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APPELLATE CIVIL.

13 B. 500.

Manekshah Jehangirshah, for the plaintiff:—It is not from the date of the bailiff's return of the summons as unserved that the one year under s. 99A of the Civil Procedure Code (Act XIV of 1882) is to be counted. The bailiff is the nazir's subordinate, and not the proper officer of the Court entrusted with the service of the summons. The application in question, therefore, was within time as counted from the date of the nazir's countersignature.

Vasudev Gopal Bhandarkar, for the defendant, contended that s. 80 and the following sections of the Civil Procedure Code spoke of the person actually serving the summons, and it was from the date of the bailiff's return of the summons as unserved that the one year should be counted. The application of the plaintiff was **[502]** therefore, barred, being made more than one year from the bailiff's return of the summons.

JUDGMENT.

SARGENT, C. J.—The nazir is the proper officer of the Court to whom under s. 72 of the Code of Civil Procedure (Act XIV of 1882) the summons is delivered for service. It is, therefore, for him to return the summons to the Court as unserved, and this he does by countersigning the bailiff's endorsement. The one year would, therefore, run from 10th October, 1887, and the application for a fresh summons is not too late.

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13 B. 502 = 13 Ind. Jur. 469.

CRIMINAL REFERENCE.

Before Mr. Justice Jardine and Mr. Justice Candy.

QUEEN EMPRESS *v.* GUNDYA.* [28th January, 1889.]

Criminal Procedure Code (Act X of 1882), s. 530, cl. (p)—Offence originally cognizable by a Second Class Magistrate—Subsequently non-cognizable by reason of an aggravating circumstance—Duty of an inferior Court—Practice—High Court's power of interference.

The accused were charged before a Magistrate of the Second Class with causing grievous hurt as members of an unlawful assembly under ss. 149 and 325 of the Indian Penal Code. The evidence showed that one of the accused had used an axe in causing the hurt. The Magistrate apparently ignored this fact, and he convicted the accused under s. 325 of the Code. The accused appealed.

The District Magistrate who heard one appeal, and the First Class Magistrate who heard the rest of the appeals, were both of opinion that the offence committed by the accused was one of causing grievous hurt with a dangerous weapon, within the meaning of s. 326 of the Penal Code, and as such beyond the jurisdiction of the Second Class Magistrate. But they did not think it proper under the circumstances of the case to quash the convictions.

The Sessions Judge on examining the record of the case was of opinion that as the offence committed by the accused was not cognizable by the trying Magistrate, his proceedings were void *ab initio* under s. 530 of the Criminal Procedure Code. He, therefore, referred the case to the High Court, and recommended that the convictions under s. 325 should be set aside.

Held, that the proceedings before the the Second Class Magistrate were not void *ab initio*, as he had jurisdiction to try the accused for offences punishable under ss. 149 and 325 of the Indian Penal Code with which they were originally charged.

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* Criminal Reference, No. 152 of 1888.

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CRIMINAL REFERENCE.

13 B. 502=
13 Ind. Jur. 469.

[503] *Held*, also, that though it was the duty of the trying Magistrate, when the evidence disclosed a circumstance of aggravation, such as the use of a dangerous weapon, which made the offence cognizable by a higher Court, to adopt the proper procedure to send the case to the higher Court, still it was not necessary to quash the proceedings, as the accused were not in any way prejudiced, and the sentences were not inadequate.

[F., 19 B. 340 (348); 4 Bom.L.R. 267 (268); 7 Cr.L.J. 319=4 N.L.R. 18; 25 M.L.J. 484; R., 25 B. 90 (98); 24 M. 675 (678)=2 Weir 699; 1 Bom.L.R. 683 (684); Expl., 1 Bom.L.R. 27 (29).]

THIS was a reference under s. 438 of the Code of Criminal Procedure (Act X of 1882) by M. H. Scott, Sessions Judge of Khandez.

The accused were tried by Rav Saheb Narayan Vaman, a Magistrate of the second class, for voluntarily causing grievous hurt as members of an unlawful assembly under ss, 149 and 325 of the Indian Penal Code. They were convicted under s. 325 of the Code, and sentenced to various terms of imprisonment and to fine.

