

matter, in my opinion, appears to be vitiated by his method of dealing with the question of reasonable and probable cause. On the question of reasonable and probable cause, the learned Judge is to determine that on the evidence in the case before him and not on the evidence in the Criminal Court.

To sum up, what the plaintiff has to prove in this case is, first, that he was acquitted and, secondly, that there was want of reasonable and probable cause. The facts upon which that question of law is to be determined are questions of fact. But the question itself of whether there was reasonable and probable cause is a question of law; and, thirdly, the fact as to whether the prosecution was malicious or not upon which an inference is to be drawn is a question of fact. But the question of whether there was malice is a question of law.

A cross objection is raised as regards the damages allowed; but I see no ground for interfering with the measure of damages which the learned Judge has applied.

In those circumstances the matter must go back to the learned Subordinate Judge to be heard and determined according to law.

The costs of this appeal will abide the hearing in the Court below.

Appeal allowed.

Case remanded.

REVISIONAL CRIMINAL.

Before Wort, J.

BINDESHWAR PRASAD

v.

KING-EMPEROR.*

Prevention of Cruelty to Animals Act, 1890 (Act XI of 1890), section 6—"permits", significance of—section,

* Criminal Revision no. 161 of 1931, from an order of L. J. Lucas, Esq., Subdivisional Magistrate of Barh, dated the 15th December, 1930, an application against which was rejected by the order of F. G. Rowland, Esq., i.c.s., Sessions Judge of Patna, dated the 26th January, 1931.

1931.

MOHAMMAD
HAROON
v.
ASGHAR
HUSSAIN

WORT, J.

1931.

May, 2.

1931.
 —————
 BINDESH-
 WAR
 PRASAD
 v.
 KING-
 EMPEROR.

whether aims at the liability of owner—employee, driving the cart—owner, ignorant of the use of sick bullock—conviction of owner, whether right—original complaint against driver only—owner's liability disclosed by evidence—owner summoned and convicted—trial, whether without jurisdiction—Code of Criminal Procedure, 1898 (Act V of 1898), section 190(c).

Section 6, Prevention of Cruelty to Animals Act, 1890, provides :

“ If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.....”

Held, that the word “ permits ” does not connote any conscious act on the part of the owner and that the section aims not only at the liability of a person actually in charge of the animal but also aims at the person who owns it.

A, an employee of B, was prosecuted under section 6 for having used a sick bullock in a bullock cart. B, the owner of the bullock, had no knowledge of the fact that his employee was so using the bullock. The original complaint under section 6 was filed against A and as the evidence disclosed that B was concerned in the offence, process was issued against him and he was convicted.

Held, (i) that the court acted under section 190(c), Code of Criminal Procedure, 1898, and, therefore, that the trial of B was not without jurisdiction;

Charu Chandra Das v. Narendra Krishna Chakravarti(1), followed.

(ii) that B had “ employed ” the bullock within the meaning of section 6, and, therefore, that his conviction was right.

The facts of the case material to this report are stated in the judgment of Wort, J.

Baldeva Sahay, for the petitioner.

No one for the Crown.

(1) (1900) 4 Cal. W. N. 367.

WORT, J.—This rule is directed against the order of the learned Sessions Judge upholding the conviction of the petitioner under section 6 of the Prevention of Cruelty to Animals Act, being Act XI of 1890.

It is stated as one of the points in the case that the original complaint was filed against the employee of the petitioner, that is to say, the bullock-driver and not against the petitioner, and that when the Magistrate issued a summons against the petitioner, who was not named in the complaint, the trial was without jurisdiction. In my judgment that argument cannot be supported. In the case of *Charu Chandra Das v. Narendra Krishna Chakravarti*⁽¹⁾ the same question came up for disposal by a Divisional Bench of the Calcutta High Court, and in the course of the judgment it is stated that “it appears to us that this is not a matter in which the Magistrate acted without jurisdiction. The matter was before him on the complaint made against another person and as the evidence disclosed the fact which has been found by the Magistrate that the petitioner was concerned in that offence, process was issued against him. It seems to us that the Magistrate was competent to act in this manner and that he was not barred, as stated in the petition made to this Court on which the rule was granted, by reason of section 190(c), Criminal Procedure Code”, in other words, the Magistrate acted under section 190(c): and the Court goes on to hold that the trial was not without jurisdiction. It is to be noted that the statement to which I have referred was this. In the evidence it was disclosed that another person was concerned in the matter. That is really the substantial point in this case whether another person was concerned in the matter: in other words, whether the petitioner, who was the master, was concerned. The argument is based on the fact, which I do not think is disputed, that the master, who was the owner of this bullock, was away at Barh at the time, and it is stated, therefore, that he had no knowledge of the

1931.

