REG. v. YESSA'PPA' bin NINGA'PPA'.

1868. May 20.

Amends in cases of Theft—Fine—Recovery of Stolen Property.

Where loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.

THIS case was referred for the orders of the Court by J. Elphinston, Acting Magistrate of the District of Cánará, under Sec. 434 of the Code of Criminal Procedure.

The accused was convicted of having cut and removed from the Government *jángals* at Ambádghey, without permission, three teak poles, worth eight annas, by the Subordinate Magistrate of the Second Class at Halliál, who awarded a sum of one rupee to be credited to the Forest Department from the fine levied from the accused, and ordered the wood thus stolen to be returned to Government.

The Magistrate of the District was of opinion that, as the stolen property was recovered, it was unnecessary to direct any portion of the fine to be credited to the Forest Department, and observed that the amount awarded was in excess of the injury alleged to have been committed.

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :—As the trying officer considered that loss had been occasioned to the Forest Department, the award of the fine was not illegal, and the Court cannot interfere.

No order.

REG. v. PA'NDURANG MAYRA'L AND RA'MKRISHNA HARI.

June 10.

Investigation by Magistrate—Discharge—Crim. Proc. Code, Sec. 171.

Where, under Sec. 171 of the Criminal Procedure Code, a case is sent up for investigation by a Magistrate, it is competent for such Magistrate to *discharge* the accused, under Sec. 225, if, in his opinion, the evidence against the accused is not sufficient to warrant their committal to the Session Court.

THIS case was referred for the orders of the High Court by F. Lloyd, Session Judge at Puṇá, under Sec. 434 of the Code of Criminal Procedure.

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Pándurang, accused No. 1, filed a suit against Rámkrishṇa, accused No. 2, in the Court of the Principal Ṣadr Amín at Puṇá. In that suit a document, purporting to be an ancient deed of sale of a house the subject of the suit, was put in by the plaintiff together with two rent-notes. The Principal Ṣadr Amín having come to the conclusion that the deed of sale had in reality been but recently executed, and was a forgery, as were also the rent-notes, and that they were put in by the plaintiff in collusion with the defendant, for the purpose of causing injury to the complainants, Govind Lakshuman and his brothers, to whom the house in question had been mortgaged by the defendants, sent both the accused, plaintiff and defendant, in custody before a Magistrate, under the provisions of Sec. 171 of the Criminal Procedure Code, charging them with having, for the purpose of causing injury to the complainant and his brothers, fabricated false documents and used the same as genuine, knowing them to be forgeries. He relied upon Secs. 196, 199, 200, 209, 463, and 471 of the Indian Penal Code, as the clauses under which the accused should be tried. The case having, accordingly, come before E. T. Richardson, Magistrate F. P. at Puṇá, he, after making certain preliminary inquiries into the matter, was of opinion that there was no sufficient evidence to warrant his placing the accused on their trial, and framing a charge against them, and, therefore, dismissed the case.

The Session Judge, however, thought that, as the case had been referred to the Magistrate by the Principal Ṣadr Amín under Sec. 171 of the Code of Criminal Procedure, the Magistrate was bound to dispose of it by the acquittal, conviction, or commitment of the accused.

The case was heard this day, before NEWTON, Acting C.J., and TUCKER, J.

PER CURIAM:—The Court is of opinion that, as the charges, for the investigation of which the accused were forwarded by the Principal Ṣadr Amín to the Magistrate, were, with the exception of that under Sec. 209 of the Indian

Penal Code, triable only by the Session Court, it was competent to the Magistrate to discharge the accused, under Sec. 225 of the Code of Criminal Procedure, if he held that there were not sufficient grounds to warrant the committal; and it would not have been within his competency to acquit the accused of the principal charges, as suggested by the Session Judge.

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Although the Magistrate has not quoted the section under which he has discharged the accused, he must be considered to have acted under Sec. 225 of the Code of Criminal Procedure. Under Sec. 435 of that Code, the Session Judge has power, should he see fit, to order the case to be committed to the Court of Session.

No order.

REG. v. BECHAR KHUSHA'L.

June 11.

Imprisonment in default of payment of fine—Act (Bombay) VII. of 1867, Sec. 31.

Imprisonment in default of payment of a fine inflicted under Act (Bombay) VII. of 1867, Sec. 31, ought to be simple, not rigorous.

THE Subordinate Magistrate of the Second Class at Mátar, Harichand Pándurang, convicted the accused, under Sec. 31, Cl. 3, of Act VII. of 1867 (Bombay), "of depositing dirt, filth, or rubbish, except in appointed places," and sentenced him to pay a fine of four annas, or in default of payment thereof to suffer one day's rigorous imprisonment.

The Acting Magistrate of Kheḍá, G. W. Elliott, being of opinion that the sentence of rigorous imprisonment in default of payment of the fine was illegal, under Sec. 31, referred the case for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code.

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.):—The Court reverses so much of the sentence as orders that imprisonment shall be rigorous.