[APPELLATE CRIMINAL JURISDICTION.]

Criminal Reference No. 53 of 1873.

REG. *v.* MÁNSANG BHÁVSANG.

1873. May 21.

Ind. Pen. Code—Theft—Act XXXI. of 1850. *Sec,* 8.—*Act XXVII of* 1837, *Sec.* 7.,—*Property in Salt naturally formed.*

Dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally aproppriated by such officer. (Per BAYLEY and WEST, JJ.)

But removal for one's own use from a creek, of such salt not legally appropriated, constitutes no offence either under the Indian Penal Code or Acts XXXI, of 1850 or XXVII. of 1837, though under Sec. 7 of the latter Act, made applicable by Sec, 8 of the former the salt removed becomes liable to detention. (Per LLOYD ane KEMBALL, JJ.)

THIS was a reference, from G. W. anderson. Magistrate in charge of the Collectorate of Broach, under Sec. 256 of the Code of Criminal Procedure,

The accused was convicted by Dámodardâs Gokaldás, Second Class Magistrate of Wágrá, of the offence of theft, and sentenced to rigorous imprisonment for 20 days and a fine of Re, 3, or in default to a further rigorous imprisonment for seven days.

Mr. Anderson, in referring the case, said: "From the evidence in this case it will be observed that the accused took away a *maund* of salt naturally formed in the creek of Gandhar, and which was under the supervision of a man belonging to the Customs Department, stationed there to prevent persons taking away salt naturally formed from sea water.

"As I entertain doubts after the ruling* of the High

* The ruling referred to by the Magistrate in charge of the District of Broach was made by LLYOD and KEMBALL, JJ., in the case of *Reg.* v. *Fakira Khandia et. al.* and is as follows:—

"Removal for one's own use of salt from the bed of a creek not forming part of any salt work, constitutes no offence, either under the Indian Penal Code, or Acts XXXI. of 1850 or XXVII. of 1837, though under Sec. 7 of the latter Act made applicable by Sec. 8 of the former, the salt removed becomes liable to detention."

Court by the Honourable LLOYD and KEMBALL, JJ., on the 12th September 1872, whether the accused has committed an offence, I forward the proceedings for the orders of the Judges of the said Court."

The reference was heard by BAYLEY and WEST, JJ.

PER CURIAM :—The Court will not interfere, as the salt having in this case been legally appropriated, its dishonest removal was theft.

Record and Proceedings returned.

[ORIGINAL CRIMINIL JURISDICTION.]

REG. *v.* PESTANJI DINSHÁ and ANOTHER.

Statement of Judge conclusive—Refusal of Judge to reserve point of law not reviewable—Summing up by judge—Non-direction—Certificate by Advocate General—Abetment of murder by impossible means—Sorgery—Privy Council—Leave to appeal.

The statement of a Judge, who presides at a criminal trial, is, upon a case reserved under the 25th clause of the charter of the High Court, or upon a case certified by the Advocate General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of bystanders or of jurors nor the notes of counsel or of short-hand writers are admissible to controvert the statement of the Judge.

It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court and such discretion will not be reviewed by the High Court, sitting as a court of review, under clause 26 of the Letters Patent.

Semble. Non-direction by a Judge is not a matter upon which the Advocate General should grant a certificate under clause 26 of the Letters Patent.

In considering whether a Judge has misdirected the jury, the tenor and general effect of the whole summing up should be looked at, and if, upon the whole summing up, the court is of opinion that substantially the proper direction has been given to the jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point.