

Queen-empress Vs. Irappa

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Court : Mumbai

Decided On : Sep-06-1888

Reported in : (1889)ILR13Bom291

Judge : Birdwood and; Parsons, JJ.

Appellant : Queen-empress

Respondent : irappa

Judgement :

Birdwood and Parsons, JJ.

1. The accused has been convicted of digging earth within a space of two cubits of an earthen boundary-mark, and sentenced to a fine of Re. 1. The digging of earth close around an earthen, boundary-mark for the purpose of repairing it is prohibited by Rule 101 of the Rules made by Government under Section 214(g) of the Land Revenue Code of 1879. That rule further provides that a space of two cubits in breadth all round each such mark is to be left untouched SO as to prevent injury to the mark from water lodging in the cavities from which the earth is taken for the repairs. For the breach, of this Rule a penalty is provided by Clause 3(a) of the Rule 111 of the Rules made under Section 215 of the Code. It is under this last section that the accused has been convicted. We are of opinion that the conviction and sentence are illegal, as Rule 101 is not such a rule as can legally be made under Section 214(g) of the Code. It is not a rule 'for the administration of

a survey settlement.' Such a settlement is a settlement of the land revenue, and relates only to such matters as are referred to in Chapter VIII of the Code. Boundaries and boundary-marks are dealt with in Chapter IX, and penalties for injuring boundary-marks are specially provided by Section 125 of the Code, which gives no jurisdiction to Magistrates. We, therefore, reverse the conviction and sentence, and direct that the fine, if paid, be restored.

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