

not be accepted for the purposes of the present suit; for the terms of the transaction between the widow and the so-called mortgagee and decree-holder, are not in issue in this case, but rather whether these persons were the creditors of the widow, and whether the property had been sold in order to satisfy their debts. The lower Appellate Court then proceeds to express an opinion that it cannot be pleaded that the widow, that is to say, the vendor who lived with a second husband, or, it would seem more properly, lived with another man after the decease of her husband, would have been driven to sell the estate to maintain herself. From this he would seem to mean that, if she lived with another man, she would not have to support herself. That is a matter which would depend upon evidence, and could not be assumed either one way or another, simply from the relation between the parties. Lastly, the lower Appellate Court states that it does not consider that the defendant could have used due diligence in ascertaining whether legal necessity on the part of the vendor existed. Now, if the evidence of the so-called mortgagee and decree-holder be believed—and on this point, sitting on second appeal, we are not able to express any opinion—we think their statements certainly justified a stranger in purchasing from a Hindu widow. We must, therefore, return this case to the lower Appellate Court for re-trial, having regard to the observations made above.

The costs will abide the result.

*Appeal allowed and case remanded.*

## CRIMINAL REVISION.

*Before Mr. Justice Pigot and Mr. Justice O'Keefe.*

IN THE MATTER OF THE PETITION OF JUGGESHWAR DASS AND OTHERS.

JUGGESHWAR DASS AND OTHERS v. KOYLASH CHUNDER  
CHATTERJEE.\*

1885

September 22.

*Mischief—Penal Code (Act XLV of 1860), ss. 341, 425—Wrongful Restraint  
—Invasion of right causing wrongful loss.*

Where complainant had for the purpose of removal placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the

\* Criminal Revision No. 336 of 1885, against the order of J. G. Ritchie Esq., Officiating Joint Magistrate of Serampore, dated the 14th August 1885.

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AMJAD ALI  
v.  
MONIRAM  
KALITA.

1885  
 JGGESH-  
 WAR  
 DASS  
 v.  
 KOYLASH  
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goods off the cart on to the road, and complainant thereupon went away at once leaving them lying there : *Held*, that under these circumstances a conviction under s. 341 of the Penal Code could not be sustained ; but that there was such "mischief" as to bring the offence within s. 425.

*Held*, also, that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.

THE petitioners in this case have been convicted of an offence under s. 341 of the Penal Code. It appears from the evidence that on the 5th of August last, the complainant was engaged in removing an iron chest and a box from his shop to another *hdt*. The accused came up and ordered him not to move them ; and, on his refusing to obey, overturned the cart, thereby throwing the boxes on to the road, where complainant left them lying, and himself went off to the new *hdt*. The *hdt* from which he was at the time removing belonged to the employers of the accused.

The accused swore that they knew nothing of the occurrence alleged by complainant, but were found guilty of causing wrongful restraint, and sentenced to fifteen days rigorous imprisonment under s. 341 of the Penal Code.

Against this sentence the accused presented the present petition.

Mr. R. Mitter and Munshi *Serajul Islam* for the petitioners.

The judgment of the Court (PIGOT and O'KINEALY, JJ.) was delivered by

PIGOT, J.—The petitioners have been found guilty by the Magistrate of an offence under s. 341 of the Indian Penal Code. The complainant was examined by the Magistrate at the time of the issue of the summons, and before the issue of the summons. In his evidence endorsed on the back of the petition taken by the Magistrate, he states that he was not himself present when the occurrence, of which he chiefly complains, took place. Before the Magistrate he appears to have stated that he was present. What he complained of was this, that when on the 5th August, he or those in his employ were removing some things to the new *hdt* at Champdani from the *hdt* belonging to the persons in whose

employ the accused are, the accused said the things must not be removed, and on his not listening to that, they turned the cart upside down, and the things fell down to the ground, where they remained some days afterwards. This story of the complainant was not controverted, and upon this state of things the Magistrate found the accused guilty under s. 341 of the Indian Penal Code.

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We do not think that under the circumstances the conviction under that section can be sustained. The charge was one of wrongful restraint, and whether the evidence of the complainant, as given when the summons was issued, or before the summons was issued, is to be taken, or that given at the hearing before the Magistrate, it appears to us inconsistent with the idea of wrongful restraint. In one case he was not present, and in the other he went away to the new *hāt* after the things were thrown down from the cart. But we think that the case does come under s. 425 of the Indian Penal Code, that there was such a change in the situation of the property done by the persons who brought it about with intent to cause, or knowing they were likely to cause, wrongful loss or damage to any person, that is the complainant, as diminished its value or utility or affected it injuriously. We think those words are sufficiently satisfied by the circumstances of this case. There was an unlawful removal of goods from the cart, and an unlawful change in their situation, with the knowledge that that change must amount to an inconvenience, more or less serious, to the owner of the goods, and must, to some extent, diminish the utility of the goods which it was desired to remove from one place to another by the fact of their being cast out of the conveyance in which they were to be removed. To that extent the utility of those goods was diminished, and to that extent they were injuriously affected. We think it is not necessary that the damage required by this section should be of a destructive character. All that is necessary is, that there should be an invasion of right and diminution of the value of one's property caused by that invasion of right, which must have been contemplated by the doer of it when he did it.

As to punishment we do not think that, under the circumstances the punishment was excessive. The offence is one which, though

1885 not of very great gravity, is not without a certain amount of  
 JUGGISH- seriousness. We think that the reasons stated by the Magistrate  
 WAR in his judgment were quite sufficient to show that such a sentence  
 DASS was, under the circumstances, desirable. We, therefore, set aside  
 v. the conviction under s. 341, and for it substitute a conviction  
 KOYLASH under s. 426, and we direct that the prisoners be imprisoned  
 CHUNDER for the remainder of the sentence not yet suffered by them.  
 CHATTERJEE

(The remainder of the judgment was not material to this report).

*Conviction altered, but sentence confirmed.*

### FULL BENCH REFERENCE.

*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Prinsop, Mr. Justice Wilson, Mr. Justice Field and Mr. Justice O'Keefe.*

1885  
 September 4,

IN THE MATTER OF THE PETITION OF KRISHNANUND DAS.  
 KRISHNANUND DAS v. HARI BERA.\*

*Sanction to prosecution—Criminal Procedure Code (Act X of 1882), s. 195—  
 Notice to accused.*

No notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.

THE petitioner, Krishnanund Das, on the 30th December 1884, lodged a complaint in the Court of the Deputy Magistrate of Balasore against Hari Bera and others, for forcibly cutting and taking away the paddy from his field. The case was tried on the 19th February 1885, when the accused were discharged because, in the opinion of the Magistrate, the evidence for the prosecution was "at the best but suspicious, and the oral testimony was untrustworthy."

On the 20th February 1885 an application was made to the Deputy Magistrate by Hari Bera for sanction to prosecute Krishnanund under s. 211 of the Penal Code, which sanction was granted without any notice being given to Krishnanund.

\* Reference to the Full Bench in Criminal Motion No. 105 of 1885, against the order of Baboo Kali Podo Mookerji, Deputy Magistrate of Balasore, dated the 20th February 1885.