

Hirji Jina v. Nárran Mulji⁽¹⁾ to have been almost assumed—although upon what ground it is not stated—that the above section had no application to an order made under the Equity Rules in the course of taking accounts. That section—read, as it must be, as an amendment to the Civil Procedure Code of 1859—is, in terms, confined to questions arising on the execution of decrees, *i. e.*—as that expression is used in the above Code—to questions arising in the enforcement of the decree on the application of one or other of the parties to it. The present order made on the application of the Commissioner under the old equity practice of the Supreme Court, introduced into the procedure of this Court by virtue of its power of making rules not inconsistent with the Civil Procedure Code, and asking for the instructions of the Court in carrying out its orders, cannot, in our opinion, be regarded as an order within the contemplation of that section. We must, therefore, hold that no appeal lies from the order in question. Appellant must pay respondent his costs.

Attorneys for the appellant.—Messrs. *Ardesir and Hormasji*.

Attorneys for respondent.—Messrs. *Hore, Conroy and Brown*.

(1) 12 Bom. H. C. Rep., 129.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánabhái Haridás.

QUEEN EMPRESS *v.* GOVINDA PUNJA.*

Mischief—Destruction of carcass—Right to skin of animals—Village Máhars—Custom.

The owner of an animal who buries it after its death is not guilty of mischief or any other offence, although he does so with the express object of preventing the Máhars of his village from taking its skin according to the custom of the country.

THIS was an application for the exercise of the High Court's revisional jurisdiction and for the reversal of the sentence passed on the accused by C. E. Frost, Magistrate (First Class) at Násik.

*Criminal Application, No. 265 of 1883.

1884

RUSTOMJI
BURJORJI
v.
KESROWJI
NÁIK.

January 31.

1884
 QUEEN
 EMPRESS
 v
 GOVINDA
 PUNJA.

On the complaint of one Ukhádyá Gangyá, a Máhár of the village of Chinchvad, the accused was charged with having destroyed the skin of a dead bullock belonging to the accused by burying the bullock, and was convicted in a summary trial of having committed mischief, and sentenced, under section 426 of the Indian Penal Code, to pay a fine of Rs. 10, or, in default, to suffer simple imprisonment for ten days.

The Magistrate in deciding the case made the following remarks :—

“It is certain that the accused buried, or partially buried, the carcass of a dead bullock with the express object of destroying the skin and preventing the complainant, who is the village Máhár, from getting it. The accused has had to prove that in his case he has a right to the skin of his dead animals. I hold that he has failed to prove this, as it is a recognized custom, all over this part of the country, for the Máhár to take, as his right, the skin of any deceased bullock of the village. The skin was in this case the property of the complainant, and the accused deliberately destroyed it. He has also done the same thing before. I find him guilty of the offence of mischief.”

Vishnu Krishna Bhátavadekar for the applicant.—The facts found do not constitute the offence charged, or any other offence. The village Máhárs are not the owners of animals dying in their village, but the ownership continues in the persons who owned them when they were alive. A right to remuneration for removing the dead animals in the shape of a pecuniary fee, or the skin, or a right to remuneration for skinning them, is quite distinct, and the assertion of it must take place in the Civil Court. The Magistrate's finding, that the Máhárs by the custom of the country are owners of the animals when dead, is not justified, by the evidence. The alleged custom is not an established one. In the case of *Suntoo v. Bábáji*⁽¹⁾, which was also a Deccan case, it was held that the village Máhár could not claim the skins of draught bullocks dying in the village, but must make them over to the owners of such animals, receiving remuneration for their

(1) Morris' Sadar Diváni Adálat Reports, Part II, p. 68.

services in skinning them. But supposing, without granting, that the Mâhârs had some right, the proper *forum* for its assertion is the Civil Court. There was no intention to cause wrongful loss within the meaning of the Indian Penal Code.

No one appeared on behalf of the Crown.

WEST, J.—The owner of the bullock asserted his right to the carcass when dead, and being in possession might retain such possession if supported by any colour of right until a better title was made to the property. This being so, the act was not one to be dealt with under the criminal law, but one for which the remedy was to be sought in the Civil Court. The Court, therefore, reverses the conviction and sentence, and directs the refund of the fine.

Conviction and sentence reversed.

APPELLATE CIVIL.

FULL BENCH.

Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Kemball, and Mr. Justice West.

BA'LKRIISHNA TRIMBAK, PLAINTIFF, *v.* GOVIND PA'ND NAIK, DEFENDANT.* February 6.

Stamp Act I of 1879—Bond—Promissory note.

Where an instrument bearing date the 24th September, 1881, stamped with an adhesive stamp of one anna, and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the date of the instrument, the defendant promising to pay interest at a certain rate on the sum thus found due and pay the principal on demand,

Held that the instrument was a bond within the definition given in Act I of 1879, and should be stamped accordingly.

* Civil Reference, No. 59 of 1883