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C. J. LYALL, Esq., C

Secretary to the

To

The Chief Secy. to the Govt.

Home Department.
Public.

Calcutta, the 27th January 1894.

SIR,

I AM directed to forward the accompanying extract (paragraph 7) from a letter, No. 118, dated the 22nd November 1893, from the Government of the North-Western Provinces and Oudh and another (paragraph 8) from a letter from the Government of Bengal, No. 5543 J., dated the 23rd December 1893, in which the necessity for undertaking legislation for the protection of sacred or dedicated bulls is represented. I am also to enclose a collection of reported cases showing the views held by the Courts as to the law as it now stands, from which it will be seen that there is some diversity of opinion on this subject.

2. I am to request that the Government of India may be favoured with the opinion of His Excellency the Governor in Council and of such officers as he may think fit to consult, as to the necessity or expediency of legislation on the subject, and if legislation is thought desirable, with a sketch of the provisions which, in the opinion of His Excellency in Council, should be enacted. It will be seen that the decisions deal with two aspects in which sacred bulls may be regarded, viz., as sacred "objects" within the meaning of section 295 of the Indian Penal Code, and as "property" within the meaning of the sections of the Code relating to theft, mischief, etc. It appears to be well-ascertained law that a sacred bull is not an "object" within the meaning of section 295 of the Indian Penal Code, and its killing cannot therefore be punished under that section. As regards the question whether it can be the subject of an offence relating to property, the Chief Court of the Punjab, and apparently the High Court of Madras, would hold that it can be, while the High Courts of the North-Western Provinces and Calcutta take the opposite view. It should be stated whether legislation is recommended for dealing with the matter under either of these aspects, or both.

3. It is requested that the opinion of His Excellency the Governor in Council may, if possible, be submitted before the end of February next.

I have the honour to be,

SIR,

Your most obedient Servant,

C. J. Lyall

Secretary to the Government of India.

Extract, paragraph 7, from a letter from the Government of the North-Western Provinces and Oudh, No. 118, dated the 22nd November 1893.

7. The fifth series of papers consists of some rulings of the North-Western Provinces High Court dealing with the question of the seizure of cattle by Hindus with the primary object of preventing their slaughter, and secondly with the question of the right of property in sacred or dedicated bulls,—a matter on which the Court of these Provinces has taken a view differing from that held by the Punjab Chief Court.

The ruling regarding the sacred bull undoubtedly caused some excitement at the time, and it has been represented to this Government by Captain Chapman of Bharwari in the Allahabad District that it has led to the destruction by butchers of the "Brahmani" bulls and to a great scarcity of bulls for breeding purposes in consequence. This view has been taken up by Dr. Voelcker in his report on the improvement of Indian agriculture. Captain Chapman's representations led Sir A. Colvin in the year 1891 to institute an inquiry on the subject. The result was to show that in the opinion of the District Officers there was no excitement on the subject and no such inconvenience as represented by Captain Chapman, and it is remarkable that during the present excitement in the eastern districts no complaint has been made regarding this matter, nor has it been put forward by the Hindus as one of their grievances. Nevertheless there can be no doubt in the Lieutenant-Governor's opinion that the ruling of the North-West High Court is directly contrary to the customary law of the Province and is calculated to annoy the religious feelings of the Hindus, and that the view taken by the Punjab Court, which holds that an object devoted either in pursuance of Hindu custom, as in the present case, or under Muhammadan law, does not thereby cease to be property, is more in accordance with justice.

Extract, paragraph 8, from a letter from the Government of Bengal, No. 5543 J., dated the 23rd December 1893.

8. There remains the point which Sir Charles Elliott desires to press on the Government of India even more urgently than any of the views expressed above, viz., the necessity of resorting to legislation to render the killing of "Brahmini" bulls punishable by law, even when it is not proved that there is any intention of insulting the religious feelings of the Hindu community.

* Queen-Empress versus Imam Ali (L. L. R., 10 All., 150).
Queen-Empress versus Nihal (L. L. R., 9 All., 348).
Ramesh Chandra Sanyal versus Hira Mondal (L. L. R., 17 Cal., 852).

Under the law as interpreted by the Calcutta and Allahabad High Courts a "Brahmini" bull is not an "object" within the meaning of section 295, Indian Penal Code, nor is it "property" within the meaning of sections 378, 403 and 425. It cannot therefore be the subject of theft or criminal misappropriation, and the killing of such

an animal for the sake of the meat or skin, but without any intention of insulting the Hindu religion, is not an offence under the Penal Code, and if it were an offence, there is no owner who is entitled to prosecute. Of the legality of these decisions there can be no question; but in the opinion of the Lieutenant-Governor it is intolerable that the law should be such as to allow animals which are considered sacred by the whole Hindu community to be slaughtered and eaten with impunity because nobody has a right to prosecute the offender. Sir Charles Elliott entirely agrees with what has been said on this subject by Mr. Forbes in his memorandum of the 23rd October, a copy of which was forwarded to you with the letter from this Government, No. 849 J.D., dated 28th October, and by Sir Antony MacDonnell in paragraph 13 of that letter, and he recommends that some such alteration should be made in section 295 of

the Penal Code as is suggested by Mr. Justice Brodhurst,† so as to make the maiming or killing of a "Brahmini" bull punishable. In order to meet the difficulty about the bull being nobody's property, the law might provide for vesting the property of "Brahmini" bulls either in the priest of the temple to which it was dedicated, or in the priest under whose instructions it was let loose on the occasion of a "sradh," or else in the zamindar of the village in which it may be found, as representing the community whose feelings are shocked and wounded by any

High Court Judgments relating to Sacred Bulls.

QUEEN-EMPRESS v. BANDHU.

This was a case reported for orders, under section 433 of the Criminal Code, by Mr. C. Donovan, Session Judge of Benares. One Bandhu was, on the 21st September 1885, convicted by Raja Jai Kishen Das, C.S.I., a Magistrate of the first class, under section 411 of the Indian Penal Code, for dishonestly receiving a bull, knowing the same to have been criminally misappropriated, and sentenced to six months' rigorous imprisonment. The evidence showed that about midnight, on the 1st September, the accused was found going along a road in Mouza Sheonathpur, driving a bull before him. Upon being questioned by a chankidār, he said he was an Afir, but immediately corrected himself, saying:—"I am a Chamar and live at Ramnagar, and the bull belongs to the Maharaja. I am taking it to Ramnagar." He also stated:—"My house is at Goghra. The bull has been sent for by Madar and Samer, butchers. They have promised to pay me eight annas." The accused was then taken to a study. The bull was found to be blind, and to bear a brand indicating it had been set at large by some Hindu at the time of performing funeral ceremonies in accordance with Hindu religious usage. Before the Magistrate the accused stated:—"I do not know who is the owner of this bull. Madar and Samer brought it from some place and gave it to me. I do not know where they drove it. The said two persons told me to take the bull secretly to their house, and promised to pay me eight annas. It was given to me at Goghra, on the western road leading to Chigyn; they made me stay near Bari Bagh from now till evening, and then told me to drive it. I acknowledge my fault that I took the stolen property with me at their instigation. Being hungry, I was tempted by the offer of eight annas."

The Magistrate, in convicting the accused, observed:—"Although no one has been found to be the owner, custodian, or keeper of this bull, yet it may be gathered from the statement of the accused himself that the butchers had come by it by illegal means. The bull was not stolen property, but there is no doubt that it was brought by means of misappropriation, and that the accused knowingly retained it for taking it away. Hence the accused is guilty under section 411, according to the definition given in section 410 of the Penal Code."

