

1868,

REG.

v.

SHEK ALI.

Code, he had power to alter the charge after the delivery of the verdict.

•PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Court reverses the conviction and sentence, on the ground that on a trial by jury the Session Judge has no power to alter the charge after the delivery of the verdict.

Conviction and sentence reversed.

NOTE.—Sec. 244 :—“It shall be competent to any Court before which a trial is held, at any stage of the trial, to amend or alter the charge.”

Feb. 4.

REG. V. MA'VJI DAYA'L.

REG. V. KA'LIDAS KEVAL.

Municipal Commissioners—Jurisdiction—Act XXVI. of 1850.

The Managing Committee of Municipal Commissioners appointed under Act XXVI. of 1850 have no power to try and convict persons for alleged breaches of rules made in pursuance of that Act.

The power to inflict fines for such offences is, by Sec. 10, vested in the Magistrate.

THE first case was submitted for the orders of the High Court by C. G. Kembball, Session Judge of Súrat, on a review of the monthly returns of the Magistrate's proceedings, with the following remarks :—

“The accused was charged with, and convicted of, wantonly or cruelly beating or torturing an animal, in breach of Cl. 15, Sec. xxxviii. of the Súrat Municipal Rules. He was a horsekeeper in the employment of a gentleman residing within the city walls, and the offence was said to have taken place in the stable while he was cleaning his master's horse. The case was a trivial one, and the punishment inflicted small, but the conviction appears to me so manifestly unjust, that I feel I have no alternative but to send up the proceedings for the orders of the High Court. The only evidence in the case most clearly disproves the charge based on the aforesaid Cl. 15; and how the Magistrate F. P. could, in the face of it, record a conviction, is beyond conjecture.”

September 26, 1867. Upon a review of the whole proceedings, the Court (COUCH, C.J., and NEWTON, J.) reversed the conviction and sentence, on the ground that there was no evidence of any offence having been committed.

1868.

REG.

v.

MÁVJI
DAYÁL.

REG.

v.
KÁLIDÁS
KEVAL.

The Court, considering such a conviction very discreditable to the Magistrate F. P., directed the Session Judge to call upon the Magistrate F. P. to forward the memorandum of the substance of the evidence required under Sec. 267 of the Code of Criminal Procedure, or to explain its absence.

The Magistrate F. P. stated in reply—"At Ahmedabád cases of nuisances under the Municipal rules are disposed of by the Managing Committee under Chap. VIII. of the Rules, and the only record kept by them is a register containing the name of the offender, the nature of the nuisance committed by him, the penalty imposed on him, &c. After my transfer to Súrat, the case of Mávji Dayál was the first I had to dispose of under Chap. VI. of the Municipal Rules, and on inquiry I found that in cases of this kind disposed of by you (Mr. Hope), only the depositions of witnesses and the offender's statement were taken down in the vernacular, and an order passed in the case. Accordingly, no memorandum of the substance of the evidence recorded in the case was kept."

Upon this a precept was issued to the Magistrate of Ahmedabád to inquire whether the above allegation was correct, and, if correct, to forward the record and proceedings in the last case disposed of by the Managing Committee at Ahmedabád.

The Acting Magistrate, A. A. Borradaile, confirmed the allegation of the Full Power Magistrate of Súrat, and accordingly forwarded the record and proceedings in the last case disposed of by the Ahmedabád Municipal Committee, namely, *Reg. v. Kálidás Keval*.

The accused was charged with committing nuisance, by throwing the public road dirty water consisting of the

1866) urine of bullocks, &c., and was fined in the sum of eight annas.

REG.

v.

MA'VJI
DAYAL.

REG.

v.

KA'TIDAS
KEVAL.

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Court annuls the conviction and sentence, on the ground that the Managing Committee of the Municipal Commission of the City of Ahmedábád had no power by law to try and convict the accused of the offence, as Secs. 6 and 7 of Act XXVI. of 1850 do not authorise the giving to the Managing Committee the power of adjudicating in cases of alleged breach of any rules therein referred to, and Sec. 10 of the same Act has provided for the recovery of fines by Magistrates.

Feb. 6.

REG. v. RA'MJI valad DA'JI.

Crim. Proc. Code, Sec. 270—Amends.

Amends, under Sec. 270 of the Code of Criminal Procedure, are awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue.

G. F. SHEPPARD, Acting Magistrate of the District of Khándeshi, wrote, under No. 110, a letter, dated the 22nd of January 1868, to the Court's Registrar as follows :—

“ I have the honour, under Sec. 434 of Act XXV. of 1861 (Criminal Procedure Code), to forward, for the orders of the Honorable the Judges of the High Court, a case tried by A'zam Vishnu Hari Vihid, Second Class Subordinate Magistrate of the Lohára Táluká, wherein that officer has, under Sec. 270 of the Criminal Procedure Code, awarded amends for an offence coming under Chap. XIV. of the Act, namely, a charge under Sec. 504 of the Indian Penal Code.

“ I have the honour to request the instructions of their Lordships the Judges thereon.”

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—As Sec. 270 of the Code of Criminal Procedure forms part of Ch. XV., the said section could operate only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue. We, therefore, annul so much of the order awards amends to the accused in this case.