BENDESH-
WAR
FRASAD
v.
KING-
EMPEROR.
WORT, J.

(1) (1900) 4 Cal. W. N. 367.

1931.

BHNDESH-
 WAR
 FRASAD
 v.
 KING-
 EMPEROR.

fact that the bullock-driver was using a sick bullock in a bullock cart. Section 6 of the Prevention to Cruelty to Animals Act provides :

“ If any person employs in any work or labour any animal which by reason of any disease, infirmity, etc., he shall be guilty of an offence under the Act.”

The second part of that section says :

“ or permits any such unfit animal in his possession or under his control to be so employed ”.

The argument addressed to me by the learned Advocate who appears on behalf of the petitioner is that the use of the word “ permits ” in that section connotes some conscious act on the part of the petitioner and that in the circumstances at any rate the petitioner being absent and being ignorant of the use of this bullock, it cannot be said that he permitted the use of this bullock. The learned Sessions Judge points out that the expression used in the Act is “ permits such use ” and not “ knowingly permits such use ”. In the first place it is obvious that on fundamental principles of the criminal law, apart from statute, a person cannot be convicted of a crime of another unless the evidence is such as to prove that he abetted or instigated the crime. But it is to be remembered that in this case we have to construe the statute and it is upon the construction of that statute and not upon the general principles of the criminal law that this matter is to be determined. I am inclined to agree with the learned Sessions Judge that the expression “ permits ” does not involve any conscious act on the part of the person who is held to be liable under the section. But it is not for that reason only I would uphold the conviction. The Act says :

“ If any person employs in any work or labour any animal ”.

There is no doubt in this case that the bullock was the property of the petitioner and that it was employed in the work of the petitioner; it is none the less employed by the petitioner by reason of the fact that the petitioner employs a bullock-driver to drive this bullock or other bullocks. It seems to me, therefore,

WORT, J.

that the section aims not only at the liability of a person actually in charge of the animal but also aims at the person who owns it: in other words, he cannot shelve his responsibility by pleading ignorance of the fact. In my judgment this petitioner employed the bullock within the meaning of section 6, and, therefore, the conviction was right. The rule is discharged.

1931.

BINDESH-
WAR
FRASAD
v.
KING-
EMPEROR.

WORT, J.

Rule discharged.

PRIVY COUNCIL.*

RANI CHHATRA KUMARI DEVI

v.

PRINCE MOHAN BIKRAM SHAH.

1931.

May, 8.

Will—Construction of revived Will—Date from which operative—Contract not to revoke Will—Trust—Suit by Beneficiary for Possession—Beneficiary's remedy to enforce Trust—Limitation—Indian Limitation Act (IX of 1908), s. 10; Sch. I, arts. 113, 120, 144.

A Hindu, who died on April 18, 1912, without leaving issue, executed three wills disposing of property which was not ancestral. A will of 1901 provided that if the testator adopted a son he should be proprietor, and that in default of a natural or adopted son the testator's wife (the appellant) should be proprietress, but that upon her death the property was to pass according to the Shastras. A will of 1903 recited that the testator had obtained consent to adopt the first respondent and provided that upon the testator's death without issue the respondent should succeed to the property; the will of 1901 was revoked and the testator declared that he should have no power to make any other will. The first respondent was adopted a few days later, and a copy of the will was sent to the respondent's grandmother. A will of 1904 revoked the will of 1903 and restored the will of 1901 in favour of the appellant. Upon the testator's death the

* *Present* :—Lord Blanesburgh, Lord Atkin, Sir Lancelot Sanderson, Sir George Lowndes and Sir Dinshah Mulla.