

1870.  
Aug. 8.

## REG. V. LA'DU, daughter of Bhágu.

*Bombay Act III. of 1867, Secs. 11 and 14—Cantonment Magistrates—  
Fine, and Imprisonment in default of Payment—Simultaneous Sentence.*

In cases of convictions under Secs. 11 and 12 of the Military Cantonment Act (Bombay Act III. of 1867), a simultaneous sentence of fine and imprisonment in default of the payment of the fine is illegal. Imprisonment in default of payment of fine can only be awarded, under Sec. 14 of the Act, in the event of no property sufficient for the payment of the fine being found.

Reports of police or medical officers are not a sufficient sanction for prosecution under this Act. A complaint on oath or solemn affirmation is necessary.

THIS case was noticed by the Honorable Mr. Justice Lloyd in paragraph 67 of his Tour of Inspection in the Southern Maráthá Country in 1869-70. He said: "I observed that in a case decided by Mr. N. Byránji, F. P., Magistrate of Belgám, a prostitute named Ládu had been punished for not presenting herself for examination by the Civil Surgeon, in conformity with a rule framed under cl. 7, Sec. XI. of Bombay Act III. of 1867, on a note from that officer and without any evidence whatever." Upon this report the High Court sent for the record and proceedings, and called upon the Magistrate F. P. to explain his proceedings. The material portion of his explanation was as follows:—

"The undersigned begs to report that the accompanying report from the medical officer in charge of the Lock Hospital intimating the absence of the accused from examination on the appointed day, coupled with the report of the chief constable (also sent herewith), intimating due notice having been served on the accused of the date on which she was required to attend at the Hospital, was deemed sufficient warrant for his recording it as a formal complaint, and issuing the summons accordingly. .... The reason why no depositions on solemn affirmation were taken was that the accused pleaded guilty....."

The case was heard by GIBBS and MELVILL, JJ.

PER CURIAM:—No complaint having been made on oath

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or solemn affirmation, the conviction and sentence are reversed, and it is ordered that the fine, if paid, be restored.

A simultaneous sentence of imprisonment in default of payment of fine is in such cases illegal. Imprisonment in default can only be awarded under Sec. 14 (Bombay) Act III. of 1867, *i.e.*, in the event of no property sufficient for the payment of the fine being found.

*Conviction and sentence reversed.*

Sept. 22.

REG. v. UKHA' SA'V.

*Police Pátíl—Conviction—Bombay Act VIII. of 1867.*

Conviction of a Police Pátíl for neglecting to report an encroachment made by the villagers on the public road reversed, as the circumstances of the case did not bring it within the provisions of Sec. 9 of Bombay Act VIII. of 1867.

UKHA' SA'V, Police Pátíl of Bhatgám, was charged with neglect of duty under Sec. 9 of the Bombay Village Police Act (VIII. of 1867), "in that he did not report an encroachment on the road caused by certain of the villagers having driven posts in front of their house and therewith enclosed a space for cattle." He was convicted by E. C. K. Ollivant, Full Power Magistrate in the Súrat district, and was sentenced to pay a fine of two months' emoluments.

Upon a review of the abstract of monthly criminal returns, the records and proceedings were called for by the High Court, under Sec. 404 of the Code of Criminal Procedure.

PER CURIAM (GIBBS and LLOYD, JJ.) :—We are of opinion that a conviction under Sec. 9 of the Village Police Act can only be good if the duty neglected is one prescribed by or under the authority of the Act. The duty of reporting encroachments on the road does not appear to be a duty legally imposed on the Police Pátíl by the Act. Sec. 6 of Act VIII. of 1867 only requires the Police Pátíl to keep the Magistrate constantly informed as to the state of crime, and all matters connected with village police, the health and general condition of the community in his village.