—see *Gilby v. Subbu Pillai*⁽¹⁾; *Amirkhān valad Himat Khān's case*⁽²⁾.

NÁNÁBHÁI HARIDÁ'S, J.—The petitioner is not a workman, labourer or artificer within the meaning of section 2 of Act XIII of 1859—see *Gilby v. Subbu Pillai*⁽¹⁾. The order of the Magistrate is reversed.

(1) I. L. R., 7 Mad., 100.

(2) Cr. Rul. (Bom.) of 24th July, 1884.

REVISIONAL CRIMINAL.

Before Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Bart., Justice.

QUEEN-EMPRESS AGAINST MANCHERJI KÁVASJI SHÁPURJI.*

Lottery—Foreign lottery—Advertisement—Newspaper—Publisher—Indian Penal Code (XLV of 1860), Sec. 294A.

The expression "in any such lottery" in paragraph 2 of section 294A of the Indian Penal Code (XLV of 1860) means "any lottery not authorized by Government," and includes a foreign lottery.

The word "publisher" in the above paragraph includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement.

The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was accordingly held to be punishable under section 294A of the Indian Penal Code.

THIS was a reference under section 434 of the Code of Criminal Procedure Code (Act X of 1882), made by P. Ryan, Presidency Magistrate, Bombay. The reference was in the following terms:—

"I have the honor to submit, for the opinion of the High Court, a question of law which has arisen in the hearing of a case pending before me, in which Mr. Mancherji Kávasji Shápurji is charged with publishing an advertisement in the *Satya Mitra*,

* Criminal Reference, No. 80 of 1885.

1885.

IN RE THE
PETITION OF
BÁLKRIŚHNA
SHÁLIGBÁM,

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a Gujaráti weekly newspaper, relating to a lottery of £20,000 on the Melbourne Cup Race, contrary to the provisions of section 294A of the Indian Penal Code.

“This section provides that whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, and whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person on any event or contingency relative or applicable to the drawing of any lot, number, or figure, in any such lottery shall be punished, &c., that is, according to my view of the law, these acts will constitute an offence within the meaning of section 40 of the Indian Penal Code, when committed in British India.

“But the question arises whether, where, as in the case before me, the lottery is not to be held in British India, it does not come within the description of a lottery not authorized by Government.

“And, further, whether the publication contemplated by section 294A should not be a publication on behalf of the person making it.

“The accused has undertaken to discontinue publishing the advertisement in the *Satya Mitra*.”

Latham (Advocate General) for the Crown.—The first question is, whether an Australian lottery is within the meaning of section 294A, and the second is, whether, under the second paragraph of the section, the publisher of an advertisement in a Bombay newspaper containing a proposal made by a person in Australia to pay any sum or to deliver any goods on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery is punishable. I submit that the lottery referred to in the second paragraph of the section to the lottery specified in the first paragraph, *viz.*, a lottery not authorized by Government, no matter where it is drawn. It makes no difference whether the drawing takes place within or without British India. If the Legislature had intended to put in any restriction as to place, the words “British India” would have

been inserted. If the section were construed as if the words British India were in the section, fresh legislation would be necessary to remedy the mischief which the section was intended to put an end to. Mischief is done by the man who publishes the proposal. There is no definition of the word "publisher" in the Penal Code; but Mr. J. D. Mayne, in his comments upon section 499, explains it as including the person who sends a defamatory advertisement for publication in a newspaper as well as the proprietor of the paper. No authorities are available on the point, except the English case of *King v. Smith*⁽¹⁾.

