CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Wilkins.

TULSI BEWAH (PETITIONER) *v.* SWEENEY (OPPOSITE PARTY).* 1897 *July* 20.

Prevention of Cruelty to Animals Act (XI of 1890), sections 2 and 3—Crabs—Animals—Cruelty to animals.

The provisions of Act XI of 1890 apply to cruelty exercised towards any animal which is either "domestic" or which being *ferœ naturæ* has been "captured" and is in captivity. Crabs are "animals" within the definition of section 2 of Act XI of 1890. If a person exposes them for sale at a public place with their legs broken and with their shells crushed in so as necessarily to cause them pain, he incurs the penalty prescribed by section 3 of the Act.

THE facts of the case appear sufficiently from the judgment of WILKINS, J.

Babu *Amarendro Nath Chatterji* appeared for the petitioner.

The following judgments were delivered by the High Court (GHOSE and WILKINS, JJ.):—

WILKINS, J.—The petitioner in this case, Tulsi Bewah, [illegible]arged before the Presidency Magistrate of Calcutta with [illegible]ng in her possession for sale certain crabs, suffering pain by [illegible]n of mutilation, on the 20th April 1897 at the New Market." [illegible]evidence showed that she had two hundred live crabs for sale, [illegible]all their legs pulled off, and the witness Sweeney saw her [illegible]k the backs of some living crabs with the shell of a dead [illegible] to show purchasers that the living crabs were healthy.

[illegible]aThe accused admitted the facts charged, and was convicted [illegible]haer section 3 of the Prevention of Cruelty to Animals Act (XI [illegible]1890), and she was sentenced to pay a fine of Rs. 20, and in default to undergo one month's simple imprisonment.

Before us it has been contended on her behalf that the conviction is illegal, inasmuch as a crab is not an "animal" within the meaning of the Act; that is, that it is not a "domestic or captured animal."

* Criminal Revision No. 393 of 1897, made against the order passed by T. A. Pearson, Esq., Chief Presidency Magistrate of Calcutta, dated the 29th of April 1897.

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The learned pleader who argued the case before us based this position upon the allegation that the whole course of the special legislation upon this subject, both in England and in India, shows that the Legislature never intended it to apply to any animals other than those which may be described as either "domestic" or "domesticated."

In support of this contention he referred us to Bengal Act I of 1869 (which is not now in force in Calcutta) and to several English Statutes from 2 and 3 Vic. cap. 47 to 39 and 40 Vic. cap. 77, both inclusive; and he relied especially upon the cases of *Aplin* v. *Porritt* (1) and *Harper* v. *Marcks* (2). Both of these cases were decided under the Cruelty to Animals Acts of 1849 and 1854, *viz.*, 12 and 13 Vic. cap. 92 and 17 and 18 Vic. cap. 60. In the first-named case, the question to be determined was whether certain wild rabbits which had been caught in nets five or six days previously and since kept in confinement were "domestic" animals within the meaning of those statutes; in the second case, the same question had to be decided with reference to certain lions kept in a cage, which had been taught or coerced to perform certain tricks. In both cases it was held that the animals were not "domestic animals" within the meaning of the statutes. And neither these statutes, nor any other statutes in force in Eng (with perhaps one exception which does not affect this c. deal with any animals which, not being domestic, are captr animals such as are described in the Act XI of 1890, which i force in India.

It was, however, contended by the petitioner's pleader that t course of legislation in England and the cases decided there shew that the intention of the Legislature in India was to include or two classes of animals within the scope of the law, that is, (1) animals which are domestic in themselves by breed or otherwise, and (2) animals which, though captured in a wild state, had become "domestic," or rather "domesticated," after capture. This contention is, in my opinion, entirely opposed to the very plain and obvious meaning of the words which define "animal" in the Act of 1890. It cannot hold good unless

(1) L. R., (1893) 2 Q. B. D., 57.
(2) L. R., (1894) 2 Q. B. D., 319.

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we interpret the word "or" in that definition to mean, not "or," but "and." I think that we should not be justified in so doing. We are bound when interpreting a statute to give to the language of it its plain and obvious meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before—*Norendro Nath Sircar* v. *Kamalbasini Dasi* (1); so that when we find that the language of Act XI of 1890 has in clear and unmistakable words enlarged the definition of "animal" to an extent not known before, we should not be justified in assuming that this was not deliberately intended by the Legislature. We cannot distort and twist the words of an Act so as to interpret them to mean the opposite of what they obviously purport to mean. Clearly, therefore, the provisions of Act XI of 1890 apply to cruelty exercised towards any animal which is either "domestic" or which being *ferœ naturœ* has been "captured" and is in captivity.

