

1871.
Feb. 9.

REG. V. DHARMAYA' valad SANGA'PA'.

Crim. Proc. Code Schedule—Jurisdiction—Subordinate Magistrate—Municipal Rules, Breach of.

By virtue of the 7th explanatory note and last part of the Schedule headed "Offences against other Laws," added to the Code of Criminal Procedure by Act VIII. of 1869, a Subordinate Magistrate, Second Class, can take cognisance of the offence of a breach of the municipal rules promulgated under Act XXVI. of 1850.

THIS was a reference from H. N. B. Erskine, Magistrate of the district of Násik, forwarding the record and proceedings, under Sec. 434 of the Criminal Procedure Code, of the Subordinate Magistrate, Second Class, at Egatpurá, in which he had fined the prisoner, Dharmayá, four annas for having committed a breach of the municipal rules duly promulgated in that town.

The reference stated: "As the Honorable the Judges ruled, in the case of *Reg. v. Mallárji bin Nauoloji (a)*, that a Subordinate Magistrate has no jurisdiction to impose a penalty for breach of a rule made under Act XXVI. of 1850, the sentence seems illegal, and for this reason the proceedings are now forwarded. The Subordinate Magistrate considers that he has authority since the passing of Act VIII. of 1869, in consequence of the last part of the schedule headed "Offences against other Laws," which gives any Magistrate power to dispose of cases punishable with fine only, or with imprisonment for less than one year. On reading the 7th of the explanatory notes at the commencement of the schedule, I have doubts whether the Subordinate Magistrate's view can be upheld. If it can, it would be of great importance that this should be generally known, as in many towns the municipal rules are merely a dead letter, because the only resident Magistrate cannot enforce them."

The reference was heard before LLOYD and KEMBALL, JJ.

PER CURIAM:—The Court is of opinion that the Subordinate Magistrate had jurisdiction to impose a fine for breach

(a) 3 Bom. H. C. Rep., Cr. Ca. 36.

of a municipal rule. The Court refers the District Magistrate to the court's ruling, of 17th November last, in the case of *Reg. v. Lakhá Jibháí* in the printed Statement of Criminal Rulings on the Code of Criminal Procedure from 1st July to 31st December 1869.

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REG.

v.

DHARMAYA'
SANGA'PA'

Papers returned.

REG. V. SOUTER.

April 4.

In re Rávji bin Keshav.

Extradition—Gáikvád's Treaty—Accused person—Preliminary Inquiry—Warrant—Act VII. of 1854, Sec. 23—Act XVII. of 1862, Schedule.

Sec. 23 of Act VII. of 1854 is not repealed by the Schedule to Act XVII. of 1862.

The treaty of the 6th of November 1817 between H. H. the Gáikvád of Barodá and the East India Company provides for the delivery upon requisition of accused persons to H. H. the Gáikvád *in a manner other than* in accordance with the provisions of the sections of Act VII. of 1854 prior to the 23rd section. The latter section is, therefore, applicable in such a case.

Seemle that Government would not be justified in delivering up an accused person to H. H. the Gaikvád without holding a preliminary inquiry into the guilt of such accused.

Where a warrant issued under Sec. 23 of Act VII. of 1854 directed the accused person to be delivered up to the Resident at Barodá, without showing either that an inquiry had been made, or was about to be made, the Court held that it was not, therefore, invalid, as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an inquiry as is required by the Act.

A warrant issued under Sec. 23 of the Act should recite either that an inquiry has been held, or is about to be held, with reference to the guilt of the accused.

ON the 3rd of April 1871, before GREEN, J., *Macpherson* moved for and obtained a writ of *habeas corpus* directed to F. H. Souter, Esquire, Commissioner of Police for the City and Island of Bombay, and to all other police officers of the said city and island, to bring up the body of Rávji bin Keshav on the 4th of April, together with the day and cause of his being taken, &c.

The writ was granted upon reading the affidavit of Rústamji Mehervánji Nárelváli, which was as follows:—