

## REVISIONAL CRIMINAL.

1919  
December, 1.

Before Mr. Justice Piggott.

EMPEROR v. JULUA AND ANOTHER.\*

*Act No. I of 1871 (Cattle Trespass Act), section 24—Offence not compoundable—  
Compromise—Intention of compromise effected by complainant refraining  
from producing evidence.*

The offence provided for by section 24 of the Cattle Trespass Act, 1871, is not compoundable. Inasmuch as however, it is a summons case, the accused would be entitled to an acquittal if the complainant failed to produce his evidence.

Where, therefore, a Magistrate purported to accept a compromise entered into between the complainant and persons accused of committing offences under section 24 of the Cattle Trespass Act and section 323 of the Indian Penal Code in pursuance of which the complainant had refrained from producing evidence against the accused, it was held that though the procedure of the Magistrate was incorrect, the result of his order was substantially right.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Sessions Judge of Cawnpore. The facts of the case sufficiently appear from the following order of the Sessions Judge.

"In this case four men, Julua, Tirangua, Mulua and Baldeo were accused by one Girand Singh of offences under sections 323 and 426 of the Indian Penal Code and section 21 of the Cattle Trespass Act. On the 9th of August, 1919, all four accused appeared and the complainant and some witnesses were examined. The case was then postponed to the 14th of August, on which day Julua and Baldeo alone of the accused appeared. That day a compromise was filed between the complainant and the two accused Julua and Mulua, whereupon Julua and Mulua were formally acquitted. Mulua was not present that day and, though acquitted, he was called on to appear at the next hearing with reference to the proposed confiscation of his security for not appearing on the 14th. On the 20th, he and the remaining two accused, Baldeo and Tirangua appeared and the case proceeded against these last two. An application was filed by them for revision of the order of the Magistrate, that proceedings were to continue against them. This came up for hearing before me, but in the meantime the case had been dismissed owing to the absence of the complainant. A revision application was accordingly filed and the question raised in it, whether a case could be compromised against only some of the accused, was not decided. It came to my notice, however, that the case was under the Cattle Trespass Act as well as under sections of the Penal Code and so far as it was under the former Act the offence was not compoundable. The order of the 14th of August, 1919, by which Julua and Mulua were acquitted, was, therefore, illegal, and I am of opinion that they should be ordered to stand their trial on the accusation under the Cattle Trespass Act, if not for the

\* Criminal Reference No. 807 of 1919.

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offences under the Penal Code. It has been suggested to me by the learned Government pleader that the compromise amounted to an illegal discharge and that I can pass orders under section 437 of the Code of Criminal Procedure. But the last clause of section 34 of the Code of Criminal Procedure is quite clear and the effect of the compounding of the offence was an acquittal. I cannot, therefore, deal with the case myself and I forward the record to the Honourable High Court with the recommendation that it be ordered that Julua and Mulua stand their trial on the accusation under section 30 of the Cattle Trespass Act at least. Before this is done, however, it will be sent to the Magistrate who tried the case for any observations he may wish to make."

The parties were not represented before the High Court.

PIGGOTT, J. :—The order of the learned Sessions Judge has been carelessly drafted. The references to sections 21 and 30 of the Cattle Trespass Act (Act No. I of 1871) are incorrect and have caused me some trouble. The actual complaint before the Magistrate was one of causing hurt coupled with the forcible rescue of cattle, punishable under section 24 of Act No. I of 1871. So far as the particular matter under reference is concerned I have come to the conclusion that the Magistrate, although his procedure may not have been perfectly regular, was substantially right and that the interference of this Court is not called for. The learned Sessions Judge is of course right in pointing out that an offence under section 24 of Act No. I of 1871 is not compoundable under section 345 of the Code of Criminal Procedure. A case under that section would, however, be a summons case and would result in an order of acquittal if no evidence were produced on which the court could find the accused guilty. In the present case the complainant entered into a compromise with the two accused Julua and Mulua in respect of whom this reference has been made. The compromise involved the compounding of the offence of causing simple hurt under section 323 of the Indian Penal Code, and the Magistrate was entitled to deal with it as withdrawal of the complaint in respect of the alleged offence under the Cattle Trespass Act. Limiting himself to a consideration of that offence only, he had jurisdiction to acquit the accused under the provisions of section 248 of the Code of Criminal Procedure if he saw sufficient reason for doing so. I am not disposed to interfere and I order that the record be returned.

*Recommendation not accepted.*