Then it has been urged before us that, if this conviction be upheld, the effect of it will be to put an end to a trade which has been in existence from time immemorial and which furnishes a means of existence to a large body of persons. I fear that this consideration which we cannot allow to affect us. It was for the Legislature to deal with when framing the Act; and all that we know, it was then dealt with. We have merely nterpret and administer the law as we find it.

Finally, it was represented for the petitioner that, in the ence of evidence to show that the crabs suffered pain from the atment alleged, the conviction could not stand. I think it ay fairly be assumed, in the absence of proof to the contrary— hat to pull the legs off a living crab and to crush in its shell are acts which must necessarily cause it pain.

I would, therefore, discharge the rule.

GHOSE, J.—I am of the same opinion. It seems to me that no argument can be derived from the statutes and the decisions in England upon the subject, as has been contended for. If any argument can be deduced, it is rather in favour of the prosecution than against it.

(1) I. L. R., 23 Calc., 563.

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In the statute 12 and 13 Vic. cap. 92 (sec. 29) the word "animal" was thus defined:

"The word 'animal' shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep lamb, hog, pig, sow, goat, dog, cat or any other domestic animal." And in the later statute 17 and 18 Vic. cap. 60 it was laid down that "the word 'animal,' shall in the said Act (12 and 13 Vic. cap. 92), and in this Act, mean any domestic animal, whether of the kind or species particularly enumerated in clause 29 of the said Act, or of any other kind or species whatever, and whether a quadruped or not." So that the operations of these statutes were clearly limited to *domestic* animals, of whatever species they might be, and whether they be quadrupeds or not. These two statutes were passed in 1849 and 1854, respectively; and we find that in the Act which the Legislature in this country passed on the subject in 1869 (Bengal Act I of 1869) and which evidently followed the English statutes, "animal" was thus defined: "The word 'animal' shall be taken to mean any domestic or tamed quadruped or any domestic or tamed bird." This definition was substantially to the same effect as that in the said statutes; and if we had to deal in the present case with the Act of 1869 the definition of "animal" as given therein would perhaps l answer to the case for the prosecution, for a crab is neith domestic or tamed quadruped, nor a domestic or tamed b The Bengal Act of 1869 was however superseded by Act X 1890, and we find that the word "animal" was therein defi in this wise: "'animal' means any domestic or captured anima

There can be no doubt, looking at this definition, that the Le gislature in 1890 meant to bring within the operation of the law the cases of some other description of animals not contemplated by the Act of 1869. And I think we may well presume that the Legislature in this country, when they were engaged in passing an Act applicable to the whole of India, found, as the Judges in England in some of the cases [*e.g. Aplin* v. *Porritt* (1), *Harper* v. *Marcks* (2)] also thought in respect to the statutes in that country, that the law as contained in the Bengal Act of 1869 was not suffi-

(1) L. R., (1893), 2 Q. B. D., 57.
(2) L. R., (1894), 2 Q. B. D., 319.

ciently wide, enlarged the definition of the word "animal" so as to bring within the operation of the law cases of animals other than domestic or tamed quadruped and bipeds; and they secured that object by using the word "domestic or captured animal." So long as an animal is *ferœ naturœ*, and it is not brought under subjugation and control of man, it stands upon a wholly different ground; but when it is captured or domesticated, the law protects it from cruelty, if such cruelty is practised at a place or in the manner laid down in the Act.

The learned Vakil for the petitioner in the course of his argument incidentally raised the question whether a crab was an animal at all. There can, I think, be no doubt whatever on the point, for the word "animal" ordinarily means an organized or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man.

The crabs which were in the possession of the petitioner were captured animals; they were exposed for sale in a public place, in a mutilated condition, and with their shells broken, so as necessarily to cause them pain, and it follows, therefore, that the petitioner has incurred the penalty prescribed by section 3 of the

The result is that this rule is discharged.

S. C. B. *Rule discharged.*

Before Mr. Justice Ghose and Mr. Justice Wilkins.

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AI LAL GOWALA AND ANOTHER (PETITIONERS) *v.* QUEEN-EMPRESS.*

gful restraint—Penal Code (Act XLV of 1860), sections 79 and 341—take of fact—Act done in good faith under belief it is justified by law.

Court peon accompanied by two of the decree-holder's men (petitioners) went to execute a warrant of arrest against the judgment-debtor *M*. A *palki* with closed doors was noticed to be coming out of the male apartment of *M's* house. The petitioners believing that *M* was effecting his escape in that *palki* stopped it and examined it, although the persons accom-

* Criminal Revision No. 487 of 1897, made against the order passed by J. Knox-Wight, Sessions Judge of Patna, dated the 3rd May 1897, modifying the order passed by Babu Ramanugrah Narain Singh, Deputy Magistrate of Patna, dated the 16th March 1897.