

( 22 )

## APPELLATE CRIMINAL.

*Before Mr. Justice Melvill and Mr. Justice Pinhey.*

EMPRESS v. BAI BAYA.\*

1883  
January 11.*Indian Penal Code (Act XLV of 1860), Sec. 425—Mischief—Stray cattle.*

In order to constitute the offence of mischief within the meaning of section 425 of the Indian Penal Code (XLV of 1860) it is not sufficient to show that the owner of cattle which had caused damage was guilty of carelessness in allowing them to stray. The prosecution is bound to show that there was an intention to cause wrongful loss or damage.

THIS case was revised by the High Court under section 439 of the Code of Criminal Procedure, Act X of 1882.

The accused was convicted of mischief, and fined Rs. 2 by Dadabhai, Dinshah Magistrate (First Class) at Kheda, under the following circumstances :—

“ In this case the accused admits that, in consequence of her allowing her she-goat to go about loose, it caused mischief by destroying a young tree—an exotic one—in the police compound. The amount of mischief is put down at Rs. 2, the tree having been brought up with great care. The Court thinks that the owner of the goat will get a sufficient warning by a nominal fine especially as she is a poor old woman. Finding her guilty of allowing her she-goat to go about loose, knowing that it would thereby cause mischief, the Court directs that she pay a fine of Rs. 2, or, in default, suffer simple imprisonment for four days—section 426 of the Indian Penal Code.”

There was no appearance in the High Court either on behalf of the accused or the Crown.

MELVILL, J.—The conduct of the accused does not constitute the offence of which she has been convicted. In order to constitute the offence of mischief it is not sufficient to show that the accused was guilty of carelessness in allowing her goat to stray. The prosecution was bound to show that there was an intention to cause wrongful loss or damage. The same view has been taken by the Calcutta and Madras High Courts in cases reported in 6 Bengal Law Reports, Appendix 3, and 6 Madras High Court Rulings, xxxvi and xxxvii. The Court, therefore, reverses the conviction and sentence, and directs the fine to be returned to the accused.

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\* Criminal Review, No. 284 of 1882.