

1864  
Jan. 8

## REG. V. DOSSA' SERA'.

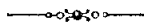
*Jurisdiction—Custody—Escape from Custody.*

A convict escaping from custody must be tried for that offence in the district within which he escaped; a Magistrate of another district has not jurisdiction to try him for the offence.

**D**OSSA' SERA', a Mussalman labourer, was tried by Kávarji Kávasji, F. P. Magistrate of Khedá, on the charge of having escaped from custody, in having, while undergoing two and a half years' imprisonment for thefts and escape from custody, effected his escape from confinement in North Cánará. He pleaded guilty, and was sentenced, under Sec. 224 of the Indian Penal Code, to suffer one year's rigorous imprisonment, to commence after the expiration of the imprisonment to which he had been already sentenced. The proceedings coming before the Court (present COCH, J.J.) for review, the following order was passed:—

The Court annuls the conviction and sentence, as the Magistrate of the Khedá District had no jurisdiction to try the offence within his district.

*Conviction and sentence annulled.*



Jan. 8

## REG. V. HARI bin VITHOJI.

*Jurisdiction—Session Judge—Sentence by Session Judge on Appeal.*

A Session Judge cannot, on appeal from a Magistrate's conviction, inflict a term of imprisonment in commutation of a fine longer than which the Magistrate himself could have inflicted.

**I**N this case Hari bin Vitthoji, was tried by A. W. Hughes, F. P. Magistrate at Ratnágiri, on a charge of theft, under Sec. 379 of the Indian Penal Code, by dishonestly cutting down and taking away a jack-tree out of the possession of, and without the consent of, one Ganesh Rámchandra. He was found guilty, and sentenced, under Sec. 379 of the Indian Penal Code, to undergo fifteen months' rigorous imprisonment. In appeal, the Acting Session Judge of the Konkan, C. Conne, recorded the following minute:—

“The Court affirms the conviction, but considers the sen-

tence excessive, and inappropriate to the nature of the offence committed.

“ The sentence is altered as follows:—The accused is to pay a fine of Rs. 50, or to undergo nine months’ rigorous imprisonment.

“ Of the fine, if paid, Rs. 10 are to be given to the complainant, Ganesh Rámchandra.”

The case coming before the Court (present FORBES and COUCH, JJ.) for review, the Court, considering that the Session Judge, on appeal from a Magistrate’s decision, could not inflict a term of imprisonment in commutation of a fine which the Magistrate himself could not have inflicted, passed the following resolution:—

Imprisonment in commutation of fine is reduced to six months, that being the maximum term which the Magistrate could have awarded.

*Conviction affirmed and sentence altered.*

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REG. V. DAYA’BHA’I PARJA’RA’M.

Jan. 15.

*Railway—Passenger by Railway—Cheating—Act XVIII. of 1854.*

A passenger by railway travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under Sec. 417 of the Indian Penal Code, but is indictable under the Railway Act, XVIII. of 1854.

THE Magistrate of Khedá submitted the record and papers in this case. The prisoner had been charged with cheating by travelling in a railway carriage of a higher class than that for which he had paid his fare, and sentenced, under Sec. 417 of the Indian Penal Code, to pay a fine of Rs. 5, commutable to seven days’ simple imprisonment, by Práñshankar Raghunáthraí, Subordinate Magistrate, first Class, at Memdábád.

The Court (COUCH and TUCKER, JJ.) passed the following resolution:—

Conviction and sentence annulled, as the offence does not fall within the provisions of Sec. 417 of the Indian Penal Code.

The Court leaves it to the discretion of the Magistrate to proceed according to law.

*Conviction and sentence reversed.*

1864.

REG.

v.

HARI VITHOJI.