partly rescinded by Rule 52, with this additional defect, that the right to levy the penalties was reserved to the Municipality, in direct contravention of Secs. 10 and 12 of Act XXVI. of 1850.

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We think that in the Balsád cases the Subordinate Magistrate had jurisdiction, and that the convictions, therefore, ought not to have been annulled.

In the present case from Malcolm Peṭ, we think that the Magistrate F. P. also had jurisdiction, and, therefore, that this court ought not to interfere with the convictions and sentences.

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Jurisdiction—High Seas within three miles from shore—British India, Territorial Limits of—12 & 13 *Vict.*, *c.* 96—23 & 24 *Vict.*, *c.* 88—*Power to legislate for High Seas—Mischief—Ind. Pen. Code, Secs.* 425 *and* 427.

Sept. 20.

An offence committed on the high seas but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Indian Penal Code.

The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of the Stat. 12 & 13 Vict., c. 96, ss. 2 and 3, extended to India by Stat. 23 & 24 Vict., c. 88.

Semble. The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate in respect of offences committed on the high seas within three miles of its coasts.

Meaning and effect of Stat. 12 & 13 Vict., c. 69, ss. 2 and 3, considered.

The *Queen* v. *Thompson* (1 Beng. L. Rep., O. Cr. J. 1) commented on.

Where certain of the inhabitants of the village of Manori, in the Thánáa District, sallied out in boats and pulled up and removed a number of fishing-stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village: *it was held* (I.) that a Magistrate F. P. in the Thánáa District had jurisdiction over the offenders; (II.) that the Indian Penal Code was the substantive law applicable to the case; and (III.) that the offence amounted to mischief within the meaning of Secs. 425 and 427 of that Code.

THIS was an application to the High Court for the exercise of its extraordinary criminal jurisdiction.

The facts of the case and the nature of the application are fully set out in the judgments delivered.

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Branson (with him *Shántárám Náráyaṇ* and *Vishṇu Ghanashám*) for the applicants.

Leith (with him *Dhirajlál Mathurádás*) for the Crown.

Cur. adv. vult.

KEMBALL, J. :—The facts appear to be shortly these.

Upon the sea-shore twenty miles north of Bombay is situated the village of Yerangal, the inhabitants of which are by profession toddy-drawers. Further north of Yerangal lie two fishing villages—one, Málavni, about a mile and a half northwards but slightly inland on a creek, and the other, Manori, from three to four miles due north of Yerangal. Both these villages have claimed for some fifty years the exclusive right to fish in the sea opposite Yerangal by means of stakes—described as being some sixty or seventy feet in length and of considerable circumference—driven in the sea, at some distance out at the close of the monsoon, and nearer in—*i. e.*, about a mile, or a mile and a half, from the shore, in the month of March. In March last the Málavni fishermen put down a number of their stakes in front of the shore of Yerangal village, and were pursuing their calling, when one morning towards the end of April the Manori villagers sallied forth *en masse* in boats, and pulling up the said stakes brought them to shore. For this act the latter were tried and convicted by the F. P. Magistrate, Mr. Mulock, under three heads, namely, 1*st*, being members of an unlawful assembly held for the purpose of committing mischief; 2*nd*, mischief; and 3*rd*, theft; though they were only sentenced to punishment under the 2nd and 3rd heads, the purpose of the unlawful assembling having been accomplished. Against these convictions the accused appealed to the Session Judge of Thánáá, who affirmed the first two convictions, but held that the charge of theft was not sustainable, there being no proof of an *animus furandi*; and the case now comes before this court for the exercise of its extraordinary jurisdiction, on the grounds, 1*st*, that the Magistrate had no jurisdiction in the case, and, even if he had jurisdiction, there was no offence under the Penal Code; and, 2*nd*, that there was no legal evidence in the case of the commission

of mischief under Sec. 427 of the Penal Code (the Session Judge having found, with reference to the conviction for theft, that there had been no "dishonest" removal, and the complainants having no legal right to place the stakes where they did).

The question of jurisdiction was hardly mooted in argument, but it was strongly urged against the convictions still subsisting that the law applicable was not that of the Penal Code, but the English law—the effect of 12 & 13 Vict., c. 96, and 23 & 24 Vict., c. 88, s. 1, being to apply the Indian Procedure to the substantive Criminal law of England; that the defendants acted in good faith, believing, under certain orders of the Mámlatdár, that they had exclusive right to the fishery, their object being to assert their own right, and not to cause wrongful loss to the complainants; that as the title to fish was common, the defendants could not be punished for removing the stakes, no injury having been done to them or to the nets; and that there was no "show of criminal force" to constitute an unlawful assembly.

The first question which presents itself for consideration is, whether, assuming that the defendants acted contrary to the provisions of the Indian Penal Code, they were liable to punishment under it—in other words, whether they committed any offence within the territories of British India. It appears to be without doubt that the act which was held to constitute mischief was committed upon the sea beyond low-water mark, though within three miles of the open sea-shore: so that, though it may be taken, on the authority of *The Queen* v. *Musson* (*a*) and *Embleton* v. *Brown* (*b*), that part of the sea between high and low water is within the body of the adjacent land, and, therefore, within the local jurisdiction of the courts of criminal justice, it will, I think, be readily admitted that after low-water mark is passed, at which point the "high seas" commence, the land ceases, and with it the local jurisdiction. Primarily the jurisdiction to try offences committed on the high seas is vested in the Admiralty Court (into the origin and constitution of which it is unnecessary

(*a*) 8 E. & B. 900. (*b*) 30 L. J., M. C. 1.

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here to inquire), but by 23 & 24 Vict., c. 88, in connection with 12 & 13 Vict., c. 96 (which extended to the colonies generally, and excepted "all such parts and places as are under the Government of the East India Company"), it was enacted that "if any person in British India shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy, or any other offence, of what nature soever, committed upon the sea or in any haven, river, creek, or place where the Admiral has power, authority, or jurisdiction; or if any person charged with the commission of any such offence upon the sea, or in any such haven, river, creek, or place, shall be brought for trial to British India, then, and in every such case, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in India, shall have and exercise the same jurisdiction and authorities for inquiring of, trying, hearing, determining, and adjudging such offences, and they are hereby respectively authorised, empowered, and required to institute and carry on all such proceedings for the bringing of such persons so charged as aforesaid to trial, and for and auxiliary to, and consequent upon, the trial of any such person for any such offence wherewith he may be charged as aforesaid as by the law of British India would and ought to have been had and exercised or instituted and carried on by them respectively if such offence had been committed, and such person had been charged with having committed the same, upon any waters situate within the limits of British India, and within the limits of the local jurisdiction of the Courts of Criminal Justice." So that now the so-called Mofussil Courts have jurisdiction over persons brought before them charged with the offences committed in places where "the Admiral has, or pretends to have, power, authority, or jurisdiction:" *vide* 28 Hen. VIII., c. 15, s. 1. But, it is argued, the effect of the above enactment is not to extend the provisions of the Penal Code to offences committed on the *high seas*, it having been distinctly provided in Sec. 2 of 12 & 13 Vict., c. 96, that the person convicted "shall be subject and liable to, and shall suffer, all such and the same pains and penalties and forfeitures as by any law or laws now in force persons

convicted of the same respectively would be subject and liable to in case such offence had been committed and were inquired of, tried, heard, determined, and adjudged in England, any law, statute, or usage to the contrary notwithstanding."

