

head-man. The order of the District Magistrate dismissing the applicant is an executive order, and so is the order directing the police to watch his conduct. This latter order was apparently passed by the District Magistrate as the executive head of the police. I am unable to hold that the order made by the District Magistrate can be regarded as proceedings of an inferior Criminal Court within the meaning of section 435 of the Code of Criminal Procedure. The portion of the order of the Subordinate Magistrate of which the applicant complains was, as pointed out above, clearly not a judicial order. The application to this Court for revision of that order and of the order of the District Magistrate is not therefore maintainable. I accordingly dismiss it.

*Before Mr. Justice Dillon.*

EMPEROR v. MEHDI HASAN. \*

*Act No. XLV of 1860 (Indian Penal Code), sections 425, 426—Definition—Mischief—Act (Local) No. I of 1900 (N.-W. P. and Oudh Municipalities Act), section 167.*

Certain cattle belonging to one M. H. upon various occasions when in charge of a servant of M. H. strayed, or were driven, into the Government Gardens at Saharanpur and there caused damage. *Held* that M. H. could not on these facts be convicted of the offence of mischief. *Forbes v. Grish Chunder Bhuttaaharjoe* (1) and *Empress v. Bai Baya* (2) followed. *Held* also that section 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. *King Emperor v. Patan Din* (3) followed.

ON the 13th of October 1906 certain cattle belonging to one Mehdi Hasan were found straying in the Government Gardens at Saharanpur and were sent to the pound. As the cattle had done considerable damage, and as it was not the first time that these cattle had been found trespassing in the Government Gardens, proceedings were taken against their owner under section 167 of the Municipalities Act. These proceedings ended in the conviction of Mehdi Hasan under section 426, and he was fined Rs. 25. Mehdi Hasan applied to the Sessions Judge to revise this order, and the Judge referred the case to the High Court under the provisions of section 438 of the Code of Criminal Procedure. Notice was also issued to Mehdi Hasan to show cause why his conviction

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TION OF  
DAMMA.

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*April, 11.*

\* Criminal Reference No. 157 of 1907.

(1) (1870) 14 W. R., 31.

(2) (1883) 1. L. R., 7 Bom., 126.

(3) Weekly Notes, 1905, p. 19.

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should not be altered to one under section 167 of Local Act No. I of 1900.

Mr. *M. L. Agarwala*, in support of the reference.

The Assistant Government Advocate (Mr. *W. K. Porter*) for the Crown.

DILLON, J.—This is a reference by the Sessions Judge of Saharanpur recommending that the conviction and sentence passed upon one Mehdi Hasan under section 426, Indian Penal Code, be set aside. Syed Mehdi Hasan was prosecuted before a Magistrate of the first class, Saharanpur, under section 167 of the Municipalities Act No. I of 1900. That section punishes the wilfully letting loose any horse or other animal so as to cause, or negligently allowing any horse or other animal to cause injury, danger, alarm or annoyance to any person, or suffering any ferocious dog to be at large without a muzzle. The facts of this case are these:—On the morning of October 13th, 1906, a number of cattle including Brāmini bulls, cows and calves, were found straying in the Government garden. They had done a considerable amount of damage and were sent to the pound. They were the property of Mehdi Hasan, or at all events the cows and calves were his property. It is clear that this was not the first time that these cattle were found trespassing in the garden. Mehdi Hasan admits this, but pleads that the fault lay with his servant. The prosecution, which had been started with the sanction of the Chairman of the Municipal Board, ended in a conviction under section 426, Indian Penal Code, and a fine of Rs. 25. On the record being received in this Court notice was issued to Mehdi Hasan to show cause why his conviction under section 426 should not be altered to one under section 167 of Act No. I of 1900. In my opinion there can be no doubt that the conviction under section 426, Indian Penal Code, is bad. From the provisions of section 425, Indian Penal Code, which defines mischief, it is clear that there must be an intention to cause wrongful loss or damage. There is no evidence in this case that Mehdi Hasan caused the cattle to go into the garden at all much less that such was his intention. Following the rulings in *Major Forbes v. Grish Chunder Bhattacharjee* (1) and *Empress v. Bai Baya* (2) I set aside the conviction and sentence of Mehdi Hasan.

(1) (1870) 14 W. R., 31.

(2) (1888) 2 I. L. R., Bom., 126.

under section 426, Indian Penal Code. The fine, if paid will be refunded. I have now to deal with the rule which was issued to Mehdi Hasan by this Court on the 19th of April 1907 calling upon him to show cause why his conviction should not be altered to one under section 167 of Act No. I of 1900. I am clearly of opinion that that section is even less applicable to the facts of this case than section 426. That section deals with offences against the person and has nothing to do with offences against property. This is clear from the section itself. Were any authority needed I would refer to *King Emperor v. Patan Din* (1) as exactly in point. The rule is discharged.

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## APPELLATE CIVIL.

1907

May 14.

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*Before Mr. Justice Banerji.*

BAKHTWAR MAL (PLAINTIFF) v. ABDUL LATIF (DEFENDANT).\*

*Civil Procedure Code, section 424—Suit against public officer—Suit to recover articles seized by police during a search.*

The plaintiff sued to recover from the defendant three account books which he alleged that the defendant, a Sub-Inspector of Police, had seized during a search, apparently in pursuance of the provisions of section 165 of the Code of Criminal Procedure, of the plaintiff's house. *Held* that the defendant, if he seized the books, which was denied, did so in his capacity as a police officer, and that the suit was not maintainable in the absence of the notice prescribed by section 424 of the Code of Civil Procedure. *Muhammad Saddiq Ahmad v. Panna Lal* (2) distinguished. *Jogendra Nath Roy Bahadur v. Price* (3) referred to.

THE plaintiff in this case sued for the recovery of three account books. He alleged in his plaint that the defendant, who was a Sub-Inspector of Police, had searched his house and carried away these books amongst other property, and that at the trial of the case against the plaintiff the Sub-Inspector was asked to produce these books, but refused to do so, stating that he had not taken them. The Court of first instance (Munsif of Deoband) dismissed the suit upon the ground that the notice prescribed by

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\* Second Appeal No. 1240 of 1905, from a decree of G. C. Badhwar, Esq., Additional District Judge of Saharanpur, dated the 24th of November 1905, confirming a decree of Pandit Knuwar Bahadur, Munsif of Deoband, dated the 14th of September 1905.

(1) Weekly Notes, 1905, p. 19. (2) (1903) J. L. R., 26 All., 220.  
 (3) (1897) I. L. R., 24 Cal., 584.