REG. v. A'BDUL KA'DAR valad BA'LA' A'BUJI.

Extortion—Ind. Pen. Code, Sec. 383—*Crim. Proc. Code, Sec.* 404.

A conviction of extortion by a Full Power Magistrate, and an order of a Session Judge rejecting an appeal therein, reversed by the High Court, under Sec. 404 of the Crim. Proc. Code : as there was no such *fear of injury* as is contemplated by Sec. 383 of the Ind. Pen. Code; nor was the delivery of money by the complainants *thereby induced;* nor did it appear from the evidence that the money was obtained *dishonestly* by the prisoner, who might have demanded it, believing in good faith that he was entitled to it.

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THE petitioner was convicted, on the 7th of July 1866, under Sec. 383 of the Indian Penal Code, of the offence of extortion, by C. B. Pritchard, Magistrate F. P. in the Tháná District, by whom the following finding was recorded :—

"The accused, A'bdul Kádar, is a man who purchased from Government the privilege of carrying any firewood he might find lying on the ground in the jungles of the Sanján and Máhim tálukás, during certain months of the last hot season. He is charged with having extorted money from the complainants, C. M. Kále and others, under threats of detaining certain cart-loads of firewood they had collected in the jungles of the Sanján Táluká and were taking to their homes. * * * *

"The points for decision are : (1) Did accused put complainants in fear of injury ; (2) did he thereby induce complainants to pay him a sum of money ; (3) did he induce the delivery of this sum of money dishonestly, or did he *bonâ fide* believe himself to be entitled to it.

"The first two points are conclusively proved in the affirmative by the evidence recorded for the prosecution, the fear of injury being caused by threats uttered by the accused (which were, indeed, temporarily put into execution) of detaining complainants' carts. The accused admits having received money from the complainants, as payment of the price of the wood they were carrying away ; but urges that this money was paid by them willingly, so that there was no occasion even for his using threats. He has not brought

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forward any evidence, however, that supports this assertion. The complainants and their witnesses, on the other hand, state that their carts were actually detained by the accused, because they declined to pay him; and that he refused to let them go, until they paid him the money he asked for; and there is every reason to believe them, as it cannot be supposed that they would have paid money for wood they knew themselves to be entitled to without payment, except under compulsion.'

"Did, then, the accused *bonâ fide* believe himself entitled to exact payment for this wood? His main argument is that, under the terms of his *maktá*, he was vested with a proprietary right over all the firewood lying on the ground in the jungles of the Mahim and Sanjáṇ tálukás during a certain period, within which the wood in question was taken by the complainants; that it was, therefore, his property, and that he was justified in exacting payment for it as such.

"The conditions of sale of the maktá, the agreement passed by accused when the maktá was granted to him, and an order from the Mámlatdár of Sanjáṇ with reference to the accused's right under the maktá, are recorded (exhibits Nos. 23, 17, and 18).

"The fact that the accused was entitled to carry away all or any of the firewood he might find lying in the jungles of Máhim and Sanjáṇ is not to be disputed; but at the same time it is quite clear that, under the provisions of his maktá, he had no proprietary right in any such wood until after he himself, or the men directly employed by him, had removed it out of the jungles. It is expressly laid down in clause 6 of the conditions of sale (exhibit No. 22), and in the agreement (exhibit No. 18), that the accused shall not set up nákás and take fees, or sublet his contract. He was, therefore, debarred from profiting by the removal of any wood, except what he removed himself, or directly by his agents, which, confessedly, the complainants were not. Again, what was the money taken from the complainants by the accused, but a fee? Looking at the transaction in every shape that occurs to the court, it cannot conceive the money paid to be anything but a fee.

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"The accused, then, knew that he was not entitled, under his máktá, to take fees, or to profit by wood removed from the jungles by others than himself or his own immediate agents. It follows that, in taking the money in question from the complainants, he caused wrongful gain to himself, and therefore acted dishonestly.

"It may be well to discuss here another branch of the argument put forward by the vakíl for the accused, who, while admitting the complainants' prescriptive right to take firewood from these jungles, urged that, as this right was not secured by any special provision in the conditions of sale, it was superseded during the period for which accused's maktá remained in force. It is nowhere laid down in the conditions of sale, or alleged in the agreement passed by the accused, that the sole right of removing firewood was granted to him. This being the case, and the complainants' prescriptive right to take such wood for household purposes being a matter of notoriety, the maktá granted to the accused must be interpreted in conjunction with those rights. The accused can claim no more than is allowed him by his maktá; and even supposing that he was taken by surprise at finding such rights in existence, his remedy was against the Government, and not in his own hands against the exercise of those rights.

"It does not appear that the accused threatened the complainants with personal violence, or directly with wrongful restraint, so that the accused may properly be convicted of extortion (though his offence very nearly approaches robbery). There is also an element of cheating in his offence; but, as the delivery of the money seems actually to have been caused by the detention of complainants' carts and bullocks, the charge of cheating may well be let go.

"The Court, accordingly, find that A'bdul Kádar valad Bálá A'buji is guilty of the offence specified in the charge, namely, of extortion; and that he has thereby committed an offence punishable under Sec. 384 of the Indian Penal Code; and the Court directs that the said Abdul Kádar be imprisoned with rigorous imprisonment for six months, and pay

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a fine of Rs. 200, or in default be imprisoned with rigorous imprisonment for a further period of one month. Rs. 18 of the fine, if paid, to be awarded to complainants, in repayment of the money extorted from them by the accused."

