

1886

GIRRAJ
BAKHSI
v.
KAZI HAMID
ALI.

to ascertain, by an issue to be determined by the Court below, or by agreement between the parties, what proportion of these monies have been expended for the benefit of the plaintiff's estate or for his support, education, or marriage. It should also be ascertained what has been the net income during these years, from the 24th December, 1877, to the present, of the property of which possession has been taken. To ascertain these matters, it would be necessary to make an order of remand under s. 566 of the Civil Procedure Code; but as we understand that there is some chance of the amount being settled by agreement between the parties, we suspend the making of such an order for a fortnight. The result is that if the figures are ascertained either by remand or by agreement, there will be a decree for the plaintiff conditional upon his paying the monies so ascertained within a time to be fixed by the decree. In ascertaining the amount of the monies which have been applied for the benefit of the plaintiff's share, it should be borne in mind that his interest in the estate is only $\frac{14}{16}$. The question of costs is reserved.

TYRRELL, J.—I concur. In reference to the learned Chief Justice's reading of s. 18 of Act XL of 1858, I will only add that it seems to me unreasonable to hold that the public, in dealing with a person who represents or professes to represent a minor's estate, should be in a worse position if that person is a widow or a mother who has obtained a certificate of guardianship from the District Court, than if the person so acting were an absolute outsider.

[On the 10th January, 1887, the following order was passed by Edge, C. J., and Tyrrell, J.—“The order referred to in the judgment is made. Ten days will be allowed for objections on the return of the findings.”]

Issues remitted.

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January 7.

CRIMINAL REVISIONAL.

Before Mr. Justice Straight.

QUEEN-IMPRESS v. NIHAL.

Res nullius—Bull set at large in accordance with Hindu religious usage—“Stolen property”—Act XLV of 1860 (Penal Code), ss. 410, 411.

A Hindu who, upon the death of a relative, dedicates or lets loose a bull, in accordance with Hindu religious usage, as a pious act for the benefit of the soul of

the deceased, thereby surrenders and abandons all proprietary rights in the animal, which thereafter is not "property" which is capable of being made the subject of dishonest receipt or possession within the meaning of ss. 410 and 411 of the Penal Code. *Queen-Empress v. Bundhu* (1) and *Queen-Empress v. Jamura* (2) referred to.

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 QUEEN-
EMPERESS
v.
NIHAL.

THIS was an application for revision of an order of the Sessions Judge of Meerut, rejecting an appeal from an order of Mr. Gladwin, first class Magistrate, by which the petitioner, Nihal, was convicted of an offence punishable by s. 411 of the Penal Code, and sentenced to one year's rigorous imprisonment. It appeared that the complainant Phundan, after the funeral of his brother, about eighteen months previously, had (in accordance with Hindu religious usage) branded a bull and set it at large in the village of Mohinipur, where he had some lands, as a pious act, for the benefit of the soul of the deceased. The Magistrate found that "although permitted to roam about freely on the complainant's land, the animal was not entirely abandoned." It did not, however, appear in what respects the complainant retained any control or exercised any supervision over the animal. In August, 1886, the bull was suddenly missed from the village, and, about the end of the month, it was found at the house of one Baldeo at Gola in the Muzaffarnagar district. The result of inquiry showed that Baldeo had purchased the bull at market from the prisoner Nihal, an inhabitant of Mohinipur. Subsequently Nihal was tried, convicted, and sentenced for an offence punishable by s. 411 of the Penal Code, as above stated.

In the course of his judgment convicting the prisoner, the Magistrate made the following observation:—"The only point for consideration is, can the complainant be held to have retained a proprietary right in the bull, with the dishonest reception of which Nihal is charged; or in other words, was the bull the complainant's 'property' in the sense in which the expression has been used in s. 410 of the Penal Code? The definition given by Sheo Dial, one of the witnesses for the prosecution, of the rights and interests inherent in the person thus setting at liberty a bull sacred to the memory of a deceased, clearly shows that the act does not in itself involve a renunciation of ownership. The only modification that takes place is that he cannot dispose of it to his own advantage

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

(2) Weekly Notes, 1884, p. 87.

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and appropriate it to his own use. From this it is obvious that the original owner's title is not completely annihilated. He is restricted to the exercise of such rights of ownership only as would not militate against the special purpose for which the animal was set apart. This being so, the bull, in this case, must be held to have belonged to, and to have been stolen from, the possession of the complainant."

The Sessions Judge, on appeal, merely observed :—"The evidence in this case fully sustains the conviction. I cannot find the slightest ground for interference. The appeal is dismissed."

The petitioner was not represented by counsel or pleader.

The *Government Pleader* (Munshi Ram Prasad) for the Crown.

STRAIGHT, J.—The case, decided by me, of *Queen-Empress v. Bandhu* (1) was determined after very full and careful discussion and prolonged consideration. Munshi Kashi Prasad in that case was good enough to lay before me all the information that was obtainable in reference to the practice and procedure among the Hindus in the matter of dedication or setting loose these bulls upon the death of a relative, and from that information it was placed beyond doubt that, as understood among men of that religion, the person letting loose the animal, by the act of so doing, surrendered and abandoned all proprietary rights therein. My brother Brodhurst in the case of *Queen-Empress v. Jamura* (2) obviously adopted this view, which I hold to correctly represent the real condition of things. This being the case, I am not disposed in any shape to depart from my ruling referred to by me, or to modify the opinion I then expressed. This application for revision, therefore, must be allowed, upon the ground that there was no property capable of being made the subject of dishonest receipt or possession within the meaning of s. 411 of the Indian Penal Code, and, acquitting the petitioner, I direct that he be released.

Conviction set aside.

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

(2) Weekly Notes, 1884, p. 87.