

be remembered that the rules when sanctioned become a part of the Scheme of Management under clause 12 (7) subject under clause 20 to the control of the High Court and that it was provided that the Scheme should be in accordance with the established practice of the institution by the preliminary judgments both of the High Court and of the Privy Council. [His Lordship then proceeded to discuss the rules in detail.]

Order accordingly.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Hayward.

EMPEROR v. NASIR WAZIR.^c

Prevention of Cruelty to Animals Act (XI of 1890), section 3 (a)—Owner of a horse—Owner turning out the horse on a street—Horse found in a starving condition—Cruelty to animals.

1919.

July 14.

The accused who owned a horse abandoned it by turning it out on the street. Some days afterwards the horse was found on a street in a starving condition. The accused was thereupon charged with the offence of ill-treating the horse, under section 3 (a) of the Prevention of Cruelty to Animals Act, 1890 :—

Held, that the accused could not be convicted of ill-treatment under section 3 (a) of the Prevention of Cruelty to Animals Act, 1890, for it was essential under the section that in fact the accused should be in a position to exercise control over the animal at the time of the ill-treatment.

THIS was an application in revision against conviction and sentence passed by a Bench of Honorary Presidency Magistrates in Bombay.

The accused who was a hack-victoria driver owned a horse. He abandoned the horse by turning it out on the street on the 1st May 1919. The horse roamed about the streets in a starving condition till the 25th

^c Criminal Application for Revision No. 164 of 1919.

1919.

May 1919, when a peon of the Society for the Prevention of Cruelty to Animals caught hold of it.

EMERSON

v.
NASIR
WAZIR.

The accused was thereupon tried by a Bench of Honorary Presidency Magistrates for ill-treating the horse, under section 3 (a) of the Prevention of Cruelty to Animals Act, 1890. The accused pleaded as follows: "admit having turned my horse out to starve. It was on the road for 25 days." The accused was convicted of the offence charged, and sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs. 50.

The accused applied to the High Court.

R. S. Pandit with *M. M. Kotasthane*, for the applicant:—The act charged against the accused does not amount to an offence under section 3 (a) of the Prevention of Cruelty to Animals Act, 1890. As soon as the accused turned his horse out into the street, he lost all control over it and was not responsible for what happened to it afterwards. Clause (a) of section 3 runs: "cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal," and clearly contemplates that the animal must be in the possession of the accused.

The English Statute (12 & 13 Vic. c. 92, section II) makes a similar provision: "If any person shall from and after the passing of this Act cruelly beat, ill-treat, over-drive, abuse, or torture, or cause or procure to be cruelly beaten, ill-treated, or overdriven, abused, or tortured, any animal, every such offender shall for every offence forfeit and pay a penalty not exceeding 5 £." In interpreting this section, Kelly C. B. said in *Everitt v. Davies*⁽¹⁾: "The mere omission to put an animal to death, even in a case where humanity might dictate its being done, is not an offence or an act of cruelty within

⁽¹⁾ (1878) 38 L. T. N. S. 360 at p. 361.

the meaning of this Act of Parliament." Passive cruelty is not an offence under the Act: *Powell v. Knight*⁽¹⁾.

S. S. Patkar, Government Pleader, for the Crown:—The accused in this case pleaded guilty and admitted that he had turned out the horse to starve. He meant therefore not only to turn out the animal but also to starve it. The words "otherwise ill-treats any animal" in clause (a) are wide and would include starvation of the animal, because the words "starvation or other ill-treatment" in clause (c) of the section show that the Legislature recognized that starvation was one kind of ill-treatment: see *Maluka Goala v. Emperor*⁽²⁾.

In Scotland allowing a horse to remain in a cab exposed and hungry has been held to be an offence under the English Act: see Halsbury's Laws of England, Vol. I, para. 882, p. 412. Besides the English Act does not contain the words "otherwise ill-treat".