The conviction and sentence were confirmed, on appeal, by R. H. Pinhey, Session Judge of the Konkan, who, after hearing the prisoner's vakíl, on the 8th of August 1866, recorded the following reasons:—

"I do not consider it necessary to hear the Government Prosecutor in support of the conviction, as I am of opinion that this appeal must be rejected.

"There is an ancient custom according to which rayats are allowed to collect firewood in the Government forests in the Máhim and Sanján tálukás. The appellant obtained a contract from the Collector, entitling him, for a certain period mentioned in the contract, to collect as much firewood as he could for the purposes of trade. By the terms of this contract, the appellant was entitled to so much wood only as he and his servants could collect; and he was distinctly prohibited from levying fees from the rayats, and from placing nákas (or depôts) in the jungle.

"It, therefore, appears to me that the money levied by the appellant, as deposed to by the witnesses for the prosecution in this case, was already levied by the appellant, illegally and by extortion, as fees."

The prisoner then petitioned the High Court, under Sec. 404 of the Code of Criminal Procedure: praying for a reversal of the conviction and sentence by the Magistrate, and of the order of the Session Judge rejecting his petition of appeal, "for the following (among other) reasons, patent upon the face of the record and proceedings:—That the said conviction and sentence are contrary to law, inasmuch as: (*a*) the Magistrate found that your petitioner had put the complainants in fear of injury; there being no evidence thereof upon the record (*b*). He found that the delivery of the money was dishonestly induced by your petitioner, and that he did not *bonâ fide* believe himself to be entitled to it;

there being no evidence of dishonesty, nor of any circumstances from which it could be inferred. (*e*) While allowing the fact, that the accused was entitled to carry away all the wood he might find lying on the ground in the jungles of Máhim and Sanján, not to be disputed, the Magistrate still held that the accused could not prevent the removal of such wood by others. (*d*) The Magistrate misconstrued exhibit No. 17, inasmuch as he held that by the terms of it your petitioner had no proprietary right in any such wood until after he himself, or the men employed by him, had removed it out of the jungles. (*e*) He misconstrued the said exhibit in holding that the sole right of removing the wood was not thereby granted to your petitioner. (*f*) The Magistrate held the prescriptive right of the rayats to take wood from the jungles to be a matter of notoriety, and, therefore, took judicial notice of it, and imported it into exhibit No. 17, so as to govern its construction. (*g*) He was in error in holding that your petitioner could not sell the firewood which, he had farmed. (*h*) The Session Judge, in appeal, found, without sufficient legal evidence, that there was an ancient custom according to which rayats are allowed to collect wood in the Government forests in the Máhim and Sanján tálukás. (*i*) The Session Judge misconstrued exhibit No 17, in holding that, by the terms of his contract, your petitioner was entitled to collect as much firewood as he could for the purposes of trade, and that the price received by him for timber removed by others was a fee."

The record and proceedings having been called for, the case came on for hearing, this day, before COUCH, C.J., and WARDEN, J.

Reid and *Shántárám Náráyan* for the petitioner.

Dhirajlál Mathurádás, Government Pleader, in support of the conviction.

COUCH, C.J. :—The conviction in this case cannot, we think, be upheld. There was no such fear of injury as is contemplated by Sec. 383 of the Indian Penal Code, in the definition of 'extortion ;' nor was the money given by the

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complainants in consequence of any such fear of injury. If the agreement between the prisoner and the Collector had reserved the rights of the villagers, and the prisoner had a right only to take what remained of the firewood, then the villagers would have a right as against him, and the firewood would be their property. What the prisoner in effect said was: "You shall not have the firewood, unless you pay me for it." If the rights of the villagers had been reserved in the agreement, the prisoner might perhaps, under these circumstances, have been guilty of cheating. But the agreement is not drawn up in that way; and the prisoner may have believed in good faith that he had acquired such a right as he put forward. And even though he were wrong in his construction of the agreement, yet, if he supposed that he had the right, he would not have 'dishonestly' induced the delivery of property. The right construction of the agreement appears to us to be, that the Government professed by it to give to the prisoner what they had no right to give without interfering with the rights of the villagers. We, therefore, reverse the conviction and sentence, and the order of the Session Judge rejecting the petition of appeal.

Conviction and sentence reversed.

REG v. GANIA bin BA'PU.

Illegal possession of Opium—Reg. XXI. of 1827—Full Power Magistrate—Jurisdiction—Crim. Proc. Code, Sec. 404.

A conviction and sentence by a Magistrate, F. P., under Reg. XXI. of 1827, Sec. x., cl. 4, annulled for want of jurisdiction; the "Zillah" (*i.e.*, District) Magistrate only being empowered by the Regulation to enforce the penalty.

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THE accused was charged, under Reg. XXI. of 1827, Sec. x., cl. 4, as being liable to the penalties enacted for abetting the smuggling of opium, in having in his possession (without being a licensed retailer) above one quarter of a Súrat ser of opium, not shown to have been legally obtained; and was convicted by Dhanjibhái Kávasji, Magistrate F. P.,