

he should have said "No; you Imám have an excess." The former decision implies that the excess was in the hands of Maktum, and he cannot now come forward on the ground that, instead of an excess, there was a deficiency. We, therefore, confirm the decree of the Court below with costs.

1873.

MAKTUM

v.

IMÁM.

Decree confirmed with costs.

[APPELLATE CRIMINAL JURISDICTION.]

REG. V. PREMJI BHAGVÁN.

July 3.

Cotton Frauds Act—Bombay Act IX. of 1863, Secs. 2 and 8—Fraudulent intent or knowledge.

To constitute the offence of offering adulterated cotton for compression under Sec. 8 of Bombay Act IX. of 1863, it is not necessary to prove that the accused had a fraudulent intention, or that he had knowledge of the cotton having been adulterated, or deteriorated, or mixed, as described in Sec. 2. of that Act.

THIS was an application for the exercise of the Court's extraordinary criminal jurisdiction. The accused Premji Bhagván was tried and convicted by the First Class Magistrate of Ahmadabad for the offence of offering adulterated cotton for compression, and sentenced to pay a fine of Rs. 25.

Bombay Act IX. of 1863, Sec. 2. :—Whoever adulterates or deteriorates cotton, by mixing therewith any seed, dirt, stones, or other foreign matter, or who fraudulently or dishonestly mixes cleaned and uncleaned cotton, commonly called cuppas, or cotton of different varieties in one bale, or who fraudulently or dishonestly, by exposing cotton to dew or by any other means, deceptively increases, or attempts to increase, the weight of the same, shall be punishable, on conviction, with imprisonment of either description for a term not exceeding twelve months, and shall also be liable to fine. All cotton so adulterated, or deteriorated, or fraudulently mixed, or deceptively increased in weight, and which has formed the subject of such a conviction, shall be confiscated.

Section 8 :—Any person offering for compression cotton adulterated, or deteriorated, or mixed, as described in Section 2, shall, on conviction, be liable to a fine not exceeding rupees one thousand, and all such cotton shall be confiscated.

1873. under Sec. § of Bombay Act IX. of 1863; and eight bales
 REG. of cotton of the value of about Rs. 1,500 were also ordered
 v. to be confiscated. An appeal was made against this deci-
 PREMJI sion to the District Magistrate who rejected the appeal.
 BHAGVA'N.

The application was heard by MELVILL and NA'NA'BHA'I
 HARIDA'S, JJ.

Shántarám Náráyan in support of the application :—
 Sec. 2 of the Cotton Frauds Act should be so read as to
 insert the words “fraudulently or dishonestly” between
 the words “whoever” and “adulterates,” for fraud or dis-
 honesty must be the very essence of crime.

[MELVILL, J. :—The Legislature has apparently been careful
 in this Act to insert those words where they considered them
 to be necessary, and has abstained from doing so where they
 considered otherwise. There are other enactments in which
 simple possession of certain articles, without any dishonest
 intention or knowledge, is made an offence. For instance,
 the possession of more than a quarter Surat seer of opium,
 on which duty has not been paid, is made punishable under
 Regulation XXI. of 1827, even though the person in pos-
 session may not be proved to have been aware that the
 opium had been smuggled.*]

[NA'NA'BHA'I, J. :—We cannot insert in Sec. 2 words,
 which the Legislature has thought fit to omit from it.]

There is not even an attempt to prove fraud or criminal
 knowledge on the part of the accused.

PER CURIAM :—The Court considers that as the accused of-
 fered the cotton for compression, and as it was adulterated,
 as described in Sec. 2 of Bombay Act IX. of 1863, the
 accused was liable to the penalties laid down in Sec. 8 of
 the Act; and that it was not necessary for the prosecution to
 prove that the accused had a fraudulent intention, or that he
 knew that the cotton was either adulterated or deteriorated.

Petition Rejected.

* *Note.*—See, as to evidence of fraud required for a conviction under
 Sec. 2 of Act IX. of 1863, *Reg. v. Jivan Usmán*, 3 Bom. H. C. Rep.
 Cr. Ca. 12:—Ed.