The accused appealed to the Sessions Judge, who, in dismissing the appeal, made the following observations:—"It was certainly not the intention of the persons who set the bull at large that any human right of property should be attached to it by any one, and the intentions of such persons are respected by general public feeling; and the bulls so let loose are looked upon as not liable to be converted to use in any way that would interfere with their liberty. I may be straining a point, but I think it may be held that the Hindu public have such an interest in these 'Sands' remaining undisturbed and at liberty, as to make them the subject of a sort of public right, and so bring them within the meaning of 'property.' I find that the bull was, for the purposes of section 403, 'property,' and that it was dishonestly misappropriated, and had therefore become stolen property (section 410, Penal Code); and I affirm the conviction and sentence of the Lower Court dismissing this appeal. As the question I have discussed, and upon which the case turns, is novel, but nevertheless may turn up again, and as my finding that the bull was 'property' was not arrived at without some hesitation, I think it well to submit the proceedings for the information of the High Court."

STRAIGHT, J.—I am much indebted to *Munshi Kashi Prasad* for taking so much pains to put the case for the accused man before the Court. I entirely agree with what fell from the *Junior Government Pleader*, that an animal of the kind to which this case has reference was not "property" at the time of the alleged misappropriation, within the meaning of the Indian Penal Code, for it was not only not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor, and had given the beast its freedom to go whithersoever it chose. It was therefore *res nullius*, and as incapable of larceny being committed in respect of it as if it had been *fera natura*. I am not now concerned to determine whether such an animal would be an offence; but I have simply to decide whether the conviction of Bandhu, under section 411, can be upheld. I do not think that it can be; and, setting aside the finding of the Magistrate and the District Judge, he will stand acquitted. If he has not been found by the Court to be at once released; if he has, no further order will be necessary. (L. R., 8 Allahabad, 51.)

QUEEN-EMPRESS v. NALLA.

JUDGMENT.—In this case two persons were charged before the second-class Magistrate of Periyakulam, Madras district, with theft of, and mischief and criminal misappropriation in respect of, an animal described by that Magistrate as "the Kamatchi Amman temple bull." The Magistrate recorded no finding in respect of the theft, but convicted them on the other two counts under sections 429 and 403, Indian Penal Code, it appearing that they

with other manstrous, the bull killed it, and cut it up, and were caught in the act of taking away or appropriating portions of the carcass. The Magistrate referred the case to the Divisional Magistrate under section 349, Criminal Procedure Code, being of opinion that the offence called for heavier punishment than he was competent to inflict. The Divisional Magistrate, upholding the conviction, sentenced the accused each to four months' rigorous imprisonment.

The Sessions Judge, on appeal, allowed the conviction, and the accused were set at liberty after undergoing three months of their sentences. Having regard to the principle on which the case—*Queen Empress versus Bandhu* (1)—was decided, namely, that a bull set at large in accordance with Hindu religious usage, when the original owner abandons all proprietary right in such animal, cannot be the object of larceny, and being of opinion that no material distinction in principle can be drawn between the case of a beast so abandoned and the case of a beast abandoned by its former owner and dedicated or attached to a temple, the Judge, not however without considerable hesitation, held the bull in the case before him to be a *fera bestia* and as *res nullius* (unappropriated by not belonging to any person) to be incapable of being the object of the offences, in respect of which the accused were convicted.

We do not consider it necessary to interfere in revision, not because we agree with the Sessions Judge that there is no material distinction in principle between the case of an animal—property in which is wholly relinquished or abandoned and allowed in accordance with the religious or superstitious usage to roam at large free from all control—and that of such an animal so abandoned and at large after dedication to a temple, but because the accused have undergone three months' rigorous imprisonment for the offences of which they were convicted.

We consider there is a material distinction between the two cases.

The Divisional Magistrate was, in our judgment, right in holding the bull not to be *fera bestia* and therefore *res nullius*, simply because temple bulls are, as he says, ordinarily wandering beasts, or even if it were proved, as the second-class Magistrate found, that this bull ordinarily roamed about at large.

If, on the evidence, it appear that the animal was turned loose after dedication to the temple, and that it was actually or inferentially accepted, as so dedicated on behalf of the temple, then, though the animal were allowed to be at large free from all control, it would *prima facie*, be the property of the temple.

If such animals, in their wanderings at times, trespass on, and do damage to, private property with impunity, it is because superstition induces villagers to regard them with veneration, and to endure the mischief which they commit without seeking redress as of right. If the Sessions Judge's view of the law were correct, it would seem to follow that the trustee of a temple, who accepted the dedication to the temple of such an animal, would not be responsible for injuries caused, for example, to a child playing in the street by a bull, to his knowledge dangerous or habitually mischievous—a proposition on the face of it untenable. Even in the case of a *res nullius*, wholly abandoning an animal, such as a bull, without any precaution taken for its future control, it is not to be assumed that he would be free from liability, civil or criminal, in respect of damage done by such animal. The Sessions Judge records no distinct finding as to whether the bull in this case was in fact the property of the temple or not. The second witness, who described himself as the manager of the temple, spoke of the animal as "the temple bull"; but without a specific finding on this point, we cannot definitely say whether or not the conviction was properly reversed, and, as the Judge says, it appears unlikely that any further material or more precise evidence would be forthcoming, we shall leave the case as it stands, having above indicated, sufficiently for present purposes, the principles to which regard should be had in such cases.—(I. L. R., 11 Madras, 145.)

BAHADUR SINGH AND OTHERS, PETITIONERS, versus THE EMPRESS, RESPONDENT.
PLOWDEN, J.—This application for revision of a conviction of the three accused under section 429, Indian Penal Code, of having committed mischief by killing a bull, was admitted with reference to the decision of Straight, J., in the case of *Empress versus Bandhu* reported at Indian Law Reports, 8 Allahabad, page 51.

It has been urged before us by the Pleader for the petitioners that there is no evidence that the death of the bull was caused by the act of the accused. There is evidence that they beat it with sticks, bound it with ropes, and put a ring through its nose, and that the animal was found dead soon after near the place where the accused had been seen with it. There was no post-mortem examination as to the cause of death, but there was evidence from which the Courts might draw the inference of fact that the animal's death was the consequence of ill-treatment, and we do not consider that there is sufficient ground for disturbing, on revision, this finding of fact.

The question remains whether the conviction is good in law.

The conviction is of committing mischief by killing a bull, and it is essential that it should appear that in killing the bull the accused, with intent to cause or knowing that they were likely to cause wrongful loss or damage to the public or to any person caused the destruction of property.

It is found that one Arjan Singh had let loose the bull some time ago for the public benefit, and that all is stated to have been used for serving the cows of the village.

found by the Sessions Judge that the bull was owned by any particular person or by the public, but merely that "it was let loose for the public benefit and is as much entitled to protection against maltreatment by members of the public as private property."

It is now contended on the strength of the Allahabad ruling above cited, that the bull is not "property" within the meaning of section 411, Indian Penal Code.

The material portion of the judgment relied upon is the following: "An animal of the kind to which this case has reference was not 'property' at the time of the alleged misappropriation within the meaning of the Indian Penal Code, for it was not only not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor and had given the beast its freedom to go whithersoever it chose. It was therefore *nullius in terra* and as incapable of larceny being committed in respect of it as if it had been *fera natura*." I am not now concerned to determine whether cases may not occur in which the killing of such an animal would be an offence, but I have simply to decide whether the conviction under section 411 can be upheld."

It is to be observed that the learned Judge expressly left open the question whether the killing of an animal such as he described might not amount to an offence, and the decision does not in terms rule that the killing of such an animal cannot amount to mischief. But I think it is a sound logical argument that an animal, which is not property within the meaning of the Indian Penal Code, can no more be the subject of mischief than of theft or criminal misappropriation.

