

**(1903) 06 CAL CK 0004****Calcutta High Court****Case No:** Rev. No. 448 of 1903

In Re. Miras Chowkidar

APPELLANT

Vs

RESPONDENT

**Date of Decision:** June 22, 1903**Judgement**

1. In this case a rule was issued calling upon the Extra Assistant Commissioner to show cause why the conviction and sentence should not be set aside. The applicant has been convicted of the offence of mischief under sec. 426, I.P.C., and sentenced to pay a fine of Rs. 15 or in default to undergo a rigorous imprisonment for one month and also to pay the costs for court-fee stamps of Rs. 3/4. The facts found by the Extra Assistant Commissioner are that the applicant went and cut some paddy which the accused claims to be his and which the Extra Assistant Commissioner found to be the complainant's. Taking these facts as found it appears to us that the accused could not be convicted of mischief, because he did not cause the deterioration of any property or any such change in any property or in the situation thereof as diminished its value or utility. Of course if the paddy had been unripe and not fit to be out, he might have been convicted of mischief; but it is not found in this case that the paddy was not in a fit state to be cut. The applicant cannot therefore be convicted of mischief. He might have been convicted of theft, but he has not as a matter of fact been found guilty of that offence. In these circumstances the conviction of the accused cannot stand. We accordingly set aside the conviction and sentence in this case and direct that the fine, if paid, be refunded and the costs Rs. 3/4.