

1881
 EMPRESS
 v.
 NOBOCOOMAR
 PAL.

Magistrate had summed up the evidence by which the orders and bills were *proved*, for their mere production is no evidence. Two of the orders refer to lemonade, and we are not aware that this is an excisable article.

We are unable to say for what offence the prisoner really was tried. The complainant was not examined as required by s. 144 of the Procedure Code, and it is certain, that the seven offences mentioned in the information could not be dealt with in one trial, *vide* s. 453, Procedure Code. The omission to record the date of the commission of the offence in the register as required by s. 229, Procedure Code, is, therefore, a material error, and the whole case shows the necessity of recording the few particulars required by law in trials under chap. xviii.

As we are unable, on the record as it stands, to say, that any offence has been made out for which the petitioner ought to have been convicted, we must set aside the conviction under s. 53, Beng. Act VII, 1878.

Conviction set aside.

APPELLATE CRIMINAL.

Before Mr. Justice Cunningham and Mr. Justice Prinsep.

IN THE MATTER OF THE PETITION OF SHUMSHER KHAN.

THE EMPRESS *v.* SHUMSHER KHAN.*

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 Feby. 7.

Criminal Procedure Code (X of 1872), s. 36—Confirmation of Sentence by Sessions Judge.

Section 36 of the Criminal Procedure Code, as regards the necessity for confirmation of the sentence by the Sessions Judge, refers to cases in which the sentence of imprisonment is a sentence of upwards of three years, without including any additional sentence as to fine or whipping.

THE accused, who was a head constable, was charged with having received a bribe. The trial was held under the special powers conferred by s. 36 of the Criminal Procedure Code; and he was found guilty of an offence under s. 161 of the

* Criminal Appeal, No. 759 of 1880, against the order of A. C. Campbell, Esq., Deputy Commissioner of Goalpara, dated the 30th September 1880.

Penal Code, and was sentenced to rigorous imprisonment for three years, and to pay a fine of Rs. 1,000, or in default, to suffer rigorous imprisonment for a further period of six months.

1881
 IN THE MAT-
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 PETITION OF
 SHUMSHER
 KHAN.

The accused appealed to the High Court.

Baboo *Rashbehary Ghose* and Baboo *Saroda Prosonno Roy* for the appellant.

The judgment of the Court (CUNNINGHAM and PRINSEP, JJ.) was delivered by

CUNNINGHAM, J.—We think that the appeal must be dismissed, on the ground that there is no sufficient reason shown for calling in question the deliberate conclusion at which the Magistrate has arrived.

With regard to the point that the sentence required the confirmation of the Sessions Judge, we think that the words of s. 36 of the Code of Criminal Procedure must be construed to refer to cases in which the sentence of imprisonment is a sentence of upwards of three years, and to leave aside any sentence the Magistrate may pass as to fine or whipping.

We, therefore, think that it is unnecessary for the sentence in this case to be confirmed by the Sessions Judge.

The appeal is dismissed.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

IN THE MATTER OF THE PETITION OF JANOKINATH GUPTA.

THE EMPRESS *v.* JANOKINATH GUPTA.*

1881
 Jan. 27:

Police Act (V of 1861), s. 29—Overstaying Leave without permission.

The failure of a Police constable to resume his duty on the expiration of his leave, does not constitute an offence under s. 29, Act V of 1861.

THE accused, a Police constable, obtained leave of absence from his duties, which had expired on the 15th October 1880. He obtained no extension of leave, but did not return to

* Motion, No. 9 of 1881, against the order of C. E. Buckland, Esq., Magistrate of Howrah, dated the 17th December 1880.