It is possible that, in making the reservation mentioned, the learned Judge had in his mind the provisions of section 295 of the Indian Penal Code, as to the destruction of objects held sacred by any class of persons. At the time when the decision under notice was pronounced, it had not been decided by the High Court of Allahabad, as it since has been, that the expression "object" in that section is to be restricted to inanimate objects (Indian Law Reports, X Allahabad, 159). On this point, it may be observed, that this Court has ruled that the language employed is wide enough to include and does include animate as well as inanimate objects, and in particular a cow (No. 27, Punjab Record, 18-4).

I do not understand the learned Judge to mean what he certainly has not said, that a domesticated bull becomes by liberation an animal "*fera natura*" but only that it becomes a "*res nullius*," to which category also belongs an animal "*fera natura*," restored to its state of natural liberty. This observation, however, is not unnecessary, for it seems from a case reported in Indian Law Reports, XI Madras, page 145 (published during the pendency of the present case), that a Sessions Judge in Madras has, upon the authority of the Allahabad decision, actually held a bull abandoned by its former owner and dedicated or attached to a temple, but allowed to be at large free from all control to be "*fera natura*" as well as "*res nullius*" (*Queen Empress versus Nalla*).

I understand the ruling of the learned Judge to be that when the owner of a domestic animal renounces both the ownership and the possession of it, and the liberator of a bull, as it is commonly called, seems in his opinion to do both, the animal forthwith becomes *res nullius*, and ceases to be property within the meaning of the Indian Penal Code.

The decision then determines two points—1st, that the bull being liberated and the ownership of it renounced by the original owner, ceases to be his property, and 2nd, that becoming thus a *res nullius* it is not property within the meaning of the Code.

It seems expedient to consider a little more closely the doctrine of *res nullius*, which lies at the root of this judgment.

In the Roman law "*res*" is a thing, as the object of a right. There were many ways of classifying things, according to the principle of division. One of these was according to their nature, as *res corporales*, natural objects, or corporeal things; *res incorporales*, intellectual objects, incorporeal things. A subdivision of the former is *res mobiles*, moveables, as furniture, cattle; *immobiles*, immoveables, as land or houses. Another division, founded on the legal aspect of things, and recognized in the days of Gaius, was *res humani juris* and *res divini juris*. Later there were other divisions, as *res in commercio*, things susceptible of private ownership, opposed to *res extra commercium*, things not so susceptible. The terms, *in patrimonio nostro extra patrimonium* and *in bonis nullius in bonis*, seem to be equivalent to the opposite terms first mentioned; but they are also used to describe things according to reality, and not according to possibility: "For instance, a knife is legally a thing *in commercio*, but if, at any time, it be under the dominion of no one person in particular because it is lost, it is *extra patrimonium*."—(Modern Roman Law, Tomkine, page 57, note.)

Justinian in the Institutes classifies things with reference to the nature of their appropriation. "They are either in the patrimony of some one (*in nostro patrimonio*) or not in the patrimony of any one (*extra patrimonium nostrum*). For some things are common to all men by natural law, some are public, some belong to corporate or public bodies, some belong to no one, many to individuals, and these are acquired in different ways."—(Institutes II. I. 1.) Thus four classes of things are mentioned as not private property.

1. *Res sacre naturali communia omnium.*

3. *Res universitatis.*

With this classification must be mentioned the principle of the law in a text of Ulpian describing "public law": *Publicum ius est, quod ad statum Rei Publicae spectat; privatum quod ad singulorum utilitatem; sunt enim quaedam publicae utilitates: quaedam privatim. Publicum ius in sacris, in sacerdotibus, in magistratibus; privatum in rebus singulis* (L. I., section 2).

Justinian thus describes some things which are "res nullius." "Those things belong to none which are *sacra* (consecrated) or *res publicae* or *sacrae* (protected by special sanction of the State), for things that are of divine right (*divini iuris*) 'belong to no one' (Inst. II, I, 7).

Other things are also *res nullius*, as things which have never been appropriated, for example, unoccupied territory, or wild animals in their natural freedom. So also is a thing which, having been appropriated, has been abandoned by the owner with a positive determination of the will that it no longer belongs to him. "*Pro derelicto autem habetur, quod dominus ea mente abiecerit, ut id rerum suarum esse nullo, ideoque statim dominus eius deiret*" (Inst. II, I, 47).

As to things unappropriated and things abandoned, and on this ground *res nullius* the same rule applies, *res nullius occupantis fit*. (In the text just quoted, Mr. Saunders observes transferred like that in things thrown to the mob *largesse* by the wish of the owner to transfer it to the person who takes possession of it: but it is much more natural to consider with the text, that the thing becomes *res nullius* by being abandoned, and the property of the first occupant by being taken possession of."—(Saunders' Justinian, page 194.)

It is important to note in connection with the judgment under consideration the state of mind by which a person ceases to be owner of a thing, and the thing becomes, when abandoned, *res nullius*. The owner rids himself of a thing, and at the same time by a mental resolve not to be owner, ceases to be owner. The whole of his intention is fulfilled in ceasing to be owner of the thing; he has no further interest regarding it, he does not intend to transfer it to another, he takes no thought for, and has no concern in, its future destination. The thing is legally susceptible of future ownership, but this is regulated merely by the law relating to the acquisition of ownership in respect of a *res nullius*, and not by the will or intention of the late owner.

Now, I think it may be correctly stated that, according to the Roman Law, when a person got rid of a thing owned by him merely intending no longer to be the owner, the thing, in modern phrase, ceased to be "his property." This is probably true in the English Law and the French Law, and systems of law founded upon the Roman Law, and may be true universally when the definition of private property involves the existence of some person as the subject of property of which the thing is the object.

But does it follow that in all cases where a person who is the owner of a thing, ceases, by his own act and will, to be the owner without transferring the ownership to another person, the thing ceases to be property?

I think it is very clear that this does not follow. In the Roman Law, a thing could be translated, for example, by dedication to a deity or temple, from the class of *res in commercio* to the class of *res extra commercium*, from the domain of private law to the domain of public law (according to the Roman view of that law).

"The doctrine of the Roman Law," says Bowyer in his Universal Public Law, "contains a principle important both in Private and in Public Law. It is this, that a thing may be actually appropriated and yet be the property of no person."

This subject is dealt with exhaustively in relation to both Ancient and Modern "Law by Savigny under the title of Juristical persons" in the second book (commencing with section 85) of his system of Modern Roman Law, recently translated by Mr. Justice Rattigan of this Court. He defines the notion of a "juristical person" as "an artificially assumed subject capable of property." "The conception of a juristical person always presupposes some one independent object different from it, which is even advanced by the property capacity and which in itself is often, strangely enough, regarded as more important than the latter." He employs "the term juristical person, in opposition to the natural person (that is to say, the individual man) in order to express that it is only through this juristical object that it has any existence as a person." * * "The Romans themselves had no general term for all cases of this sort. When they wished to express the juristical character of such subjects they merely said that these represented the place of person (*persona loco, vice funguntur*) which was tantamount to saying that they are 'feigned persons'." (Mr. Rattigan's Translation, pages 178, 179).

Among the kinds of juristical persons Savigny mentions two: "Some juristical persons have a visible representation in a number of individual members who, as the collective whole, constitute the juristical person." These are called corporations; others on the contrary have no such visible substratum but a mere ideal existence which rests upon the attainment of a common object by their means. "These are usually designated institutions, the chief objects of which consist in the service of 'religion, education and charity' (page 180)."

In tracing their history Savigny, speaking of a time before the notion was developed says: "Among the Romans the service of God involved no small expenditure, but the cost thereof was defrayed by the State, and therefore a corporate property of the priesthood or of the temple itself was rendered less necessary. Moreover, the pious intention of those who

ed to promote God's service by institutions, established by the consecration of the things, would anyhow be withdrawn from the sphere of proprietary sense, to the temple, nor to the *res sacra* and as such a *res nullius* in the class 87, page 183).

