

1866.
July 11.
Referred Case.

“The denomination of ‘Zillah Magistrate’ appears from Sec. I. and Sec. III. Cl. 1 of Reg. XII. of 1827 to apply only to the ‘Collector of each Zillah.’ It is true that those sections have been partially repealed [so far as they provide for the punishment of offences] by Act XVII. of 1862; but that does not, I think, affect the meaning to be put on the term ‘Magistrate of the Zillah’ in Sec. 16 of the Bombay Ferries’ Act.”

The case came on for hearing this day before COUCH, C.J., NEWTON and WARDEN, JJ.

PER CURIAM:—The Court annuls the conviction and sentence, and order the fine to be returned if paid: and the Magistrate of the district has authority to entertain any complaint which may be preferred to him against the accused.

Conviction and sentence annulled.

REG. v. JÍVAN USMA'N and others.

Bombay Cotton Frauds' Act, No. IX. of 1863—Jurisdiction.

Convictions under Sec. 2 of the Act, and sentences of one month's rigorous imprisonment, as well as an order for confiscation of cotton, set aside for want of evidence to show that the Deputy Magistrate who tried the case had jurisdiction in the matter over the persons convicted; and for want of evidence of fraud.

As to whether, notwithstanding Sec. 411 of the Criminal Procedure Code, a regular appeal lies in such case—*Quare.*

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THE record and proceedings in this case had been called for, under Sec. 404 of the Code of Criminal Procedure.

Purushottam Nathu, Dharamdás Girdhar and Jívan Usmán were charged before Kuvarjí Kávasjí, Deputy Magistrate of Broach, with “fraudulently mixing cotton of different varieties in one bale,” an offence punishable under Sec. 2 of Bombay Act, No. IX. of 1863.

Nine bales of mixed cotton were found in the possession of accused No. 1 at Broach; and, as he stated, had been sent to him for the purpose of being sold by accused Nos. 2

and 3 (who resided within the territories of H. H. the Gáikavád).

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The Deputy Magistrate recorded the following finding:—

“It is proved from the evidence of witness No. 2, and of some of the witnesses for the defence, that the cotton in the bales in question is of two different varieties. It is clear, from what the accused Nos. 2 and 3 state, that they did not care as to whether the cotton was of one description or of different varieties; since it was purchased by them, in very small quantities, at different times, and from different persons.

“Under these circumstances the Court finds that Dharamdás Girdhar and Jívan Usmán are guilty of fraudulently mixing cotton of different varieties in nine bales of cotton, and that they have thereby committed an offence punishable under Act IX. of 1863, Sec. 2. And the Court directs that the said Dharamdás Girdhar and Jívan Usmán be rigorously imprisoned each for a period of one month. The nine bales of cotton in question are ordered to be confiscated. Purushottam Nathu is acquitted and discharged.”

From this conviction an appeal was preferred to the Session Judge at Súrat, who dismissed it for want of jurisdiction, under Sec. 411. (a) of the Code of Criminal Procedure.

The case came on for final disposal this day before COUCH, C.J., NEWTON and WARDEN, JJ.

Shántarámi Náráyan for the petitioner:—There is no evidence of fraudulent mixing; and if the cotton was mixed by the petitioners, the presumption is that the mixing took place within the territories of the Gáikavád, in which case the Deputy Magistrate could have no jurisdiction under the Act.

There was also error in law in the decision of the Court of Session; inasmuch as an appeal lay to it from the sentence of the Deputy Magistrate, which was not merely one “of

(a) Sec. 411.—“In all cases in which a Court of Session or the Magistrate of a District or other officer exercising the powers of a Magistrate shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty rupees, no appeal shall be allowed.”

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imprisonment not exceeding one month ;” but, also, one of confiscation of property.

[COUCH, C.J. :—It must be shown that the confiscation was a part of the sentence. It follows the sentence under Sec. 2, but does not accompany it. Under Sec. 3, fraudulently selling or offering for sale adulterated or deteriorated cotton is an offence punishable with imprisonment, or fine, or both ; and in that case, also, the cotton is confiscated, though it may not be the property of the person who sells or offers it for sale.]

Dhirajlál Mathurádás, in support of the conviction, referred to the examinations of the accused before the Magistrate.

COUCH, C.J. :—The conviction under Sec. 2 of the Cotton Frauds’ Act cannot be supported. There is no evidence that the petitioners committed any offence within the jurisdiction of the Deputy Magistrate ; or, in fact, that they fraudulently or dishonestly mixed bad with good cotton.

It is not necessary for us to determine the question of the right of appeal, against such a sentence, to the Court of Session ; because it would be useless to send the case to the lower Appellate Court, after our finding of the absence of evidence of an offence and of the want of jurisdiction.

Conviction, sentence, and order for confiscation annulled.

NOTE.—The following sections of the Act are material :—

Sec. II.—Whoever adulterates or deteriorates cotton by mixing therewith any seed, dirt, stones, or other foreign matter, or who fraudulently or dishonestly mixes cleaned and uncleaned cotton, commonly called cuppas, or cotton of different varieties in one bale, or who fraudulently or dishonestly, by exposing cotton to dew or by any other means, deceptively increases or attempts to increase the weight of the same, shall be punishable on conviction with imprisonment of either description for a term not exceeding twelve months, and shall also be liable to fine. All cotton so adulterated, or deteriorated, or frau-

dulently mixed, or deceptively increased in weight, and which has formed the subject of such a conviction, shall be confiscated.

Sec. III.—Whoever fraudulently or dishonestly sells, or offers for sale, any cotton adulterated, deteriorated, or deceptively increased in weight, as in the 2nd Section of this Act described, shall be punishable on conviction, with imprisonment of either description for a term not exceeding twelve months, or with fine, or with both. All such cotton so sold or so offered for sale and which has formed the subject of such a conviction shall be confiscated.