C. A. V.

SHAH, J.:—The accused in this case has been convicted by a Bench of Honorary Presidency Magistrates of ill-treating his horse on the 21st of May last, under section 3, clause (a) of Act XI of 1890. His plea of guilty is recorded in these terms: "I admit having turned my horse out to starve. It was on the road for twenty-five days." The question in this application is whether the conviction under section 3 (a) is right.

In substance what the accused did was that he abandoned his horse. After he turned his horse out he apparently exercised no control over the animal and the horse was practically left uncared for in the public streets. The section provides among other things that "if any person in any street or in any other place, whether open or closed, to which the public have access,

⁽¹⁾ (1873) 38 L. T. N. S. 607.

⁽²⁾ (1905) 3 Crim. L. J. 116.

1919.

EMPEROR
v.
NASH
WAZIR.

or within sight of any person in any street or in any such other place cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal," he shall be liable to punishment by way of fine or imprisonment. All the acts of cruelty mentioned in this clause, viz., beating, overdriving and overloading suggest that the person concerned exercises an immediate control over the animal at the time. In the present case the accused is said to have ill-treated the horse by turning it out to starve.

It was suggested, on behalf of the accused in the course of the argument, that it would not be ill-treating the animal within the meaning of section 3 (a) to let it starve. I am, however, not prepared to accept this argument. It may be that where the person is in a position to exercise control over the animal and prevent starvation, he may effectively ill-treat an animal by starving it.

But it seems to me that in the present case the accused ceased to exercise any control over the animal when he turned it out in the streets. In order that he can ill-treat his horse under section 3 (a) it seems to me essential that in fact he must be in a position to exercise control over the animal at the time of the alleged ill-treatment. The statement of the accused is consistent with his having abandoned the animal altogether. The Act does not prohibit in terms a total abandonment of the animal by the owner; and the scheme of the Act does not suggest any such prohibition. It is apparently open to the owner under the Act to get rid of an animal, if so minded, by killing it or by abandoning it. It is clear from section 5 that the Act does not prohibit the killing of an animal; it prohibits the killing of an animal in an unnecessarily cruel manner. There is no express provision relating to the abandonment of an animal by its owner.

It may be that in the case of animals thus abandoned by their owners in the city of Bombay the provisions of sections 52 and 53 of the Bombay City Police Act, IV of 1902, may afford some remedy. For under those provisions it is the duty of every Police Officer and it is lawful for any other person to seize and to take to any public pound for confinement therein any cattle found straying in any street, and if the owner does not come forward to claim the animal, the procedure laid down in section 53 can be followed. Outside the Presidency Towns, the provisions of the Cattle Trespass Act may serve the purpose more or less to the same extent as the provisions of the City of Bombay Police Act just referred to. I do not suggest that the provisions relating to the impounding of cattle afford an adequate remedy for an evil arising in consequence of the abandonment of animals by their owners. But I feel clear that such an abandonment is not prohibited by the Prevention of Cruelty to Animals Act: and the starvation of the animal after it is abandoned is not any ill-treatment of the animal by a person who has ceased to exercise any control over it. In the present case there is nothing to show, and it is not suggested in the argument before us, that the subsequent conduct of the accused indicated any attempt or intention on his part to resume control over the horse after he turned it out on or about the 1st May. I do not think therefore that the conviction under section 3 (a) can be sustained.

If the evil resulting from the animals being thus abandoned in the streets assumes any appreciable proportion, it would be a matter for the Legislature to consider whether the Act should not be suitably amended.

I would, therefore, set aside the conviction and sentence and direct the fine, if paid, to be refunded.

1919.

EMPEROR

v.

NASIR

WAZIR.

1919.

EMPEROR
v.
NASIR
WAZIR.

HAYWARD, J. :—The accused Nasir Wazir is a hack-victoria driver and sometime in May last, turned his horse out into the street where it was subsequently found wandering by an agent of the Society for the Prevention of Cruelty to Animals. He admitted at his trial that he had turned the horse out to starve and on that plea he was found guilty under section 3 (a) of Act XI of 1890.

