Present : Hutchinson C.J.

Sept. 20, 1910

ABDUL *v.* DIAS.

538, *P. C., Galle,* 48,885.

Theft—Removal of cattle by licensed cattle seizer from private land to police station—Wrongful loss—Penal Code, s. 368.

Where a licensed cattle seizer untied a bull from the complainant's garden and took it to the police station, alleging that he found it loose and trespassing on the road,—

Held, that he was guilty of theft, as the removal of the bull for the purpose of causing the owner to pay something which he was not legally bound to pay constituted wrongful loss to the owner.

THE accused-appellant, a licensed cattle seizer, untied a bull from the complainant's garden in the night time and took it to the police station, alleging that he found it loose and trespassing on the road. The Magistrate convicted the accused under section 368 of the Penal Code.

The accused appealed.

[1] *(1906) 9 N. L. R. 359.*
[2] *(1909) 12 N. L. R. 139.*
[3] *(1909) 4 Leader 69.*
[4] *(1906) 2 A. C. R. 10.*
[5] *(1906) 9 N. L. R. 217.*

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Abdul v. Dias

A. St. V. Jayewardene, for the appellant.—" Intention to take dishonestly " is a necessary ingredient of the offence of theft. A thing is said to be done dishonestly when it is done with the intention of causing wrongful gain to one person or wrongful loss to another.

It is clear that the accused did not cause any wrongful gain to himself. It was held in India that the illegal seizure and impounding of cattle, even though it was effected with the malicious intent of subjecting the owners to expense, inconvenience, and annoyance, was not " wrongful loss " to the owners. *Aradhum Mundul v. Myan Khan Takadjeer.*[1] Removal of cattle with the object of coercing the owner to pay a sum of money which he owed to the accused was held not to be theft. *Patra v. Udoy Sant.*[2]

Cur. adv. vult.

September 20, 1910. HUTCHINSON C.J.—

The appellant was convicted of the theft of a bull. He is a licensed cattle seizer. The evidence for the prosecution, which the Magistrate believed, went to show that the appellant untied the bull from the complainant's garden in the night time and took it to the police station, alleging that he found it loose and trespassing on the road. The proctor for the accused argued that, even admitting the facts to be as stated by the complainant, illegal removal of cattle by a licensed seizer is not theft, but the Magistrate ruled that it is. The Penal Code enacts that : " Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit ' theft ' ; and the meaning of " dishonestly " is stated in section 22 : " Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing ' dishonestly.' " And by section 21 " ' wrongful gain ' is gain by unlawful means of property to which the person gaining is not legally entitled. " This man moved the bull, intending to take it out of the owner's possession without his consent ; the question is, whether he did it " dishonestly " within the meaning of the Code. He intended to cause loss to the owner, who, if the accused could satisfy the Court or Village Tribunal that the bull was trespassing, would have to pay something under the Cattle Trespass Ordinance in order to get his bull back ; and at first sight that would seem to be wrongful loss. But it is contended that it is not " wrongful loss " as defined by section 21 ; and two decisions of Indian Courts are quoted in support of that view. In the case of *Myan Khan Takadjeer*[1] the accused illegally seized cattle while grazing on fallow land and,

[1] *(1875) 24 W. R. Cr. 7.* [2] *(1895) 22 Cal. 699.*

instead of taking them to the nearest pound, drove them twelve or fourteen miles to a pound in the next district ; the Magistrate considered that wrongful loss was intended, because the act was done with the malicious intent of subjecting the owners to additional expense, and he convicted the accused of theft under section 379 of the Indian Penal Code. The High Court quashed the conviction, holding that the wrongful loss referred to in section 24, which is in the same terms as section 22 of our Code, referred to the thing dishonestly taken, *i.e.*, to the animals ; they said that the last words of section 23 (our section 21) : " to which the person losing it is legally entitled," show that that is what is meant. In the case of *P. K. Patra v. Udoy Sant*[1] the accused, with a view to coerce the complainant to pay a sum which he owed to the accused, removed some cattle from the complainant's homestead. His intention was to induce the complainant to pay him a debt which was legally due, and it seems to me difficult to say that he intended to cause wrongful loss to the complainant or wrongful gain to himself. The Court held that it was not a case of theft, but not on that ground ; they thought that to gain property by unlawful means meant to gain the thing used for the use of the gainer. But they also referred to illustration (*l*) to section 378, which is the same illustration to our section 366 : " A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft " ; and they said the effect of that is that " it is theft if a person takes the property of another for the purpose of extorting from the owner, in exchange for the thing taken, something which the taker has no right to claim." It seems to me probable that their decision would have been the other way if the fact had been that the accused had taken the cattle for the purpose of causing the owner to pay something which he was not legally bound to pay. In the last-mentioned case the Court discussed several cases decided in India. One was that in 24 *W. R.* ; another, the 9th, was that of *Paryay Rai v. Argu Mian*,[2] in which the accused had loosened the complainant's cattle at night and driven them to the pound with the object of sharing with the pound owner the fees to be paid for their release ; and the High Court held that that was theft. In my opinion illustration (*l*) to section 366 shows that the act of this appellant was theft, and the conviction was right. The appeal is dismissed.

Appeal dismissed.

[1] (*1895*) *22 Cal. 669.*

[2] (*1894*) *22 Cal. 139.*