And in support of this contention we are referred to the judgments of this court in *Reg.* v. *Elmstone, Whitwell, et al.* (*c*), and of the Bengal High Court in *Reg.* v. *Thompson* (*d*). Having carefully considered the question, I am decidedly of opinion that the Penal Code is not applicable to offences committed on the high seas and without the territories of British India, and that a subject of the Queen prosecuted for an offence so committed, and not on board a foreign ship, must be charged with an offence against the English law. No doubt this conclusion involves the absurdity that a resident of British India may, by proceeding out a certain distance from the shore, commit with impunity that which is a crime under the Penal Code but which is not an offence by the English law, *e.g.*, adultery.

However, I must observe that in neither of the cases above quoted was the question involved as to the liability under the Penal Code for an offence committed on the high seas but within three miles of the shores of India (though in the former case the learned Chief Justice of this court made some valuable observations on the point in the course of judgment); and, after giving the subject the best consideration I can, I am impelled to concur in the opinion of a learned Judge of the Madras High Court (Holloway, J.), who is said to have suggested in *Reg.* v. *Irvine*, 1st Mad. Sessions 1867—*vide* Mayne's Commentaries on the Penal Code, 6th ed., p. 9—where an offence was committed within three miles of the shores of India, that "the locality was within the territories of British India, as defined in Sections 1 and 2 of the Indian Penal Code." It seems to be settled law, according to the current of modern authority, that the general territorial jurisdiction of a State extends into the sea as far as a cannon-shot will reach, which is usually calculated

(*c*) 7 Bom. H. C. Rep., Cr. Ca. 89. (*d*) 1 Beng. L. Rep., O. Cr. J. 1.

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to be a marine league, or three miles (fortunately for the purposes of the present case we may rest contented with this calculation): so that the ordinary rule, by which the private vessels of every nation on the high seas are subject to the jurisdiction of the State to which they belong, ceases to operate when such vessels enter that part of the sea which is *infra dominium* of any other State, albeit they continue to be bound by their own municipal laws. If, then, a State *may* claim exclusive jurisdiction on the sea to the extent of a marine league from low-water mark of the nearest land, as seems to me to be sufficiently established by the cases of *Rolet* v. *The Queen* (*e*) and *The Queen* v. *Anderson* (*f*), it is, I apprehend, impossible to avoid the necessary conclusion that *the territories*, strictly speaking, of a State include not only the compass of *land*, in the ordinary acceptation of the term, belonging to such State, but also that portion of the sea lying along and washing its coast, which is commonly called its maritime territory. I fail to discover, in the absence of special legislation on the subject, any ground for distinguishing between offences (of a like character) committed in different portions of a State's territory. That being so, I find on the points under consideration that, although the alleged offence of mischief was committed without the District of Thán̤á, the Magistrate F. P. was empowered by statute to take cognisance of it, and that as the venue of such offence was within the territories of British India, the charge was rightly laid under the Indian Penal Code, the 2nd section of which provides that "every person shall be liable to punishment under the Code, and *not otherwise*, for every act or omission contrary to the provisions thereof of which he shall be guilty within the said territories," such provision superseding the provisions of Sec. 2 of 12 & 13 Vict., c. 96, if they ever extended within three miles of these shores.

I will now proceed to consider the next question, whether the act committed constituted the offence of mischief. As I have noted above, the grounds urged against the conviction were that the exclusive right to fish in the place in dispute

(*e*) 1 L. R., P. C. C. 198. (*f*) 1 L. R., C. C. R. 161.

was believed to be in the defendants; that there was no intention to cause wrongful loss to the complainants; and that, as the title to fish was common to all the world, the defendants had committed no punishable offence, no injury having been done to the nets or stakes.

It may be premised that it is neither contended nor proved here that either party had acquired by prescription the exclusive right to fish in front of Yerangal, and also that it is not pretended the stakes offered any obstruction to general navigation. I would further here observe, with reference to the argument that the defendants believed they had the exclusive right of fishing in the particular locality, that the Mámlatdár's decisions afford, in point of fact, no foundation for such a pretence; the most they determined was that the complainants in this case (who were plaintiffs before the Mámlatdár) had not the exclusive right of fishing —a very different thing to saying that that right existed in the defendants: and this, I think, sufficiently disposes of the point raised that the conviction was opposed to the ruling of the High Court of Bengal in *The Queen* v. *Denoo Bundhoo Biswas and others* (*g*).

The question for consideration then is narrowed to this: Did the defendants, in pulling up the stakes fixed by the complainants in the sea, commit the offence of mischief: for, if the act of removing the stakes was unlawful, the fact of no injury having been done to the nets or the stakes themselves would not affect the question, it being patent that a change in the stakes was made which destroyed or diminished their value or utility.

The locality where the complainants' stakes were fixed may without doubt be correctly described as one of the *res publicæ* which the State, in the language of Austin, "without leaving or conceding the use of them to determinate private persons, nevertheless permits its subjects generally to use or deal with in certain limited or temporary modes. Such, for example, are public ways, public rivers, the shores of the

(*g*) 12 Calc. W. Rep., Cr. R. 1.

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sea (in so far as they are not appropriated by private persons), the sea itself (in so far as it forms part of the territory of the State)," things public differing from things common—*i.e.*, things the property in which belongs to nobody, but the right of using which belongs to everybody, such as light, air, running water, the sea—in this particular, that whereas in things common, property is acquired by simply taking possession, no person can acquire property in a *public thing* by occupation, for occupation confers property in such things only as belong to nobody.

Right is described by Austin as "the capacity or power of exacting from another or others acts or forbearances." The question then is whether the act of the complainants in fixing their stakes where they did was fair and reasonable, for it is clear that the law will protect or relieve a subject *lawfully* using a public right, against every disturbance of such right on the part of other persons.

