Present: Lascelles C.J. and Wood Renton J. 1913.

MEYAPPA CHETTY *v.* RAMANATHAN *et al.*

168—D. C. Colombo, 31,882.

Opium Ordinance, No. 5 of 1899—Partnership for the sale of opium by the licensee with an unlicensed person—Action for share of profits.

By a partnership deed P 3 the two defendants and three others entered into partnership for acquiring the whole of the opium licenses and thus to secure the monopoly of the opium traffic throughout the Island. The members of the syndicate bought in their individual names practically all the opium licenses for the years 1908 and 1909. The plaintiff, who was not one of the original partners, and who had bought the licenses for Matara and Hambantota, sued the defendants for an eighth share of their profits, averring that the defendants had by a verbal agreement of partnership between plaintiff and defendants agreed to give him an eighth share of their profits.

Held, that the plaintiff's action was not maintainable, as it was founded on a partnership which was illegal, as being contrary to the policy of the Opium Ordinance of 1899.

LASCELLES C.J.—The Ordinance contemplates each opium shop being under the control of an individual licensed for that purpose by the proper authority and personally bound to observe the conditions of the license. During the continuance of the partnership the control and management of all these shops were under the deed P 3 vested, not in the hands of the persons who were licensed in that behalf by the several licensing authorities, but in the hands of a syndicate, of whose existence the licensing authorities were presumably unaware, and to whom, if they did their duty, they would have refused to issue licenses. It is no answer to say that the members of the partnership were themselves licensees or assignees from licensees, for under the deed these persons had no direct personal control over the particular shops for which they had acquired licenses.

THE facts are set out in the judgment of Wood Renton J. as follows:—

In this action Meyappa Chetty, the appellant, sues Ramanathan Chetty, the first, and Sinnetamby, the second, respondent, claiming a one-eight share, which he values at Rs. 71,000, of the profits of an alleged informal agreement of partnership between him and them in the business of opium renters for the years 1908 and 1909. The respondents deny the alleged agreement for a partnership, and contend further that even if it were established it would be rendered

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illegal and incapable of supplying a valid cause of action by the provisions of section 6 of the Opium Ordinance, 1899 (No. 5 of 1899), inasmuch as the appellant was not the licensee under Government of the rents for a share in the profits of which he sues.

The learned District Judge has not dealt with this latter point. But in his original judgment he came to a strong conclusion on the merits in the respondents' favour, and dismissed the appellant's action with costs. On the fourth day of the argument before us we sent the case back to the District Court to give the appellant an opportunity of producing and proving certain letters which, it was alleged, were not in his possession at the time of the original trial, and which, in our opinion, had a material bearing on the question whether or not there had been a partnership. We permitted either side to adduce in the District Court any further evidence relevant to the meaning and effect of those letters, and invited the learned District Judge, in returning the record to the Supreme Court, to inform us whether, and if so, to what extent, the fresh evidence so placed before him had affected his original view of the case. The District Judge stated that if the letters in question had been before him at the trial he would have held that the alleged partnership had been proved.

H. A. Jayewardene, for first defendant, respondent.—The agreement relied on by the plaintiff is one made in contravention of the provisions of the Opium Ordinance, and it is therefore illegal. [Ordinance No. 5 of 1899, sections 4, 16 (2).]

[Wood Renton J.—Do you say that the agreement is illegal as to the Colombo rent or to the Matara and Hambantota rent?] It is illegal as to both. The fact that plaintiff had a license in his own name for the Matara and Hambantota rent does not make any difference, as the partnership agreement on which he relies is illegal. He is not entitled to any profits under the agreement whether he had a license or not.

The plaintiff alleges that he was in partnership with the defendants for the sale of opium. There was no license in favour of the persons forming the partnership. Plaintiff is asking for profits from the sale. He is, therefore, claiming a benefit arising from a business conducted without a license—an illegal partnership.

The illegality of an agreement of the kind which the plaintiff seeks to prove may arise either from a contravention of the terms of the license or of the provisions of the Ordinance (*Padmanabhan v. Sarda*[1]). Here the illegality arises from a contravention of the terms of the Ordinance itself. Where an unlicensed person was taken into partnership for the sale of opium it was held that the agreement was illegal (*Marudamuttu v. Mooppan*[2]).

[1] *(1911) 35 Mad. 582.*

[2] *(1901) 2 Mad. 401.*

[Lascelles C.J.—Does the plaintiff claim to be a partner in the opium venture or does he say he was entitled by agreement to some benefit as a consideration for his services?] His case is that he was taken on as a partner. Plaintiff claims a share of the profits as one of the vendors. He had no right to sell. He cannot, therefore, maintain this action for the proceeds of the sale. An unlicensed person who joins a person licensed to sell opium must be held to sell opium himself within the meaning of the Ordinance.

