

FULL BENCH.

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

PROCEEDINGS, 4TH SEPTEMBER 1877.

REG. v. MUHAMMAD SAIB AND ANOTHER.

*Indian Penal Code, Sec. 160—Sentence, legality of—Criminal Procedure
Code, Sec. 309.*

Prisoners were convicted of having committed an offence punishable under Section 160 of the Indian Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under the section.

Held by a majority of the High Court (KINDERSLEY, J., dissenting) that having regard to the provisions of Sec. 309 of the Criminal Procedure Code, Act X of 1872, the sentence was legal.

UPON a reference by the Sessions Judge of North Malabar of the proceedings of the Cantonment Magistrate of Cannanore in case No. 201 of 1877, Counsel not appearing, the High Court made the following

RULING:—In this case the Cantonment Magistrate convicted two persons of committing an affray, an offence punishable under Section 160 of the Penal Code, and sentenced them to pay a fine of Rupees 25 each, or in default to be rigorously imprisoned for thirty days. An offence under Section 160 of the Penal Code being punishable with imprisonment for one month and with fine to the extent of Rupees 100, or with both, the Sessions Judge submits that the Magistrate was not authorized in awarding imprisonment, in default of payment of fine, for a period exceeding one-fourth of one month.

The High Court, after giving careful consideration to the provisions of Section 309 of the Code of Criminal Procedure, are of opinion that the sentence of the Cantonment Magistrate is not illegal. The final clause of Section 309 of the Code of Criminal Procedure enacts that where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under the Act. It appears to the High Court that the proper construction of this clause is as follows: If imprisonment and fine, and further

1877.
September 4.

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