The accused's act in turning out his horse in the streets of a large town would no doubt be ill-treatment in the ordinary meaning of the term. But the question to be decided here is whether it is ill-treatment which has been made punishable by law. It has been argued that his act amounted to mere abandonment and at most to a passive ill-treatment similar to that of the man who left an injured horse to die and was held to have committed no offence in the case of *Everitt v. Davies*⁽¹⁾ in England. It has been urged that this passive ill-treatment is distinguishable from the wilful leaving of a horse standing without food in a cab in a street which was held to have been an offence in the case of *Anderson v. Wood*⁽²⁾ in Scotland. It has been argued, on the other hand, that the abandonment of the horse to starve comes within the words "cruelly beats, overdrives, overloads or otherwise ill-treats" in clause (a) as the words "has in his possession for sale any animal suffering pain by reason of starvation or other ill-treatment" occur in clause (c) and as the starvation here resulted in a street which would be a public place within the meaning of section 3 of Act XI of 1890.

It seems to me, however, that abandonment of a horse in this manner, however morally reprehensible, has not been made expressly punishable by law. Abandonment has not been forbidden and alone would not

⁽¹⁾ (1878) 38 L. T. N. S. 360. ⁽²⁾ (1881) 9 C. of Sess., 4th Sess., J.C. 6-

amount to ill-treatment. It is not akin to cruelly beating, overdriving, or overloading, and could not without strain of language be brought within the connected words "otherwise ill-treats". It cannot moreover be said, without loose speaking, that an abandoned horse is starved by the man who was previously its owner, any more than it could strictly speaking be said that a dismissed workman was being starved by his former master. It might, on the other hand, properly be said that a horse kept standing in a cab without food was being starved by its driver, just as it might truly be said that a workman who was being sweated was being starved by his employer. It has also to be noticed that starving a horse has not been made *per se* an offence. It is no offence under the enactment to starve a horse in a stable. It would at most be an offence to starve a horse on a cabstand when it might be punishable as ill-treatment in a public place under clause (a) or to offer it when suffering pain from starvation for sale in a street when it would be punishable as an offence in a public place under clause (b) of section 3 of the Act. It would also be an offence to use a horse which had become unfit to work through starvation under section 6 and it might also be an offence to let an animal disabled by starvation, die in a street or other public place under section 7 of the Act. But it would, in my opinion, be an abuse of our authority to hold that abandonment of a horse was an offence because starvation might result, when no express provision has been made to that effect in the Act and when that Act—XI of 1890—has, as indicated, been strictly limited in its operation by the Legislature. It should be observed that starvation ought not to result in the town of Bombay if it were recognized practically that any person might and every police-officer ought to take any horse found straying in any public place to the pound under section 52 of the

1919

EMPEROR:

v.

NASHI

WAZIR

1919.

EMPEROR
v.
NASIR
WAZIR

Bombay City Police Act, IV of 1902. It must also be presumed that there were good reasons for the restrictions imposed in the operation of the law which was to have force not merely in Presidency Towns but throughout the rural districts of India.

Conviction and sentence set aside.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1919.

August 8.

MANCHHARAM BHIKU PATIL AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS v. DATTU AND TWO OTHERS WHO WRITE BHIKU AS THEIR FATHER'S NAME (ORIGINAL PLAINTIFFS NOS. 1 TO 3), RESPONDENTS. ^o

Hindu Law—Sudras—Leva Kumbis of Changdev in the East Khandesh District, whether Sudras—Illegitimate sons dividing property with legitimate sons, mother entitled to a share.

Leva Kumbis residing at Changdev in the East Khandesh District are Sudras.

Under Hindu law, even when, among the Sudras, the illegitimate sons divide the property with the legitimate sons, the mother is entitled to a share.

FIRST appeal against the decision of J. H. Betigiri, First Class Subordinate Judge at Dhulia, in suit No. 6 of 1914.

Suit for partition.

One Bhiku Pandu, a Patil of Changdev in the East Khandesh District, died in 1912. He left surviving him a son Mansaram, a grandson Bhagwan and a widow Bhimabai (defendants Nos. 1 to 3) and also three illegitimate sons (plaintiffs).