

1864.
Reg.
v.
Timmi'.
sidering that the evidence was insufficient to sustain the conviction, they, under Sec. 399 of the Code of Criminal Procedure, acquit the prisoner, and order that she be discharged.

The Court remark that the Session Judge improperly allowed one witness (No 1) to state that the accused was not of good character; and that the committing Magistrate allowed several witnesses to give similar evidence before him.

Conviction and Sentence reversed.

NOTE.—Before the Court of Session *Bhivaji Nilkanth* deposed:—"I know the prisoner, Timmi. Her husband is alive; but she has left him for two or three years. She is not of good character."

Before the first Class Subordinate Magistrate of Nargund, amongst other evidence to the same effect, *Ningona*, the mother of the prisoner, deposed:—"She has been living separately from her husband. She is ill-behaved. I do not know who has kept her."—Ed.

Jan. 8.

REG. V. GANU' LA'DU'

Conviction on several Charges—Aggregate Punishment—Previous Conviction—Crim. Proc Code, Secs. 22 46, and 443—Ind. Pen. Code, Secs. 75, 380, and 454.

Where a person, though charged under different sections of the Penal Code, was convicted of what was substantially but a single offence:—

Held that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment, as for separate offences under Sec. 46 of the Code of Criminal Procedure, exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence.

Held, also, that, as the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished, as after a previous conviction, under Sec. 75 of the Penal Code.

THE prisoner was convicted by T. Bosanquet, Magistrate F. P. at Ratnágiri, of the offences of theft in a dwelling-house, under Sec. 380, and of house-breaking in order to the committing of an offence punishable with imprisonment, under Sec. 454 of the Penal Code; and sentenced to suffer two years' rigorous imprisonment for each of these offences,

such penalties to commence the one after the expiration of the other.

Tucker, J., having noted at foot of the abstract submitted to the High Court (*a*) that the Magistrate had gone beyond the powers vested in him by Sec. 22 of the Code of Criminal Procedure in passing a sentence of imprisonment exceeding the term of two years, on conviction of what was substantially a single offence, the record was called for and reviewed this day by COUCH and FORBES, JJ.

PER CURIAM—The Court alters the sentence to one of two years' rigorous imprisonment on both heads of the charge together, the offence being substantially a single one.

The Magistrate, as the prisoner had already been several times convicted of similar offences, should have committed him for trial to the Court of Session, which could then have awarded an adequate punishment.

Sentence altered.

REG. V. JAFFIR NAÍK and another

Dec. 7.

Criminal Breach of Trust—Denial of Mortgage—Refusal to give up Land
—*Ind. Pen. Code, Sec. 405*

A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a Criminal Breach of Trust, under Sec. 405 of the Indian Penal Code.

THE prisoners were convicted of criminal breach of trust by M. J. M. Shaw Stewart, Magistrate of Cánará; and sentenced each to pay a fine of Rs. 51, commutable to six months' rigorous imprisonment.

The record was called for, and reviewed this day by COUCH and NEWTON, JJ.

COUCH, J.—This was a refusal by the prisoners to give up land alleged to have been mortgaged to them, which they denied; the Magistrate treating it as a misappropriation of the documents of title amounting to a criminal breach of

(a) Under Sec. 443 of the Code of Criminal Procedure.