CRIMINAL REVISIONAL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

1883
March 20.

EMPRESS *v.* BHAGVANTA RAVJI.*

2nd class Magistrate—Jurisdiction—Sentence of whipping—Code of Criminal Procedure, Act X of 1872—*Act X of* 1882, *Secs.* 2 *and* 32.

A person appointed a Magistrate of the 2nd class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of section 32 of the latter Act.

THIS was a reference by W. H. Propert, Magistrate of the District of Khandesh, who stated the case thus :—

"I have the honour to submit for the orders of the High Court the papers and proceedings in the case of *Empress* v. *Bhagvanta Ravji*, tried by the Magistrate (2nd Class) of Pachora, Rav Saheb Moro Ragunath Bivalkar, on a charge of theft. The accused was convicted and sentenced on the 24th of January, 1883, to suffer twelve stripes with a rattan, under section 5 of Act VI of 1864. On a review of the Criminal return of the said Magistrate it appeared that the Magistrate, not being specially empowered under section 32 of the new Criminal Procedure Code, was wrong in inflicting the punishment of whipping on the accused. The papers were, therefore, called for and are herewith submitted for orders. The Magistrate (2nd Class) is under the impression that he can still exercise the power of inflicting the punishment of whipping which he exercised under the old Code (Act X of 1872), and quotes section 2 of Act X of 1882 as the authority. I am doubtful on this point, however, and I, therefore, refer the case for the authoritative order of the High Court. Under the old Procedure Code this power was inherent in a 2nd Class Magistrate as such, and was not required to be conferred on him by any one ; while under the new Code it is required to be conferred on him by the local Government. As, therefore, the power of inflicting whipping was not conferred by any one on the 2nd Class Magistrate of Pachora under Act X of 1872 (now repealed), he cannot, I think, exercise it now under para. 2 of section 2 of the new Criminal Procedure Code."

* Criminal Reference, No. 25 of 1883.

1883

EMPRESS v. BHAGVANTA RAVJI.

There was no appearance on either side in the High Court.

KEMBALL, J.—The District Magistrate is, in the opinion of the Court, right. The powers conferred originally on Rav Saheb Moro Raghunath Bivâlkar were those of a 2nd Class Magistrate. Since the passing of the new Code those powers, whatever they may be, must be taken, by virtue of section 2 of the new Code, to have been conferred by the new Code. This was obviously enacted to avoid the inconvenience of re-appointing officers on the repeal of the old Code ; but the provisions of section 2 were not intended to continue to 2nd Class Magistrates a jurisdiction which the new law expressly says they shall not exercise except they are specially empowerd so to do.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

1883 June 15.

RUTTONSEY LALJI AND OTHERS, PLAINTIFFS, v. POORIBAI AND OTHERS DEFENDANTS.*

Practice—Agreement of compromise of the suit—Subsequent disagreement—Application for decree in terms of agreement—Procedure—Civil Procedure Code (*Act XIV of* 1882), *Sec.* 375.

After the hearing of the suit had begun, the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause, with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a rule *nisi*, calling on the plaintiffs to show cause why the agreement should not be recorded in Court, and why the Court should not pass a decree in accordance therewith, under the provisions of section 375 of the Civil Procedure Code (Act XIV of 1882). The rule was argued on affidavits on either side, the plaintiffs objecting that the above section did not apply to such a case as this, and that, in any case, the matter could not be decided on affidavits, but evidence must be gone into.

Held that section 375 gave the Court the power to deal with such a case as this in the manner required, and that this was a proper case in which exercise such a power ; and that, in the circumstances of this case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits.

Rule made absolute accordingly.

* Suit No. 104 of 1882.