

REG. v. JOM'A bin BA'LU.

1867.
Aug. 15.*Refusal to perform work—Magistrate's order—Act XIII. of 1859, Sec. 2.*

An order of a Magistrate, passed under Sec. 2 of Act XIII. of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him.

THE prisoner was charged "with neglecting to perform work as a labourer on account of which he had received an advance of money," and being convicted of the same, under Sec. 2 of Act XIII. of 1859, was ordered by Vishnu Moreshvar Bhide, Magistrate F. P. in the Tháná District, to work for nineteen months and twenty-one days at the distillery of Nasarvânji's Dhurp at Mora, and, in case he failed to do so, to suffer rigorous imprisonment for one month.

On a review of the Magistrate's monthly Criminal Return, the High Court sent for the record and proceedings in this case, under Sec. 404 of the Crim. Proc. Code.

PER CURIAM (COUCH, C. J., NEWTON and GIBBS, JJ.):—
The Court annuls that part of the order which directs that in case of failure to do the work the person is to suffer rigorous imprisonment for one month, as the Magistrate has no power to make that order until the failure has occurred, and has been proved to his satisfaction.

REG. v. NA'THA' MULA'.

Oct. 9.

Fine—Refund.

A prisoner was sentenced to imprisonment and fine, and in default of payment of the latter to a further term of imprisonment.

He paid a portion of the fine, but, that fact not having been communicated to the jailer, underwent the entire further term of imprisonment.

Held that, under these circumstances, the Court had no power to order the fine to be refunded.

THE prisoner was convicted, by the 1st Class Subordinate Magistrate at Muhmudábád, in the Kheḍá District, of dishonestly receiving stolen property, and was sentenced to