He goes on to state that the notion of benefit of dependent towns, and gradually extended to Artisans; then to the State which was designation of the "Fiscus, and placed under completely ideal subjects such as Gods and a t

He then collects the most important existing Roman law, under several heads, first, communal associations, religious or official, or generally and then "pious foundations or invisible jurists"

He gives instances of juristical persons which are exceedingly rare. Certain specified Gods had acquired the special privilege that they might be instituted heirs as is shown by a passage in Ulpian. Slaves and Freedmen might belong to a Temple (page 195). He points out the difference between the Pre-Christian conception of the ancient Gods as individual persons, resembling individual visible men, that one sees around one, and the belief of the Christian Church in one God revealed to one Church (page 197). His conclusion is that in all cases of either religious or charitable endowments, the juristical person is the institution itself (page 200).

Bowyer, in his "Public Law" (page 377), after briefly referring to Savigny, states: "We may conclude that the juristical person is in reality a fiction. Thus, a corporation has been called a mere metaphysical being, a mere *res rationis*, and has been said to rest only in intention and consideration of law." It follows that the true principle is that involved in the doctrine of the Roman Law regarding *res nullius*; that is to say, that things may be devoted and appropriated to a public purpose without being vested in any person or persons. It is the purpose of a foundation or other appropriation that must be looked upon as the real owner." He cites an instance of the principle from the English Law. "Notwithstanding the jealous eye, with which our common law looks upon the suspension or abeyance of the freehold, now the freehold of the glebe of the parsonage is void, but is in abeyance." Thus, during the interval, it is *res nullius*, or not vested in any person, and yet it is property, and by the English Law the property which the parson has in the Church is of a different nature from his right over his private property, and even that which he has over the parsonage house. The property of the parson in the Church and church-yard is only for the technical purpose of enabling him to bring actions for injuries to them. (Blackstone's Commentaries, Book I, chapter II, sections 5 and 7.)

Perhaps enough or even more than enough has been said to establish the proposition that, under Roman Law, and other systems of the law, a thing may exist as property or continue to exist as property in the eye of the law, notwithstanding that it has no human or visible owner. It may exist as property belonging to a person who exists as a mere fiction, but in legal contemplation exists.

If it be granted that a bull liberated by a Hindu, in accordance with usage, ceases to be his property by reason of his renouncing his ownership and possession, it does not necessarily follow that it ceases to be property.

Whether the animal so liberated is or is not capable, after liberation and such renunciation of being the subject of offences against property punishable under the Indian Penal Code, depends upon the meaning to be attributed to the word "property" in that Code.

The terms property, immoveable property, moveable property, goods, valuable security and incorporeal rights, all occur in that Code, some of them frequently. Of these only "moveable property" and "valuable security" are defined. In the definition of the former (section 22) is included "corporeal property of every description except land and certain things connected with the earth." But there is no definition of corporeal property. When the term property is used alone, the context generally indicates, that corporeal property, moveable or immoveable, is intended, as for instance, in the definition of mischief. Any moveable property that is corporeal property of the kind described, is capable of being the subject of theft or criminal misappropriation. It is not necessary in the present case, upon the view I shall presently express, to determine whether moveable property, abandoned by its owner, is incapable of being the subject of theft or criminal misappropriation. It is a large question whether the term property as used in the Penal Code means and includes every corporeal thing which is susceptible by law of being the subject of ownership, or is restricted to things which, being thus susceptible, actually are the subject of ownership. The distinction would be practically important only, as it seems to me, in regard to the question whether a thing abandoned by its owner can be the subject of criminal misappropriation. I apprehend, that even with the narrower definition, a watch or similar thing in the possession of a person, who had found it lying on the road, and taken it into his custody, and kept it merely with the intention of restoring it to its owner, is capable of being stolen within the definition of theft

would not be necessary for the prosecution to was, nor sufficient defence for the accused to owner. Probably effect would be given under property," as defined by Sir J. Stephen in his obtained, by any means, the possession of any owner thereof as against any person who cannot st. article 198), with the remarkable illustration of this watch, C steals from A." With such fiction will be unnecessary.

seems by the French, law—"Things of which the e of being stolen" (Stephen's Digest, article operation of this rule in regard to things in the r. The Indian Law as to "theft and criminal respects from the law of England, acts which ces under the Penal Code.

are not punishable under the

But the conclusion at which I arrive in this case renders it unnecessary to express any opinion as to whether a thing, which so long as it has an owner is moveable property, becomes incapable of being criminally misappropriated when it is abandoned by its owner, and is in the possession of no one. For the conclusion I form in this case is that the liberated bull either did not cease to be the property of the liberator, or if it did cease to be his property, the meaning of the Code, and in either view was capable of being the subject of the offence of mischief. In my opinion a bull liberated by a Hindu according to ancient usage still practised, does not cease to be property, and is moveable property within the meaning of the Code. So long as it is not in the possession of any person, it is incapable of being stolen, not because it is not property, but because it is not in the possession of any person, it is still capable of being criminally misappropriated, because it is moveable property belonging either to the liberator or by a fiction of law to a juristical person. For the same reason it is capable of being the subject of mischief, an offence of which the commission is not dependent upon the circumstance whether the property is or is not in any person's possession.

It is necessary or at least expedient to advert to the usage of liberating bulls.

In Colebrooke's Digest, Volume II, Part I, page 86, is quoted the precept "Consecrate a black bull," with the note "Men of the servile class are enjoined to dismiss black (literally, blue) bulls on certain occasions. The higher classes on the same occasion dismiss bulls of a reddish-white colour." The liberation of a black bull is mentioned in Vaishnu Parana, Book III, Chapter XVI (Wilson's Translation, Volume III, page 198 and notes). In Menu, Chapter VIII, page 142, it is stated: For damages * * * by bulls kept for impregnation and for cattle consecrated to the deity, whether attended or unattended, Menu has ordained no fine." The Vivada Chintamani of Vachaspathi Misra is to the same effect, and adds "Bulls marked with some religious symbols" (Translation by Prasanna Comar Tagore, page 136). In Ward's work on the Hindus, section 37 on "Shardda," a description is given of the ceremony of liberating a bull-calf, and the author observes: "These bulls wander about and are treated by the Hindus with great respect. No one can claim any redress for the injury they do. 'No Hindu dare destroy them' (pages 242, 264 notes). In Yule's Glossary (S. V. Brahmin 1 bulls), it is stated that they are dedicated to Siva (page 85).

The liberation is a common practice to this day throughout India, I believe, and it is done as an act either of piety or benevolence among Hindus. Apart from the evidence in this case, to which I shall refer presently, so far as I have been able to ascertain the liberated animal is generally regarded as having a quasi-sacred character, and as being inviolable (in the sense involved in the Latin expression *sacro sanctus*), and the connection between the liberator and the animal liberated is not regarded as wholly severed. For instance, it would be regarded as reprehensible in him, if the animal were permitted to die of starvation, and he would be considered both competent and in duty bound to redeem the animal if it were impounded for trespass and to restore it to liberty.

Turning to the evidence in the case, it appears that the liberated bull belonged originally to one Arjan Singh. He deposed that he had liberated it some two or two and-a-half years ago, but whether there was any particular occasion for the act does not appear. He stated the object to be "for breeding purposes." He says "I liberated it *dharma*": an expression which nearly corresponds to the word "*Wagf*" among Muhammadans, and imports generally a benevolent or charitable, if not a religious, purpose. (In the petition now before the Court, the petitioners have used the two vernacular words as synonymous.) "I intended that it should be used for breeding purposes, and it was so used by others and also by myself." He further says, that on his return to the village, he was informed by certain persons that "his bull (*tumhard sand*) had been beaten to death, and in reporting to the Police he described the bull as "his" (*mera sand*).

