

1869
April.

Reg. v. Dixon.

*Jurisdiction—British-born Subject—Justice of the Peace—
Imprisonment in default of payment of fine.*

A Magistrate being also a Justice of the Peace has no jurisdiction to try a British-born subject under the Penal Code. His jurisdiction in the trial of such subjects is governed and limited by 53 Geo. III., c. 155, s. 105, and Act VII. of 1853, neither of which gives him power to award imprisonment in default of payment of a fine.

The accused, R. M. Dixon, a British-born subject, was convicted by A. H. Plunkett, a Justice of the Peace, and Magistrate F. P. in the Thana District, of voluntarily causing hurt, and sentenced, under Sec. 323 of the Indian Penal Code, to pay a fine of Rs. 50, or in default to undergo one week's simple imprisonment.

On a review of the Magistrate's Monthly Criminal Returns, A. Bosanquet, Acting Session Judge of Thana referred the case for the orders of the High Court, under Sec. 431 of the Code of Criminal Procedure, with the following remark:—

“It appears from the Magistrate's proceedings that accused No. 1 is a European British subject. Mr. Plunkett had no power to try him under the Penal Code. This is so obvious that it is scarcely necessary to quote authority for it; but see pp. 191, 223, and 395 of Sadr Foujdari Adalat Reports for 1862.”

The case was heard this day before COUCH, C. J., and WARDEN, J.

Dhirajlal Mathuradas, in support of the Magistrate's decision:—Though the accused is a British-born subject, the Penal Code was rightly applied to him, under Sec. 2, which says “every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof.” Sec. 21 of the Code of Criminal Procedure says that the Criminal Courts shall, in the investigation and trial of offences, be guided by the provisions of the Code, and Sec. 25 provides that no person shall be

exempted from the rules of criminal procedure by reason of place of birth or of descent; and by Sec. 42 the jurisdiction given by the statute is not to be interfered with: and, therefore, if the two sections 25 and 42 are read together, a Justice of the Peace can try British-born subjects for such offences under the Penal Code as are within his cognisance as a Magistrate.

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COCKB, C.J.:—The two decisions of the Sadr Court quoted were passed after the Code of Criminal Procedure had come into operation, and in the last case two Judges (Forbes and Newton, JJ.) held that the accused could not be tried under the Indian Penal Code. According to my recollection, that decision has been followed in this Court and there is no reason for thinking that it is not a right one. I, therefore, concur in it. A Magistrate being a Justice of the Peace can try a British-born subject only under 53 Geo. III., c. 155, s. 105, and Act No. VII. of 1853, but under them he has no power to award, as is done in this case, imprisonment in default of payment of the fine inflicted. We must, therefore, annul the conviction and sentence, and order the accused to be tried under the statute.

WARDEN, J., concurred.

Conviction and sentence annulled.

Reg. v. John Connon.

April 12.

In re David Turnbull Stewart.

*Escape from Custody under Civil Process—Sheriff's Bailiff—
Offence—Act XLVIII. of 1860, Sec. 8.*

To escape from custody under Civil process is not a criminal offence within the meaning of Sec. 8 of the Presidency Towns Police Amendment Act of 1860.

Quære: whether such an escape without force is a misdemeanour at Common Law.

On the 5th of April 1869, *Pigot*, before WESTROFF, J., obtained a rule *nisi* for a writ of *certiorari* to issue directed to John Connon, Esquire, Acting Chief Magistrate of Police