

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 I'SHVAR.

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District Police Officers), and Sec. 41 of the same Regulation (defining the limits of their jurisdiction), being both repealed by Act XVII.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.

The accused was convicted by a Subordinate Magistrate, First Class, of having trespassed upon the B. B. & C. I. Railway ; and sentenced to pay a fine of Rs. 4, to be levied, if not paid, by distraint and sale of his property.

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PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The power of appointing District Police Officers in the Bombay Presidency is given by Reg. XII. of 1827, Sec. 5 ; but, that section being repealed by Act XVII. of 1862, there is now no power to make that appointment.

Hence it would seem that the powers given to a District Police Officer in the Presidency of Bombay by Sec. 35 of the Railway Act (XVIII. of 1854) no longer exist ; and that an offence under that Act can only be tried by one of the persons mentioned in Sec. 34 of the Act, namely, “ any Justice of the Peace, Magistrate, Joint Magistrate, or other person lawfully exercising the powers of a Magistrate, or an Assistant to a Magistrate, or Deputy Magistrate.”

This view of the law is supported by the fact that the power of punishing, which the District Police Officer had, under Reg. XII. of 1827, has been taken away, by the repeal of Sec. 41 of that Regulation, by Act XVII. of 1862.

This decision will also apply to offences punishable under Secs. 4, 5, 6, and 21 of Act XVIII. of 1854.

It appears to the Court that Act XVIII. of 1854 requires amendment, as a Subordinate Magistrate of any class should have the power to punish for such offences.

The Court, therefore, annuls the conviction and sentence, and directs the fine to be restored ; being of opinion that the Subordinate Magistrate, First Class, had no jurisdiction to try the case.