

1872.
Sept. 5.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. AHONE AKONG.

*Violation of conditions of remission of punishment—Jurisdiction—
Indian Pen. Code, Sec. 227.—Crim. Proc. Code, Sec. 33.*

A person convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of Burglary, and sentenced to transportation for ten years, at a place to be appointed by the Governor General of India in Council, was released from the Ratnagiri jail on a ticket-of-leave after having been in confinement for more than eight years. At Karedar he committed theft in a dwelling house before his sentence had expired.

Held that the Full Power Magistrate at Kárwár had jurisdiction to try the convict for the offence of violation of the condition of remission of punishment under Section 227, Indian Penal Code.

THIS was a reference from the District Magistrate of North Kanara for the orders of the High Court under Section 434 of the Code of Criminal Procedure.

The facts were briefly as follows :—

The accused Ahone Akong was convicted by the Court of Judicature of Prince of Wales's Island, Singapore, and Malacca, of Burglary, and was sentenced by the Recorder "to be transported beyond the seas to such place as the Governor General of India in Council may direct and appoint, for the term of ten years." In pursuance of this sentence he suffered imprisonment in the Ratnagiri jail for a period of eight years, one month, and fifteen days, at the end of which he was permitted to reside at Kárwár on a ticket-of-leave issued by the Inspector General of Prisons. While at Kárwár the accused committed the offence of theft in a dwelling house, and was tried and sentenced, on the 10th of March 1872, by Mr. Ingle, Magistrate, to fifteen months' rigorous imprisonment. After passing this sentence the F.P. Magistrate tried and convicted the accused of violation of condition of remission of sentence under Section 227 of the Indian Penal Code, and sentenced him to suffer such portion of the punishment to which he was originally sentenced by the Recorder as he had not already suffered.

With regard to the case of theft in a dwelling house which was No. 41 in the F. P. Magistrate's Calendar, the District Magistrate suggested that the proceedings should be reversed ; and with regard to the latter, he doubted whether any court in British India had jurisdiction.

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The reference was heard by LLOYD AND KEMBALL, JJ.

PER CURIAM :—The offence of which the accused was originally convicted by the Recorder's Court answers to house-breaking by night, with intent to commit theft, under the Indian Penal Code, which offence is triable (vide Column 7 of the Schedule to the Criminal Procedure Code under Sec. 457) by a F. P. Magistrate. And, in order to give force and effect to the provisions of Section 33, Criminal Procedure Code, the words, "by the Court by which the original offence was triable," (Schedule under Section 227) must be taken to mean by any court empowered by law to try any such an offence as that for which the convict was under sentence.

Mr. Ingle, therefore, had power to sentence the convict to suffer so much of the punishment as he had not already suffered, that term being manifestly within his powers ; though he should have determined and declared the exact term of punishment the convict was required to undergo in consequence of breaking the conditions of his ticket-of-leave.

As regards the theft case the court does not understand why the District Magistrate should have suggested that "the proceedings should be reversed."

Order accordingly.