

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.

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accused was thereupon charged with the offence of mischief, and put on his trial before the Second Class Magistrate at Dhulia, who convicted him of the offence on the ground that the accused, with full knowledge that his cow was in the habit of damaging crops, allowed it to roam and cause the aforesaid mischief. The Magistrate accordingly sentenced the accused to pay a fine of Rs. 20, or, in default, to suffer simple imprisonment for twenty days.

There was no appearance for the Crown or the accused.

WEST, J.—In this case there is not evidence or a finding that Shaik Rájú wilfully turned the cow into the enclosure, and so caused it to destroy the crop. Some wilful conduct of such a kind is necessary to constitute an offence under section 426 of the Indian Penal Code. For the minor offence of negligence in guarding an animal which strays into the ground of a person not its owner, provision is made by the Cattle Trespass Act I of 1871, sec. 10. The Court reverses the conviction and sentence, leaving the accused to be proceeded with, if thought fit, under the Act last named.

Conviction reversed.

APPELLATE CIVIL.

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

MALHA'RI (APPLICANT), v. NARSO KRISHNA (OPPONENT).*

Civil Procedure Code Act XIV of 1882, Sec. 295—Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Sale—Rateable distribution of assets.

Certain moveable property was at first attached in execution of a money decree passed by a Subordinate Judge in his Small Cause jurisdiction, of which a part was afterwards sold. In execution of a money decree passed by the same Subordinate Judge in his ordinary jurisdiction the remaining property was attached and sold. Prior to the date of this sale the applicant applied for execution of a money decree passed in his favor by the same Subordinate Judge in his Small Cause jurisdiction, and prayed for rateable distribution of the proceeds along with other decree-holders.

* Civil Reference, No. 44 of 1884.

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