

## CRIMINAL REFERENCE.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

QUEEN-EMPRESS *v.* BABAJI LAXMAN.\*

1897.

September 9.

*Cattle Trespass Act (I of 1871), Sec. 11—Forest Act (VII of 1873), Sec. 69—Cattle straying in a reserved forest—Seizure by a forest officer of such cattle.*

Section 11 of the Cattle Trespass Act (I of 1871) having been applied to forests by section 69 of the Indian Forest Act (VII of 1879), the seizure by a forest officer of cattle found straying in a reserved forest is legal, even though no damage has actually been done.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882).

The facts, as found by the District Magistrate of Poona, were as follows :—

“The accused, Babaji Laxman, a forest guard, and Shankar Balvant Kulkarni were tried for illegal seizure of cattle (20 sheep and 5 goats) belonging to the complainant. The complainant alleged that his cattle did not trespass into the forest, but went by a public road. The evidence, however, showed that the cattle were grazing inside the forest. The Magistrate on personal inspection, though he found that the place where the cattle were alleged to have been grazing was forest, seems to have thought that it was not far enough from the road to justify their being impounded.”

On these facts the Magistrate passed an order to the following effect :—

“As the forest guard has illegally impounded the cattle, I direct that he should pay to the complainant Re. 1-9-0 on account of cattle-pound fees and Re. 1-9-0 on account of court-fee expenses, &c.”

The District Magistrate, being of opinion that this order was illegal, referred the case to the High Court.

The High Court issued notice to the complainant to show cause why the Magistrate's order awarding compensation should not be set aside.

*Sadashiv R. Bakhale*, for the complainant.

There was no appearance for the accused.

1897.

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LAXMAN.

PARSONS, J.:—The Magistrate has adjudged the seizure of the cattle in question illegal and awarded compensation to the owner under section 22 of the Cattle Trespass Act, 1871, because he was of opinion that they had done no damage even if they had strayed into the reserved forest in which it is alleged they were found straying, and were seized by the accused who was the forest officer in charge of the reserved forest. The Magistrate has apparently lost sight of the words “or found straying thereon” which occur in section 11 of the Cattle Trespass Act, 1871, which is applicable to forests by section 69 of the Indian Forest Act, 1878. If the cattle were found straying in a reserved forest, as alleged by the accused, the seizure would be legal even if no damage had actually been done. There is no finding, that we can see, by the Magistrate on this point. We reverse the order and remand the case for retrial.

## CRIMINAL REFERENCE.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

QUEEN-EMPRESS v. SAKAR JAN MAHOMED.\*

1897.

September 16.

*Criminal Procedure Code (Act X of 1882), Sec. 560—Compensation for vexatious complaint—Compensation illegal where the complainant is a police officer.*

Section 560 of the Criminal Procedure Code (Act X of 1882) does not authorize a Magistrate to pass an order for compensation to be paid by the complainant to the accused, where the complaint is instituted by a police officer.

*Ramjeevan Koormi v. Durga Charan Sadhu, Khan*<sup>(1)</sup> followed.

THIS was a reference by R. B. Steward, District Magistrate of Násik, under section 438 of the Criminal Procedure Code (Act X of 1882).

The reference was in the following terms:—

“The complainant, Abdul Sheikh Rahmia, Constable of the Násik District Police, filed a complaint against Sakar Jan Mahomed and three others of committing an affray.

\* Criminal Reference, No. 63 of 1897.

(1) I. L. R., 21 Cal., 979.