

## CRIMINAL REVISION.

*Before Mr. Justice Norris and Mr. Justice Beverley.*

HARI MANDLE (COMPLAINANT) *v.* JAFAR (ACCUSED).<sup>o</sup>  
*Penal Code (Act XLV of 1860), section 429—"Bull" and "Cow," Definitions of—"Any other animal," Meaning of.* 1895  
February 14.

The words "bull" and "cow" in section 429 of the Penal Code include the young of those animals. The section specifies the more valuable of the domestic animals, without any regard to age, but in respect of other kinds of animals not so specified, the section would not apply unless the particular animal in question was shown to be of the value of fifty rupees or upwards.

THIS case having been reported to the High Court with reference to another matter, an order was made on the 4th of December 1894, calling upon the accused to show cause why the order of the Officiating Sessions Judge should not be set aside.

The facts of the case are fully given in the judgment.

No one appeared to show cause.

The judgment of the Court (NORRIS and BEVERLEY, JJ.) was as follows :—

BEVERLEY, J.—In April last three persons were detected in the act of butchering and skinning a calf. One of them, a boy named Doman, was arrested at the time; the other two, Shaik Jafar and Shaik Narain, escaped, and were not arrested till some time afterwards. Doman was convicted on the 26th April by the Deputy Magistrate of Contai of an offence under section 429 of the Indian Penal Code, and was sentenced to undergo six weeks' rigorous imprisonment. Upon appeal, the Sessions Judge, Mr. Pratt, upheld the conviction, but in consideration of the youth of the appellant and the fact that he appeared to be a tool in the hands of the other two men, reduced the sentence to three weeks' rigorous imprisonment. On the 4th July, Jafar and Narain were tried in respect of the same occurrence by the same Deputy Magistrate at Contai, and they were convicted by him of the offence of theft under section 379 of the Indian Penal Code,

<sup>o</sup> Criminal Miscellaneous case No. 54 of 1894, against the order passed by Babu Kadar Nath Roy, Officiating Sessions Judge of Midnapore, modifying the order of the Deputy Magistrate of Contai, dated 4th July 1894.

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and were sentenced to suffer rigorous imprisonment for one year. Upon appeal the Officiating Sessions Judge, Mr. Kedar Nath Roy, held that the finding under section 379 could not stand, inasmuch as it was not shown that the calf had been moved out of the possession of the complainant. He held, however, that the offence of mischief had been committed, but that such offence would not fall under section 429 of the Indian Penal Code, but under section 426 of that Code, and he accordingly reduced the sentence to three months' rigorous imprisonment, the maximum punishment provided by that section. In his judgment he remarks as follows: "The subject of slaughter was admittedly a calf of the value of eight rupees. The complainant said so in his first information and deposition. All the witnesses describe it as a calf. It has been held, and it is now widely known to all Magistrates, that a calf, which is valued under fifty rupees, does not come within the provisions of section 429 of the Indian Penal Code."

The case having been reported to this Court with reference to another matter, an order was made on the 4th December last, calling upon the accused to show cause why the order of the Appellate Court should not be set aside, and the sentence passed by the Deputy Magistrate restored. The rule has been served upon Shaik Jafar, but Shaik Narain is reported to have died. No cause has been shown before us.

We are of opinion that the decision of the Officiating Sessions Judge is erroneous. We think that the words "bull" and "cow" in section 429 include the young of those animals, and that the expression "any other animal" in that section does not mean an animal of the kind already mentioned, but refers to an animal of a different *genus* altogether such as a dog or a goat. It is stated in Mayne's Commentary of the Indian Penal Code that, at the fourth Madras sessions of 1864, Scotland, C.J. held that a calf does not come within the terms "bull, cow, or ox." So far as we are aware, that decision is not reported, and we are not prepared to follow it. It seems to us that the section specifies the more valuable of the domestic animals without any regard to age, but in respect of other kinds of animals not so specified the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards.

Accordingly, setting aside the order of the Officiating Sessions Judge, we alter the finding of the Deputy Magistrate in this case to a conviction under section 429 of the Indian Penal Code, and we restore the sentence of one year's rigorous imprisonment which he imposed. Shaik Jafar must accordingly be re-arrested and undergo the unexpired portion of the sentence.\*

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## APPELLATE CIVIL,

*Before Mr. Justice Ghose and Mr. Justice Rampini.*

CHANDIDAT JHA (DEFENDANT) v. PADMANAND SINGH BAHADUR  
AND OTHERS (PLAINTIFFS).†

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*Civil Procedure Code (Act XIV of 1882), sections 492 and 503—Receiver,  
Appointment of—Temporary Injunction.*

The distinction between a case in which a temporary injunction may be granted, and a case in which a receiver may be appointed, is that, while in either case, it must be shown that the property should be preserved from waste or alienation; in the former case, it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged; while in the latter case, a good *prima-facie* title has to be made out.

*Sidheswari Dabi v. Abhoyeswari Dabi* (1) approved.

An order of the lower Court for appointment of a receiver under section 503 of the Civil Procedure Code (Act XIV of 1882) was set aside, and an order for a temporary injunction, under section 492 of the Code, granted.

APPEAL from orders passed by the Subordinate Judge of Bhagalpore on an application for an injunction and appointment of a receiver under sections 492 and 503 of the Civil Procedure Code (Act XIV of 1882).

\* The same point was similarly decided in the case of *Jaga Bundhoo Mythee v. Golam Ali Sha* (Criminal Miscellaneous case No. 53 of 1894), which was heard by the same Judges (NORRIS and BEVERLEY, JJ.) on the same day. *Rep. note.*

† Appeal from Order No. 305 of 1893, against the orders of Babu Madhub Chauder Chackravarti, Subordinate Judge of Bhagalpore, dated the 31st July, the 12th August, and the 5th of September 1893.