CRIMINAL JURISDICTION.

1881
March 7.

Before Mr. Justice Oldfield.

EMPRESS OF INDIA *v.* RANDHIR SINGH.

Causing death by a rash or negligent act—Voluntarily causing hurt—Act XLV of 1860 (Penal Code), ss. 304A., 323.

A person, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of a brick at him which struck him in the region of the spleen and ruptured it, the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt.

THIS was a reference to the High Court under s. 296 of Act X. of 1872, by Mr. J. H. Prinsep, Sessions Judge of Cawnpore, of a case in which the Sessions Judge was of opinion that the conviction under s. 304A. of the Penal Code was contrary to law, and the conviction should have been under ss. 323 or 304. The facts of the case are stated in the order of the High Court.

OLDFIELD, J.—The facts in this case are that the deceased's pigs were grazing in the accused's field, and the deceased not immediately driving them out when called on to do so by the accused, the latter took up a piece of a brick and threw it at deceased from a distance of five paces; it struck him over the spleen, which, being in a diseased state, was ruptured, and death ensued. The blow does not appear to have been a violent one, as it left no mark on the skin. The Magistrate convicted the accused of an offence under s. 304A., Indian Penal Code, (Causing death by a rash or negligent act), and inflicted a fine of Rs. 15, which was paid. The Judge has sent the case up for revision, as he considers the offence is not one under s. 304A., and the sentence is inadequate. There is no doubt that the facts do not constitute an offence under s. 304A. The offence of causing death by a rash or negligent act, within the meaning of the section, is not committed where an intention exists on the part of the offender to cause hurt to some particular person, as was the case here. Such an offence is otherwise provided for in the Penal Code. The nature and scope of the offence under s. 304A. appears to me to have been rightly explained in *Nidamarti*

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EMPRESS OF INDIA v. RANDHIR SINGH.

Nagabhushanam (1). The learned Judges observe: "Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness (*luxuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories." The only offence which the facts appear to me to establish is voluntarily causing hurt under s. 323. They certainly do not establish the offence of culpable homicide; since, looking to the implement used, and the moderate force with which the brick was thrown, the prisoner cannot be said to have had the intention to cause death, or to cause such bodily injury as was likely to cause death, or even the knowledge that he was likely by his act to cause death. Death would not have been a probable consequence of his act if the diseased spleen had been sound, and the accused was not aware that it was diseased. Nor can I say, looking to all the circumstances, that he intended to cause grievous hurt, or that grievous hurt was a probable consequence of the act. But finding the accused guilty of an offence under s. 323, Indian Penal Code, I consider the sentence to be inadequate, and in addition to the fine already imposed, I sentence him to rigorous imprisonment for three months.

APPELLATE CIVIL.

1881
March 7.

Before Mr. Justice Oldfield and Mr. Justice Straight.

KHWAHISH ALI (DEFENDANT) *v.* SURJU PRASAD SINGH (PLAINTIFF).*

Minor—Majority—Act IX of 1875 (Majority Act), s. 3—Act XL of 1858.

A minor of whose person or property a guardian has been appointed under Act XL. of 1858 does not attain his majority when he completes the age of eighteen years, but when he completes the age of twenty-one years.

* First Appeal, No. 113 of 1880, from a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 29th May, 1880.

(1) 7 Mad. H. C. Rep., 119.