CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Shah.

EMPEROR *v.* IBRAHIM MEER SHIKARI.*

1917.
March 28.

Prevention of Cruelty to Animals Act (XI of 1890), section 3, clause (b)—Cruelty to animals—Cranes having their eyes seeled up—Carriage by railway in that condition.

The accused purchased at Indore certain cranes (*sáras*) which had their eyes seeled up. He was carrying them in that condition by rail from Indore to Kolhapur. At Poona, an intermediate station, it was found that the birds' eyes were bleeding from the stitches. He was therefore convicted of an offence punishable under section 3, clause (*b*) of the Prevention of Cruelty to Animals Act, 1890:—

Held, that the accused had committed no offence under the section, for, the cruelty if any was caused by the antecedent stitching up of the eyes and not by the manner or position in which the birds were carried in the train.

THIS was an application in revision against conviction and sentence passed by J. B. Vachha, City Magistrate, First Class, at Poona.

The accused purchased at Indore five cranes (*sâras*), which had their eyes seeled up. He was carrying them in that condition in the luggage van of a railway train from Indore to Kolhapur. At an intermediate railway station, Poona, the accused took the birds out on the platform for feeding them. It appeared that the birds were bleeding from the stitches in their eyes.

On these facts the accused was convicted of an offence punishable under section 3, clause (*b*) of the Prevention of Cruelty to Animals Act (XI of 1890), and sentenced to pay a fine of Rs. 5.

The accused applied to the High Court under its criminal revisional jurisdiction.

*Criminal Application for Revision No. 24 of 1917.

1917.

EMPEROR
v.
IBRAHIM
MEER
SHIKARI.

Setalvad, with *W. B. Pradhan*, for the accused.:—The section does not penalise the actual causing of the pain, but the binding or carrying the animals in a public place in such a manner as to cause unnecessary pain. Here, the pain whatever it was was caused by the vendor of the birds who seeled up their eyes. The manner of carrying them was not painful in the least. Further, the process of seeling up eyes of cranes is a well-recognised method.

S. S. Patkar, Government Pleader, for the Crown.:—The eyes of the birds were stitched up and bleeding. The seeling up of the eyes was painful: the carrying of them in that condition is also painful.

BATCHELOR, J.:—The applicant before us has been convicted by the learned Magistrate under clause (*b*) of section 3 of the Prevention of Cruelty to Animals Act, XI of 1890. The facts upon which the conviction was had are these:—

The applicant purchased certain cranes known as *sáras* and was conveying them by rail from Indore to Kolhapur. They were young birds and prior to the applicant's purchase of them their eyes were seeled or stitched up in accordance with the practice which appears to prevail in India, as it certainly prevails, or used to prevail, in England. At the Poona station it was noticed that the birds' eyes were thus stitched up and were bleeding. A complaint was consequently lodged against the applicant.

Now it may well be, as the learned Magistrate believes, that this process of seeling up the eyes of cranes or hawks is in itself a cruel practice. But the question before us is not whether that practice is cruel, but whether the requirements of section 3 (*b*) of the Act are satisfied. The words of that section, so far as they are now material to us, are these: "If any person

1917.

EMPEROR
v.
IBRAHIM MEER SHIKARI.

in any place to which the public have access binds or carries any animal in such a manner or position as to subject the animal to 'unnecessary pain or suffering," then he shall be liable to the punishment provided. It is not questioned but that the birds are animals within the section, or that the platform of the Poona station is such a place as the section refers to. But it is contended by the learned counsel for the applicant that the words which I have cited show that the intention of the Legislature is not to punish any form of cruelty, but to punish only such cruelty as is inflicted on an animal by causing it unnecessary pain or suffering by reason of the manner or position in which the animal is bound or carried. That appears to me to be the real intention of the language used, and I do not think it can be said here that the unnecessary pain or suffering which these birds endured was attributable to the manner or position in which they were carried. It is not contended that the applicant bound them in any such place as the section refers to, so that we are concerned only with the question whether he carried them in the manner or position which the section forbids.

Assuming that the Railway Company's carrying of the birds was the applicant's carrying, yet I am of opinion that the cruelty, if any, was caused by the antecedent stitching up of the eyes and not by the manner or position in which the birds were carried in the luggage van of the train. The method and position in which they were carried were admittedly usual, and added nothing to the pain which had already presumably been caused by the seeling. I am forced, therefore, though with some regret, to the conclusion that the provisions of the Act are not wide enough to cover this form of cruelty, and the application, therefore, must be allowed.

1917.

EMPEROR v. IBRAHIM MEER SHIKARI.

The conviction must be set aside, the accused must be acquitted and discharged and the fine, if paid by him, must be refunded to him.

SHAH, J.:—I am of the same opinion.

Conviction set aside.

R. R.

CRIMINAL APPELLATE.

FULL BENCH.

Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Beaman, Mr. Justice Heaton and Mr. Justice Macleod.

EMPEROR *v.* NAZAR MAHOMED.*

1917. *April* 3.

Scheduled Districts Act (XIV of 1874), section 7—Rule 44—Rule 44 not ultra vires—*Jurisdiction of High Court over conviction and sentences by Mewas Agent.*

Rule 44 framed by the Government of Bombay under the Scheduled Districts Act, 1874, is not *ultra vires.*

The High Court of Bombay may, therefore, take cognizance of any case decided by the Mewas Agent on the petition of a convicted party, and if it thinks fit send for the proceeding and pass a fresh decision.

CRIMINAL appeal from convictions and sentences passed by J. A. G. Wales, Mewas Agent, West Khandesh.

The accused were tried by the Mewas Agent for the offence of causing grievous hurt (sections 326 and 114 of the Indian Penal Code); in that they cut off the nose of the complainant.

The Mewas Agent convicted the accused of the offences charged, and sentenced accused No. 1 to suffer

* Criminal Appeal No. 539 of 1916.