

1896.
August 26.

THE QUEEN v. SULTAN.

D. C. (Criminal), Trincomalee, 2,382.

Mischief—Cutting trespassing animal—Duty of District Judge when decisions of Supreme Court are cited to him in argument.

A buffalo trespassed on a paddy field of which accused was in charge as cultivator. The field was under young plants, which were trodden down and eaten by the animal. Accused tried to drive it out of the field, and being unable to do so he made a slash at it with a katty. The blow cut through the animal's tail and hamstring—

Held, that accused was not guilty of mischief.

When judgments of the Supreme Court are cited to a District Judge by a party to a case before him, he should deal with them. If the circumstances of the case before him were materially different from the circumstances of the cases cited, he should point out that difference, and show that the decisions cited to him did not apply. If those decisions did apply to the circumstances of the case before him, he should follow them, whatever his own opinion.

THE facts of the case appear in the judgment.

Bawa, for accused, appellant.

Ramanathan, S.-G., for the Crown.

26th August, 1896. WITHERS, J.—

This conviction must be set aside and the accused acquitted and discharged.

The Solicitor-General, who appeared to support the judgment, admitted that the case on the facts found by the District Judge brought it within the judgments of this Court which were cited in the Court below.

The District Judge did not deal with the cases as he should have done. If the circumstances of this case were materially different from the circumstances in the reported cases he should have pointed that difference out and shown that the decisions cited to him in argument did not apply. If these decisions did apply to the circumstances, he should have followed them, whatever his opinion.

The following facts are partly found by the Judge and partly appear from the evidence for the prosecution.

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A buffalo trespassed in a paddy field of which the accused was in charge as cultivator. The field was under young plants, which were trodden down and eaten by the animal. The accused tried to drive it out of the field, and being unable to do so he made a slash at it with a katty. The blow cut through the animal's tail and hamstring. On these facts the District Judge found the man guilty of committing mischief by maiming an animal, an offence punishable under section 412 of the Penal Code. For this offence he sentenced the man to undergo nine months' rigorous imprisonment. The District Judge said it was no concern of his to try and discover the man's motive in injuring the buffalo. There, he is quite right, the law does not concern itself with a man's motives but a man's intentions.

In his judgment this observation occurs: "The law says that "if you maim a buffalo knowing that you are likely to cause "damage to any person, you commit mischief." But that is not the law as laid down by the Code. What the law does say is, "Whoever with intent to cause wrongful loss or damage to the "public or to any person causes the destruction of any property," &c.; "commits mischief."

Was it causing wrongful damage to the owner of the animal in a criminal sense to hack at the animal, whatever the result, in order to drive it out of the field where it was trespassing and doing damage, or to stop its doing any more damage after reasonable and ineffectual efforts had been made to drive the beast from the field without doing it harm?

I do not think it was. In *Lowe v. Wasilino*, reported in 9 S. C. C. 109, Mr. Justice Clarence held, shooting a cow dead under similar circumstances was not an act of mischief.

In any case the severity of the sentence was out of all proportion to the offence.

Set aside and acquitted.

