award, and this he has failed to do. In our judgment this omission is a material irregularity. He should not have proceeded to pass a decree in conformity to the award without first hearing the petitioners' objections. The decree, as it stands, is one made without hearing the petitioners, who were entitled to be heard, and which it was not competent to the District Múnsif to do. We direct him to restore the suit to the file, to give the petitioners ten days' time for filing the objections, and, after considering them, pass such orders as appear to him to be just in the circumstances of the case.

RANGASÁMI v. MUTTUSÁMI.

Costs will abide and follow the result.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

QUEEN-EMPRESS

against

NALLA.*

1887. Sept. 13.

Penal Code, ss. 403, 429—Bull dedicated to an idol.

A bull dedicated to an idol and allowed to roam at large is not *fera bestia* and therefore *res nullius*, but, *primâ facie*, the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership.

THIS was a case taken up by the High Court under s. 435 of the Code of Criminal Procedure.

The facts of this case appear sufficiently, for the purpose of this report, from the judgment of the Court (Muttusámi Ayyar and Brandt, JJ.).

Counsel were not instructed.

JUDGMENT.—In this case two persons were charged before the Second-class Magistrate of Periyakulam, Madura district, with theft of, and mischief and criminal misappropriation in respect of, an animal described by that Magistrate as "the Kamatchi Amman temple bull."

The Magistrate recorded no finding in respect of the theft, but convicted the accused on the other two counts under ss. 429 and

* Criminal Revision Case No. 178 of 1887.

QUEEN-EMPRESS v. NALLA.

403, Indian Penal Code, it appearing that they with others hamstrung the bull, killed it, and cut it up, and were caught in the act of taking away or appropriating portions of the carcase. The Magistrate referred the case to the Divisional Magistrate under s. 349, Criminal Procedure Code, being of opinion that the offences called for heavier punishment than he was competent to inflict. The Divisional Magistrate, upholding the conviction, sentenced the accused each to four months' rigorous imprisonment.

The Sessions Judge, on appeal, quashed the conviction, and the accused were set at liberty after undergoing three months of their sentences. Having regard to the principle on which the case—*Queen-Empress* v. *Bandhu*(1)—was decided, namely, that a bull set at large in accordance with Hindú religious usage, when the original owner abandons all proprietary right in such animal, cannot be the object of larceny, and being of opinion that no material distinction in principle can be drawn between the case of a beast so abandoned and the case of a beast abandoned by its former owner and dedicated or attached to a temple, the Judge, not however without considerable hesitation, held the bull in the case before him to be a *fera bestia* and as *res nullius* (unappropriated by not belonging to any person) to be incapable of being the object of the offences, in respect of which the accused were convicted.

We do not consider it necessary to interfere in revision, not because we agree with the Sessions Judge that there is no material distinction in principle between the case of an animal—property in which is wholly renounced or abandoned and allowed in accordance with religious or superstitious usage to roam at large free from all control—and that of such an animal so abandoned and at large after dedication to a temple, but because the accused have undergone three months' rigorous imprisonment for the offences of which they were convicted.

We consider there is a material distinction between the two cases.

The Divisional Magistrate was, in our judgment, right in holding the bull not to be *fera bestia* and therefore *res nullius*, simply because temple bulls are, as he says, ordinarily wandering beasts, or even if it were proved, as the Second-class Magistrate found, that this bull ordinarily roamed about at large.

(1) I.L.R., 8 All., 51.

If, on the evidence, it appeared that the animal was turned loose after dedication to the temple and that it was actually or inferentially accepted as so dedicated on behalf of the temple, then, though the animal were allowed to be at large free from all control, it would, *primâ facie*, be the property of the temple.

If such animals, in their wanderings at times, trespass on, and do damage to, private property with impunity, it is because superstition induces villagers to regard them with veneration, and to endure the mischief which they commit without seeking redress as of right. If the Sessions Judge's view of the law were correct, it would seem to follow that the trustee of a temple, who accepted the dedication to the temple of such an animal, would not be responsible for injuries caused, for example, to a child playing in the street by a bull, to his knowledge dangerous or habitually mischievous: a proposition on the face of it untenable. Even in the case of a person wholly abandoning an animal, such as a bull, without any precaution taken for its future control, it is not to be assumed that he would be free from liability, civil or criminal, in respect of damage done by such animal. The Sessions Judge records no distinct finding as to whether the bull in this case was in fact the property of the temple or not. The second witness, who described himself as the manager of the temple, spoke of the animal as "the temple bull;" but without a specific finding on this point, we cannot definitively say whether or not the conviction was properly reversed, and, as the Judge says, it appears unlikely that any further material or more precise evidence would be forthcoming, we shall leave the case as it stands, having above indicated sufficiently, for present purposes, the principles to which regard should be had in such cases.

Ordered accordingly.