

REG. V. BHALA' CHULA'.

1863.

July 29.

Causing Hurt—Grave and Sudden Provocation—Ind. Pen. Code, Secs. 324 and 334.

Causing hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under Sec. 334, and not under Sec. 324, of the Indian Penal Code.

THIS prisoner was charged with causing hurt to the prosecutor on grave and sudden provocation given by the prosecutor to him. The Subordinate Magistrate at Nariad, in the Khedá District, tried the case, and sentenced the prisoner to one month's rigorous imprisonment, under Sec. 334 of the Indian Penal Code.

The Magistrate of Khedá, on a review of the case, was of opinion that the prisoner should have been charged under Sec. 324 of the Indian Penal Code, and accordingly forwarded the record and proceedings for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure—

“ Upon the ground that the person to whom the prisoner is charged with causing grievous hurt on grave and sudden provocation, is not ‘other’ than the person who gave him provocation.”

The decision of the High Court, consisting of SAUSSE, C. J., FORBES and TUCKER, JJ., was as follows:—

The Court considers that the Subordinate Magistrate has correctly construed the 334th section in applying it to the principal party who caused the provocation, and thereupon received the hurt which was the subject of complaint.

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July 29.

Cotton—False Packing—Fraudulently Offering for Sale—Reg. III. of 1829, Sec. 1., cl. 1—Translation of Findings to be recorded.

Cotton having been sold subject to examination by an Inspector, the mere fact of cotton of two different qualities being found in one of the bales is not sufficient to support a charge under Sec. 1., cl. 1, of Reg. III. of 1829.*

Magistrates are bound to record translations of their findings in criminal cases.

THE accused in this case was a cotton merchant of Broach in Gujarát, and had contracted to supply a certain quantity of cotton to one Lakshmidás, one of the terms of the contract being that, prior to delivery, the cotton tendered

* Reg. III. of 1829 is repealed by Act IX. of 1863 (Bombay).

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should be examined and passed by an Inspector. When the cotton was tendered by the accused, it was examined by the Inspector of Cotton at Broach, who found that one of the bales contained good and bad descriptions of cotton, whereupon he detained it, and lodged the information which led to the institution of criminal proceedings against the accused.

The charge, as framed by the Deputy Magistrate of Broach, who tried the case, was that the accused having sold some cotton to one Lakshmidás, the bales tendered in fulfilment of the contract were inspected by an Inspector, when it was discovered that one bale contained two descriptions of cotton, one of bad and the other of good quality, and that the accused had thus committed an offence under Sec. 1, cl. 1, Reg. III. of 1829, punishable under Sec. 2 of the same Regulation, and within the cognisance of the said Magistrate.

In the course of the trial a jury was appointed to examine the cotton, and the conclusion they came to was, that the bale in question contained cotton of two descriptions, which were both capable of sale, though at different prices, according to quality.

The accused in defence urged that in the year in question two kinds of cotton had been produced, and that the bales had been packed by his employés during his illness.

The Deputy Magistrate, Vináyak Dinkar, found, from the evidence in the case and the jury's report, that the accused must have had some evil motive in packing cotton of two kinds in one bale, and accordingly convicted him of the offence charged, and sentenced him to twenty days' simple imprisonment, and to pay a fine of Rs. 50, which if not paid was to be realised by distress and sale of the accused's property. The cotton was ordered to be destroyed.

The record and proceedings in the case having been called for on the Broach Magistrate's Monthly Return, the High Court (present SAUSSE, C. J., FORBES and TUCKER, JJ.) passed the following order thereon :—

The clause of Reg. III. of 1829 under which the prisoner was charged is as follows :—“Any person fraudulently mixing good and bad descriptions of cotton in one bale, termed ‘false packing,’ and fraudulently offering for sale or selling cotton so packed, as good cotton, shall be deemed to be guilty of a penal offence, and punishable,” &c.

Now, this cotton having been sold subject to examination by an Inspector, the Court does not consider that the evidence would support an allegation of fraud even if it had been made in the charge, which it has not. The sentence is accordingly annulled. Let the fine and the cotton be returned, and let the Magistrate also be informed that he is bound to record a translation of his finding in criminal cases.

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Conviction annulled.

Special Appeal No. 131 of 1863.

BHUKAN BHA'IBA'VA' *Appellant.*
BHA'IJI PRA'G *Respondent.*

July 30.

Hindú Law—Sale of Immoveable Property—Possession—Sheriff's Sale.

Possession is not essentially necessary by Hindú Law to give validity to a transfer by sale of immoveable property.

A purchaser at a Sheriff's sale takes only such right, title, and interest as the judgment-debtor may possess in the property sold.

BHA'IJI, the plaintiff below, sued Bhukan and three others in the Court of the Munsif of Broach, in the Súrat District, for possession of certain lands purchased by him at a Sheriff's sale promoted by the judgment creditor of one Jorá.

Bhukan, for the defence, set up a title as proprietor to the land claimed, by virtue of a deed of sale executed in his favour by the heir of the said Jorá prior to the Sheriff's sale relied on by Bháiji. Two of the remaining defendants put in no appearance, and the third did not join in the two last stages of the suit.

The case was heard by the Munsif of Broach (Jamiyat-rám), who awarded the land as claimed to Bháiji, on the ground that Bhukan's deed of sale was invalid, under the ruling in Special Appeal No. 3667, it not having been followed by possession; and, on appeal, the Senior Assistant Judge of Broach (W. Sandwith) confirmed this decision, on the same grounds.

Bhukan thereupon preferred a Special Appeal to the High Court, on the ground, among others, that possession was not