In view of his evidence it cannot, I think, be successfully contended that the lower court ought, as a matter of law, to have held that the bull did not belong to Arjan Singh. The language of Arjan Singh is consistent with his having intended to retain some ownership

have ownership or have made its owner, while renouncing all beneficial ownership as well as physical possession. But even if it be taken that such a bull be inconsistent with a liberation, the bull in my opinion is not, though's renunciation of ownership in a liberation of the bull for a benevolent purpose, *dharma*, cease to be "property."

al condition of the person who liberates a bull for such a purpose is clearly from that of the person who simply gets rid of a thing with the mere intention to be owner. The liberator has a clear and definite intention as to the destination, and the law is capable of regarding it, by reason of this intention of the property even if it be no longer his property. It would probably be both a shock to Hindus to hear that an animal thus liberated ceases to be property, and of the protection accorded by law to property. As we have seen already, a bull and be recognized by the law as property, though it has no human or visible

doctrine which is not new or unknown to our Indian Courts. This will be clear from a consideration of the Muhammadan Law of "*Wagf*." The question of the ownership of property created in pursuance of a vow or of things appropriated, "*Wagf*," has engaged the Muhammadan lawyers, and is considered in the *Hidaya* Volume II, Book XV (Brady's edition of Hamilton).

is a female camel set at liberty in pursuance of a vow, which the owner prohibits further use of. According to the view of Hanifa—"The law does not admit the thing during its existence going out of the possession of one proprietor without the possession of another proprietor." * * Appropriation ("*Wagf*") resembles of setting a camel at liberty in this respect, that the thing appropriated does not pass out of the right of property of the proprietor; in other words, if a man constitute his *ayceba*, he still continues his property, and so also, if a person appropriate his land, it is otherwise in a case of manumission as that is a dereliction of property. Also in the case of a mosque, as that is dedicated purely to God. Whereas appropriation, the right of the individual still continues in force, and that is not dedicated purely to God." But even according to the view of Hanifa, the appropriator passes out of him by the decree of the Kazi.

to the two disciples Yusuf and Muhammad, "*Wagf* is the detention of a thing in the ownership of Almighty God in such a manner that its profits may revert to the benefit of mankind, and the appropriation is obligatory, so that the appropriated can neither be given nor sold nor inherited" (Baillie, page 550).

les differ as to the time when the right of the appropriator ceases, but both they agree, that when the appropriation is perfected and becomes absolute, "the thing passed out of the appropriator"; but it does not enter into the "property of the appropriator" (Baillie, page 551).

effect of "*Wagf*" according to the two disciples is "an abatement of the appropriation of property in the thing appropriated in favour of Almighty God" (Cf. Shama Tagore Lectures, 1873, pages 113-116).

to the same law the "*Wagf* of moveables when designedly appropriated if they are for the use of the community or for the use of the poor, is lawful (Baillie, page 561); and perhaps of other things it is customary to appropriate.

tions by "*Wagf*" are most frequently of a pious or charitable nature, though restricted to such purposes as pointed out by Mr. Baillie.

f of the Muhammadan Law is in truth only an illustration of the doctrine of "*Wagf*" as propounded by Savigny.

stance of the doctrine that property may exist without a human and visible owner, well illustrated in this connection by reference to the definition of mischief in the offence charged in the present case.

ial to the offence of mischief that there should be "destruction of some property in some property or in the situation thereof as destroys or diminishes its value or affects it injuriously." (Section 425, Indian Penal Code.)

tion refers to immoveable as well as moveable property as is shown by the use of the word "property" without qualification, as well as by subsequent penal sections, notably regarding mischief to a building which is ordinarily used as a place of worship, or to an ancient mosque used for public worship and duly dedicated, so as to make, 604 to 606), can it be doubted that the mosque is property both according to Law and within the meaning of the Penal Code, though it be not possible for any human owner according to the Muhammadan Law?

to the Statute Law of this country we find the doctrine of juristical persons and the recognition of corporations. "The essential quality of all corporations," says the law, is this, that the subject of the right does not exist in the individual members, but even in all the members taken collectively, but in the ideal whole; a specially important result whereof is that by the change of an individual

member, indeed even of all the members, the essence and unity of a corporation is not affected." (Savigny *ubi supra*, page 181. Cf. also Boyer's remarks already cit. on a corporation).

Now I think that, when we find a thing corporeal and capable of being the subject of ownership, dedicated as "*dharma*" by a Hindu in this country, in accordance with Hindu usage, and in a manner not prohibited by any law of the country, we are perfectly justified in regarding that thing, be it moveable or immovable, by the aid of the doctrine of juristical persons, as coming within the definition of property for the purposes of the Penal Code, notwithstanding that it may after dedication have no visible owner. To do so, appears to me sound in principle and consonant with legal practice in this country in like matters. It certainly is not contrary to Hindu law, or to custom, so far as I know either, and it is in harmony with the sentiments both of the Hindus, and of the bulk of the community, who are disposed as experience shows, to regard and to treat things dedicated in "*dharma*," even animals like a liberated bull, as having something of a sanctity not inherent in the ordinary objects of property. These sentiments would no doubt receive a real shock from a decision that things so dedicated are not regarded by the law as property.

Therefore, however much it may be regretted that there is difference of opinion on the point, whether a bull liberated according to ancient Hindu usage and modern practice is property, it can hardly be regretted in this Court that we are able to hold that it is, and is as much protected by the Penal Code from the offence of mischief, as a bull which is the private property of an individual of any religion.

For the reasons stated, I think the convictions of the accused were right, and that the convictions and the sentences which were not unduly severe should be confirmed, and this application dismissed.

TREMLETT, J.—I have had the benefit of reading my learned colleague's judgment and I entirely concur with the conclusion therein arrived at, that an object by being devoted either in pursuance of Hindu custom, as in the present case or under Muhammadan Law, does not thereby cease to be property. The other part of the definition of mischief, which requires that the offender shall have done the act with intent to cause, or knowing that he will be likely to cause, wrongful loss or damage to the public or to any person, which person need not be the owner of the injured property, is certainly fulfilled in the present case, as the offenders must have known they would be causing wrongful loss or damage to all persons wanting to use the bull for breeding purposes by depriving them of the benefit Arjan Singh had provided for them; even if Arjan Singh did not, according to Hindu religious ideas, still keep up a certain interest in the bull, so that its destruction in this way was a distinct outrage and damage to him, as his subsequent language and conduct would seem to show. I therefore concur in rejecting this application, which stands dismissed.—(No. 34, *Punjab Record*, 1888.)

QUEEN-EMPRESS *versus* NIHAL.

This was an application for revision of an order of the Sessions Judge of Meerut, rejecting an appeal from an order of Mr. Gladwin, first-class Magistrate, by which the petitioner, Nihal, was convicted of an offence punishable by section 413 of the Penal Code, and sentenced to one year's rigorous imprisonment. It appeared that the complainant, Phundan, after the funeral of his brother, about eighteen months previously, had (in accordance with Hindu religious usage) branded a bull and set it at large in the village of Mohinipur, where he had some lands, as a pious act, for the benefit of the soul of the deceased. The Magistrate found that "although permitted to roam about freely on the complainant's land the animal was not entirely abandoned." It did not, however, appear in what respect the complainant retained any control or exercised any supervision over the animal. In August 1886 the bull was suddenly missed from the village, and about the end of the month it was found at the house of one Baldeo, at Gola in the Muzaffarnagar District. The result of inquiry showed that Baldeo had purchased the bull at market from the prisoner, Nihal, an inhabitant of Mohinipur. Subsequently Nihal was tried, convicted and sentenced for an offence punishable by section 411 of the Penal Code as above stated.