It is admitted that the ordinary and recognised practice of taking fish along the coast is by means of nets attached to stakes. It must, therefore, I take it, be held *primâ facie* that the complainants' stakes were lawfully fixed, and that the burden of proving the contrary is on those who committed the damage to their prejudice. Before the Magistrate the defendants appear to have relied on the fact that the existence of the complainants' stakes in some way or other interfered with their own haul of fish; but it is not suggested here in argument, apart from their extravagant claim to exclusive enjoyment, that any tort or wrong was done by the complainants, in the exercise of their user, to the defendants which they were entitled to abate, and indeed there is nothing to show that the complainants' stakes were fixed after those of the defendants. Reference was made at the bar to the case of *Perry* v. *Fitzhowe* (*h*); but, assuming the existence of an analogy between the sea within a State's territory and a common, it is clear that one important element in that case is wanting here, and that is

(*h*) 8 Q. B. 757.

the *unlawfulness* of the use, which it was held could be summarily obstructed.

The learned counsel for the appellants also quoted, in the course of his argument, the case of *Young* v. *Hichens* (*i*), but it appeared to me to tell rather against than for his clients: for whereas the defendants here were not charged with taking the complainants' fish, it establishes two points very strongly —1*st*, that though an injury may be done by one person fishing beside another on the sea, and by various contrivances drawing away the fish to himself, there is no *wrong*; and, 2*ndly*, that a forcible, violent disturbance of the lawful user of a public right creates such wrong.

The sum and substance of the mischief charged was that the defendants caused wrongful loss or damage to the complainants by removing their stakes, and thereby destroying the character of their property.

Much stress was laid on the words "wrongful loss," the causing of which is a necessary ingredient of the offence of theft—theft being defined as the moving of property, with intent to take *dishonestly*, or, in the words of Sec. 24 of the Penal Code, "with the intention of causing wrongful gain to one person or wrongful loss to another person." And it was argued that the Judge's finding on the head of "theft" was fatal to the conviction for mischief, but it hardly requires any argument to show the essential difference between theft and mischief. A person rooting up a number of telegraph posts and throwing them down at a distance could probably not be said to commit theft, though he might, I apprehend, be successfully prosecuted for mischief; and I have no doubt in the present case of the correctness of the conviction of the defendants of "mischief," in that they, knowing that they were likely to cause damage to the complainants, did remove the stakes from the position where they were of use and value, and where they had been fixed at the expense of much time and labour, thereby considerably diminishing their value and utility.

(*i*) 6 Q. B. 606.

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I would, therefore, return the papers to the Magistrate. In this view of the case, it is unnecessary to consider the conviction under the head of an unlawful assembly for the purpose of committing mischief, though the question really admits of very little argument.

WEST, J. :—The points raised for the applicants in this case are—

(1) That they should have been charged and tried under the English Law, and not under the Indian Penal Code.

(2) That the facts proved do not constitute the offence of which they have been convicted under the Indian Penal Code.

(3) That the Magistrate had not jurisdiction to dispose of the case.

The third objection is that which in ordinary cases would first call for disposal, but in this instance the relation of the jurisdiction and procedure to the substantive penal law is such that it will be more convenient to invert this order.

The legislative power of the Governor General in Council at the time when the Indian Penal Code was passed was regulated by Stat. 3 & 4 Wm. IV., c. 85. Sec. 43 of that statute enables the Governor General in Council to make laws for "all persons" and "for all places and things whatsoever within and throughout the whole and every part of the said territories," that is, the territories under the Government of the East India Company (s. 38). As, by Sec. 39 of the same Act, the "superintendence, direction, and control of the whole civil and military government of all the said territories" is vested in the Governor General in Council, and Sec. 45 provides that laws made under Sec. 43 "shall be of the same force and effect within the said territories as any Act of Parliament would or ought to be within the same territories," there can be no doubt that a general power of legislation for British India and its inhabitants was intended to be conferred on the Governor General in Council, as part of the general delegation to him of political powers, sufficient for all the purposes of internal government. But

the Government thus constituted being essentially a subordinate one, the question naturally arose of the extent of its legislative powers as to persons and transactions lying beyond the recognised local limits of the territories placed under it. In the case of *Reg.* v. *A'lú Párú* (*j*), Sir E. Perry was of opinion that "the laws of a country prohibiting crime are personal laws, and render the persons of that country amenable to its criminal jurisdiction wherever the crime may have been committed;" and as "the unlimited delegation of authority to legislate for all persons carries with it the inherent power to pass all such personal statutes as are requisite for the good government of a great country," the Indian Legislature had power to make laws with a view "to prevent excesses and enormities committed on its coasts, or on the uninhabited and barbarous islands in the Indian seas." He thought it quite clear that it was not the intention of Parliament to restrict the powers of the Legislative Council to persons merely within the territories of India." In these views the Chief Justice, Sir H. Roper, concurred.* At Morley's Digest II., page 394, he says: "When the Legislature of Great Britain proposed to itself to delegate legislative powers with regard to India and the Courts therein to the Legislative Council of India, it is reasonable to suppose it was intended to delegate to such Legislative Council power to prescribe the law to be administered, as well with respect to offences committed on the high seas and prosecuted in India, as with respect to offences committed upon the Indian soil." These opinions, so far as they relate to legislation for the high seas, have lately been questioned, if not virtually overruled, in the case of *Reg.* v. *Elmstone, Whitwell, et al.* (*k*), and it seems impossible to maintain that a general power of legislation for the high seas, where a subordinate Government can neither enforce obedience nor afford protection, is implied in the

(*j*) Perry's Or. Ca. 551.

* Sir E. Perry (Or. Ca. 555) says that no note of the Chief Justice's judgment had been preserved, but this must be a mistake, as such a note, supplied by Sir E. Perry himself, may be found at 2 Morley's Digest, 388.

(*k*) 7 Bom. H. C. Rep., Cr. Ca. 89.

