

have been the wish of the settlor to keep the property in the family, impossible to say that he has so framed this instrument as to carry out such an intention or to effectuate such a wish beyond the life of Haidar Husain. The right of Fatima Bibi to her shares in the property is clear upon the terms of this instrument, unless the defendant could show that there were provisions in it which would control that part of it, and limit her for ever (for that seems to be the contention) simply to an enjoyment of the profits, and not to have any other interest in the property. There are words which indicate an intention that she should take an interest in the property with an attempt, no doubt, to control her in the disposition of it, and to prevent her parting with it to strangers.

It is unnecessary to allude to what is said in the judgments of the subordinate Court and the High Court. Their Lordships are of opinion that the conclusion they came to was a correct conclusion, and they will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss this appeal. The costs of it will be paid by the appellant.

Solicitor for the appellant : Mr. T. L. Wilson.

Solicitors for the respondent : Messrs. Barrow and Rogers.

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## CRIMINAL REVISIONAL.

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Before Mr. Justice Straight.

QUEEN-EMPRESS v. BANGHU.

*Animal "nullius proprietatis"—Bull set at large in accordance with Hindu religious usage—Appropriation of bull—Act XLV of 1860 (Penal Code), ss. 402, 410, 411.*

A person was convicted and sentenced under s. 411 of the Indian Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies.

*Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Indian Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore *nullius proprietatis*, and incapable of larceny being committed in respect of it; and that the conviction must be set aside.

1885

MUHAMMAD  
ABDUL MAJID  
v.  
FATIMA BIBI.

1885  
December 7.

1885

QUEEN-  
EMPRESS  
v.  
BANDHU.

THIS was a case reported for orders, under s. 438 of the Criminal Procedure Code, by Mr. C. Donovan, Sessions Judge of Benares. One Bandhu was, on the 21st September 1885, convicted by Raja Jai Kishen Das, C.S.I., a Magistrate of the first class, under s. 411 of the Indian Penal Code, for dishonestly receiving a bull, knowing the same to have been criminally misappropriated, and sentenced to six months' rigorous imprisonment. The evidence showed that about midnight, on the 1st September, the accused was found going along a road in Mauza Sheonathpur, driving a bull before him. Upon being questioned by a chaukidar, he said he was an Ahir, but immediately corrected himself, saying :—" I am a Chamar and live at Ramnagar, and the bull belongs to the Maharaja. I am taking it to Ramnagar." He also stated :—" My house is at Goghra. The bull has been sent for by Madar and Samer, butchers. They have promised to pay me eight annas." The accused was then taken into custody. The bull was found to be blind, and to bear a brand indicating that it had been set at large by some Hindu at the time of performing funeral ceremonies in accordance with Hindu religious usage. Before the Magistrate the accused stated :—" I do not know who is the owner of this bull. Madar and Samer brought it from some place and gave it to me. I do not know where they drove it. The said two persons told me to take the bull secretly to their house, and promised to pay me eight annas. It was given to me at Goghra, on the western road leading to Chigya ; they made me stay near Bari Bagh from now till evening, and then told me to drive it. I acknowledge my fault that I took the stolen property with me at their instigation. Being hungry, I was tempted by the offer of eight annas."

The Magistrate, in convicting the accused, observed :—" Although no one has been found to be the owner, custodian, or keeper of this bull, yet it may be gathered from the statement of the accused himself that the butchers had come by it by illegal means. The bull is not stolen property, but there is no doubt that it was brought by means of misappropriation, and that the accused knowingly retained it for taking it away. Hence the accused is guilty under s. 411, according to the definition given in s. 410 of the Penal Code."