In the course of his judgment convicting the prisoner, the Magistrate made the following observation:—"The only point for consideration is, can the complainant be held to have retained a proprietary right in the bull, with the dishonest reception of which Nihal is charged; or, in other words, was the bull the complainant's 'property' in the sense in which the expression has been used in section 410 of the Penal Code? The definition given by Sheo Dial, one of the witnesses for the prosecution, of the rights and interests inherent in the person thus setting at liberty a bull sacred to the memory of a deceased, clearly shows that the act does not in itself involve a renunciation of ownership. The only modification that takes place is that he cannot dispose of it to his own advantage and appropriate it to his own use. From this it is obvious that the original owner's title is not completely annihilated. He is restricted to the exercise of such rights of ownership only as would not militate against the

special purpose for which the animal was set apart. This being so, the bull, in this case, must be held to have belonged to, and to have been stolen from the possession of, the complainant."

The Sessions Judge, on appeal, merely observed:—"The evidence in this case fully sustains the conviction. I cannot find the slightest ground for interference. The appeal is dismissed."

The petitioner was not represented by counsel or pleader.

The Government Pleader (Munshi Ram Prasad) for the Crown.

STRAIGHT, J.—The case, decided by me, of *Queen-Empress versus Bandhu* (1) was determined after very full and careful discussion and prolonged consideration. Munshi Kashi Prasad in that case was good enough to lay before me all the information that was obtainable in reference to the practice and procedure among the Hindus in the matter of dedication or setting loose these bulls upon the death of a relative, and from that information it was placed beyond doubt that, as understood among men of that religion, the person setting loose the animal by the act of so doing surrendered and abandoned all proprietary rights therein. My brother Brodhurst in the case of *Queen-Empress versus Jamuna* (2) obviously adopted this view, which I held to correctly represent the real condition of things. This being the case, I am not disposed in any shape to depart from my ruling referred to by me, or to modify the opinion I then expressed. This application for revision therefore must be allowed, upon the ground that there was no property capable of being made the subject of dishonest receipt or possession within the meaning of section 411 of the Indian Penal Code, and, acquitting the petitioner, I direct that he be released. *Conviction set aside.*—(1. L. R., 9 Allahabad, 348.)

QUEEN-EMPRESS *versus* IMAM ALI AND ANOTHER.

In this case two Muhammadans, Imam Ali and Amiruddin, were convicted by Mr. E. T. Lloyd, a Magistrate of Shahjahanpur, of an offence punishable under section 295 of the Penal Code (destroying an object held sacred by any class of persons), and were each sentenced to pay a fine of Rs. 25. It appeared that each of the accused had, on the day of the 30th August 1887, killed a cow in a place within a few yards of a public road, exposed to public view. The Magistrate found that there were two slaughter-houses in the town of Tilhar where the cows were killed; that it was customary for sacrifices of cows to be made inside the premises of Muhammadans; that the road near which the prisoners had killed the cows was frequented by Hindus, who on "seeing a cow being killed or dead by the side of the road must be much disgusted and distressed," but that cows had on previous occasions been sacrificed in the same place without the Hindus making any complaint. The prisoners applied for revision of the Magistrate's order to the Sessions Judge of Shahjahanpur, who referred the case to the High Court under section 438 of the Criminal Procedure Code by the following order:—

"The applicants, Amiruddin and Imam Ali, are Muhammadans resident in the town of Tilhar. On the day of Id, according to their religious customs, they sacrificed a cow within four or five yards of a public road. They have been convicted under section 295 of the Penal Code of having, I presume, 'destroyed an object' (to wit, a cow) 'held sacred' by the Hindus resident at Tilhar.

"Apart from the doubt I hold that the conviction can be sustained under this section, I think it is bad for the following reasons:—

"1. The Lower Court admits that there is strong reason to believe that cows have been sacrificed before in this very spot, and without the Hindus preferring any complaint, 'despairing of obtaining any redress.' The practice has therefore the sanction of previous custom or use.

"2. There are no Hindus dwelling immediately proximate to the place where the cow was sacrificed. The surrounding dwellings are those of Muhammadans, and though a Hindu might have had his feelings outraged or his religious prejudices hurt, had he passed that way, there is no reason to believe that such was the case.

"3. It is not established that the applicant ever meant to outrage any such feelings or prejudices. It is just possible, in the strained relations that now exist between Hindus and Muhammadans, that he stretched his privilege or custom to its extreme limit; but I cannot think that in sacrificing where previous sacrifices had taken place, he violated any rule of law that would subject him to a criminal prosecution.

"The executive have been given most ample powers, especially in municipalities like Tilhar, to make rules and regulations for matters like the present. It is to be regretted that certain places were not marked out and proclaimed as 'fit places for such sacrifices'; but I cannot think that under the present circumstances the applicant is shown to have infringed any rule, law or regulation whatever.

"The doubt of applicant's guilt that the Magistrate held should have gone rather to prompt an acquittal than to reduce the sentence. The record will be submitted to the High Court for orders that to it may seem fit."

The reference came before Straight and Brodhurst, JJ., who directed that it should be before a Full Bench.

(1) I. L. R., 8 All., 51.

(2) Weekly Notes, 1884, page 87.

to and before the advent of the British rule to oppress the method, cannot easily accommodate themselves to the new state of things ushered into existence by the British Government, under which religious toleration and individual liberty of the citizen is recognised to an extent which, according to some deep thinkers, was too much in advance of the stage of civilization which the country had attained. Quite recently in Criminal Revenue No. 629 of 1887 I had to deal with a somewhat similar matter. There the dispute was not between Hindus and Muhammadans, but between two sections of the Hindu community, that is between the *Paisnavas* and the *Sakavis* in connection with a religious procession of the latter to which the former objected. Similarly, quarrels arise between the two sections of the Muhammad community—the *Sunnis* and the *Shi'as*—in connection with the uttering of certain words which are most offensive to the religious feelings of the *Sunni* Muhammadans, and which words might in some circumstances fall under the purview of section 298 of the Indian Penal Code. I have no doubt that the Legislature in framing Chapter XV of the Indian Penal Code has made a great advance in the direction of the religious toleration which civilized methods of thoughts enjoin; and if difficulties arise in connection with such matters, they are due not to any defect of the law but to the inconsiderate and reckless behaviour of the various sections of a population which does not fully appreciate the blessings of religious toleration and individual liberty which the British rule by framing wise laws has accorded to the people of this country.

Having regard to the facts of this case as they appear from the judgment of the Magistrate and of the learned Sessions Judge, I cannot help feeling that it was imprudent and inconsiderate on the part of the accused to have slaughtered cows on the roadside and in a locality which would be visible to any Hindu passer-by; and I think I may say as a Muhammadan myself that it is difficult for me to conceive that the gentlemanly feelings of any even on the festival of the *Id-ul-Zuha*, permit the sacrifice of a cow in violation of considerations suggested by the religious feelings and prejudices of his Hindu fellow-subjects and neighbours with whom the Musalmans have for centuries associated on friendly terms as particular facts of this case: because, as the learned Chief Justice has pointed out, the question is a pure question of law, and in this view I am bound to hold that section 295 of the Indian Penal Code does not cover the case, and that the convictions were therefore wrong in law. I may, however, add that the circumstances of the case require that such matters should be dealt with by municipal regulations, for which ample provision is made by our law, and that the learned Government Pleader, Munshi Ram Prasad, who appeared on behalf of the Crown to support the convictions, has been unable to show me any section of the Indian Penal Code under which the facts proved in this case would constitute a criminal offence within the meaning of that Code (section 40). But when I say this I wish to guard myself against being understood to lay down any general rule as to whether acts done by Hindus or Muhammadans offensive to each other's religious feelings would not in certain circumstances constitute an offence under the Code.

