

such penalties to commence the one after the expiration of 1864.
the other. REG.

Tucker, J., having noted at foot of the abstract submitted to the High Court (*a*) that the Magistrate had gone beyond the powers vested in him by Sec. 22 of the Code of Criminal Procedure in passing a sentence of imprisonment exceeding the term of two years, on conviction of what was substantially a single offence, the record was called for and reviewed this day by *COUCH* and *FORBES, JJ.*

PER CURIAM :—The Court alters the sentence to one of two years' rigorous imprisonment on both heads of the charge together, the offence being substantially a single one.

The Magistrate, as the prisoner had already been several times convicted of similar offences, should have committed him for trial to the Court of Session, which could then have awarded an adequate punishment.

Sentence altered.

REG. V. JAFFI'R NA'IK and another.

Dec. 7.

Criminal Breach of Trust—Denial of Mortgage—Refusal to give up Land
—*Ind. Pen. Code, Sec. 405.*

A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a Criminal Breach of Trust, under Sec. 405 of the Indian Penal Code.

THE prisoners were convicted of criminal breach of trust by *M. J. M. Shaw Stewart*, Magistrate of Cánará; and sentenced each to pay a fine of Rs. 51, commutable to six months' rigorous imprisonment.

The record was called for, and reviewed this day by *COUCH* and *NEWTON, JJ.*

COUCH, J.—This was a refusal by the prisoners to give up land alleged to have been mortgaged to them, which they denied; the Magistrate treating it as a misappropriation of the documents of title amounting to a criminal breach of

(*a*) Under Sec. 443 of the Code of Criminal Procedure.

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trust under Sec. 405 of the Penal Code. The facts as found do not constitute a criminal breach of trust; and the matter in dispute is but of the ordinary description which forms the subject of a civil suit.

PER CURIAM :—The Court reverses the conviction and sentence, and orders the fine if paid to be returned.



1865.
Jan. 25.

REG. v. POSHU' bin DHAMBA'JI PA'TI'L.

Escape from lawful Custody—Obstructing a Public Servant—Ind. Pen. Code, Secs. 186 and 224.

Escaping from lawful custody is not obstructing a public servant in the discharge of his public functions, within the meaning of Sec. 186 of the Penal Code.

THE prisoner was convicted by an Honorary First Class Subordinate Magistrate at Tháná or having, under Sec. 186 of the Penal Code, voluntarily obstructed a public servant in the discharge of his public functions, in running away from the custody of a police poon; and sentenced to pay a fine of Rs. 15, or in default to suffer rigorous imprisonment for twenty days.

The record was called for and reviewed this day by COUCH, NEWTON, and WARDEN, JJ.

PER CURIAM :—The Court reverses the conviction and sentence, and orders the fine if paid to be restored; as the act proved does not constitute the offence charged.

Conviction and Sentence reversed.

NOTE.—The charge should have been laid, under Sec. 224, for having escaped or attempted to escape from lawful custody.—ED.