

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

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NATHA'MULA' six months' rigorous imprisonment and to pay a fine of Rs. 25, or in default to suffer further rigorous imprisonment for one month.

The accused paid the sum of Rs. 22-1-11, in part payment of the fine inflicted ; but the Subordinate Magistrate failed to give a notice of the payment to the jailer, and the consequence was that the accused suffered the whole term of imprisonment awarded by the Subordinate Magistrate in commutation of the fine imposed.

The above being the case, G. W. Elliot, Acting Magistrate of Khedá, sent a letter to the High Court requesting its sanction to refund to the accused the portion of the fine recovered from him.

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

PER CURIAM :—The Court has no power to order the fine to be refunded. Any necessary application should be made to the Government. The Subordinate Magistrate ought to see that the party does not suffer in consequence of his omission.

Dec. 5.

REG. v. BECHAR MA'VA'.

Jurisdiction—Foreigner—Act XXV. of 1861, Sec. 31.

Sec. 31 of the Crim. Proc. Code does not confer jurisdiction upon a Magistrate to try the subject of a foreign State for "receiving stolen property," when the offence of receiving such property has been committed outside the British territories.

THE accused was convicted, in September 1867, by M. H. Scott, holding the powers of a Subordinate Magistrate of the First Class in the Khedá District, of "having dishonestly retained or received stolen property, knowing or having reason to believe the same to be stolen property;" and sentenced to suffer two months' rigorous imprisonment, under Sec. 411 of the Indian Penal Code.

The record and proceedings were referred for the orders of the court, under Sec. 134 of the Code of Criminal Proce-