

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

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Code, a First Class Subordinate Magistrate has jurisdiction to try the offence of possessing above a quarter of a Súrat *ser* of opium not shown to have been legally obtained, under cl. 4, Sec. x. of Reg. XXI. of 1827.

We are now of opinion that this decision cannot be sustained. Sec. 21 of the Criminal Procedure Code provides that "the Criminal Courts of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV. of 1860), or under any special or local law, *except offences which are by any such law made punishable by some other authority therein specially mentioned*, and in the investigation and trial of the offences hereby declared to be within their jurisdiction shall be guided by the provisions of this Act."

Cl. 4, Sec. x. of Reg. XXI. of 1827 provides that a person having in his possession a greater quantity of opium than one quarter of a Súrat *ser* shall be liable to the penalties enacted in Sec. 4, to be enforced in the manner directed in Sec. 7. By Sec. 7 such penalty is to be enforced by information before the *Zillá Magistrate*.

The *Zillá Magistrate* being specially mentioned as the authority by whom such penalty is to be enforced, we are of opinion that the case falls within the exception contained in Sec. 21. of the Criminal Procedure Code, and that no other authority has jurisdiction.

The conviction and sentence in this case are, accordingly, reversed, and the penalty is ordered to be returned.

MELVILL, J., concurred.

*Conviction and sentence reversed.*