I agree in the order proposed by the learned Chief Justice (2).

(I. L. R., 10 Allahabad, 150.)

Convictions set aside.

ROMESH CHUNDER SANNYAL (PETITIONER) versus HIRU MONDAL
AND ANOTHER (OPPOSITE PARTY).*

In this case the two accused, who were Muhammadans, were charged with an offence under section 295 of the Indian Penal Code. It appeared that at the *Adya Sradha* of the mother of Raja Jogendra Nath Rai of Nattore, which was performed in the year 1888, a bull was dedicated and set at large with the usual ceremonies. After the bull was so dedicated, it was tended by the *Rajbári* cowherd under the supervision of the *Rajbári* Sirdár, and he gave it a *sér* of rice a day and used to drive it away if he found it eating any one's crops. It appeared in the evidence taken in the case that the bull was used by the villagers for breeding purposes with the permission of the *Rajbári* people.

The accused were charged with having killed the bull. They were shown to have killed it at night in a straw field some distance from the village, no Hindu being present. It appeared that the reason for their killing it was to obtain its flesh and skin, the former being eaten and the latter sold.

The Deputy Magistrate discharged the accused under section 253 of the Code of Criminal Procedure for reasons given in his judgment, which is set out below in the judgment of Mr. Norris.

(1) *Queen-Empress versus Sheodin*, ante, page 117.

(2) The only other reported case in which it was necessary to consider the effect of section 295 of the Penal Code is *Hakim versus Empress* (Panjab Record, 1884, No. 27) in which it was held by Plowden and Burney, JJ., that the word "object" as used in section 295 of the Penal Code is not limited to inanimate objects, but is wide enough to include animate objects which are held sacred, as well as idols, relics or the like.

* Criminal Motion No. 89 of 1890 against the order passed by Babu Mohin Chander Ghosh, Deputy Magistrate of Nattore, dated the 13th of January 1890.

The petitioner, who was the complainant in the Court below, applied to the High Court for an order of discharge set aside and the case sent back for re-trial, on the ground that the Deputy Magistrate had erred in law in holding that section 295 of the Indian Penal Code had no application to the case.

The application was made by the *Advocate General* (Sir G. C. Paul), and a rule was made on the 10th inst. to show cause why the order of discharge should not be set aside and the case sent back for re-trial.

The rule came on to be heard on the 27th March.

The *Advocate General* (Sir G. C. Paul) and Babu *Pranath Nath* appeared for the petitioner and the *Deputy Legal Remembrancer* (Mr. Kilby) for the opposite party.

The *Deputy Legal Remembrancer* (showing cause).—The essence of the offence provided for in section 295 is the intention of insulting the religious feelings of any class of persons. In this case it is clear the accused had no such intention, as the bull was killed at night secretly, and their object was to eat the flesh and sell the hide. They were only charged under section 295, not with theft, criminal misappropriation, or mischief (sections 378, 403 and 425). It has often been held in this Court that these sections do not apply. *Brahmani bull is "nullius in propria"* [See *Dwarka Moochi versus Queen-Empress* (1), *Queen-Empress versus Bandhu* (2), *Queen-Empress versus Nihal* (3)]. It is clear from these cases that no charge of theft, criminal misappropriation or mischief would lie; and as it is equally clear from the evidence that there was no intention to insult the religious feelings of any one, section 295 does not apply. [NORRIS, J.—Is there not in the evidence something to show that the complainant claims a proprietary right in the bull? No, there is no claim of right set up. The bull was let loose to go where it chose, and abandoned by the owner. The dedication of and letting loose the bull, as shown by the Allahabad cases, necessarily involve the surrender and abandonment of all proprietary rights in it.]

A bull is not an "object" within the meaning of section 295. This was held by the Judges of the Allahabad Court in *Queen-Empress versus Imam Ali* (4). The word "object" used in the section means "an inanimate object," such as an idol.

Advocate General.—This case is one of considerable importance, and although the *Queen-Empress versus Imam Ali* (4) is no doubt against me, the principle therein laid down has not been followed everywhere, and the word "object" in section 295 has not been given the restricted meaning put on it by the Allahabad Full Bench. In the case of *Imdad Katnu versus Empress* (Panjab Record, 1884, No. 27), referred to in the note to *Imdad Katnu versus Empress* (5), the word was held not to be limited to inanimate objects, but is wide enough to include animate objects which are held sacred. Chapter XV of the Penal Code deals with offences relating to religion, and section 295 is of a most comprehensive character. There would seem to be no real reason why the destruction of a picture of a monkey which is worshipped should be held to be within the section, while the destruction of a monkey itself, which is equally worshipped, should be excluded. The interpretation put on the section by Sir John Edge in the case of *Queen-Empress versus Imam Ali* (4) is erroneous, and he has misapplied the doctrine of *ejusdem generis* (see Maxwell on Statutes, 2nd Ed., page 540). Then the word "destroy" in section 295 undoubtedly includes "to kill." There is also a decision of the Madras Court which is opposed to that of the Allahabad Court—[*Queen-Empress versus Nalla* (6)]. So that on the decided cases we have the Madras and Panjab Courts deciding one way, as against the Allahabad Court deciding the other. Then if we look to see what mischief this chapter of the Code was intended to provide against, we find that it was certainly not intended to restrict section 295 to inanimate objects. In the note to the Penal Code prepared by the Indian Commissioners published in the year 1837, Lord Macaulay says in note J to Chapter XV (see pages 71 and 49)—[NORRIS, J.—I don't think you are entitled to refer to that.] In *In re New versus Thorne* (7) it was held that this could be done, and the Lord Chancellor there referred to the Commissioners' report made in the year 1854, and to the speech of the Member in the House who introduced the Bill in 1860. [NORRIS, J.—I don't understand that judgment to lay down that you can refer to speeches of Members of Parliament to show what the definition of a word in a section is.] The Lord Chancellor states that he does it "for the purpose of gaining assistance in interpreting the words of the law, not that one will be warranted in giving to these words any different meaning from that which is consistent with their plain and ordinary signification, but at the same time it may somewhat assist in interpreting these words and in ascertaining the object to which they were directed," and it is for that purpose I desire to refer to Lord Macaulay's note. [See also *Hawkins versus Gathercole* (8); Maxwell on Statutes, 2nd Ed., page 30 et seq., and *The Queen versus The Bishop of Oxford* (9).] [NORRIS, J.—My brother Macpherson thinks you are entitled to read it, and although I am of a contrary opinion.]

(1) Criminal Motion No. 86 of 1884, unreported, decided by McDonnell and Field, JJ.

(2) I. L. R., 8 All., 51.

(3) I. L. R., 9 All., 343.

(4) I. L. R., 10 All., 150.

(5) I. L. R., 10 All., 159.

(6) I. L. R., 11 Mad., 135.

(7) 31 L. J. Bkcy., 87.

(8) 6 Da J. M. and G. 1, see page 21.

(9) L. R., 4 Q. B. D., 535, page 549.

think that when one Judge of a division bench thinks it is enough.] In that note Lord Macaulay expressly refers to the slaughter of a cow in a sacred place at Benares as being a very serious matter and likely to lead to tumult, outrage and even insurrection, and treats that as one of the offences for which the Commissioners had provided in this chapter. There can be no doubt that a Brahman bull is looked on as a very sacred object by Hindus (see Manu's Institutes, Chapter V, sloka 242; Colebrooke's Digest, Volume II, page 370), and therefore the slaughter of such an animal is clearly an insult to Hindu religion. I submit therefore that the Allahabad decision is erroneous, and that the case does come within section 295, which should not be restricted to damaging or destroying inanimate objects only.