Dinsháh Pestanji Kángá for the accused.—Section 294A of the Indian Penal Code is a re-enactment, for the sake of convenience, of Act V of 1844, which has been repealed. The first section of that Act enacted "that in the territories subject to the Government of the East India Company all lotteries not authorized by Government shall, from and after the 31st day of March, 1844, be deemed, and are hereby declared, common and public nuisances and against law." The words "in the territories subject to the Government of the East India Company" are not repeated in section 294A; but the object of the Legislature is to punish lotteries held in British India and not authorized by Government. The Penal Code punishes offences committed in British India; section 294A should, therefore, be so read as to prohibit those lotteries only which are drawn in places to which the Code applies. The publisher of a proposal in a Bombay newspaper is not punishable under the second paragraph of section 294A, which speaks of a "proposal to" instead of a "proposal for" in section 3 of Act V of 1844. The former expression implies a personal responsibility, and indicates the intention of the Legislature to punish only the proposer, not the publisher of the proposal in a newspaper. The English Lottery Acts, especially Statutes 6 and 7, Will. IV, ch. 66, are very stringently and explicitly worded, in order to prohibit foreign lotteries. In absence of such strict wording in section 294A of the Penal Code, it should be construed as if the Legislature only intended to prohibit lotteries in British India.

(1) 4 Term Rep., 414.

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NA'NA'BHA'I HARIDA'S, J.—The first paragraph of section 294A of the Indian Penal Code runs thus: "Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished * * * ." The present case does not come under that paragraph, for it is not stated that the accused has kept any office or place for such purpose. He is charged under the second paragraph of the section, which provides: "And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or to forbear doing any thing for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery shall be punished * * * ." In deciding what answer should be given to the Magistrate's first question we must determine what is meant by the words "any such lottery" in this paragraph. Taking the two paragraphs together, we think they mean, upon a grammatical construction of them, "any lottery not authorized by Government." It does not matter in the least where a lottery is to be drawn, whether in British India or out of it. If it is one "not authorized by Government," any one who publishes such a proposal as is therein contemplated relating to it renders himself liable to be punished under paragraph 2 of the section. This, then, will be our answer to the first question.

To answer the second question we have to determine what is the meaning of the word "publishes" in this section. We do not find any definition of the word in the Indian Penal Code, and we must, therefore, take that word in its ordinary sense. Thus taking it, it seems to us that if A. sends an advertisement to B., the proprietor of a newspaper, for publication, B. is punishable as well as A. for such publication. On this point we have the authority of Lord Kenyon, C. J., in *King v. Smith*⁽¹⁾, to which we shall refer the Magistrate. Mr. Dinsháh has contended for the accused that the section should be so read as not to touch a newspaper proprietor in any case, or an advertiser in a newspaper if the lottery is a foreign lottery. To do so, however, would be very nearly to defeat the object of the enactment.

(1) 4 Term., Rep. 414.

Every lottery is either authorized or not authorized by Government. The section does not touch authorized lotteries, but intends to save people from the effects of those not authorized (1st) by prohibiting the keeping of offices or places for drawing them, and (2ndly) by prohibiting the publication of any advertisement relating to them. After the first prohibition, the chance of any office being kept in British India for drawing lotteries not authorized by Government is very small indeed. But people not subject to our laws may contrive to open offices for that purpose out of British India, but still near our own doors—at Navsari or Daman for instance, and thence send advertisements to all the widely-circulated newspapers throughout British India. In that case, if the section were to be narrowly construed as applying only to lotteries to be drawn in British India, the object aimed at by the second prohibition, to prevent the mischief of people in British India being drawn into temptation by such publications, would be very nearly, if not utterly, defeated. The words of the section are wide enough to include foreign lotteries, and we have no reason to suppose the Legislature intended to exclude advertisements relating to them from the operation of section 294A of the Indian Penal Code (XLV of 1860). We make no order as to the costs of this reference.

The Magistrate should be informed accordingly.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

PURMA'NANDDA'S JIWANDA'S, (ORIGINAL DEFENDANT), APPELLANT,
v. DHA'RSEY VIRJI, (ORIGINAL PLAINTIFF), RESPONDENT.*

1885.
September 18.

Registration—Act III of 1877, Secs. 17, Cl. (d), and 49—Agreement for lease—Evidence.

Under clause (d), section 17, of the Registration Act III of 1877, an agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention as gathered from the whole of the instrument must prevail.

* Suit No. 18 of 1883.