

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Benson.*

QUEEN EMPRESS

v.

LAKSHMI NAYAKAN.*

*Cattle Trespass Act—Act I of 1871, ss. 22-25—No appeal—Criminal
Procedure Code, s. 404.*

There being no appeal from a conviction under Cattle Trespass Act, the High Court refused to revise the proceedings of the lower court under ss. 455, 433, Criminal Procedure Code, since there being evidence to support the conviction to adopt such a course would be to substantially allow an appeal.

Imprisonment cannot be inflicted in default of payment of the compensation awarded under the Cattle Trespass Act.

CASE referred for the orders of the High Court by A. W. B. Higgins, District Magistrate of Tinnevely, under section 438, Criminal Procedure Code.

The case was stated as follows:—

“In Calendar Case No. 169 of 1895 on the file of the Sub-Magistrate of Vilatikulam, the complainant charged the accused with having seized his master’s cattle and impounded them, and also with having beaten him owing to some enmity between the accused and his (complainant’s) master. The complaint was under section 22 of the Cattle Trespass Act I of 1871 and section 323 of the Indian Penal Code. The Sub-Magistrate entertained the complaint and tried both the offences together. The complainant examined two witnesses to prove his allegation. The accused pleaded that the cattle grazed on his field and that, for this reason, he impounded them, and that this complaint was got up against him because he impounded the cattle. He pleaded also that the complainant was beaten by his own men for having allowed the cattle to stray on another man’s land. The accused cited four witnesses to prove his defence. The Sub-Magistrate believed the prosecution and disbelieved the defence and sentenced the accused to pay Rs. 12 as compensation under

“ section 22 of the Cattle Trespass Act and a fine of Rs. 5 under “ section 323, Indian Penal Code, or, in default, to undergo “ rigorous imprisonment for ten days and five days respectively.

QUEEN-
EMPRESS
v.
LAKSUMI
NAYAKAN.

“ An appeal was preferred by the complainant and the “ Joint Magistrate found that there was not sufficient evidence as “ to the illegal impounding, and, as regards the assault, he held “ that there was no reason to believe the prosecution rather than “ the defence. He therefore quashed the sentence under section “ 323, Indian Penal Code, but, as no appeal is provided against “ the award of compensation under section 22 of Act I of 1871, “ he has made a reference under section 435, Criminal Procedure “ Code.

“ The Cattle Trespass Act I of 1871 does not provide for any “ appeal, and, under section 404, Criminal Procedure Code, there “ was no appeal against the order of compensation. As observed “ by the Joint Magistrate, the evidence about the illegal seizure “ of the cattle is apparently insufficient. I consider, therefore, “ that the award of compensation is unjust, and request that the “ High Court will be pleased, in exercise of its powers of revision, “ to order the refund of the amount of compensation levied. I “ have also to remark that the order of the Sub-Magistrate award- “ ing imprisonment in default of payment of compensation is “ illegal.”

Parties were not represented.

JUDGMENT.—The District Magistrate is right in stating that no appeal lies against an order under section 22 of the Cattle Trespass Act (I of 1871), *Queen-Empress v. Raya Lakshma*(1) and *Dhiku v. Deno Nath Deb*(2).

There is evidence that the seizure was illegal and the Sub-Magistrate believed it. The Joint Magistrate however considered it ‘insufficient.’ The High Court, as a Court of Revision, will not, in such a case, weigh the evidence, for to do so would, in effect, be to admit an appeal where the law does not allow it. So much, however, of the Sub-Magistrate’s order as directs that imprisonment be awarded in default of payment of compensation is illegal, and is set aside.

(1) I.L.R., 10 Bom., 230.

(2) I.L.R., 15 Calc., 712.

[Reporter’s Note : See *In re Khadar Khan*, I.L.R., 11 Mad., 350.]