

1870.
REG.
v.
LA'DU.

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.

The Court does not consider that the circumstances stated in the proceedings constituted an offence within the meaning of Sec. 9 of the Village Police Act. We, therefore, reverse the conviction and sentence, and order the fine, if paid, to be restored.

1870.

REG.
v.
URKHA'
SA'V.

Conviction and sentence reversed.

July 22, 30.

REG. v. ELMSTONE, WHITWELL, *et al.*

Jurisdiction—High Seas—Offence committed on the High Seas—Substantive Law applicable—Procedure—Penal Code—Abetment—Accessories—9 Geo. IV., c. 74, s. 7—30 & 31 Vict., c. 124, s. 11—Merchant Shipping Acts.

The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 & 31 Vict., c. 124, s. 11.

The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence.

The procedure applicable in such cases is the ordinary criminal procedure of the High Court.

The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered.

There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship, when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.

THE prisoners, Richard William Marks, Christopher Thomas Elmstone, Alfred Whitwell, and George Harriott, were at the Third Criminal Sessions of 1870, before BAYLEY, J., and a Special Jury, charged as follows:—

I. That he, the said Marks, British subject and seaman, on the 12th of June 1870, on board a British ship, the "Aurora," on the high seas and within the Admiralty jurisdiction of the High Court of Judicature at Bombay, feloniously, &c. did set fire to the said ship, against the form of the statutes, &c.