1867.
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that if there is confirmation as to one prisoner, that is sufficient. My practice is different, and I tell juries not to find prisoners guilty, unless the accomplice's evidence is confirmed, not only as to facts, but also as to identity." *Wightman* and *Cresswell*, JJ., concurred.

This may now be taken to be the established practice in England; and it would certainly be unsafe to depart from it in India. Applying the rule to the present case, neither the conviction of Bálá nor of Jotí can be upheld.

We regret very much that the Judge did not notice the discrepancies in the evidence of so important a witness as Ganu. He ought to have asked him to explain the apparent discrepancies between his statement before the Magistrate and before himself.

We, therefore, reject the petition of Imám, and confirm the sentence of death as against him; but with regard to Bálá and Jotí the convictions and sentences must be reversed.

REG. v. REMEDIOS and others.

Tender of Pardon—Magistrate—Crim. Proc. Code, Sec. 209—*Bombay Act No. III. of* 1866—*Gaming.*

On a reference by a Session Judge, where certain persons were found guilty of gaming, by a Full Power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned:—

Held that a Magistrate has no power to tender a pardon in a case which he tries himself; but only, under Sec. 209 of the Crim. Proc. Code, in the case of an offence triable by the Court of Session.

June 12.
Referred Case.

THIS case was referred for the orders of the Court by R. H. Pinhey, Session Judge of the Konkan, with the following remarks:—

"The accused, Francis Remedios and seven others, were entered as having been charged: Nos. 1 to 8 with the offence of gaming in a common gaming-house in the town of Thána, and No. 7 with the offence of keeping a gaming-house. Nos. 1, 2, 3, 4, 6, and 7 were convicted, and sentenced: Nos. 1, 2, 3, 4, and 6 to pay each a fine of Rs. 20, and in default to undergo one week's rigorous imprisonment [Bom. Act III.

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of 1866, Sec. 4]; No. 7 to undergo one month's rigorous imprisonment [Bom. Act III. of 1866, Sec. 3]; No. 5 admitted Queen's evidence; and No. 8 acquitted and discharged, by I. Dracup, Magistrate F. P.

"It appeared on the face of the return that the Magistrate had tendered to one of the accused a pardon, and examined him as a witness, and that the said Magistrate had then proceeded to dispose of the case. This procedure was illegal: as Sec. 209 of the Code of Criminal Procedure applies only to cases triable by the Court of Session. In the case of *R.* v. *Megji Premji* (*a*) the High Court ruled that a Magistrate had no power to tender a pardon in a case which he tried himself. In this case the Magistrate convicted the rest of the accused solely on the evidence of the accused, whom he had pardoned, and turned into a witness."

PER CURIAM (COUCH, C.J., NEWTON and WARDEN, JJ.):—The Court reverses the convictions and sentences, and orders the fines, if paid, to be restored: as the Magistrate had no power to tender a pardon in a case to be tried by himself; but only in the case of an offence triable by the Court of Session.

Conviction and sentence reversed.

(*a*) By COUCH and NEWTON, JJ., 13*th* April 1864.

NOTE.—"It shall be lawful for the Magistrate of the District, or other Officer exercising the powers of a Magistrate, recording his reason for so doing, to tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified in Column 7 of the Schedule annexed to this Act as triable by the Court of Session, on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances within his or their knowledge relative to the crime committed, and every other person concerned in the perpetration thereof. If any person shall accept a tender of pardon under this Section, he shall be examined as a witness in the case under the rule applicable to the examination of witnesses. Such person, if not on bail, may, if the Magistrate or other Officer as aforesaid shall think proper, be detained in custody pending the termination of the trial."—*Crim. Proc. Code, Sec.* 209.—ED.