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delegation to it of authority to make laws for the territory placed under it. The clearest of political reasoners has said of civil laws that "the making thereof must of right belong to him that hath the power of the sword by which men are compelled to observe them, for otherwise they should be made in vain." This power of the sword a subordinate Government cannot exercise beyond its own territorial limits. It can in general enter into no arrangements with foreign powers for the police of the seas. *It cannot confer a national character on* the ships which sail from its ports. It is not as Indian but as British ships that vessels registered in the ports of this dependency sail under the protection of the British flag. When Sir E. Perry (Or. Ca. 559) said "laws * * * prohibiting crime are personal laws," he did not, probably, mean to ascribe to them that personality which is recognised by international jurists as giving to certain laws an extra-territorial and almost universal efficacy. The English Common Law regards crimes as altogether local. "The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purposes of that jurisdiction" (Lord Brougham in *Warrender* v. *Warrender*). The extra-territorial obligation of laws is founded, according to Blackstone, on natural allegiance, and Baron McCleland (quoted in *Rex* v. *Johnson*) (*l*) says: "Every subject of the Empire is bound by his allegiance to the Crown to obey the laws of the Empire." The allegiance of a native of British India is due to the Sovereign of the British Empire, and, binding him equally to obedience to the laws of every province according to their local operation, relieves him *pro tanto* from the operation, as personal laws, of the Regulations of the particular provincial Government under which he happens to have his domicile. When he passes the bounding line of the subordinate jurisdiction, his provincial character merges in that of a wider nationality. For the maintenance of peace and good order within the territories confided to its charge, it is enough that the Local Government should deal with offences committed within those territories, and, under particular circumstances, with those committed by its subjects in the territories of States adjacent

(*l*) 6 East 591.

to, and allied with it. In the case of *Low* v. *Routledge* (*m*) L. J. Turner says: "Every alien coming into a British colony becomes temporarily a subject of the Crown, bound by, subject to, and entitled to the benefit of the laws which affect all British subjects. He has obligations and rights both within and beyond the colony into which he comes. As to his rights within the colony he may well be bound by its laws, but as to his rights beyond the colony he cannot be affected by those laws, for the laws of a colony cannot extend beyond its territorial limits." These words express a principle of a local subjection and protection subordinate to a higher and further-reaching connexion of allegiance which are applicable to British subjects generally,—to aliens only as they accidentally share that character at a particular time and place. The guardianship of the general welfare of the Empire is thus properly a function of the Imperial Government. Its delegation is not to be presumed. Its exercise tends to prevent a clashing of laws and jurisdictions which might operate unfavourably on the intercourse of the several component provinces of our colonial dominions. In one class of cases, express provision (17 & 18 Vict., c. 104, s. 290) has been made for preventing a collision of local laws by reducing them in common to the pattern of the imperial law, and every extension of the principle consistent with the adaptation of local laws to local needs brings nearer to us the realisation—for some great sections of the world, at least—of what Savigny has called the "noble prospect of a community of legal convictions and legal life working out a universal practice."

The considerations seem to me to tend strongly against any recognition of a power on the part of a subordinate government to legislate for the high seas, unless such a power be granted in express terms. But so far as the territory placed under such a government extends, the presumption based on *à priori* probability is all the other way. In granting legislative powers to the Government of India, it must have been intended that such powers should for their proper purposes be sufficient and effective. This they would not

(*m*) L. R. 1, Ch. App. 47.

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and could not be if their local range was bounded strictly by the line of coast. In the case already referred to, Sir E. Perry says: "Suppose that the fishermen on this coast were discovered to be engaged in a series of fraudulent transactions half a mile from the shore, can it be that, under the clause which enables the Governor General in Council to legislate for all persons, whether British or Native, no power exists to regulate fisheries?" It is obvious that the greatest inconveniences might arise from the possibility of escaping the operation of the laws of British India by merely going afloat a few yards from shore. Writers on international law have recognised the principle that, so far as its own subjects are concerned, every State may properly define the limits of its own territories beyond the line of coast (*n*). The necessities of orderly government on which this principle rests are as great and obvious in a dependency as in the ruling country. A limit of three miles from shore has thus come to be recognised as undoubtedly within the general powers of local legislation conceded to Colonial Governments (*o*); on the same ground of public convenience and necessity, it might not unreasonably be argued that these powers extend, except where otherwise expressly restricted, to the making of laws for sea-going vessels engaged in fishing, or on voyages from one port in India to another, and the persons on board such vessels. Such vessels, it might be contended, have a local or colonial rather than a national character, and those on board carry with them a legal consciousness moulded and determined by the local law. Yet the anomaly of offences bearing a different character according as they were committed at sea or on land was one that subsisted for centuries in the English law, and must be endured here as it was in England until provided against by a legislature vested with the requisite authority.

Such, it appears to me, are the general principles by which the extent of the legislative power of the Governor General in Council must be interpreted. When, therefore, the Indian Penal Code was passed—a law of which Sec. 2 says that

(*n*) Vattel, Dr. des Gens, 289. (*o*) *Rolet* v. *The Queen*, L. R. 1, P. C. C. 198.

"every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories"—all persons became liable, I apprehend, for intra-provincial offences to the operation of this law. Mischief to fishing-stakes, or any other infraction of its prohibitions, committed within three miles from the coast, is punishable only under its provisions. Such offences are intended to be so punishable, and the intention of the Indian Legislature to this extent is the intention of the sovereign power.

It has been contended, however, that Acts of the Indian Legislature are subordinate in their operation to Statutes of the Imperial Parliament, and that the effect of one of the latter (extended to India by a later statute) is at once to confer jurisdiction on the local magistrates over offences committed on the sea, and to make these offences of the same quality as they would be by English law, and, therefore, triable only under the English penal statutes. This argument, which is not without the support of high authority, requires a somewhat critical examination. The Stat. 12 & 13 Vict., c. 96, the earlier of the two referred to, was passed as "an Act to provide for the prosecution and trial in Her Majesty's Colonies of offences committed within the jurisdiction of the Admiralty." The preamble, after a recital of the provisions made by the Stat. 10 & 11 Wm. III., c. 7, and 46 Geo. III., c. 54, for the trial in foreign settlements of offences committed at sea, states that "it is expedient to make further and better provision for the apprehension, custody, and trial in Her Majesty's islands, plantations, colonies, dominions, forts and factories, of persons charged with the commission of such offences on the sea, or in any such haven, river, creek, or place as aforesaid." Here there is no hint to be gathered of an intention to alter in any case the substantive penal law applicable to an offence. The sole aim appears to be an improvement of the jurisdiction and procedure. Sec. 1 says that "If any person within any colony shall be charged with the commission of any.....offence, of what nature or kind soever, committed upon the sea.....

