

1866.  
June 1.  
Crim. Review.

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 Súrát ser of opium, not shown to have been legally obtained; and was convicted by Dhanjibháí Kávasji, Magistrate F. P.,

at Súrat, and sentenced to forfeit Rs. 151-4-9, or in commutation of the forfeiture to suffer imprisonment for a period of six months. 1866.  
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The conviction and sentence were confirmed on appeal by the Session Judge of Súrat.

The record and proceedings were called for, under Sec. 404 of the Code of Criminal Procedure.

PER CURIAM (COUCH, C.J., and WARDEN, J.) :—The Court annuls the conviction and sentence, and orders the fine, if paid, to be restored; the Full Power Magistrate not having had jurisdiction, as the “Zillah Magistrate” (that is, the Magistrate of the District) only is empowered to enforce the penalty.

NOTE.—Sec *Reg. v. Sadu valad Pavade, antè*, p. 39.—ED.



### REG. V. J. M. DIAZ.

*Criminal breach of Trust—Ind. Pen. Code, Sec. 409—Examination of Prisoner—Crim. Proc. Code, Sec. 373—Irregularity.*

A conviction and sentence for criminal breach of trust as a public servant, reversed, owing to irregularities in the preliminary inquiries, and irregular procedure as to the examination of the prisoner in the Court of Session.

THE prisoner was convicted, on the 21st of September 1866, of criminal breach of trust as a public servant, under Sec. 409 of the Penal Code, and sentenced to eighteen months' rigorous imprisonment, by A. C. Watt, Acting Assistant Session Judge of Puná. 1866.  
Dec. 12.  
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The record and proceedings were sent for (10th October), on hearing the petition of the prisoner.

*Howard* and *Macpherson*, for the prisoner :—The Assistant Session Judge said to the prisoner, on the 19th of September, before he was examined, “It is optional for you to answer the questions or not; but your refusal to do so will be considered as an admission.” This was immediately before putting the questions to the prisoner. The prisoner was examined, in the course of the evidence for the