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of the provisions of section 115 of the Code of Civil Procedure apply to such a case. If a party does not choose to take a point of law in the Court below, then it cannot be said that the lower Court has acted illegally or with material irregularity in deciding the case without taking into consideration a point of law that was never raised before it. If we entertain this application on that ground we should be exceeding the powers that are granted to the High Court to exercise revisional jurisdiction over the decisions of the lower Courts. The application must be refused.

Application refused.

J. G. R.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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June 10.

BARTHOL DUMING RODRIKS AND OTHERS (ORIGINAL OPPONENTS),
APPLICANTS v. PAPA DADA (ORIGINAL APPLICANT), OPPONENT*.

Criminal Procedure Code (Act V of 1898), sections 408 and 413—Cattle Trespass Act (I of 1871), section 22—Order of compensation—Appeal from the order.

An order awarding compensation and repayment of fines, &c., under section 22 of the Cattle Trespass Act, 1871, is appealable under section 408 of the Criminal Procedure Code. The compensation so awarded is not a fine, and consequently the restrictive provisions of section 413 of the Criminal Procedure Code do not apply.

THIS was an application under the criminal revisional jurisdiction of the High Court against an order passed by P. J. Taleyarkhan, Sessions Judge of Thana, declining to entertain an appeal from the order passed by E. W. Perry, Sub-Divisional Magistrate of Bandra.

Cattle belonging to the opponent were put into the cattle-pound for straying, by the applicants. The

* Criminal Application for Revision No. 67 of 1921.

opponent had to pay Rs. 26-8-0 for releasing the cattle from the pound.

The opponent then applied to the Sub-Divisional Magistrate at Bandra to recover compensation and the amount of Rs. 26-8-0 from the applicants, under section 22 of the Cattle Trespass Act, 1871. The Magistrate awarded Rs. 100 as compensation and also Rs. 26-8-0. The whole amount of Rs. 126-8-0 was ordered to be recovered from the three applicants in equal amounts of Rs. 42-2-8 each.

The applicants appealed from the order to the Sessions Judge of Thana. A preliminary objection was raised at the hearing that no appeal lay under section 413 of the Criminal Procedure Code, inasmuch as the amount to be recovered from each of the applicants was less than Rs. 50.

The learned Judge upheld the objection.

The applicants applied to the High Court.

S. V. Bhandarkar, for the applicants.

D. R. Patwardhan, for the opponent.

MACLEOD, C. J. :—The petitioners were convicted by the Sub-Divisional Magistrate, Bandra, under section 22 of the Cattle Trespass Act, I of 1871, and the complainant was awarded as compensation Rs. 100, together with the fine of Rs. 26-8-0 which he had paid. The learned Magistrate directed that the total amount of Rs. 126-8-0 should be recovered in equal amounts of Rs. 42-2-8 from each of the petitioners.

In appeal to the Sessions Judge the first point which was taken was that there was no appeal. The second point was that if there was an appeal the compensation awarded was really a fine, and the effect of the decision of the Magistrate was that each of the petitioners had been fined Rs. 42-2-8, and, therefore, no appeal lay

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under section 413 of the Criminal Procedure Code. It is admitted that a person convicted under section 22 of the Cattle Trespass Act can be said to be convicted of an offence. Therefore an appeal would lie unless the restrictive provisions of section 413 applied to the case. That question depends upon whether it can be said that compensation awarded to a complainant under section 22 of the Act is a fine. We see no necessity why the Court should exert its ingenuity to discover that what is stated by the Legislature to be compensation, which is one thing, is to be included within the term "fine" as laid down in the Penal Code and other penal Statutes, which is another thing. It is quite true that a person who is ordered to pay compensation, and pays it, is out of pocket to the extent of the amount paid, and the person who is ordered to pay a fine, and pays it, is also out of pocket to the extent of the fine, but it does not follow that the nature of the penalty exacted is the same. It is quite true that under section 23, the compensation which is awarded under section 22 should be recovered in the same way as a fine. There again the method of recovery has nothing whatever to do with the nature of the penalty, and in this respect it may be remarked that there is no provision under which the Court can give a sentence of imprisonment in default of the compensation not being paid. If the Legislature had intended that compensation awarded under section 22 of the Cattle Trespass Act was to be treated exactly in the same way as a fine for the purpose of considering whether the sentence was appealable or not, then the Legislature could easily have said so, and there is no reason why we should go out of our way in order to remedy the defect, if it is one. An appeal lies against a conviction under section 408, and in my opinion, the Sessions Judge was wrong in deciding that section 413 of the Criminal Procedure Code

applied. There is, therefore, no necessity to consider the point that, although the amount of compensation awarded to the complainant against all the petitioners was over Rs. 50, because each petitioner was liable to pay under Rs. 50, therefore it could be said that each petitioner had been fined less than Rs. 50. I think the Rule must be made absolute and the appeal must go back to the Sessions Judge to be dealt with according to the merits.

SHAH, J.:—I agree.

Rule made absolute.

R. R.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR v. MOTILAL HIRALAL*.

Criminal Procedure Code (Act V of 1898), sections 164 and 337—Accused—Tender of pardon—Tender can only be made in course of an inquiry under the Criminal Procedure Code—Pardon tendered not in the course of such inquiry—Evidence given under such a tender of pardon cannot form the basis of an alternative charge of giving false evidence—Indian Penal Code (Act XLV of 1860), section 193.

Under the provisions of section 337 of the Criminal Procedure Code, 1898, a tender of pardon can be made only during an inquiry into an offence under the Code.

Where a pardon has been tendered not during an inquiry under the Criminal Procedure Code, and the approver makes a statement under the pardon, such statement cannot form the basis of an alternative charge of an offence punishable under section 193 of the Indian Penal Code, 1860.

THIS was an application under the criminal revisional jurisdiction from conviction and sentence passed by M. M. Mehta, Resident Magistrate, First Class, Nadiad, confirmed, on appeal, by D. C. Mehta, Additional Sessions Judge of Ahmedabad.

* Criminal Application for Revision No. 103 of 1921.

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