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QUEEN
EMPRESS
v.
SHAIK RÁJU.

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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Held, that the application must be allowed. Although a Subordinate Judge invested under Act XIV of 1869, sec. 28, with Small Cause powers acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a Subordinate Court.

THIS was a reference from Ráv Sáheb Dwárkánáth Náráyan Rándive, Subordinate Judge (Second Class) of Pimpalgaon, who stated the case thus :—

“This is an application for the execution of a money decree passed by this Court in the exercise of its power as a Small Cause Court. The defendant’s moveable property was at first attached in execution of a similar decree, and part of it, sufficient to satisfy that decree, was sold. The remaining property was afterwards attached in execution of a money decree of this Court passed in the exercise of its ordinary power as a Second Class Subordinate Judge, and has been sold subsequently to the date of the application under reference. The applicant prays that under section 295 of the Civil Procedure Code (XIV of 1882) he be allowed to share in the proceeds of the sale along with other decree-holders.

“The question referred is :—Whether in the case of a Subordinate Judge, invested also with the power of a Small Cause Court, the Subordinate Judge sitting in the exercise of his power as a Judge of Small Cause Court and the same Judge sitting as an ordinary Subordinate Judge, forms the same Court within the meaning of section 295 of the Civil Procedure Code, or forms two different Courts?

“My opinion is that he forms two different Courts.

“If he forms two different Courts, as is held by the Allahabad High Court in *Himálaya Bank v. Hurst*,⁽¹⁾ the applicant in this case would not be entitled to share, under section 295, in the proceeds of the sale. There is no Bombay decision, that I am aware of, on the point in question. The case of *Jetha Mádhavji v. Najer Alli Abhrámji*⁽²⁾ is not on all fours with the present case. The opinion of the High Court is, therefore, necessary for the guidance of the Courts in this Presidency. The point raised is of daily-occurrence in this Court.

⁽¹⁾ I. L. R., 3 All., 710.

⁽²⁾ I. L. R., 4 Bóm., 472.

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MALHÁRI
v.
NARSO
KRISHNA.

“Following the Allahabad High Court case, referred to above, I have rejected the applicant’s prayer, but contingent on the orders of the High Court.”

There was no appearance in the High Court on behalf of either party.

The judgment of the Court was delivered by

KEMBALL, J.—Although a Subordinate Judge invested under Act X of 1869, sec. 28, with Small Cause powers acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a Subordinate Court.

APPELLATE CIVIL.

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

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DAVLATSING VALAD DA'YA'RAM, PLAINTIFF, v. PA'NDU VALAD
CHANDRA'BHA'U AND TWO OTHERS, DEFENDANTS.*

Civil Procedure Code Act XIV of 1882, Sec. 257 A—Agreement—Judgment-debt—Sanction of Court—Contract void—Principal—Surety.

An agreement entered into to pay interest not awarded by a decree in addition to the sum decreed without the sanction of the Court which passed the decree is void under section 257 A. of the Code of Civil Procedure, Act XIV. of 1882, so far as it operates in satisfaction of the judgment-debt.

When the void part of an agreement can be properly separated from the rest, the latter does not become invalid; but where the parties themselves treat debts—void as well as valid—as a lump sum, the Court will regard the contract as an integral one, and wholly void, upon which neither the principal nor the sureties can be sued.

THIS was a reference under section 617 of the Code of Civil Procedure, Act XIV of 1882, from Ráv Sáheb D. G. Ghárpuré, Subordinate Judge (Second Class) at Yával.

He stated the case as follows :—

“The plaintiff sues on an instalment bond (exhibit 3) dated April 26, 1882, executed by defendants Pándu and Zendu, their deceased father, Chandrábháu, and by Bhoju, the deceased father of defendant Dágdu, for the recovery of the first two instalments thereunder due, with interest.

* Civil Reference, No. 37 of 1884.