

dilicto. Section 31 again refers to search and seizure of arms under certain other circumstances, none of which are applicable to the present case.

"The most then that can be said against the petitioner is that he has in his possession certain arms without a license, but this would be an offence only if the provisions of s. 32 of the Act had been extended to, and were still in operation in this district. The petitioner states that no order was ever issued for the disarming of the district. To ascertain this, I wrote to the Magistrate, requesting him at the same time to let me know under what section of the Arms Act he had taken proceedings against the petitioner; but on the first point he states that he can give no answer 'at present,' and on the other he has practically refused to give any answer at all. In the meantime, however, I have caused a search to be made through all the Government notifications in my office since 1857, and I am unable to find any order for the disarming of Gya, while from the Government notification of 1st October 1860 it is clear that, since that year at all events, s. 32 of Act XXXI of 1860 has not been in operation in the Lower Provinces of Bengal.

"If the view I have taken of the law be correct, it seems clear that the petitioner has committed no offence that would warrant the issue of a summons or warrant for his personal appearance before the Magistrate. For the foregoing reasons I am of opinion that the proceedings of the Magistrate are illegal, and should be quashed.

"I am, therefore, under the circumstances compelled to transmit the record for the consideration and orders of the High Court."

Mr. Allen for the petitioner.

The following was the judgment of the Court:—

Taking the facts, as disclosed by the record we are of opinion that the Sessions Judge is quite right, and we accordingly set aside the proceedings of the Magistrate as contrary to law (1).

Before Mr. Justice Bayley and Mr. Justice Mitter.

IN THE MATTER OF THE PETITION OF W. N. LOVE.*

Infringement of Municipal Bye-laws—Daily Fine illegal.

1872

August 29.

THE following reference was made by the Officiating Sessions Judge of Hooghly:—

"The petitioner, W. N. Love, has been convicted, under s. 18 of the Howrah

* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of Hooghly.

(1) In *in re Madnarain Pari*, decided on 5th July 1872, Kemp and Glover, JJ. following the ruling in this case, held that mere possession of arms was no offence under Act XXXI of 1860 in districts where s. 32 of the Act is not in force.

1872

IN THE
MATTER OF
THE PETITION
OF W. N. LOVE.

Municipal Bye-laws (1), and fined Re. 1 for infringement thereof, as well as ordered to pay a daily fine of Rs. 2 (I presume until he complies with the Bye-law).

An order of this description has been held, not only to be contrary to law, but to vitiate the entire conviction—*In re Sagar Dutt* (2); and following that rule, I feel bound on the petitioner's application to submit the proceedings under s. 434 of the Code of Criminal Procedure to have that order set aside."

The judgment of the Court was delivered by.

MITTHER, J.—We think that the daily fine of Rs. 2 was illegal, and ought to be set aside. But under the circumstances of this case, we do not think it necessary to exercise our special powers of discretion by setting aside the fine of Re. 1 which was inflicted upon the prisoner for an offence actually committed. The conviction on that offence is not bad in law, and we do not see any reason for exercising our extraordinary powers by setting aside that conviction.

Before Mr. Justice Kemp and Mr. Justice Glover.

1872
July. 26

QUEEN v. MOZAFAR KHALIFA.*

Criminal Procedure Code (Act XXV of 1861), s. 62—Order by a Magistrate prohibiting the Straying of Cattle—Conviction for Breach of such Order.

An order by a Magistrate, prohibiting the straying of cattle within certain local limits, is not an order within the meaning of s. 62 of the Code of Criminal Procedure. There can be no conviction for disobedience of such order under s. 289 of the Penal Code.

THE Deputy Magistrate of Jamalpore, purporting to Act under s. 62 of the Code of Criminal Procedure, promulgated an order on the 27th August 1869 in general terms prohibiting the owners of cattle, calves, goats, sheep, and ponies from allowing such animals to stray loose within and about the town and station of Jamalpore, and prescribing the limits within which the said order should have effect.

On the 6th May 1872, one Mozafar Khalifa was convicted, under s. 289 of the Penal Code, for permitting his pony to stray about loose, and sentenced to pay a fine.

* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of Mymensing, dated the 12th June 1872.

(1) The external roofs and walls of any of grass, leaves, or any other inflammable hut or any other building whatever about materials. The commissioners may from be erected or renewed, in or near any time to time notify what bazars and roads large bazar or main road, shall not be made come under the above denomination.

(2) 1 B. L. R., O Cr., 41.