

The Allahabad High Court in *Basant Lal v. Batul Bibi*(1) held that an application of this nature ought to be considered as one for the revival of former proceedings after removal of the injunction, and that art. 178 of the Limitation Act 1877 (rather than art. 179) was applicable to it; but, with all respect, we cannot agree with the learned Judges in that conclusion. In the first place, the application in that case was to attach *other* property than that in respect of which the execution of the decree had been stayed; and, secondly, art. 178 only applies to applications for which no period of limitation is provided elsewhere in the schedule. But art. 179 clearly provides for *all* applications for the execution of decrees or orders, and hence art. 178 will not, in our judgment, apply

NARAYANA
NAMBI
v.
PAPPI
BRAHMANI.

The date of the last application in the present case was 19th June 1880, and the decree is therefore barred. We must dismiss the appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Parker.

VERNEDE IN RE.*

1886.
September 23

Criminal Procedure Code, s. 517—Disposal of stolen property—Cow stolen—Disposal of calf, not in esse at time of theft, by Magistrate on conviction of thief.

R.'s cow having been stolen, the thief after a lapse of a year and-a-half was convicted. Six months after the theft, V. innocently purchased the cow, which while in his possession had a calf. The magistrate, under s. 517 of the Code of Criminal Procedure, ordered that the cow and calf should be delivered up by V. to R.:

Held that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal.

CASE referred to the High Court by L. R. Burrows, District Magistrate of Nilgiris.

The case was stated as follows:—"About a year and-a-half before the 3rd of February 1886, a cow was stolen from one Rangasami and was sold by the thief to Mr. A. Stonehouse, second witness in calendar case No. 53 of 1886, on the file of the second-class Magistrate of Coonoor. After that, it changed hands several

(1) I.L.R., 5 All., 23.

* Criminal Revision Case 431 of 1886.

VERNEDE
In re.

times and at last was purchased by Mr. Vernede for Rs. 20. While in Mr. Vernede's possession, which lasted about a year, it had a calf. In the calendar case above mentioned, one Michael was convicted of the theft of the cow, and the Magistrate passed an order that the cow and calf should be handed over to Rangasami, and that if the fine imposed on Michael should be recovered, Rs. 20 should be paid to Mr. Vernede as compensation. This latter order was quashed by the High Court in proceedings, dated 7th April 1886, Criminal Revision Case No. 180 of 1886.

"The cow and the calf appear to have been taken back to Pattikombi, in the Coimbatore District, by Mr. Vernede, who was most reluctant to part with them. The second-class Magistrate wrote to Mr. Vernede on 20th May 1886 that if he did not give up the cow and calf, he would report him to the District Magistrate for disobedience of his (Magistrate's) legal orders, adding "I should be sorry to go to this extreme and would therefore advise you to hand over the property without any delay."

"Mr. Vernede now states in his petition that the cow and calf were removed from his possession under protest on the 1st of June, and shows reasons for his prayer that the order of the second-class Magistrate may be cancelled and the cow and calf returned to him. I think the calf at all events should not have been taken away from Mr. Vernede. It could not have been in existence, not even in embryonic existence, at the time the theft was committed and is not therefore 'stolen property.'

"I think the second-class Magistrate's order should be modified by making it apply only to the cow."

The Acting Public Prosecutor (Mr. Powell) appeared for the Crown.

The Court (Kernan and Parker, JJ.) delivered the following

JUDGMENT:—The calf was not any part of the stolen property. It was not in fact in embryonic existence when the theft took place. Therefore no order could be legally made to deliver up the calf. So much of the order as relates to the calf is quashed. The rest of the order must stand.

