

“In the present case, the order being under Section 255, the Sessions Judge is, in my humble opinion, not authorized by law to set it aside and order commitment under Section 435, because the accused person was acquitted after a charge had been prepared.”

The proceedings were considered in Court by Bayley and Kemball, JJ., on the 23rd May 1872.

PER CURIAM :—The Court annuls the order of the Session Judge, directing the committal of the said Venku Narsá to the Session Court, for the reason that the said accused having been acquitted after trial, it was not competent to the Session Judge to interfere under Section 435 of the Code of Criminal Procedure.

Order annulled.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. JETHYA' valad VESTYA'.

May 23.

Breach of contract of service—Act XIII. of 1859, Sec. 2.

A labourer agreed to serve in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service in violation of the agreement. He was prosecuted and convicted of breach of contract of service under Act XIII. of 1859.

Held that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract within the meaning of Act XIII. of 1859, and because, further, *no money in advance was received*, the consideration for the agreement to serve being an old debt.

THE accused was convicted by G. W. Anderson, Magistrate, F. P., in the Khandesh District, of the offence of committing breach of contract of service under Section 2 of Act XIII. of 1859, and was, on the 20th February 1872, sentenced to suffer rigorous imprisonment for two months.

The accused owed Rs. 195 to one Náná Prayág on account of former debts. On the 24th August 1871, he passed to Náná a writing, in which he agreed to serve him (Náná) for ninety-seven months and a half, in consideration of this sum of Rs. 195. Accordingly, Jethyá entered Náná's service, but

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left it after three months. On this, Náná prosecuted him before the Magistrate F. P., who found him guilty under Act XIII. of 1859.

On a review of the monthly Criminal return, the High Court sent for the Magistrate's proceedings. On their receipt, the case was considered in Court by Bayley and Kembal, JJ. on the 23rd May 1872. The Court passed the following order :—

It is clear that there was no "fraudulent breach of contract," within the meaning of Act XIII. of 1859, so as to render Jethyá liable to be dealt with criminally; and the way in which the case has been dealt with reflects little credit on the Magistrate, F. P. It is patent on the face of the proceedings that *no money in advance was received*, the consideration for the agreement to work for the complainant being an old debt, so that nothing but great carelessness in reading the Act in question could have allowed the Magistrate to deal with Jethyá as a criminal.

Jethyá has suffered the full term of this improper sentence. The Honorable the Judges of the High Court are, therefore, powerless to afford him any remedy.

[APPELLATE CRIMINAL JURISDICTION.]

May 23.

REG. v. ANVARKHA'N valad GULKHA'N and another.

*House-breaking in order to commit theft—Theft—Compound offence—
Separate sentence—Limit of punishment—Ind. Pen. Code,
Secs. 380 and 457—*

It is competent to a Magistrate to pass a separate sentence in respect of each of the two charges, of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences.

THE accused were convicted by E. T. Richardson, Magistrate F. P. at Púna, of two offences, viz., of house-