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then all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in such colony shall have and exercise the same jurisdiction and authorities for inquiring of, trying, hearing, determining, and adjudging such offences ..... as by the law of such colony would and ought to have been had and exercised..... .....if such offence had been committed, and such person had been charged with having committed the same, upon any waters situate within the limits of any such colony, and within the limits of the local jurisdiction of the courts of criminal justice of such colony." Here again the words point solely to jurisdiction and procedure. The powers to be exercised, the proceedings to be adopted "for the bringing of such person so charged as aforesaid to trial, and for, and auxiliary to and consequent upon, the trial of any such person," are to be the same as if the charge related to an offence committed "upon any waters situate within the limits of such colony," which here means those limits where they march with those of the Admiralty jurisdiction.

Thus far, then, there is no difficulty. But Sec. 3 provides "that if any such person shall be convicted before any such Court of any such offence, such person so convicted shall be subject and liable to, and shall suffer, all such and the same pains, penalties, and forfeitures as by any law or laws now in force persons convicted of the same respectively would be subject and liable to, in case such offence had been committed and were inquired of, tried, heard, determined, and adjudged in England, any law, statute, or usage to the contrary notwithstanding." On this Sir Barnes Peacock, C. J., observed in the case of *The Queen* against *Thompson* (*p*): "The only possible construction of that sentence is that they shall be liable to all such and the same pains, &c., and those only;" and afterwards he proceeds: "The prisoner being punishable then, as I think, according to English Law, it seems to me that he ought to be charged with an offence against the English Law."

(*p*) 1 Beng. L. Rep., O. Cr. J. 49.

In the particular case then before the court this was unquestionably a correct expression of the law; the judgment in the case of *Reg.* v. *Elmstone, Whitwell, et al.* leaves no room for reasonable doubt on the subject. But suppose the "offence" is not reckoned such by the colonial law, are the local courts to take cognisance of it as though it were an offence, because it is one in England? This would be to impose a burden on their legal conscience which they could not well bear. Lord Brougham in the case already cited says: "It may safely be asserted that no instance whatever can be given of the criminal law of any country being made to bend to that of any other in any part of its administration." That which it would be improper to enforce internationally it is not to be presumed that a dominant country intended to enforce in the case of a dependency in matters not affecting their political relations to each other. As an English Court would not enforce a Criminal law of a colony differing from its own, so neither is it likely that it was meant to impose on Colonial Courts an obligation to enforce all the provisions of the English Criminal Law. Suppose, again, the case of a local law of New Zealand, for example, prohibiting the sale of firearms or of gunpowder to the natives; is it to be said that, because no charge of such an offence could be framed under the English Law, the traffic could be carried on with perfect impunity at a hundred yards from the shore? This would be to nullify the local law in most of the instances in which it is specially adapted to local circumstances, and thus to do away with the chief benefit arising from the existence of colonial legislatures. The true intent of the section I cannot but think is this, that, where the law defining an offence in a dependency coincides with that of England in force when the statute became law, a person convicted of such offence shall not be subject to a severer penalty than the English Law prescribes. It was probably thought, the statute not having been originally applicable to India, that in the colonies, properly so called, a practical identity would be found to subsist between the descriptions of offences in general and those recognised by

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the English Criminal Law. As the statute would include the cases of persons accused of offences committed midway between England and the colonies, it was not unnatural that such persons should be guarded against the operation of a colonial law, possibly differing from their own as to the penalties it awarded, for acts committed before they had ever come within the bounds of the colonial jurisdiction. These considerations would apply very properly to such a case as that of *The Queen* against *Thompson*, and justify the proceedings taken against him; but it cannot have been meant that all local regulations as to the conduct of persons afloat were to be rendered inoperative. The section, as I read it, begins to operate only from the moment at which a conviction has been had. Such a conviction, if of an act committed beyond the local jurisdiction, must be of an offence under the English law; if of an act committed within the local jurisdiction, it must be of an offence according to the local law, whether that coincides with the English law or not. When such coincidence exists as to the description of the offence, or when the offence has been committed at more than three miles from shore, the punishment is limited by the English law: when such coincidence does not exist, and the offence has been committed within the local jurisdiction, the section ceases to operate, and the penalty is determined solely by the local law.

As this view of the law, though recommended, as I think, by its obvious fitness and convenience, differs, if his language be taken as the expression of a general principle, from that taken by so eminent a Judge as the late Chief Justice of Bengal, and is besides opposed to some of the national prejudices which make Englishmen inclined at this day to repeat that plea of "*Civis Romanus sum*" which has been declared inconsistent with all legal principle, it will be desirable to support it, if that may be, by authority. One is naturally led in a case of this kind to trace the Admiralty statutes back to their sources. Before the 28th Henry VIII., c. 15, a person who had committed an offence at sea could be tried by the Court of Admiralty only accord-

ing to the Civil and Maritime law. By that statute it is provided that "all treasons, felonies, robberies, murders, and confederacies to be committed in or upon the sea, &c. shall be tried, heard, determined, and judged in such shires and places in the realm as shall be limited by the King's commission or commissions to be directed for the same, in like form and condition as if any such offence or offences had been committed or done in or upon the land." The persons commissioned were to hear and determine such offences "after the common course of the laws of this land used for treasons, &c. .....done and committed upon the land within this realm." To "determine and adjudge" as if the offences had been "committed upon the land within this realm" are strong words; but still stronger ones follow:—"It is further enacted.....that if any person.....happen to be indicted for any such offence.....that then such order, process, judgment, and execution shall be had, used, done, and made..... as against traitors, felons, and murderers, for treason, murder, robbery, or other such offence done upon the land by the laws of this realm, is accustomed.....and such as shall be convicted of any such offence.....shall have and suffer such pains of death, &c. .....as if they had been attainted and convicted of any treasons, felonies, robberies, or other the said offences done upon the land." Here we have a jurisdiction given to "determine and adjudge offences," and then to punish them according to the English law. The indictment then, according to the reasoning in *The Queen* against *Thompson*, should necessarily have been of an offence against the English law and defined by it. Yet it was resolved by all the Judges, as Coke informs us (Inst. I. 391*a*), in the 2nd Jac. I., that "the statute of Henry VIII. *did not alter the offence*, but ordain a trial and inflict punishment," and that consequently some persons guilty of piracy were not entitled to the benefit of a general pardon of felonies, as they must have been had the mere assimilation of procedure and penalties effected any change in the nature of their crime. For a conviction proof would still be required of the acts or omissions constituting the offence according

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to the Civil law. This law the 11th & 12th Wm. III., c. 7, empowered the Admiral to administer abroad; and finally, notwithstanding the long-subsisting identity of penalties for offences recognised by both systems of law, the Stat. 39 Geo. III., c. 37, was required to make offences committed on the high seas "offences of the same nature respectively as if they had been committed on the shore." In the case of *The King* against *Depardo* (*q*), Burrough, for the prisoner, says: "The Stat. 28 Henry VIII., c. 15, merely altered the mode of trial in [the Admiralty] Court; and its jurisdiction still continued to rest on the same foundations as it did before that Act"; and this was not contradicted by the Judges,* or by the accomplished lawyer (Abbott) who appeared for the Crown. I feel justified then in holding that a statute which does not say that the offences to which it relates shall be of the same nature—that is, conformable to the same definition, as well as entailing the same consequences—as under the English law, does not, by merely prescribing an identical punishment where an identity between the offences may subsist, as denominated and defined by a Colonial and by the English law, make it necessary in any case that the trial should be had upon a charge of an offence according to the English law. That necessity where it exists is determined by circumstances which I have already considered.