Whether the plaintiff was entitled to sue for the Matara and Hambantota sale or not must be decided according to the same rule. He entered into an illegal agreement with the defendant. Whether the plaintiff had no license or the defendant had no license it is immaterial; if one of them had not a license the action cannot be maintained. It makes no difference whether the license for Matara and Hambantota was in the plaintiff's name or not. Counsel cited *Shaba v. Shaba*,[1] *Scott v. Brown*,[2] *Shaba v. Shaba*,[3] *Peris v. Fernando*,[4] *Ritchie v. Smith*.[5]

van Langenberg, K.C., Acting A.-G. (with him Samarawickrama and *Hayley*), for the plaintiff, appellant.—This case may be distinguished from all the cases cited by the counsel for the appellant. Where a person enters into a partnership dealing with the sale of things allowed only by license and actively takes a part in the sale such a contract cannot be enforced. Here the plaintiff was not a partner. He had not the right to inspect the books, except Ramanathan's books. But plaintiff had no claim against the firm (*Ramanathan, De Mel & Co.*). Plaintiff had no right of partnership as regards the firm. The only right to which plaintiff was entitled was a share of the profits made by Ramanathan. Plaintiff could not interfere with the management, could not take any active part in the business, and it is such interference that is prohibited. Counsel cited *Lindley on Partnership, 7th ed., pp. 108, 109; Shaba v. Shaba;*[3] *Shaba v. Shaba.*[1]

Jayewardene, in reply.

Elliott (with him *Allan Drieberg*), for the first defendant, respondent.

De Sampayo, K.C. (with him *Bawa, K.C.*, and *Sandrasegra*), for the second defendant, respondent.

Cur. adv. vult.

January 15, 1913. LASCELLES C.J.—

During the course of the trial an additional issue was framed, which raised the question of law whether the plaintiff could maintain this action inasmuch as he was not a licensee under Government,

[1] *(1874) 21 W. R. 289.*
[2] *(1892) 2 Q. B. 724, at page 728.*
[3] *(1904) 31 Cal. 798.*
[4] *(1905) 1 Bal. 199.*
[5] *18 L. J. C. P. 9.*

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except in respect of the Matara and Hambantota rents. This question is not dealt with in the judgment of the learned District Judge.

We have referred to the authorities collected in *Lindley on Partnership*, and also to the case of *Padmanabhan v. Sarda*,[1] a decision on a similar question under the Indian Opium Act of 1878, in which the Indian authorities are reviewed.

The true question, it seems to me, is whether the partnership deed P 3 between the defendants and the Sinhalese partners is illegal, as being in contravention of the policy of the Opium Ordinance of 1889. If this deed is contrary to public policy, it is clear that the present action, which is for an interest under that deed, is not maintainable.

This Ordinance prohibits any person other than a duly licensed wholesale or retail dealer from being in possession of more than 150 grains of opium without a license, and makes provision for the issue of licenses by the " proper authority " to possess opium and to sell the drug by wholesale or by retail. The license may be offered for sale by the proper authority either by public auction or tender, but the proper authority has a discretionary power to refuse to issue a license to the highest bidder. Licensees are liable to penalties for transgression of the conditions attached to the licenses. These conditions require the licensees personally to conform to a number of regulations with regard to the sale of opium and the conduct of the licensed shop.

It is, I think, apparent, in the first place, that this Ordinance was not enacted merely for the purpose of levying a duty on the sale of opium, but that it is founded on " considerations of public policy," and was intended to regulate and restrict dealings in a deleterious drug; in the next place, it is clear that the licenses issued by the proper authority are personal licenses. The privilege of dealing in opium is given by the licensing authority to approved persons, to such individuals only as the proper authority considers can be trusted to observe the provisions of the Ordinance. On reference to the partnership deed P 3 it will be found that the provisions of this deed are wholly repugnant to the policy of the Ordinance.

The effect of the partnership deed is to centralize in the hands of the members of the partnership the management of all the opium licenses granted by the different licensing authorities to different individuals. The deed provides that all the opium must be bought through the first defendant, who had the monopoly of importing opium from Calcutta ; the expenses of all the opium shops in the Island are defrayed from the general partnership funds, the cheques being signed by the first defendant on behalf of the firm. The arrangements for the management of the different shops are specially noteworthy. The shops are by Schedule B of the deed divided into two categories, namely, Part I. comprising shops under

[1] *(1911) 21 Mad. L. J. 425.*

the management of the two defendants, and Part II. comprising shops under the management of Cooray and De Mel. The business was to begin by the two defendants having the management of the shops in Part I., and De Mel and Cooray the management of the shops in Part II.; at the end of each quarter each set of partners makes up his accounts, and the management of the two groups is exchanged, the two defendants taking over the shops in Part II., and De Mel and Cooray the shops in Part I., of the schedule.

