

**Appellate Jurisdiction. (a)***Criminal Appeals, Nos. 43 and 44 of 1874.*THE GOVERNMENT PLEADER.....*Appellant.*

Where the Session Judge might upon appeal have convicted the defendants under a different Section of an Act from that under which they were convicted by the Magistrate, but instead of doing so he acquitted them.

*Held*, upon appeal by the Local Government, that it was not a case which called for the interference of the High Court.

**T**HESE were Appeals under Section 272 of the Criminal Procedure Code<sup>(b)</sup> against the Judgments of acquittal passed by the Court of Session of South Canara, in Criminal Appeals, Nos. 9 and 8 of 1873, reversing the sentences of the Acting Head Assistant Magistrate of South Canara in Cases Nos. 17 and 15 of the Calendar for 1873 respectively.

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The defendants and other persons, fifteen in number, were charged with having imported salt into British India contrary to the restriction imposed by law, an offence punishable under Section 24 of Act VI of 1863.<sup>(c)</sup>

It appeared from the evidence that salt was taken on board a vessel of one of the defendants and brought to Hoodi (not a port or harbour) in the South Canara District, where part of it was landed. The landing of the rest was

(a) Present :—Morgan, C. J. and Holloway, J.

(b) Section 272 is as follows :—

“ The Local Government may direct an appeal by the Public Prosecutor or other officer specially or generally appointed in this behalf from an original or Appellate judgment of acquittal but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

“ Such Appeal shall be to the High Court, and the rules of limitation shall not apply to appeals presented under this section.

The High Court may in any case appealed “ direct a new trial by another Court, or may pass such judgment sentence or order as may be warranted by law.”

(c.) Section 24, so far as it is necessary to set it forth, is as follows :—

“ If any goods the importation or exportation of which is prohibited or restricted or shall hereafter be prohibited or restricted be imported into or exported from British India contrary to such prohibition or restriction \* \* \* such goods together with any goods which shall be found packed with or used in concealing them shall be liable to confiscation ; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding 1,000 Rupees.”

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interrupted by the arrival of the Police, and a quantity of salt was found on board the vessel.

The evidence implicated all the defendants, who were convicted by the Head Assistant Magistrate and fines of various amounts were imposed or in default of payment of the fines imprisonment.

Upon Appeal the Session Judge quashed the conviction on two grounds :—(1) that salt, though dutiable, not being “restricted” article within the meaning of Section 24 the offence did not fall under that section but under Section 194, and (2) that there was no power to imprison in default of payment of fine(a) as laid down in the proceedings of the High Court dated the 7th December 1866 and 24th April 1873.

The Government Pleader appealed to the High Court against the acquittal under Section 272 of the Code of Criminal Procedure, upon the ground that the Acting Head Assistant Magistrate had power to inflict the fines he did inflict and to enforce payment of the same by imprisonment.

*The Government Pleader*, for the appellants.

*Gould*, Contra.

The Court delivered the following

JUDGMENT :—In this case we are asked to exercise the very exceptional procedure permitted by Section 272. If the acquittal by the Session Judge were bad in law and the facts as found by him manifestly made out the offence, there would be no need of the application of the section.

(a.) Section 194. “Any person shipping or landing goods or aiding in the shipment or landing of goods, or knowingly keeping or concealing or knowingly permitting or procuring to be kept concealed any goods shipped or landed or intended to be shipped or landed contrary to the provisions of this Act; and any person who shall be found to have been on board of any vessel liable to confiscation under Section 13 of this Act while such vessel was within any bay, river, creek or arm of the Sea which had not then been declared to be and was not then existing as a port for the landing or shipment of goods shall be liable to a penalty not exceeding 1,000 Rupees.”

Section 225. “When a penalty or fine is adjudged against any person under this Act by a Magistrate, such Magistrate shall at the same time fix within the following limits a period of imprisonment in default of payment of such penalty or fine \* \* \*

Here however the charge was of an offence under Section 24, for although Section 194 is quoted in the charge, the effect and intent were merely to point to the specific offence described in 24. <sup>1874.</sup>  
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Now we agree with the Session Judge that although goods which cannot be imported without payment of duty may etymologically be said to be goods of which the importation is restricted, yet the language of the Act (Section 25 and elsewhere) shows that this was not the meaning.

In strictness of law therefore the Session Judge was right in saying that the offence was not made out. We are inclined to think that instead of acquitting the prisoners he might properly have come to the conclusion that they had not really been prejudiced in their defence, and have allowed the conviction to stand for the offences of which they were manifestly guilty. On such a matter of discretion it would however be a strong thing for us to re-establish the conviction as we are asked to do, even if so doing would be legal.

The course to be taken would probably be the ordering of a new trial, if we thought it desirable to do so. We think, however, that the exercise of our discretion in such a matter requires that we should be satisfied that the case is of sufficient consequence to justify us in acting under this very exceptional section. We are of opinion that we shall have done enough by making these observations with the addition that the Session Judge is in error in saying that the alternative imprisonment is illegal. Section 225 not only shows that such award is legal, but also shows that the sentence would be bad without it.

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