It follows that the Indian Penal Code is the substantive Criminal law applicable in my opinion to each of the offences of which the applicants were accused in this case. If the offence of which they were convicted had happened to be identical in its definition with any offence under the English law, they might perhaps insist that the penalties inflicted should be limited both as to kind and as to degree by the provisions of the English law. It would then have to be considered whether the Penal Code, having for India the authority and effect of an Act of Parliament on a special subject and relating to a particular province, was affected in its operation by a statute so general in its terms and application as the Stat. 12 & 13 Vict., c. 96. The Governor

(*q*) I. Taunton 29. * Lord Mansfield, C. J., Heath and Grose, JJ.

General in Council could not, under 3 & 4 Wm. IV., c. 85, s. 43, pass any Act which should "repeal, vary, suspend, or affect.....any provisions of any Act hereafter to be passed in any wise affecting the said Company or the said territories or inhabitants thereof," but the question would still remain, whether in this particular case the enforcement of the Penal Code would really deprive the English statute of any part of its intended operation (*r*). But it has not been contended that the definitions in the Penal Code of the offences charged in this case are identical with any under the English Criminal Law, or that, if they are, the punishment inflicted exceeds that which the English law allows in the like cases. So far, therefore, as the law under which the cases have been tried is concerned, I hold that the convictions are perfectly good.

The Magistrate, without recording a formal finding or awarding punishment on the charge against the accused of having formed an unlawful assembly, convicted them of having committed mischief and theft. The Session Judge reversed the conviction of theft. It has to be considered whether the Magistrate had jurisdiction as to the charge of mischief. The mischief consisted in pulling up and removing a number of fishing-stakes fixed in the ground by the prosecutors at a mile or more from the shore. Sec. 21 of the Code of Criminal Procedure determines the offences of which Magistrates in the Mofussil may take cognisance as those punishable under the Penal Code, or under any special or local law. It appears to me very questionable whether, supposing that the whole Criminal Code of England as it existed in 12 & 13 Vict. was made applicable in particular circumstances in India, powers exercised in giving effect to it could be considered as an exercise of jurisdiction "under a special law" as defined in Sec. 4 of the Code of Criminal Procedure. But, waiving that question, I find it laid down in Sec. 26 that, "except where otherwise expressly

(*r*) See *Fitzgerald* v. *Champneys*, 2 J. & H. 46; *Williams* v. *Pritchard*, 4 T. R. 2; *Eddington* v. *Borman*, 4 T. R. 4; *Perchard* v. *Heywood*, 8 T. R. 473.

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provided by this Act, every offence shall be inquired into and determined in the district, or division of a district, in which the offence was committed." The Code does not apparently contemplate at all the commission of an offence outside the line of coast. "District" is defined as "the local jurisdiction of a Magistrate of a District," and Magistrate of a District as the "chief Officer of a District." Definitions such as these, including the word defined, can give us no help: we must look elsewhere for the local boundaries of the Magistrates' jurisdiction. The Stat. 53 Geo. III., c. 155, s. 110, contains a recital amounting to a legislative declaration that "the Courts established by the said [East India] Company have no jurisdiction over crimes maritime." This was made the basis by Mr. Erskine, Judge of the Konkan in 1859, of an argument by which he demonstrated that he had not Civil jurisdiction in a suit between the same parties whose contentions have resulted in the present case. On appeal his decision declining jurisdiction was affirmed by the late Ṣadr Court. In the judgment of the Ṣadr Court it is said: "We find no authority for the extension of the limits of a zillá beyond the low-water mark towards the open sea." The word Zillá, which is equivalent to District, then entered into the designation of the principal local Magistrate (Reg. XII. of 1827, Sec. 1). No authority beyond low-water mark was assigned to him in either his judicial or his executive capacity. The power assigned to him as Collector, under Reg. XVII. of 1827 and Act XVI. of 1838, of giving immediate possession of fisheries, must be construed, when taken with the context, as applying only to inland fisheries within his ordinary jurisdiction. But then came the Stat. 12 & 13 Vict., c. 96, which gives jurisdiction to local Courts and Magistrates as if the offence had been committed "within the limits of the local jurisdiction of the Courts of Criminal Justice." What court then has jurisdiction in this case? The state of the law being such as I have described when the Code of Criminal Procedure was passed, if it had been intended to extend the local jurisdiction of the Magistrate of the District, or in other words the District, to seaward, express provision would have been made for the

purpose. No such provision occurs, and, subject to the express provision of the Legislature, it appears to me that the analogy holds true of what is said at 3 Hagg. Adm. Rep. 275, 290: "No one ever heard of a land jurisdiction of a body of a county which extended to three miles from the coast." The offence of mischief here has not been committed within any district, and could not, under the Code, be inquired into or tried in any district. But again the Stat. (12 & 13 Vict., c. 96, s. 1) comes in aid of the local law, and says that all Magistrates shall have jurisdiction as if the alleged offence had been committed upon any waters situate..... within the limits of the local jurisdiction of the Courts of Criminal Justice." The words "any waters" are very wide. They will include any one of the numerous shallow creeks and streams within the body of the land in the Thán̤á District. Over offences on such waters the Magistrate would undoubtedly have jurisdiction: consequently he had jurisdiction over the offence in this case; and having jurisdiction he was bound to pursue the course of investigation prescribed by the Code of Criminal Procedure. This investigation led the Magistrate to the conclusion that the accused (the present applicants) were guilty of having, within "the limits of the village of Yerangal, committed mischief by causing damage to the amount of Rupees 50 by tearing up certain fishing-stakes, and thereby committed an offence punishable under Sec. 427 of the Indian Penal Code." The definition of the offence is contained in Sec. 425 of the Penal Code:—"Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such damage in any property or in the situation thereof, or destroys or diminishes its value or utility, or affects it injuriously, commits mischief." That in this case a change has been made in the situation of the fishing-stakes, diminishing their utility to the owners, has not been denied. But it is said there has not been any wrongful loss or damage occasioned to the complainants. Wrongful loss is defined in Sec. 23 of the Penal Code as "the loss by unlawful means of property to which

