1868.
Oct. 12.

REG. v. MUHAMMAD ALI' valad ABDUL ALI'.

Whipping Act—Juvenile Offender.

Under Act VI. of 1864 (the Whipping Act) a juvenile offender means person under the age of sixteen years.

MUHAMMAD ALI' valad Abdul Alí, a Boráh shopkeeper of Barhánpur, aged eighteen years, was charged, under Sec. 268 of the Indian Penal Code, with being guilty of a public nuisance, in having caused annoyance to the passengers at the Nimborá railway station by making a great disturbance on the railway station on the 7th of June 1868. He was convicted under Sec. 290 of the Indian Penal Code by Captain T. E. Britten, F. P. Magistrate at Bhosáwal, and was sentenced to receive thirty stripes with a rattan, under Secs. 5 and 10 of Act VI. of 1864.

Upon a review of the monthly criminal returns, the papers in this case were called for by TUCKER, J., to determine the question whether the sentence awarded was legal, and whether the accused was a juvenile offender. "Offenders under Sec. 290 of the Indian Penal Code are ordinarily punishable with fine alone. But the F. P. Magistrate proceeded under Sec. 5 of Act VI. of 1864, which provides that juvenile offenders may, in the cases of all offences not punishable with death, be punished with whipping in lieu of any other punishment provided by the Indian Penal Code, and, holding the accused to be a juvenile offender, sentenced him to the highest punishment under Sec. 10 of Act VI. of 1864."

The case was considered by NEWTON and TUCKER, JJ., who on the 12th of October 1868 made the following order:—

PER CURIAM:—The Court reverses the conviction and sentence, 1*stly*, because the accused, being described on the record as eighteen years of age, could not be legally treated as a juvenile offender—Sec. 433 of the Criminal Procedure Code, which provides for the punishment of youthful offenders in reformatories, declares this class of offenders to be persons under the age of sixteen. And 2*ndly*, because the acts found

1868.

REG. v. MUHAMMAD ALI' ABDUL ALI'.

to be proved against the accused, namely, that he had refused, with much clamour, to pay the difference between a third-class and a fourth-class railway fare, and had seized the belt of the railway policeman who detained him, with the view of ascertaining the policeman's number, cannot reasonably be held to amount to the commission of a public nuisance under the circumstances under which it occurred. The accused, who is a shopkeeper at Barhánpur, travelled on the G. I. P. Railway from the station near that town to Nimborá in a third-class carriage with a fourth-class ticket. He appears to have remained in the carriage in which he was found, with the knowledge and acquiescence of the station-master at Barhánpur, as the guard of the train deposed that the station-master at Barhánpur had informed him that the accused was in a better class of carriage than his ticket entitled him to use, and had said that the accused would pay the excess fare at Nimborá. The accused stated that he was put into a third-class carriage by the station-master at Barhánpur, because the fourth-class carriages were full, and the guard admitted that it was the custom to put fourth-class passengers in third-class carriages when the fourth-class carriages were full, but added that on the occasion in question there was plenty of room in the fourth-class carriages. If the latter part of the guard's statement be true, the station-master at Barhánpur would seem to have acted improperly in letting the accused, whom he knew to have a fourth-class ticket, remain in a third-class carriage; and certainly, without ascertaining from this official whether the statement of the accused was true or false, the accused should not have been punished criminally for noisily refusing in the first instance to pay the difference between the two fares. In flogging the accused for an act of this description, there has been an abuse of reasonable discretion on the part of Captain Britten, the Full Power Magistrate.

Conviction and sentence reversed.