

## REG. V. MALHA'RI bin SHIVJI.

*Bombay Ferries' Act, No. XXXV. of 1850—Construction.*

On a reference by a Session Judge, a conviction and sentence by a District Magistrate, under the Bombay Ferries' Act, for conveying passengers for hire from U'ran to Bombay was reversed; as the act charged did not constitute an offence under any section of the Act.

THE accused was convicted by W. H. Havelock, District Magistrate of Tháná, under Secs. 14, 15, and 16 of Act XXXV. of 1850, of having conveyed passengers for hire from the island of U'ran across the harbour to Bombay, without the special license of the Governor in Council; and sentenced to pay a fine of Rs. 20, to be recovered by distraint.

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The record and proceedings were called for, on a review of the Magistrate's monthly criminal return, by R. H. Pinhey, Session Judge of the Konkan, who recorded the following remarks:—

“The act stated in column I does not constitute an offence under Sec. 14 of Act XXXV. of 1850. That section applies to persons conveying for hire passengers ‘from any part of the Islands of Bombay and Colaba across the harbour of Bombay to the mainland, or to any of the adjacent Islands;’ but does not make penal the conveying for hire of passengers from islands in the harbour to Bombay.

“The case must be referred to the High Court, under Sec. 434 of the Code of Criminal Procedure, with a view to the conviction and sentence recorded by the Magistrate being reversed.

“The Magistrate's interpretation of Sec. 14 of the Ferries' Act (No. XXXV. of 1850) appears to me quite inadmissible, and altogether opposed to the well-known principle that penal clauses in a statute are to be interpreted strictly.

“I am also of opinion that the Magistrate is wrong in arguing that the act of the accused, if not penal under Sec. 14, is penal under Sec. 15. Secs. 14 and 15 refer to different waters. Sec. 14 makes certain acts penal in the Bombay

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Harbour. Sec. 15 makes certain other acts penal in 'any other arm of the sea, creek, or river' in the Bombay Presidency. The word 'other' in Sec. 15 appears to me to exclude the Harbour of Bombay, for which special provision is made in the preceding section.

"It appears probable that the act of the accused is a *casus omissus*; but this is by no means certain, and even if it were certain, it would not be proper for a court of criminal jurisdiction to legislate, or to supply omissions made by the Legislature, by declaring acts penal for which the Legislature has prescribed no penalty."

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

PER CURIAM:—The Court reverses the conviction and sentence; as the act charged does not constitute an offence under the Bombay Ferries' Act.

*Conviction and sentence reversed.*

REG. V. RAGHOJI bin KA'NOJI.

*Ind. Pen. Code, Secs. 416 and 177—Crim. Proc. Code, Secs. 426 and 434.*

On a reference by a Session Judge, in reviewing the monthly magisterial returns, where the conviction by the Magistrate was for cheating by personation, and the offence appeared to the High Court to be furnishing false information,—for which the punishment awarded was legal:—

*Held* that the Court, under Sec. 426 of the Crim. Proc. Code, ought not to interfere with the conviction or sentence.

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THE accused was convicted, in the month of December 1866, by A. K. Nairne, Magistrate F. P. in the Ratnágiri District, of the offence of cheating by personation, and thereby inducing the delivery of a stamped paper; and sentenced to pay a fine of one rupee, or in default to suffer one day's simple imprisonment, under Sec. 417 of the Indian Penal Code.

The record and proceedings had been called for, on a review of the Magistrate's monthly return, by R. H. Pinhey, Session Judge of the Konkan,—who had noted that the sen-