

1877. imprisonment in default of payment of fine is the sentence, the
 September 4. imprisonment in default cannot exceed one-fourth of the period of
 REG. imprisonment which the Magistrate is competent to inflict for
 v. the offence ; but if the sentence is *fine only*, the imprisonment
 MUHAMMAD in default of payment may be the whole period of imprisonment
 SAIB. which the Magistrate is competent to inflict for the offence. With
 the adoption of this construction the meaning and object of this
 piece of legislation, which had no place in the former Procedure
 Code (Act XXV of 1861), becomes clear and intelligible.

The sentence of the Cantonment Magistrate is therefore legal and will stand.

*Before the Officiating Chief Justice (Mr. Justice Innes),
 Mr. Justice Kindersley, Mr. Justice Busteed and
 Mr. Justice Tarrant.*

PROCEEDINGS, 18TH SEPTEMBER 1877.

REG. v. PYLA ATCHI AND OTHERS.

Salt earth—Collection of—Madras Regulation I of 1805, Sec. 18.

The collecting of salt earth from salt swamps, or the being in possession of salt earth for the purpose of making salt is not an offence within the meaning of Sec. 18 of Madras Regulation I. of 1805.

UPON reading the register of summary trials held by the Deputy Magistrate of Ganjam in certain cases, Counsel not appearing, the High Court passed the following

1877. RULING :—In Cases Nos. 17, 18, 19 and 20, the accused have
 September 18. been convicted of collecting salt earth from salt swamps, or of
 being in possession of salt earth for the purpose of making salt
 illicitly, and have been sentenced in three cases (Cases 17, 19
 and 20) to pay fines, and in one case (No 18) to be imprisoned
 for seven days.

The convictions purport to be under Act XVII of 1840. That Act, however, does not define what acts amount to breaches of the salt laws, but merely invests the Magistracy (as distinguished from the then *Criminal Courts*) with certain powers of punishment in respect of acts which, under the existing law, amounted to breaches of the salt laws. The declaratory law as to what acts amount to breaches of the salt laws is contained in

Madras Regulation I of 1805. Section 18 of that Regulation enacts that "Any person engaging in any clandestine or fraudulent transaction with respect to rowannahs or passes, smuggling, or conniving at the smuggling of salt, making, purchasing, obtaining, selling, or weighing salt in an illicit manner, shall, on conviction, besides being fined at the discretion of the Judge, according to the circumstances of the case, be liable to permanent exclusion from the service of the Company."

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REG
v.
PYLE ARCHD.

The High Court are of opinion that the collecting of salt earth from salt swamps, or the being in possession of salt earth for the purpose of making salt, does not come within any of the terms of Section 18 of Regulation I of 1805.

The Court are aware that a contrary decision was arrived at in 1869 (High Court Proceedings, 1st July 1869) (1), when it was held that being in possession of salt earth for the admitted purpose of making salt was an "engaging in a clandestine and fraudulent transaction with respect to making salt in an illicit manner." That decision was also followed in a subsequent case decided in April 1871.

In one of the cases now under consideration (Case No. 20), the purpose for which the salt earth was collected was admitted to be the making of salt. In the other three cases it does not appear that any evidence was given, or that any admission was made, as to the purpose for which the salt earth was intended. It is not, however, sought on that ground to distinguish the cases now before the Court from the case decided in the Proceedings of the 1st July 1869.

The High Court are of opinion that the ruling of July 1869 was erroneous, and they think that the decision then arrived at should be overruled.

An enactment (Act No. VI of 1871) is now on the Statute Book under which the acts, for which the accused have now been punished, might be legally dealt with. The Local Government have not, however, issued the notification required by law to bring that Act into force in the district in which the cases now dealt with arose. Until the new Act is brought into force, convictions such as those now before the Court must be held to be illegal.

Convictions quashed.

(1) See 4 Mad. H. C. R. App. liii.