

his own use, or made a fictitious entry regarding. The prisoner, by the line of defence which he took in the Court of Session, rather injured his case, and excluded the supposition that the entry was made by mistake by those who kept the books. The case is altogether one of such a nature that, had we the power, we should send it down to be re-tried more carefully and minutely.

The Acting Assistant Session Judge, in violation of the provision of Sec. 373 of the Criminal Procedure Code, which distinctly lays down that: "The Court, at the close of the evidence on behalf of the accused person, if any evidence is adduced on his behalf, or otherwise at the close of the case for prosecution, may put any question to the accused person which it may think proper," put certain questions in the middle of the case to the prisoner, with a view to supply the evidence for the prosecution. This was a most serious irregularity in the trial of the case.

Looking at all these circumstances, and the doubts created in our minds as already stated, I am of opinion that the conviction and sentence should be reversed.

NEWTON and WARDEN, JJ., concurred.

REG v. BHA'U' bin VITHU and another.

Disobeying order of Public Servant—Ind. Pen. Code, Sec. 188—Bombay Act No. V. of 1864—Mámlatdár—Jurisdiction.

Convictions and sentences for disobeying an order duly promulgated by a public servant, reversed; as the Mámlatdár, who stated that he proceeded under Bombay Act No. V. of 1864, was not thereby empowered to make the order.

THE accused were convicted by G. Wilson, Acting Magistrate F. P., in the Sátará District, under Sec. 188 of the Indian Penal Code, of disobedience to an order duly promulgated by a public servant; and sentenced, respectively, to pay a fine of Rs. 15, or in default to suffer eight days' simple imprisonment.

The case was referred for the orders of the Court, under Sec. 434 of the Code of Criminal Procedure, by R. F. Mac-tier, Session Judge of Sátará, with the following remarks:—

1867.
Jan. 17.
Referred Case.

“The question is, was the Mámlatdár competent to make such an order, as he did, under the authority quoted. The order was, ‘that, the plaintiff having possession of the premises, the defendant should not allow the water from his house to fall within the plaintiff’s premises;’ and, as the Mámlatdár states, the order was made under Bombay Act V. of 1864, which gives him authority to decide regarding possession of premises, but not to order a person ‘to abstain from a certain act, or to take certain order with certain property in his possession or under his management’ (a), as mentioned in Sec. 188 (b) of the Penal Code.”* * *

PER CURIAM (NEWTON and TUCKER, JJ.):—The Court reverses the convictions and sentences: as the Mámlatdár was not legally empowered, under Bombay Act V. of 1864, to pass the order which the accused were charged with disobeying.

REG. V. TRIBHUVAN ÍSHVAR.

Indian Railway Act (No. XVIII.) of 1854—Reg. XII. of 1827, Secs. 5 and 41—Act XVII. of 1862—Jurisdiction.

By Sec. 35 of the Railway Act, District Police Officers in the Presidency of Bombay could punish, to the extent of the powers conferred upon them, in petty offences, any offence made punishable under the Act, by fine not exceeding Rs. 20.

But Sec. 5 of Reg. XII. of 1827 (authorising the appointment of District Police Officers), and Sec. 41 of the same Regulation (defining the limits of their jurisdiction), being both repealed by Act XVII. of 1862:—

Held that a Subordinate Magistrate had no jurisdiction to impose a fine, under Sec. 17 of the Railway Act.

Feb. 6.
Referred Case.

THIS case was referred for the orders of the Court, under Sec. 434 of the Code of Criminal Procedure, by A. A. Borradaile, Acting District Magistrate of Khedá.

(a) “It shall be lawful for the Mamlutdars’ Courts in the Bombay Presidency to give immediate possession, under Section I., Clause 2nd, of Act XVI. of 1838, of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed of the same, or of the profits thereof, otherwise than by due course of law, provided application be made to them by such party within six months from the date of such dispossession; and it shall also be lawful for such Courts, in cases in which a disturbance of the possession of lands, premises, trees, crops, or fisheries, is attempted by any party, to issue an injunction to such party to refrain from disturbing the possession of the party who is in possession.”—Act V. of 1864, Sec. I.

(b) *Vide antè*, p. 34.