

jurisdiction, only by reason of a supposed irregularity on the part of such Court. See section 403 of the Criminal Procedure Code (Act X of 1882).

This conviction must, therefore, be set aside, and the fine, if levied, refunded.

Conviction set aside.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Sir William Wedderburn, Bart., Justice.

QUEEN-EMPRESS v. JAGANNA' TH BHIKAJI BHAVE.*

Indian Penal Code (Act XLV of 1860), Sec. 430—Mischief—Water-course.

Where upon the evidence it appeared that the complainant was the exclusive owner of a water-course, and that the accused had no sort of right to assert any claim to it, the causing of a diminution of the supply of water by the accused, even though in the assertion of a right, was held to be only an additional wrong, and to constitute mischief within the meaning of section 430 of the Indian Penal Code (Act XLV of 1860).

Rámkrishna Chetti v. Palaniyandi Kudámbar⁽¹⁾ followed.

THIS was a reference, under section 438 of the Code of Criminal Procedure (Act X of 1882), by R. E. Candy, Magistrate of the district of Ratnágiri.

The accused was charged before Mr. K. V. Ghaisas, Magistrate (First Class) at Ratnágiri, with having caused a diminution of water-supply for agricultural purposes by diverting water from a water-course alleged to have been constructed by the complainant, and belonging to him exclusively. The accused contended that the water-course belonged to himself and the complainant jointly, that it ran partly in his (the accused's) land, and that he was entitled to use it for the purpose of watering his own trees.

The Magistrate found that the contention of the accused was wholly groundless, that he had no claim to the water-course, and

* Criminal Reference, No. 146 of 1885.

(1) I. L. R., 1 Mad., 262.

1885.

QUEEN-
EMPRESS
v.
GUSTÁDJÍ
BARJÓRÍ.

1885.
October 29.

1885.

QUEEN-
EMPRESS
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BHÍKÁJI
BHÁVE.

that the water-course belonged exclusively to the complainant. He, therefore, convicted the accused under section 430 of the Indian Penal Code (Act XLV of 1860), and sentenced him to pay a fine of Rs. 10.

The District Magistrate was of opinion that, in the absence of evidence as to the conditions upon which the accused allowed the complainant to carry the water-course through his (the accused's) lands, the accused could not be held guilty, under section 430 of the Indian Penal Code (XLV of 1860), for doing what he considered he had a right to do on his own lands until the complainant produced a decree of a Civil Court, or some grant or arrangement from or with the accused giving to the complainant an exclusive right to the use of the water-course.

No one appeared in the High Court on behalf of the accused or the Crown.

Per Curiam.—The trying Magistrate seems to have been distinctly of opinion, on his appreciation of the evidence, that the complainant was the exclusive owner of the water-course stopped by the accused, and that the latter had no sort of right to assert any claim to it. If the Magistrate's view of the case is correct,—and for the purposes of this reference, we must, we think, accept it,—then any claim set up by the accused could not have been *bonâ fide*. The assertion of a claim in such a case would “only be an additional wrong”—*Rámkrishna Chetti v. Palaniyandi Kuddambar*⁽¹⁾.

The conviction and sentence must, we think, be sustained.

(1) I. L. R., 1 Mad., 262.