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the Magistrate of the District has lent the sanction of his authority to support this illegal action. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners; and we can find no indication in the Act of any intention to make a delinquent also liable to punishment under the Penal Code. No penalty is attached to the omission to make a return under section 133, and there are no words in the Act constituting the making a false return a penal offence. Whenever there is an intention to apply the provisions of the criminal law to acts authorized or required by particular statutes, that intention is always made clear by express words to that effect. Instances of this may be found in the Cess Act (Bengal Act IX of 1880), section 94; in the Estates Partition Act (Bengal Act VIII of 1876), section 148; in the Income Tax Act II of 1887, sections 35 and 37; in the Land Acquisition Act I of 1894, section 10, and in many other Acts. In the Bengal Municipal Act there are no such words as are necessary to make the provisions of the Penal Code applicable, and we have no power to import them. The Municipal Commissioners have their remedy in a case like this under the Act itself. The remedy may not in their opinion be sufficient, but they are not entitled to go beyond it.

For these reasons we make the rule absolute and set aside the entire proceedings taken against the petitioner in this case.

Rule made absolute and proceedings quashed.

H. T. H.

CRIMINAL REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

PARYAG RAI (COMPLAINANT) *v.* ARJU MIAN AND OTHERS (ACCUSED.)* 1894 *August* 18.

Cattle Trespass Act (I of 1871), section 22—Illegal Seizure of Cattle—Theft—Compensation—Fine—Imprisonment in default of payment of Compensation—Criminal Procedure Code (Act X of 1882), section 380—Penal Code, section 378.

* Criminal Reference No. 231 of 1894, made by H. A. D. Phillips, Esq., District Magistrate of Monghyr, dated the 10th of August 1894, against the order passed by H. Wheeler, Esq., Sub-Divisional Magistrate of Begusarai, dated 21st July 1894.

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An accused was found to have loosed the complainant's cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I of 1871 (The Cattle Trespass Act), and under the provisions of section 22 ordered to pay compensation to the complainant, and in default to undergo one month's rigorous imprisonment. *Held*, that section 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present, and the accused should have been charged with and tried for that offence. *Held*, further, that the sentence of *imprisonment in default* of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in section 386 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment.

THIS was a reference made by the District Magistrate of Monghyr, recommending that an order passed by a Sub-Divisional Magistrate under section 22 of the Cattle Trespass Act, 1871, should be set aside.

The material portion of the letter of reference was as follows :—

"Under section 438, Act X, 1882, I herewith transmit the record of the case noted in the margin to be laid before the High Court with the following report :—

2. "*Brief analysis of case*—

"The accused persons unloosed buffaloes from a *halthan* (cattle-pen) at night and took them to the *pachhier* (pound) and there impounded them. This was done with the object of sharing with the pound-keeper the fines which would be paid for the release of the cattle.

3. "*The Order recommended for Revision*—

"The order under section 22, Act I, 1871.

4. "*The error on a point of Law.*

"I think the sentence is inadequate, the offence is a serious one. All the elements of theft were present, and I think the accused should be sentenced to three months' imprisonment under section 379, Penal Code; or at any rate that they should be put on their trial for theft.

5. "*The grounds on which the order should be revised*—

"That the sentence is inadequate and not sufficiently deterrent

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to put an end to this pernicious 'touting' system I herewith forward the explanation of the Joint Magistrate. I fully agree with the explanation up to a certain point. There may be doubts where an animal was caught, whether it actually had done damage or not, and so on. But if an animal is tied up in its pen at night, and deliberately unloosed and taken away, I see no reason why the criminal should escape from the consequences of his act, which is pure theft. A man might enter a house and take away cattle and there would be an offence under section 457, Penal Code. It is often extremely difficult in this country to say whether there has or has not been a taking from a house. In this connection it may be remarked that it is curious the Legislature has taken such pains to protect property in houses, when the people's principal wealth, cattle, is kept out of doors. To enter a *halthan* to steal or poison cattle would only be punishable with three months under section 447. In the present case the accused committed offences under section 379, and there are exceptional reasons for prosecuting them under that section so as to put an end to the touting system, which is such a curse to an agricultural community. Offences under section 22 of Act I, 1871, are most difficult to prove, and an occasional award of compensation is not sufficient to deter pound-keepers from employing lads to prowl about at night and unloose cattle, and bring them to pounds.

