

ment thereof, we order that the parties do respectively bear their own costs.

Attorneys for the plaintiff:—*Dallas and Lynch.*

Attorney for the defendant Govardhandás:—*C. Tyabji.*

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DA'S JAG-
JIVANDA'S.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. NA'RA'YAN GANGA'RA'M and other.

July 11.

*Offences against opium laws—Regulation XXI. of 1827—Jurisdiction—
Power of arrest.*

The District Magistrate (whose Court is the proper tribunal for the trial of an offence relating to the smuggling of opium *) has, under Section 21 of the Code of Criminal Procedure, power to inflict any fine provided by Regulation XXI. of 1827 for such offence, even though the fine may exceed Rs. 1,000.

The arrest of a person accused of the above offence without a warrant is generally illegal, except under the circumstances specified in Sec. 108 of the Code of Criminal Procedure.

THIS was a reference made by R. H. Pinhey, Session Judge of Púna, for the orders of the High Court.

Each of the two accused was found in illegal possession of a bundle of opium, weighing over a quarter of a Súrat *seer*. The quantity in each of the bundles was such that the penalty recoverable exceeded the sum of one thousand rupees. The Police apprehended the accused without a warrant and sent them on to Mr. Bell, Acting Magistrate of the District of Púna, who committed the case for trial by the Court of Session. That Court, under Sec. 22 of the Code of Criminal Procedure, Cl. 3, delegated the trial to the Assistant Judge, Mr. Satyendra Náth Tagore, who, finding the accused guilty, sentenced each to pay a fine of Rs. 1,292-6-4 or in default to suffer six months' simple imprisonment. Mr. Pinhey, the Sessions Judge, being of opinion that the offence was not triable by the Assistant Judge, and feeling doubtful whether the Magistrate of the District, whose pecuniary jurisdiction was limited, by Sec. 22 of the Code of Criminal Procedure,

* See *Reg. v. Lakhu Sakru* 8 Bom. H. C. Rep. Cr. Ca. 118.

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to one thousand rupees, could take cognizance of the case, referred the matter for the orders of the High Court. Mr. Pinhey also brought to the notice of the court an illegality in the original arrest of the accused and in the sentence passed upon them by Mr. Tagore.

The reference was heard by LLOYD and KEMBALL JJ.

PER CURIAM :—The court concurs with the opinion of the Session Judge that his Assistant had no jurisdiction, and directs that the accused be tried by the Magistrate of the District, who, the court is of opinion, has, under Section 21 of the Code of Criminal Procedure, power to inflict any fine which he may be competent to impose under Regulation XXI. of 1827, this being an offence punishable under a special law. The Court also concurs with the Session Judge in thinking that an arrest without a warrant for such an offence is generally illegal, though under the provision of Sec. 108 of the Code of Criminal Procedure it is competent to a Police officer, under the circumstances therein named, to arrest without a warrant.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION.]

Aug. 22.

REG. v. GARBAD BECHAR.

*Evidence—Confession—Retracting Confession—Crim. Proc. Code
Section 205.*

A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with Sec. 205 of the Code of Criminal Procedure, does not amount to a confession, although the plea for retracting the confession, viz., ill-treatment of the accused by the police, may be inquired into and found to be untrue.

THE accused was tried and convicted of murder by W. H. Newnham, Session Judge of Súrat, and sentenced to transportation for life.

From the evidence of Máhákor—a pardoned accomplice—it appeared that she had been carrying on a criminal intrigue with Garbad, the convict, that her husband Mansing,