

## JURISDICTION AS COURT OF REVISION.

*Before Mr. Justice Innes and Mr. Justice Kernan.*

PROCEEDINGS, 22ND DECEMBER 1876.

1876.  
December 22.

REG. v. KANDAKORA.

*Magistrate, Jurisdiction of—Act XVI of 1874.*

The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws thereby given to them.

UPON a reference by the District Magistrate of South Canara, under Sec. 296 of the Code of Criminal Procedure, of certain proceedings of the 2nd-class Magistrate of Nileshwar as contrary to law, Counsel not appearing—

The High Court passed the following

RUMING :—In this case the 2nd-class Magistrate convicted the accused of an offence against the salt laws and sentenced him under Regulation 1 of 1805, Section 18, and Act XVII of 1840, to be rigorously imprisoned for 20 days.

The District Magistrate submits that the sentence is illegal inasmuch as Regulation 1 of 1805 authorizes a sentence of fine only, and Act XVII of 1840 merely empowers Magistrates to deal with offences against the salt laws (which had up to that time been cognizable only by the Criminal Courts) and does not invest them with any new or extra powers.

The High Court are of opinion that the sentence of the 2nd-class Magistrate is legal.

Act XVII of 1840 authorizes a Magistrate of a district to pass a sentence of imprisonment of either kind for a period not exceeding 30 days.

Madras Act III of 1865 authorizes every Magistrate to take cognizance within his jurisdiction of any offence against any special or local laws now in force, *notwithstanding any provision to the contrary in any Act or Regulation now existing.* Madras

1876. Act III of 1865, though repealed, has been held to be still  
December 22. in force in so far as it established a jurisdiction over offences.

(H. C. Proceedings, 29th September 1876) (1).

REG.  
v.  
KANDAKORA.

The sentence was not in excess of what the 2nd-class Magistrate might, in the exercise of his ordinary jurisdiction, have awarded.

## JURISDICTION AS COURT OF REVISION.

*Before Mr. Justice Holloway and Mr. Justice Innes.*

1877.  
January 19.

PROCEEDINGS, 19TH JANUARY 1877.

REG. v. ACHARJYS.

*Penal Code, sec. 304a.*

In the course of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall to the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held*, that on these facts the accused was not guilty of the offence described in Sec. 304a of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *a fortiori*, no designed causing of it.

UPON reading the record in Criminal case No. 86 of 1876, on the calendar of the Assistant 1st-class Magistrate of Ganjam,

(1) In the Proceedings dated 29th September 1876, the High Court [Holloway, Innes, Kernan and Kindersley, JJ.] decided as follows: "The question is whether the repeal of Madras Act III of 1865 by Act XVI of 1874 has deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws. The answer depends upon the meaning of the last two paragraphs of Clause I.

So far as it applies to the present matter: "This Act, i. e., the repeal of former Acts, shall not affect any established jurisdiction notwithstanding that the same may have been in any manner derived from any enactment hereby repealed."\* The plain meaning of these words seems to a majority of the Court to be that the repeal of any Act shall leave any existent jurisdiction precisely as the repeal found it.

The negative words seem to render this still clearer. This Act (the repeal) shall not restore any restriction, &c., not now existing. The incapacity to deal within the limits of their ordinary powers with an offence under a special or local law, indicating a particular tribunal, was a restriction upon the jurisdiction given by the Procedure Code. That restriction was removed by this repealed Act. It is not by the express words of the repealing Act to be restored by that repeal.

The result is that Acts are repealed, but all the effects which they have produced are to be treated as rooted in the law despite the repeal."

\* See Act XVI of 1874 in Sec. 1.