"I believe that illegal seizure (that is 'a seizure adjudged illegal') is not a criminal offence, and that a sentence of fine or imprisonment cannot be passed in default of payment of the compensation awarded. [*In the matter of Ketabdi Mundul* (1), *Shaik Hussain* v. *Sanjivi* (2)]."

In his explanation, referred to in the reference, the Sub-Divisional Magistrate gave the following as his reason for dealing with the case under the Cattle Trespass Act :—

"With reference to the second para. of your letter it had not struck me at the time to treat the case as one of theft. Being a specialised kind of offence I naturally referred to the special section made to fit it. In a certain sense every case of unlawful impounding might be treated as theft, as they all would involve

(1) 2 C. L. R., 507. (2) I. L. R., 7 Mad., 345.

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unlawful moving of property with a view to dishonestly taking it out of a person's possession without his consent. I had imagined that when special laws were directed against special offences the latter should be tried under them.

"I admit however that treating the case under section 379, Penal Code, would have had this advantage that it would have been possible to send the men to prison. I certainly think they should have gone to prison, which was impossible under section 22, Act I of 1871. If a fine had to be resorted to, I had to reduce it to that amount which I thought the accused might reasonably be able to pay."

No one appeared on the hearing of the reference.

The judgment of the High Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows:—

The accused in this case are found to have loosed the complainant's cattle at night and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release; and they have been ordered by the Joint Magistrate to pay compensation under section 22 of Act I of 1871 (Cattle Trespass Act), and in default to suffer one month's rigorous imprisonment.

The District Magistrate refers the case to us on the ground that the penalty inflicted is inadequate, and he asks us to quash the proceedings and direct that the accused be tried for theft.

We are of opinion that the proceedings of the Joint Magistrate must be set aside, inasmuch as on the findings this was not a case of illegal seizure and detention of cattle under the Cattle Trespass Act, and therefore section 22 of that Act is not applicable. We agree with Mr. Phillips that in this case all the elements of theft are present, as that offence is defined in section 378 of the Penal Code. We accordingly set aside the proceedings of the Joint Magistrate, and direct that the accused be placed on their trial charged with an offence under section 379, Penal Code.

Mr. Phillips also appears to us to be right in the opinion that the sentence of imprisonment awarded in default of payment the compensaton is not warranted by the law. This was held

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the case of *In the matter of Ketabdi Mundul* (1), but the other case cited *Shaik Hussain* v. *Sanjivi* (2) is not to the point. The law prescribes that the compensation may be levied as a fine, but it does not say that imprisonment may be awarded in default of payment, and we are not aware of any provision of law which provides that fines may be levied by means of imprisonment. The ordinary mode of levying fines is laid down in section 386 of the Code of Criminal Procedure. This part of the Joint Magistrate's order therefore is clearly illegal (3).

H. T. H. *Order set aside.*

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

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BAID NATH DAS (DEFENDANT) *v.* SHAMANAND DAS (PLAINTIFF.)*

Succession Certificate Act (VII of 1889), section 4—Right to maintain suit without certificate—Suit on mortgage bond by heir—Suit continued by party substituted for plaintiff who has taken out certificate—Interest at high rate—Penalty—Contract Act (IX of 1879), section 74—Precise sum not named but ascertainable.

A mortgage bond was executed by the defendant in favour of *H*, who died, leaving two sons *J* and *S*, the elder of whom *J* took out a certificate to collect the debts of his father, and instituted a suit on the bond in which he asked both for sale of the mortgaged property and for a personal decree against the defendant. Whilst the suit was pending *J* died, and *S* was allowed to be substituted in his place as plaintiff. A decree was made for sale of the property, but the personal relief was not granted, as it was held to be barred by lapse of time : *Held*, that this was not " a decree against a debtor for payment of his debt " within the meaning of section 4 of the Succession Certificate Act (VII of 1889). *Roghu Nath Shaha* v. *Poresh Nath Pundari* (4) and *Kanchan Modi* v. *Baij Nath Singh* (5) approved. The suit was therefore maintainable notwithstanding that no certificate had been taken out by *S*. *Semble.*—It is doubtful whether that Act would apply at all to

* Appeal from Original Decree No. 193 of 1893, against the decree of Babu Bulloram Mullick, Subordinate Judge of Cuttack, dated the 4th of April 1893.

(1) 2 C. L. R., 507. (2) I. L. R., 7 Mad., 345.

(3) See *Ramjeevan Koormi* v. *Doorga Charan Sadhu*, I. L. R., 21 Calc., 979, *Ed. note.*

(4) I. L. R., 15 Calc., 54. (5) I. L. R., 19 Calc., 336.