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mittee of the Privy Council, as well on behalf of the defence as on behalf of the prosecution, for it could not be expected that Lieutenant Reay should do so, the fine having been only one rupee), the question as to the scope of the powers of the Bombay Legislature involved in this case being of considerable importance, and one which it is desirable should be brought before the tribunal of final resort. In saying thus much, my brother Gibbs is not to be understood as in anywise departing from the judgment which he has given, and my brother Melvill and myself are not to be taken as expressing any opinion as to whether or not the question on which the appeal is sought, has been rightly decided. In fact we have not formed any opinion upon that point.

We say nothing as to the probable result of an application made directly to Her Majesty in Council for leave to appeal. It is sufficient for us to state our opinion that we do not think that in a case so circumstanced as this, howsoever willing we may be to grant such permission, we have any power to do so. The motion of the learned Advocate General must, therefore, stand refused.

Petition rejected.

June 23.

REG. v. BA'PU PARBAT.

Practice—Charge.

Proper course laid down for a Judge to adopt when the facts proved do not support the charge as laid.

BA'PU PARBAT was committed by the Magistrate of Kheḍá, on a charge of adultery, alleged to have been committed on or about the 10th of December 1869, for trial before the Court of Session at Ahmedábád.

E. T. Candy, the Acting Assistant Judge who tried the prisoner, found that the overt act of adultery as alleged in the charge could not be proved to have been committed on the 10th of December 1869, but, being of opinion that there was reason to believe that *after* the 10th of December 1869 the accused lived with the wife of the complainant in adultery, the Assistant Judge, though he formally acquitted the accused,

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ordered a new trial on a charge of having committed adultery within four months of the date alleged. The Assistant Judge held that the words "or about" were merely formal, and that the real charge was that the accused had committed an overt act of adultery *on* the 10th of December 1869.

W. M. Coghlan, Session Judge at Ahmedábád, referred the proceedings to the High Court, under Sec. 434 of the Code of Criminal Procedure, as he thought that the order directing a new trial was illegal under the circumstances. He considered the words "or about" in the charge as material, and not merely formal, and that the widest reasonable limits must be assigned to them.

The Court (GIBBS and LLOYD, JJ.,) disposed of the reference on this day.

PER CURIAM:—That the order directing the new trial under the circumstances was illegal. The trying authority, when he considered the facts did not support the charge on which the prisoner was tried, might have altered it, but had no power to order the Magistrate to recommit the accused.

June 28.

REG. v. PA'RVATI.

Practice—Acquittal—Recording Opinion of Assessors.

When a judgment of acquittal is recorded, it is not necessary to record the opinions of the Assessors.

THIS was a point of law referred, under Sec. 404 of the Code of Criminal Procedure, for the opinion of the High Court, by W. M. Coghlan, Acting Session Judge of Thána.

It arose in the case of *Reg.* v. *Párvati* and another, tried at the Kulábá sessions, and was whether, when a judgment of acquittal is recorded under Sec. 372 of the Code of Criminal Procedure, it is proper to take and record the opinions of the Assessors. The Acting Session Judge was of opinion that it was not necessary to do so.

PER CURIAM (in chambers):—When a judgment of acquittal is recorded under Sec. 372 of the Code of Criminal Procedure, it is not necessary to take and record the opinions of the Assessors.