

1884

RUPÁ
JAGSHET
v.
KRISHNÁJI
GOVIND.

and nothing to show that the Mahárája intended to establish it for the benefit of his sons or heirs or any-body else in perpetuity."

We are of opinion, therefore, that the gift created a religious endowment, as, indeed, has been already presumably ruled by the learned Judges of this Court who decided Second Appeals Nos. 56 and 71 of 1880, confirming the decree of the District Judge, who had similarly construed the above gift. Such being the nature of the gift, the present suit, as it has been treated throughout without objection by the defendant, is not one by a party to the suit in which the sale was made to set aside the sale, but one by the trustee of the endowment to recover the property. We must, therefore, confirm the decree, with costs.

Decree confirmed.

CRIMINAL JURISDICTION.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

*In re THE PETITION OF BASA'PA AND OTHERS.**

1884
December 24.

Jurisdiction—Judge—Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case.

The mere circumstance that a trying Magistrate is the master of the complainant, does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate.

On the 9th September, 1884, at a summary trial before J. J. Hearn, Magistrate of the First Class at Kaládgi, the petitioners were charged with the offence of causing hurt to one Sayad. They were convicted of the offence, and sentenced to pay fine, or suffer rigorous imprisonment in default. The Magistrate further ordered, under section 106 of the Criminal Procedure Code (Act X of 1882), the petitioners to be bound in certain sums for a period of one year to keep the peace.

The petitioners presented the present petition to the High Court, and, in praying for reversal of the above sentence and order, stated, among other things, that the complainant was a private servant of the convicting Magistrate, and submitted that the latter ought not, therefore, to have tried the case.

*Application for Review, No. 255 of 1884.

Shámráv Vítal for the petitioners.—The convicting Magistrate stood in the relation of master to the complainant, and ought not to have tried the case himself, but should have referred it to some other Magistrate.—*Wood v. Corporation of the Town of Calcutta*⁽¹⁾. Whenēver the deciding Judge has any direct or indirect interest in the matter to be decided, he is not a fit Judge to decide it—*Dimes v. Proprietors of the Grand Junction Canal*⁽²⁾. That such is the intention of the Indian Legislature, may be inferred by reference to the rules for electing jurors in the Criminal Procedure Code, 1872, by which persons who stood in the relation of master and servant were disqualified. *A fortiori*, a master cannot sit as a Judge in a matter where his servant is the complainant. The Magistrate in convicting the petitioners mainly relied on the truthfulness of his servant, the complainant, and it cannot be said that he was unbiassed. The conviction and the order of the Magistrate are, therefore, bad.

WEST, J.—We do not think the Magistrate was deprived of jurisdiction by the circumstance that the complainant was his servant complaining on his own account merely, though, in such a case, it would generally be expedient for him to refer the complainant to another Magistrate. We, therefore, reject the application.

(1) I. L. R., 7 Calc., 322.

(2) 3 H. L. Ca. at p. 793.

REVISIONAL CRIMINAL.

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

QUEEN EMPRESS *v.* SHAIK RAJU.*

Mischief—Penal Code Act XLV of 1860, Sec. 426—Cattle Trespass Act I of 1871, Sec. 10—Cattle causing damage to crop—Liability of owner.

The owner of an animal which strays on to another's land, and causes damage to the crop thereon, does not, unless he has wilfully driven it upon the land, commit the offence of mischief under section 426 of the Indian Penal Code.

THE accused owned a cow which strayed into the Government garden attached to the Collector's bungalow at Dhulia, and caused damage to the crop of maize therein to the amount of Rs. 5. The

*Criminal Review, No. 247 of 1884.