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the person entitled to it is legally entitled." A question might arise as to whether the mere removal of property, as in this case, to another situation, without any intent to appropriate it, or to deprive the owners of the power of recovering it at will, would amount to a "loss" of such property; but there can be no doubt that the removal of the stakes, though without any intent to appropriate them, occasioned "damage" in the sense of pecuniary injury to the complainants. This damage the applicants must have known that their proceedings would cause; and if their acts were "wrongful" the definition of "mischief" is satisfied. What "wrongful" means in this connexion is to be ascertained from Sec. 23, which I have already quoted, and a definition of wrongful damage is thus arrived at as "damage caused by unlawful means to the property of another." For the applicants it has been urged that there was no property of the complainants in the situation of the fishing-stakes, though they were owners of the stakes themselves, and that the applicants' rights having been injuriously affected by the stakes being placed where they were, their removal in the manner found by the Magistrate was not a use of "unlawful means." This raises a question of the relative duties and rights of the parties, the complete solution of which involves a rather wide inquiry. I will compress my remarks on the subject into as brief a compass as possible.

The Civil Law regarded the land covered by the sea, so far as the utmost high-water mark, as common property. I quote some extracts which are instructive in their bearing upon the whole matter that we have now under consideration:—

"Et quidem naturali jure communia sunt omnium hæc, aër, aqua profluens, et mare, et pro hoc littora maris..... Flumina autem omnia et portus publica sunt, ideoque jus piscandi omnibus commune est in portu fluminibusque..... Littorum quoque usus publicus est et juris gentium, sicut et ipsius maris et ob id cuilibet liberum est casam ibi ponere in quam se recipiat.....Proprietas autem eorum potest in-

telligi nullius esse, sed ejusdem juris esse cujus et mare et quæ subjacet mari, terra vel arena."—Inst. II., 1 fr. 1, 2, 5.

Consistently with the doctrine here enunciated, the Roman lawyers held that the first to erect a structure on the sea-shore gained a title by occupancy so far as this was consistent with the public interests—a limitation urged with great force and ability by Best, J., in the case of *Blundell* v. *Catterall* in a judgment overruled, for reasons still more weighty, by the other Judges (Abbott, C.J., Bayley and Holroyd, JJ.) who sat in that case. The Civil Law was in these matters but partially followed by the Feudal Law, the doctrines of which were received into the Common Law of England. By this the property in the sea-shore and the bottom of the sea is reckoned amongst the *jura regalia* of the Crown, a disposition which is advantageous to the community, as it tends to prevent the conflicts which are apt to arise in consequence of disputed rights of occupancy. The English law on this subject may be gathered from *Blundell* v. *Catterall* (*s*); *Benest* v. *Pipon* (*t*); *Malcomson* v. *O'Dea* (*u*); *Sir H. Constable's Case* (*v*); and Butler's note to Coke on Littleton, Sec. 440, in which Lord Hale's treatises De Jure Maris and De Portubus Maris are abundantly quoted. These authorities support both the ownership by the Crown of the soil under the sea, and the proposition that the subjects of the Crown "have also by common right a liberty of fishing in the sea, and in its creeks or arms, as a public common of piscary." "Yet in some cases the King may enjoy a property exclusive of their common of piscary. He also may grant it to a subject; and consequently a subject may be entitled to it by prescription" (Hale de J. M., p. 11). The sovereign's rights are as great under the Hindú and Muhammadan systems as under the English; but, without a minute examination of these, it is sufficient to say that by the acquisition of India as a dependency, the Crown of Great Britain necessarily became empowered to exercise its prerogatives and enjoy its *jura*

(*s*) 5 B. & Ald. 268. (*t*) 1 Knapp P. C. C. 60. (*u*) 10 H. L. Ca. 593.
(*v*) 5 Rep., p. 105 b.

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regalia in this country and on its coasts, subject always to the legislative control of Parliament (*Campbell* v. *Hall*, Cowp. 204). These are involved in the very idea of English sovereignty. I am not aware that in any case they have been so used as to exclude any subject in this country from fishing in any part of the sea. No grant of a fishery in the present case has been set up either as directly proved, or as to be inferred from prescriptive enjoyment. The complainants and the applicants alike must rest on their common right of fishing in the sea; and a permission in favour of one or the other party by the villagers of Yerangal, as given without title, could confer none upon either.

In the enjoyment of the common right of fishing, every subject of Her Majesty, except where expressly restrained by statute, is entitled to make use of the means ordinarily employed for that purpose. The existence of the one right implies that of the other (5 B. & C. 885). But the right must, like that of using a navigable river, or highway, be exercised so as not to interfere unreasonably with a like enjoyment on the part of others. In the case of such an interference the law provides a remedy. In some instances an obstruction to general enjoyment may be abated, without recourse to the courts, as a nuisance. The case has been quoted to us of *Perry* v. *Fitzhowe* (*w*), and this, taken with the subsequent case of *Davies* v. *Williams* (*x*), establishes the principle that "a commoner may pull down a house wrongfully erected so as to prevent his exercising his rights as fully as he might otherwise have done, and even, after due notice," though the house be at the time actually inhabited. But the plaintiffs in these cases were obviously wrong-doers. They erred not merely in using a right to excess, but in assuming to exercise a right at all. *Sadgrove* v. *Kirby* (*y*) shows that "if the easement be injured to a certain degree only, or if it may be a question whether injured or not, in the nature of things it cannot be a subject of abatement." That was a case in which a commoner cut down trees

(*w*) 8 Q. B. 757; S. C., 15 L. J., Q. B. 239.
(*x*) 16 Q. B. 546; S. C., 20 L. J., Q. B. 330. (*y*) 6 T. R. 483.

planted by the lord of the manor, and is to be contrasted with the cases of *Mason* v. *Cæsar* (*z*) and *Arlett* v. *Ellis and others* (*a*), in which the breaking down of hedges which excluded commoners from enjoying their rights was held justifiable. Now in the present case, what right have the applicants, what right do they even assert, that would authorise them to remove the complainants' fishing-stakes as a nuisance? Their common right of fishing gave them no such authority. A commoner, if we are to be guided by this analogy, is not justified in distraining the cattle of his fellow-commoner merely because they are excessive in number (2 Bac. Abr. 102). The enjoyment of the right of fishing by the complainants was in no way inconsistent, so far as the facts found enable a judgment to be formed, with the exercise of a similar right by all Her Majesty's subjects; but even if this had not been so, the applicants must, as a justification for their conduct, have shown that the alleged nuisance inflicted some private and special injury on them personally, which they could not without great inconvenience escape except by abating it. As observed by Lord Campbell, C.J., in *Bateman* v. *Bluck* (*b*), "a party can only abate an obstruction so far as is necessary to enable him to exercise his own right.....A person cannot at his pleasure go into a public highway and remove an obstruction which may happen to be there." In *Dimes* v. *Petley* (*c*) an action was brought for injury to the plaintiff's wharf occasioned by a vessel of the defendant. The defendant pleaded that the wharf was a common nuisance, as causing an obstruction to navigation, but this plea was held bad for not alleging that the nuisance could not have been avoided by taking any other course with reasonable convenience.