In my opinion these provisions are in direct contravention of the policy of the Ordinance. The Ordinance contemplates each opium shop in the Island being under the control of an individual licensed for that purpose by the proper authority and personally bound to observe the conditions of the license. The partnership deed provides that the control and management of all these shops should be vested in the members of the syndicate.

During the continuance of the deed the control and management of the opium shops in Ceylon were not in the hands of the persons who were licensed in that behalf by the several licensing authorities in the Island, but in the hands of a syndicate, of whose existence the licensing authorities were presumably unaware, and to whom, if they did their duty, they would have refused to issue licenses. It is no answer to say that the members of the partnership were themselves licensees or assignees from licensees, for under the deed these persons had no direct personal control over the partnership shops for which they had acquired licences. All the shops comprised in the deed were under the same management; they were under the management of the syndicate in which the first defendant had a controlling influence. The deed, in my opinion, is clearly contrary to the policy of the Opium Ordinance, and as such is illegal. It is, therefore, the duty of the Court to refuse its assistance to any person claiming an interest under the provisions of that deed. In my opinion it matters very little that the plaintiff was not a licensee, except as regards the Hambantota and Matara licenses. He can be in no better position than the parties to the deed.

For the above reasons I would dismiss the appeal with costs.

WOOD RENTON J.—

His Lordship discussed the facts and continued:—

If it had been necessary to decide the question, I should have been prepared to hold that the partnership, even if established, was an illegal one, and that no action would lie to enforce any rights arising under it. In the issue framed on the point at the trial it was sought to establish his illegality on the somewhat narrow ground that the appellant was not himself the licensee under Government of at least some of the rents in question. It was argued on the other side that the appellant was only a sub-partner with a share in the profits, and

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that the fact, in so far as it was a fact, that he was unlicensed did not render illegal a partnership carried on by other duly qualified persons. (See *Lindley on Partnership, 7th ed., p. 199.*) For the purposes of another part of the case, however, the appellant contended that he had concerned himself actively with the business of the partnership.

> " In 1908," he says, " I used to go to the opium boutique in Kayman's Gate and see what the salesmen were doing. My kanakapulle went on behalf of the syndicate and visited the shops in Badulla and other places. He went at my request."

And again—

> " I took an interest in the opium business being a partner. The defendants had an opium office. I frequently went there."

Section 6 of the Opium Ordinance of 1899 (No. 5 of 1899) is sufficient to stamp with illegality and render unenforceable rights arising under a partnership in the opium business, when an unlicensed person claiming, as the appellant does here and under document P. 1, to have been a partner has been engaged as such in furthering its interests. Direct Indian authority to this effect is to be found in *Padmanabhan v. Sarda*,[1] a case decided under the analogous provisions contained in section 9 of the Indian Opium Act, 1878 (Act I. of 1878), and the same principle has been affirmed in numerous decisions in regard to other classes of business which the Legislature has made illegal unless certain conditions are present. It has been held, for instance, that the licensee of a wine shop let to an unlicensed person in contravention of the Bengal Act II. of 1866 could not recover rent due under the lease, *Shaba v. Shaba*,[2] and *cp. Shaba v. Shaba*,[3] and *Ritchie v. Smith* [4]), and that an action on a secret contract of partnership in pawnbroking, where in violation of the requirements of the law the name of one partner only appeared above the office door, could not be maintained [*Gordon v. Howden*,[5] and *cp. Davis v. Makuna* [6] (assumption of an unlicensed person as a medical partner)].

It might be said, however, that a decision of the case on this ground disposed only of the appellant's right to share in the profits derived from these rents as to which he held no license. I would prefer, therefore, to hold that the deed of partnership P 3, under which the appellant claims to come in between the respondents and Messrs. de Mel, Cooray, and Peris, was itself illegal, as being contrary to the policy of the Opium Ordinance of 1899, and can give rise to

[1] *(1911) 21 Mad. L. J. R. 423.*
[2] *(1874) 21 W. R. Civ. 289.*
[3] *(1904) I. L. R. 31 Cal. 798.*
[4] *(1848) S. L. J. C. P. 9.*
[5] *(1845) 12 Cl. & F. 237.*
[6] *(1885) 29 Ch. D. 596.*

no rights enforceable by action. I would adopt in this connection, without any additions of my own, the reasons given by my Lord the Chief Justice in his judgment, which I have had the advantage of perusing, for arriving at the same conclusion. The fact that the case was not argued before us on this basis is immaterial. " When upon the trial of an action," said Kennedy J. in *Gedge v. Royal Exchange Assurance Corporation*,[1] " the plaintiff's case discloses that the transaction, which is the basis of the plaintiff's claim, is itself illegal, the Court cannot properly ignore the illegality and give effect to the claim."

I would dismiss this appeal with costs.

Appeal dismissed.