

Crown Cases.

1864.
Jan. 11.

REG. V. YELLA'PPA' bin MUDAKA'PPA'.

*Frivolous Prosecutions—Fines—Compensation—Crim. Proc. Code,
Sec. 270.*

Magistrates have no power to award fines to accused as compensation for frivolous and vexatious prosecutions, except in cases in which a summons on complaint shall ordinarily issue.

L REID, the Acting Magistrate of Dhárwár, wrote, under No. 1256 of 1863, dated the 16th of December 1863, to the Court's Registrar, as follows:—

“ Under the provision of Sec. 434 of the Code of Criminal Procedure, I have the honour to forward for the orders of the Court a case in which the Mámlatdár of the Rohan Táluká, holding the authority of 2nd Class Subordinate Magistrate, has, in a case of theft tried by him, fined the complainant Rs. 10, and ordered it to be paid to the accused, under Sec. 270 of the Procedure Code, the complaint having turned out to be frivolous and vexatious.

“ As such fines are awardable only in cases triable by the Magistrate, in which a summons on complaint shall ordinarily issue, the order passed by the Mámlatdár in this case is illegal.”

PER CURIAM (FORBES and COUCH, JJ.):—The Court reverses the order of the Subordinate Magistrate, and directs that the fine, if levied, be restored.

Order reversed.

Jan. 27.

REG. V. DA'MQDCHAR DA'LJI.

False Weights—Ind. Pen. Code, Sec. 266—Fraudulent Intention

The mere possession of weights in excess of the authorised standard will not support a conviction under Sec. 266 of the Indian Penal Code; a fraudulent intent must be charged and proved.

THIS case came before the Court on the return of the Magistrate of Khedá. It appeared from the record and

proceedings that the person was convicted of the offence of being in possession of false weights, the same being in excess of the authorised weights, and sentenced, on the 3rd of November 1863, by the Deputy Collector of Khedá, to pay a fine of Rs. 5, commutable to four days' simple imprisonment.

1864.

REG.

v.

DA'MODHAR

DA'LJI.

PER CURIAM (COUCH and TUCKER, JJ.) :—The Court reverses the conviction and sentence, and orders the fine, if levied, to be restored, as no fraudulent intention was either charged or proved.

Conviction reversed.

Special Appeal No. 609 of 1863.

DA'MODHAR VITHAL KHARE *Appellant.*

March 4.

DA'MODHAR HARI SOMAN *Respondent.*

Hindú Law—Manager of Undivided Hindú Family.

The manager of an undivided Hindú family, if acting in his individual capacity, can sell his own share of the family property only.

THIS was a Special Appeal against the decision of the Acting Senior Assistant Judge at Ratnágiri, A. T. Crawford. It appeared that Dúmodhar Khare preferred his plaint, on the 14th of November 1859, in the Court of the Munsif of Harnai, stating that the defendant had obstructed his enjoyment of a certain *thikán* purchased by him of Mahádáji Soman, a brother of the defendant, by preventing him from receiving the rent thereof. The defendant replied that the sale under which the plaintiff claimed was fictitious, and that he was in possession.

The Munsif threw out the claim, on the ground that Mahádáji (the seller) was not in possession, and was, moreover, incompetent to sell the said *thikán* without the consent of his two brothers, to whose share it had fallen on a division of the family property; that the plaintiff's averments and occupation were not proved; and that the deed was of a very doubtful character. On appeal by the plaintiff, the acting Senior Assistant Judge found that the *thikán* was bought by