The accused appealed to the Sessions Judge, who, in dismissing the appeal, made the following observations :—“ It was certainly not the intention of the persons who set the bull at large that any human right of property should be attached to it by any one, and the intentions of such persons are respected by general public feeling ; and the bulls so let loose are looked upon as not liable to be converted to use in any way that would interfere with their liberty. I may be staining a point, but I think it may be held that the Hindu public have such an interest in these ‘*Sands*’ remaining unmolested and at liberty, as to make them the subject of a sort of public right, and so bring them within the meaning of ‘property.’ I find that the bull was, for the purposes of s. 403, ‘property,’ and that it was dishonestly misappropriated, and had therefore become stolen property (s. 410, Penal Code) ; and I affirm the conviction and sentence of the lower Court dismissing this appeal. As the question I have discussed, and upon which the case turns, is novel, but nevertheless may turn up again, and as my finding that the bull was ‘property’ was not arrived at without some hesitation, I think it well to submit the proceedings for the information of the High Court.”

Munshi *Kashi Prasad* appeared for the prisoner, Bandhu.

The *Junior Government Pleader* (Babu *Dwarika Nath Banarji*), for the Crown.

STRAIGHT, J.—I am much indebted to Munshi *Kashi Prasad* for taking so much pains to put the case for the accused man before the Court. I entirely agree with what fell from the *Junior Government Pleader*, that an animal of the kind to which this case has reference was not “property” at the time of the alleged misappropriation, within the meaning of the Indian Penal Code, for it was not only not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor, and had given the beast its freedom to go whithersoever it chose. It was therefore “*nullius in terra dominus*,” and as incapable of larceny being committed in respect of it as if it had been “*feræ naturæ*.” I am not now concerned to determine whether cases may not occur in which the killing of such an animal would be an offence ; but I have simply to decide whether the conviction of Bandhu, under s. 411, can be upheld. I do not think that it can be ; and, setting

1885

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 QUEEN-  
EMPERESS  
v.  
BANDHU.

1885 .

QUEEN-  
EMPRESS  
v.  
BANDHU.

aside the orders of the Magistrate and the District Judge, he will stand acquitted. If he has not found bail and is in custody he will be at once released; if he has, no further order will be necessary.

*Conviction set aside.*

## APPELLATE CIVIL.

1885  
December 7.

*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

UDIT SINGH (PLAINTIFF) v. PADARATH SINGH AND ANOTHER  
(DEFENDANTS). \*

*Pre-emption—Mortgage by conditional sale—Act XV of 1877 (Limitation Act),  
sch. ii, No. 120—Time from which period of limitation begins to run.*

A mortgagee under a deed of mortgage by conditional sale obtained a final order for foreclosure under Regulation XVII of 1806 in December, 1875. He then sued to have the conditional sale declared absolute and for possession of the mortgaged property, obtaining a decree for the relief sought in April, 1881.

In a suit for pre-emption in respect of the mortgage,—*hald*, with reference to art. 120, sch. ii of the Limitation Act, which was applicable to the case, that the pre-emptor's full right to impeach the sale had not accrued until the mortgagee had obtained the decree of April, 1881, declaring the conditional sale absolute and giving him possession. *Rasik Bal v. Gajraj Singh (1)* and *Prag Chaudhey v. Bhajan Chaudhri (2)* referred to.

THE plaintiff in this suit claimed to enforce the right of pre-emption in respect of a mortgage by conditional sale, dated the 23rd March, 1868, made by the defendant Chatarpal Singh to the defendant Padarath Singh. The mortgagee had applied under Regulation XVII of 1806 for foreclosure of the mortgage, on the 21st April, 1873, and the year of grace allowed by that Regulation had expired on the 24th May, 1874, and a proceeding by the District Court foreclosing the mortgage had been drawn up on the 8th December, 1875. He had subsequently sued to have the conditional sale declared absolute and for possession of the mortgaged property, and had obtained a decree on the 28th April, 1881, for the relief claimed. On the 20th November, 1883, he had obtained possession of the mortgaged property in execution of that decree. This suit was instituted on the 27th March, 1884.

\* Second Appeal No. 112 of 1885, from a decree of Rai Raghunath Sahai, Subordinate Judge of Gwalchpur, dated the 31st July, 1884, affirming a decree of Munshi Shiva Sahai, Munsif of Basti, dated the 5th May, 1884.