Thus the accused, finding a particular space in the sea occupied by the Málavni fishermen, were bound themselves so to pursue their own calling, if they could, as to leave their rivals without molestation. The cases to which I have referred might be corroborated by many others, but they

(*z*) 2 Mod. 65.
(*a*) 7 B. & C. 346.
(*b*) 21 L. J., Q. B. 406.
(*c*) 19 L. J., Q. B. 449.

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seem to me to be quite sufficient, for the purposes of this case, to overcome the inference attempted to be drawn from *Perry* v. *Fitzhowe* in favour of the applicants. But before quitting this branch of the subject, I will refer to the case of *The King* against *Russell* (*d*). In the report of that case, remarkable for the array of eminent names connected with it both on the Bench and at the Bar, many observations occur which make it as instructive even as *Blundell* v. *Catterall*. At page 571 Lord Hale de Portubus is cited in argument to the effect that "where the soil is the King's, the building below the high-water mark is a *purpresture*, an encroachment, an intrusion on the King's soil, which he may either demolish or seize or arent at his pleasure, but it is not *ipso facto* a common nuisance, unless indeed it be a damage to the port and navigation." Holroyd, J., in his judgment, after enumerating various rights that may be exercised in a port, says: "The enjoyment of each of those rights by some is frequently and necessarily an obstruction to the free and complete enjoyment either of the same rights, or of some other of the above rights, in others.....But such obstruction is not necessarily, or as a matter of law, a public or a private nuisance. Each of the rights must occasionally yield and become subordinate, as may be necessary or reasonable—at least in part—to some of the others. The public, that is, each individual, has not an absolute right to navigate, *i.e.*, to sail over, every part of the river, but only where there is not otherwise a legal preoccupation by others." Immediately afterwards, quoting Lord Hale, he remarks: "It is not, therefore, every building below the high-water mark that is *ipso facto* in law a nuisance;" and further on he approves of the direction to the jury: "Do the purposes of public benefit resulting from the staith countervail the prejudice which individuals may sustain by having the exercise of their rights of passage narrowed?.....If you think this is placed not in a reasonable part of the river, that it does an unnecessary damage to the navigation, or that this is not of any public benefit, or that the public benefit resulting from it is not equal

(*d*) 6 B. & Cr. 566.

to the public inconvenience which arises from it, then you will find your verdict for the Crown." Bayley, J., maintained the same opinions, and at page 598 he asks: "Is the place in which the public benefit accrues material?.....The King is equally the guardian of the public rights of all his subjects; all his subjects are equally under his care; and if public benefit results, it is immaterial whether it is to his subjects in London or to his subjects at Newcastle." Let us now apply these principles to the case before us. It is quite obvious that the efficiency of the fisheries on the coast is an element of the public welfare of this community. Their efficiency is known to depend on measures such as those which the complainants in this case took for carrying on their business; indeed, it was the very efficiency of the fishery which gave occasion to the foray made upon it. It is not alleged that the setting up of the stakes occasioned any obstruction to navigation. The only right affected was the common right of fishing, which the people of Manori possessed in no higher degree than those of Málavni. The fishery of the latter was no public nuisance; there is no pretence for saying it was a private nuisance to any property held by the applicants, whose act, therefore, in dislodging the stakes, and thus breaking up the fishery, was clearly unlawful. The Málavni fishermen had a property in their stakes, not merely as so many pieces of timber, but as arranged in a particular way. To replace them would cost time and labour. The removal of them impairs their means of living. These injuries constitute wrongful damage in the sense of the Indian Penal Code, and the conviction must, I think, be sustained.

One point, however, has been urged in the applicants' favour, which deserves a little further consideration. It appears that in 1865 the Mámlatdár of Salsette gave to the accused an order empowering them to retain the enjoyment of the fishery as hitherto. This, it is said, entitled the accused to sole possession and enjoyment of the fishery, or at least justified them in supposing that they had an exclusive right to it. It might be sufficient to say that the

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Mámlatdár had no jurisdiction to deal with sea-fisheries. His powers were not intended by Bombay Act V. of 1864 to be extended beyond those of the Collector and his Assistants under the Regulations and Act XVI. of 1838. Those who engage in acts of violence on an insufficient warrant do so at their own peril. But the order relied on is in truth not one which assigns to the Manori fishermen any exclusive enjoyment of fishing-rights over a definite district of the sea. Much less does it purport to empower them to tear up the fishery of their neighbours the people of Málavni. It cannot have the effect of exonerating them from the natural consequences of their conduct, on the ground that they did not know that they were about to cause wrongful damage. They appear to have been led into violence chiefly by the mischievous guidance of the late unfortunate Mr. Morobá Kánobá. I trust the result will for the future prevent their taking the law into their own hands, as it must teach them that thus used, or abused, it is a dangerous weapon—more likely, perhaps, to injure those who employ it than their antagonists.

I concur in dismissing the application.

July 3.

REG. v. CHILL.

Jurisdiction—European British Subject—Offence committed in Indian Foreign Territory—Penal Code.

A European British subject is liable to be tried in the High Court of Bombay for an offence against the Indian Penal Code committed in the territories of a Native Prince in alliance with Government upon charges framed under the Penal Code.

AT the third Criminal Sessions of 1871 (held by SARGENT, J.), G. P. Chill, a European British subject, was by the Clerk of the Crown charged as follows:—

(I.) That he, the said G. P. Chill, on the 1st of January 1871, at Kennagh Khedá, in the village of Sat Khanda, in the Parganá of Nimbaherá of Tonk of Rájputáná, within the jurisdiction of the High Court of Judicature at Bombay, did wrongfully confine one Udá Jívá, against the form of the