

1863.

*In re*  
VA'MANAJI  
KONERA'.

was also practising in the same court since A. D. 1850; that he would be a loser in many ways by his transfer to Madhen; and that, as both of them had done their duties to the best of their ability, this order for his transfer should be annulled. The District Judge of Solápur, being called upon to report upon the petition, stated that the petitioner and his son were both employed as *vakils* in the Munsif's Court at Bársi, which was "objectionable, and contrary to allowed practice;" that he had, therefore, directed the Munsif of Bársi to send one of them to the Court of the Munsif of Madhen; and that he had no objection, if it suited the petitioner better, to allow him (the petitioner) to remain at Bársi, his son going to Madhen in his stead.

*Pándurang Balibhadra* (with him *Múdhavráv Krishna Khárkar*) for the applicant.

PER CURIAM (WESTROPP and TUCKER, JJ.) :—The Court, after consultation with, and with the concurrence of, Forbes and Erskine, JJ., have come to the conclusion that a District Judge is not empowered to remove a *vakil* against his will from a court to which he has once been allotted, except under Sec. 56 of Reg. II. of 1827, for a criminal offence, misbehaviour, or neglect of duty; the Judge's order is, therefore, annulled.

### Crown Cases.

Jan. 8.

REG. v. KHODA' JA'GTA' *et al.*

*Vessel—Plying Unsafe Vessel—Charge—Ind. Pen. Code, Secs. 282 and 336.*

Boatmen who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under Sec. 282, and not under Sec. 336, of the Ind. Pen. Code.

**K**HODA' JA'GTA' and two others, sailors by profession, were tried by Kúvarji Kávasji, F. P. Magistrate of Khedá, under Sec. 336 of the Indian Penal Code, on the charge of "doing an act which endangered the lives or the personal safety of others, in having plied on the Máhi river a boat which was out of order and had also a crack, taking therein about one hundred passengers, and with the assistance of only two men, viz., the prisoners Nos. 1 and 2, the prisoner No. 3 being the man to whom the fare of plying the ferry

was given, the consequence of which was that the boat was upset and about seven persons were drowned."

The accused were convicted, and sentenced each to pay a fine of Rs. 25, commutable to one month's imprisonment.

The monthly Return of Criminal Cases for September 1863 of the Magistrate of Khedá being received, the proceedings in this case were sent for, and the following resolution was passed by FORBES and COUCH, JJ. :—

The Court annuls the conviction and sentence under Sec. 336 of the Penal Code, which was not properly applicable to the offence committed by the accused, and directs that they be charged and tried under Sec. 282 of the Penal Code.

*Conviction and sentence annulled.*

[ANONYMOUS.]

*Recognisance Bond—Penalty—Mitigation of Penalty by Magistrate.*

Jan. 11.

A Magistrate has not power to mitigate the penalty entered in a recognisance bond. Such bond must be enforced to its full amount, unless Government forego a portion of the penalty.

THIS was a reference by the Acting Magistrate of Dhárwár. The Second Class Subordinate Magistrate of Hubli had directed the payment of only a part of the penalty mentioned in a recognisance bond, which had become forfeited, to be enforced. The Acting Magistrate requested the instructions of the Court as to whether or not the full penalty to which parties bind themselves can be reduced at discretion, in case of forfeitures, by any Magistrate within the extent of his jurisdiction.

The Court (present FORBES and COUCH, JJ.) passed the following resolution :—The order mitigating the penalty is annulled, as the Second Class Subordinate Magistrate had not the authority to make it.

The Magistrate is to be informed that he had not the above power, and that the recognisances, therefore, must be enforced to the full amount, unless Government forego any portion of the penalties, a course which will be recommended to Government by this Court, in consequence of the Second Class Subordinate Magistrate having led the accused to suppose that the full penalties would not be enforced.

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KHODA JAGTA  
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