In addition to this the evidence in this case shows that the parties who set the bull at large still retained their property in the animal, so that it was capable of being stolen, and appropriated or the subject of mischief, and was not *feræ naturæ*.

The judgment of the Court (NORRIS and MACPHERSON, JJ.) was delivered on the 5th April, and was as follows:—

NORRIS, J.—The facts of this case are as follows:—

At the ceremony of the *Ājya Śradha* of the mother of Rāja Jogendra Nath Rai of Nattore, which was performed about twenty months ago, a bull was dedicated and set at large after being branded on the hind part. After the dedication and setting at large the Rājbari cowherd tended the bull under the supervision of the Rājbari Sirdār; he gave it a *ser* of rice a day and used to drive it away if he found it eating any one's crops. The bull was used by the villagers for breeding purposes, and there is some evidence to show that it was not so used without permission having been obtained from the Rājbari. Some eighteen months after the bull had been so dedicated and set at liberty, Hiru Mondal and Modhu Mondal, both Muhammadans, with others, killed it. The killing took place at night in a straw field some distance from the village, and was not witnessed by any Hindu.

Information of the slaughter of the bull reaching the Rājbari, a complaint was made to the Deputy Magistrate, and Hiru and Modhu were sent up for trial under section 295, Indian Penal Code. The Deputy Magistrate, after taking the depositions of two witnesses, discharged the accused under section 253, Code of Criminal Procedure.

The Deputy Magistrate's judgment, so far as it is material to set it out, is as follows: "It appears that the bull was killed by some Muhammadans, including the two accused, for the sake of the meat. It has been held that the word 'object' in section 295 of the Penal Code does not include animate objects [*Queen-Empress versus Imam Ali* (1)] hence section 295, Indian Penal Code, does not apply to the present case. Nor do I think that the case comes under the definition of 'mischief.' To constitute the offence of mischief the act must be shown to have caused destruction of some property, or such a change in the property as the situation of it, as destroys or diminishes its value or utility, or affects it injuriously. Now it has been held that a bull so dedicated and set at large is *nullius in terra*, and it is therefore in my opinion incapable of being made the subject of mischief. For the same reason it is not 'property' which is capable of being made the subject of criminal misappropriation or larceny. [*Queen-Empress versus Bandhu* (2); *Queen-Empress versus Nihal* (3).] No doubt the killing of such a bull is simply outrageous to the religious feeling of a Hindu, and specially of one who dedicated it, but the rulings cited above leave me no option but to discharge the accused."

On the motion of the Advocate General we granted a rule calling upon the two discharged persons to show cause why the order of discharge should not be set aside and the case sent back for re-trial.

The rule was argued before us a few days ago; Mr. Kilby showing cause, and the Advocate General supporting it.

Mr. Kilby contended that the evidence conclusively negatived any "intention" on the part of the discharged persons "to insult the religion of any class of persons." The bull, he pointed out, was killed secretly at night at a distance from the village in the presence of none but Muhammadans for the sake of the meat and for the value of the skin, which the evidence showed was sold for Rs. 2.

The learned Counsel further contended on the authority of *Queen-Empress versus Imam Ali* (1) that the bull was not an "object" within the meaning of section 295, Indian Penal Code; and he relied upon the two other cases decided by the Allahabad High Court referred to by the Deputy Magistrate, and upon an unreported case decided by McDonnell and Field, JJ. [*Dwarka Mochi versus Queen-Empress* (4)], as establishing that the bull was not "moveable property" within the meaning of sections 378 and 403, Indian Penal Code, nor "property" within the meaning of section 425, Indian Penal Code; and therefore he contended the discharged persons could not properly have been convicted of an offence under either of these sections. The Advocate General contended that the case of *Queen-Empress versus Imam Ali* (1) was wrongly decided; that Edge, C.J., had misapprehended the rule of *eiusdem generis*, and had misapplied it; that the evidence showed that those who had dedicated the bull and set it at large still

(1) I. L. R., 10 All., 150.

(2) I. L. R., 8 All., 51.

(3) I. L. R., 9 All., 343.

(4) Criminal motion No. 86 of 1894 unreported.

judgments of Edge, C.J.,
versus *Imam Ali* (1).

ture meant something, "*eiusdem generis*"
ture which was the subject of litigation in
Imam Ali (2); something that is capable of
ordinarily used, or of "damage" or of
make; the killing of a dedicated bull an
ave used language clearly expressing that

at Edge, C.J., has either misapprehended or
straining the section, nor do I think that the
port the contention. The Advocate General, in
ation of the Legislature, referred to the notes to the
Law Commissioners and submitted by them to the
Council. In note J, being the note on "the chapter of offences",
the Commissioners say of section 275 of the Penal Code, which
of the present Code:—

ed a punishment of great severity" (the proposed punishment was
for a term which might extend to seven years) "for the intentional
g of places of worship, or of objects held sacred by any class of persons.
The whole Code is so likely to lead to tumult, to sanguinary outrage, and even
arrestion. The slaughter of a cow in a sacred place at Benares in 1809 caused
ilt, attended with considerable loss of life. The pollution of a mosque at Banga-
lore was attended with consequences still more lamentable and alarming. We have therefore
empowered the Courts in cases of this description to pass a very severe sentence on the
offender. The Advocate General contended that this passage showed that the Commissioners
intended that the word "object" should include a cow.

I am unable to place this construction on the passage. What caused "the violent tur-
at Benares in 1809" was not the slaughter of the cow, but its slaughter in a sacred
place. The naming of two instances, one the defilement or pollution of a sacred place, the other
the pollution of a place of worship, and then the use of the words "cases of this description,"
far from helping the learned Advocate General's contention, seems to me to militate against it.

With reference to the reading of this note I may observe that when the A.
General proposed to refer to it, I was of opinion that he was not entitled to do so; N.
son, J., however, thought that he was so entitled, and so the note was read. I wish
that upon consideration I think the Advocate General was entitled to read the note
seems to stand in much the same position as the Report of the Select Committee
Evidence Act, which was referred to by the Full Bench in *Queen-Empress versus*
Chunder Das (3).

In support of the third and fourth conclusions at which I have arrived, I rely
on *Queen-Empress versus Bandhu* (4). That was a case
in which the learned Judge said that the bull was the bull in this case. The learned Judge said
that the bull was not the property of any person, but the origin
and had given it its freedom
as incapable of larceny.

material of the animal was turned loose after being essentially accepted as so dedicated on being allowed to be at large free from all control of the temple."

I fail to see anything in this judgment correctness of the law laid down by Straught not think that the fact that the bull, in this cowherd and is daily fed by him by the direction of "total surrender" by those who set him:

* A bull thus dedicated and set at liberty is a religious and meritorious act on the part of the sacred in the eyes of the person who performed it. he regards it as a moral duty to feed it after it has been set at liberty.

Even if it be true that the villagers do not use the bull asking permission of the Rājbari people, I think this is only part, and ought not to be construed as evidence of any property in those who set him at large.

In support of the fifth conclusion at which I have arrived, I rely upon the argument which I have summarised above, and to which I have nothing to add. I am therefore of opinion that the rule should be discharged.

MACPHERSON, J.—I agree and would discharge the rule.

(I. L. R., 17 Calcutta, 852.)

(1) I. L. R., 9 All., 348.

(2) I. L. R., 11 Mad., 145.

(3) I. L. R., 8 All., 51.

Rule discharged.

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[Despatch Abstract.]

Requesting the Honorable the Judges of the High Court and the Inspector General of Police to their opinions on the proposed legislation for the protection of sacred and dedicated bulls.