

APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

EMPRESS v. IMAMBU.*

Poisonous drugs—Bombay Act VIII of 1866—Jurisdiction.

1879

November 20.

Convictions under section 11 of Bombay Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the Town and Island of Bombay before Magistrates of the first class.

THIS was a criminal review by the High Court, which sent for the papers in the case on an examination of the criminal calendar of the Second Class Magistrate of Indi, within the district of Kaládgi, who had tried and convicted the accused, under section 11 of Bombay Act VIII of 1866, of having sold poisonous drugs without a license, and sentenced him to pay a fine of Rs. 15. It appeared doubtful whether the Second Class Magistrate had jurisdiction to try the case.

There was no appearance either on behalf of the accused or on that of the Crown.

Per Curiam.—The Court annuls the conviction and sentence for want of jurisdiction.

By section 11 of Bombay Act VIII of 1866 the conviction must be had before “a Magistrate”. Section 2 of the Act defines a Magistrate as “a person invested with the powers of a Magistrate under the Code of Criminal Procedure”. The Code of Criminal Procedure in force at the time when Bombay Act VIII of 1866 was passed, was Act XXV of 1861, and section 16 of that Act provides that the words “the powers of a Magistrate” shall imply “the full powers of a Magistrate”. It follows that a conviction under section 11 of Bombay Act VIII of 1866 can only be had before a Magistrate, first class.

Order accordingly.

* Criminal Review, No. 224 of 1879.