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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-

breaking in order to commit theft, and of theft in a dwelling house and, on the 22nd June 1871, were sentenced, each, to undergo rigorous imprisonment for two years (being one year for each offence) under Sections 457 and 380 of the Penal Code.

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On appeal, the Session Judge of Puna (R. H. Pinhey) considered the sentences passed by the Magistrate, F. P., to be illegal and reduced them to one year. His reasons will appear from the following extract from his finding recorded on the 2nd August 1871 :—

“Notwithstanding a great deal of illegal evidence (hearsay) that has been recorded in this case, there can, I think, be no doubt of the guilt of the appellant, but the F. P. Magistrate was in error in sentencing the appellant for two distinct offences. House-breaking in order to commit theft, and theft committed by means of that house-breaking, are parts of one offence, and therefore, under the provision of Section 71 of the Indian Penal Code, not punishable separately (*Reg v. Bhiká Putzá*, Bombay High Court, 4th November 1863).

“Under the provisions of Section 419 of the Code of Criminal Procedure, I alter the sentence recorded against the appellant by the F. P. Magistrate by reversing the sentence of one year's rigorous imprisonment passed on the appellant Anvarkhán Gulkhán for theft.”

On the 3rd October 1871, the Magistrate of the District of Puna (J. E. Oliphant), at the request of Mr. Richardson, submitted the proceedings for the consideration and orders of the High Court. Mr. Richardson's reasons for passing two distinct sentences upon the two offences held proved by him, will appear from the following extract from his letter:—

“I have the honour, with deference to the Session Judge's remarks, \* \* \* to point out that the following circulars, decisions, and rulings of Her Majesty's High Court Judges, overrule the opinion held in the case referred to by the Session Judge of Puna.

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(1) Circular from Her Majesty's High Court, No. 1348, dated the 4th November 1863.

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(2) Do. • do. No. 449, dated the 26th March 1866.

(3) The decision in *Reg v. Genu bin Aka*, Volume V. page 83, of reported cases, dated 16th September 1868.

(4) Criminal rulings of Her Majesty's Judges, dated 16th August 1869, in *Reg. v. Ramchunder Jairam*.

“From the circular and decision above quoted (1 and 3) it would appear that the passing of separate sentences upon conviction of house-breaking in order to the committing of theft, and of theft, is not in itself illegal, as the sentences passed by me taken together, in each of these cases, were not beyond my powers.

\* \* \* \* \*

“The Session Judge does not in the least doubt the guilt of the appellants, for, in both cases he says, ‘there can, I think, be no doubt of the guilt of the appellants,’ and as the Session Judge has reduced the sentences, not from their being too severe, but from an impression that I was wrong in passing sentences upon each of the heads of charge, I would beg respectfully, under the provisions of Section 404 of the Criminal Procedure Code, to suggest that the cases be referred to Her Majesty's High Court, in order that the Session Judge's order may be reversed and the original sentences confirmed.”

The case, coming before a Division Bench of the High Court (Kemball and West, JJ.), on the 25th October 1871, was referred by it to the Full Bench for disposal with the following observations :—

“We refer to the Full Bench the question whether a person charged with a complex criminal act such as house-breaking with intent to commit theft, and theft, may be tried and convicted and punished for each of these offences as to which the Penal Code has separate and distinct provisions. Two cases have been referred from the districts of Puna and Nasik, respectively, for the interference of this Court on the

ground that conviction and punishment for each of the several offences are illegal. This view is supported by the rulings of this Court, in *Reg. v. Bhiká Putzá*, 4th November 1863, *Reg. v. Arjun (a)* and *Reg. v. Tukyá Bhikyá*, 2nd March 1864; but, on the other hand, there are the decisions also of this Court in *Reg. v. Genu (b)* and criminal rulings of the 16th August 1869, opposed though these are to various rulings of the Bengal High Court.

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“The decisions seem confused and contradictory, and we think that the whole question requires fuller consideration, both as to the soundness of the principle of annexing a single *criminal* intent to successive acts so as to constitute several offences, and as to the propriety, when the Sessions Court convicts of the greater of two partially coincident offences, of suspending the inquiry upon the other.”

The proceedings were, accordingly, considered in Court by Westropp, C.J., Gibbs, Lloyd and Kembal, JJ., on the 25th January 1872.

*Cur. adv. vult.*

23rd May. PER CURIAM:—The Court is of opinion that it was competent for the Magistrate F. P. to pass a sentence on each of the two charges, viz., of house-breaking in order to the committing of an offence punishable with imprisonment, and of theft in a building used as a human dwelling, provided that the aggregate amount of punishment awarded on the two charges did not exceed that which the case warrants for the greater of the two offences of which the two accused persons have been respectively convicted, and provided also that such aggregate punishment did not exceed the jurisdiction of the Court which has convicted the accused. Tried by these tests, the sentences passed by Mr. Richardson, the Magistrate, F. P., in this case of the Queen v. Anvarkhán valad Gulkhán, and Bhutá bin Sabláji, were lawful; inasmuch as the aggregate of the punishments awarded to each prisoner neither exceeded the punishment, which by law might be allotted to the graver of the two offences, nor the

(a) 1 Bom. H. C. Rep. 87

(b) 5 Bom. H. C. Rep. Cr. Ca. 83.

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REG. The Court, therefore, reverses the orders of the Session Judge,  
ANVARKHAN and restores the sentences passed by the Magistrate, F. P.  
valad  
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*Orders of the Session Judge reversed.*

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