

not be desirable. In no district have Government appointed more than five Full Power Magistrates—in some there are only three; and I have noticed, when reviewing the monthly Criminal Returns, that very few Magistrates of the District try a single case if they can avoid it. I feel sure that if the ruling asked for were given, the Magistrates of Districts would be able to get rid of every case, and, considering the distances at which the camps of the Full Power Magistrates generally are from that of the Magistrate of the District, such power would only result in much additional trouble and fatigue to all concerned, prisoners, witnesses, and police. The police send a case up to the Magistrate of the District; this will often involve a journey of some few miles: if then this officer, instead of at once disposing of the case, refers it for trial to the nearest Full Power Magistrate, existing circumstances will ensure thereby many miles' additional travel to the parties concerned, and form an additional reason for prosecutors refraining from putting the law into force. I think, therefore, that, not only on legal grounds, but also on the ground of convenience, the ruling applied for should be refused; and the order of the District Magistrate of Súrat cancelled.

Order annulled.

REG. V. THAKU' bin IRA'

Sept. 10.

*Maintenance—Judicial Proceeding—Appeal—Crim. Proc. Code,
Secs. 316, 404, and 409.*

An order of maintenance, under Sec. 316 of the Criminal Procedure Code, is a "judicial proceeding of a Criminal Court" within the meaning of Sec. 404 of that Code, but no appeal lies against such order under Sec. 409.

ONE Sankú, wife of Petu, the son of the petitioner, Thakú, having petitioned for maintenance, the Acting Magistrate of the District of Kárwár, J. Elphinston, ordered, under Sec. 316 of the Code of Criminal Procedure, an allowance of eighteen rupees per annum to be made to her by her husband and father-in-law jointly. No payment was made as

1868.
REG.
v.
KRISHNA'
PARASHRAM'
et al.

1868.

REG.)

v.

THAKU'
IRA'

directed, and the property of the petitioner, father-in-law of Sankú, was seized and sold for payment of the maintenance. Thereupon the petitioner presented a petition to R. West, Acting Session Judge, who, being of opinion that the petitioner was not liable for Sankú's maintenance, forwarded the case for the orders of the High Court with the following remarks :—

“It does not appear that strictly this court had jurisdiction to call for the proceedings in this case. It was ruled in the case of Bassappà bin Bhrama (26th April 1865) that such a power does not exist, and a Magistrate ordering payment of an allowance for subsistence does not seem to be a court subordinate to the Court of Session, which is a purely criminal court. Neither does the High Court appear to have jurisdiction, under Sec. 404, to review such a case, which is not a criminal trial or a “judicial proceeding of a Criminal Court,” as defined in Sec. 11 of the Code. But neither, on the other hand, does a Magistrate acting under Ch. xx. of the Code of Criminal Procedure appear to be a court; yet the interference of the Court of Session to prevent acts of apparent illegality under that chapter has been sanctioned by Her Majesty's High Court; and here it would appear that the High Court may proceed in the exercise of the function of superintendence given to it by Sec. 15 of the High Courts Act (a).”

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—An order of maintenance, under Sec. 316 of the Code of Criminal Procedure, is a judicial proceeding of a Criminal Court within Sec. 404 of the said Code; but, no appeal lies against it under Sec. 409.

The Court reverses the order of the Acting Magistrate of the District so far as it extends to the father-in-law, Thakú.

Order reversed.