

Before Mr. Justice Jackson and Mr. Justice McDonell.

1879
March 24.

AFATOOLLA SIRDAR (PLAINTIFF) v. DWARKA NATH MOITRY
AND OTHERS (DEFENDANTS).*

Growing Crops—Under-tenure, what passes at sale of.

At a sale of an under-tenure for arrears of rent under s. 66 of Beng. Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved.

THIS was a reference for the opinion of the High Court.

In this case the plaintiff was the tenant of the defendant No. 1. The plaintiff did not pay the rent of his holding to the defendant No. 1, and the consequence was, that a decree was passed against the former. In execution of that decree, the under-tenure which fell into arrear was sold under s. 66 of the Landlord and Tenant Act, 1869, and purchased by the defendant No. 1. It was admitted on all hands that the plaintiff raised some paddy on the lands comprised in the under-tenure, and at the time of the aforesaid execution-sale, the crop was standing on the land unharvested. It also appeared from the certificate of sale, that no mention of the sale of the crop to the purchaser was made. The present action was brought for the recovery of damages, on the ground that the auction-purchaser, the defendant, had cut and misappropriated the crop.

The question referred was, whether the unreserved sale of an under-tenure under s. 66 of the Landlord and Tenant Act of 1869 vests in the auction-purchaser a right to the crop standing thereon?

The Judge of the Small Cause Court dismissed the suit subject to the opinion of the High Court.

No one appearing for the plaintiff or defendants, the opinion of the Court was delivered by

* Small Cause Court Reference, No. 355 of 1879, from an order made by Baboo Bulloram Mullick, Officiating Judge of the Court of Small Causes, Kooshtea, dated the 13th January 1879.

JACKSON, J.—It is not stated that evidence was given of any special custom in this point.

The sale of the tenure would apparently pass all that was growing upon the land, unless the growing crops were excepted by the notification of sale, or else a custom was proved that the outgoing ryot should have the crops, subject to a payment for use and occupation of the land while they remained on the ground. If such a custom with tender of the proper amount was proved, the plaintiff might be entitled to recover, but otherwise he would not appear to have laid the foundation for a claim of damages, as the defendant merely cut down crops growing on his own land.

1879

AFATULLA
SIRDAR
v.
DWARAK
NATH
MOITRY.

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice White.

THE EMPRESS v. SAFATULLA AND ANOTHER.*

1879

March 31.

Penal Code, s. 304a—Doing Rash and Negligent Act—Direction to Jury.

Where an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased,—

Held, that it was not sufficient, in order to find the accused guilty of a rash act under s. 304a of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.

THE facts are sufficiently stated in the judgment of the Court delivered by

WHITE, J.—The prisoners in this case were acquitted by the jury of culpable homicide, and convicted under s. 304a of the

* Criminal Reference, No. 413 of 1877, from an order made by C. D. Field, Esq., LL.D., Sessions Judge of Burdwan, dated the 1st March 1879.