

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, Gañesh 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 Memdábad.

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.