

1870.
July 14.

REG. V. GURNINGA'PA' *et al.*

Crim. Proc. Code, Sec. 270—Award of Compensation.

When, on a complaint being preferred to a Magistrate of an offence not coming within Ch. XV. of the Code of Criminal Procedure, the Magistrate alters it so as to bring it under Ch. XV., he cannot award compensation to the accused, under Sec. 270 of the Criminal Procedure Code, the offence originally complained of not being one for which compensation can be awarded.

THE Magistrate of the District of Kaládgi referred this case for the orders of the High Court with the following observations :—

“One Bágápá bñ Giriápá complained to the 1st Class Subordinate Magistrate, Mr. Shankar Pándurang Pandit, that Gurningápá and eleven others had come to his house with the intention of robbing and murdering him.

“The Subordinate Magistrate, when the accused were before him for trial, wrote as follows :—

“ ‘The twelve accused in this case, being informed of the accusation against them by the complainant, deny having committed criminal trespass upon his house; the following evidence is, therefore, recorded.’

“The Subordinate Magistrate dismissed the complaint as frivolous and vexatious, and, under the provisions of Sec. 270 of the Code of Criminal Procedure, directed the complainant to pay to each of the accused a certain sum of money as compensation.

“The Subordinate Magistrate treated the case as one of criminal trespass upon the complainant's house, and as coming under Ch. XV. of the Criminal Procedure Code, under Sec. 270 of which compensation can be awarded; but, as the complaint made by the complainant was of intent to rob and murder, the Subordinate Magistrate ought, I think, to have inquired into it as such, or, if he thought proper, as he did, to reduce the charge to one of criminal trespass, he ought not, I consider, to have awarded compensation, as the offences complained of against the accused

by the complainant were serious ones, and not offences coming under the provisions of Ch. XV. of the Criminal Procedure Code.

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“The complaint by the complainant was not one coming within Ch. XV., and although the Subordinate Magistrate informed the accused that they were charged with criminal trespass, and brought the case within Chapter XV., I think that he was wrong in awarding compensation, as this complaint was not one within Ch. XV.”

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM:—The Court agrees with the Magistrate of the District that compensation could not, under the circumstances stated in the reference, be awarded.

Order accordingly.

REG. v. HI'RA' JI'VA'.

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Crim. Proc. Code, Sec. 21—Reg. XXI. of 1827, Secs. 4, 7, and 10, cl. 4—Opium—Smuggled Opium, Possession of—Offence—Jurisdiction.

The offence of possessing above a quarter of a *Súrat ser* of opium not shown to have been legally obtained is exclusively cognisable by District Magistrates.

Reg. v. Náráyan v. Náthá and others (Criminal Reference No. 209 of 1869) overruled.

THE proceedings and record in this case were called for by the High Court, under Sec. 404 of the Code of Criminal Procedure.

The case, the facts of which appear from the judgment, was considered by GIBBS and MELVILL, JJ.

GIBBS, J.:—We have called for the proceedings in this case, under the provisions of Sec. 404 of the Criminal Procedure Code, in order that we might have an opportunity of reconsidering our decision in the case of *Reg. v. Náráyan valad Náthá and others* (Criminal Reference No. 209 of 1869.)

Our decision in that case was that, under the last part of the amended schedule appended to the Criminal Procedure