The accused appealed. The District Magistrate, Mr. Loch, heard one of the appeals, and Mr. Fraser, Magistrate First Class, heard the rest of the appeals. Both of them were of opinion that the offence disclosed by the evidence was one of causing grievous hurt with a dangerous weapon, an axe having been used in causing the hurt. They, therefore, held that the offence was punishable under s. 326 of the Indian Penal Code, and was, therefore, beyond the jurisdiction of the trying Magistrate; but they did not think proper to quash the proceedings, as the accused were not in any way prejudiced.

The Sessions Judge, on examining the record of the case, was of opinion that as the trying Magistrate had no jurisdiction to take cognizance of the offence, his preceedings were void *ab initio*. He, therefore, made the following reference to the High Court:—

"The offence of hurt tried by the Magistrate was, as pointed out by the District Magistrate, who disposed of one appeal and the Magistrate First Class, who heard the rest of the appeals, that of causing hurt by a dangerous weapon, s. 326, Indian Penal Code, and not grievous hurt, s. 325. Cases under s. 325 are triable by a Magistrate of the second class; those under s. 326 are not. The Magistrate should not have tried the case as one falling under s. 325 when he found [504] that it was punishable under s. 326. He should have stayed proceedings as regards the hurt when he found (if he did not know when he took up the case) that the matter was beyond his jurisdiction, and referred the case for trial to a competent Magistrate. His proceedings as regards the conviction under s. 325 of the Indian Penal Code appear to be void *ab initio*, under s. 530 of the Code of Criminal Procedure, and I recommend that the convictions under s. 325 of the Indian Penal Code be set aside. The cases quoted by Mr. Fraser do not apply. In those cases the Magistrates had jurisdiction, but had applied a wrong section of the Code."

There was no appearance for the Crown or for the accused.

OPINIONS.

JARDINE, J.—Rav Saheb Narayan Vaman, a Magistrate of the second class who tried the case, convicted the accused under s. 325 of the Indian Penal Code of grievous hurt. In the opinion of the Magistrates Mr. Loch and Mr. Fraser, who heard the appeals, the offence disclosed by the evidence was that of grievous hurt with a dangerous

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weapon, punishable under s. 326, and beyond the jurisdiction of the Magistrate of the second class, who appears to have ignored the fact that an axe was used in causing the hurt. The learned Sessions Judge has referred the case and the appeals decided by Mr. Fraser to this Court, on the ground that the proceedings were void *ab initio* under s. 530, cl. (*p*) of the Code of Criminal Procedure. That clause declares void the proceedings of any Magistrate who, not being empowered by law in this behalf, tries an offender. It has not been suggested that the accused have been prejudiced, nor that the sentences passed are unduly lenient. We have, therefore, only to consider the question of jurisdiction.

The same question was much discussed in the Court of Exchequer in *In re Thompson* (1), where the learned Judges were divided in opinion, and the conviction had before the Justices was not interfered with. *Queen-Empress* v. *Husein Gaibu* (2), was a case in which the point before the Court was very similar to the present. The Court declined to interfere, and drew attention to the provisions of s. 403 of the Code of Criminal Procedure. **[505]** There has been no appearance in the case before us, and in the present state of the authorities we are unable to hold that the Magistrate of the second class was wholly without jurisdiction, and we, therefore, refrain from interference. At the same time, we think it proper to point out that it is an evasion of the law to treat an aggravated as an ordinary offence, and thus introduce a different jurisdiction or a lower scale of punishment. When the evidence discloses a circumstance of aggravation, such as the use of a dangerous weapon, which makes the offence one cognizable by a higher Court, it becomes the duty of the trying Magistrate to use the proper procedure for sending the case to the higher Court. The Magistrate of the second class should be so informed.

CANDY, J.—On the single point referred by the Session Judge, I am of opinion that the proceedings before the Second Class Magistrate were not void *ab initio*. Section 530 of the Code of Criminal Procedure runs: "If any Magistrate, not being empowered by law in this behalf.....tries an offender, his proceedings shall be void,—" *i. e.*, if a Magistrate tries an offender for an offence beyond his jurisdiction, his proceedings shall be void. In the present case the accused were tried for voluntarily causing grievous hurt as members of an unlawful assembly (Indian Penal Code, ss. 149 and 325). They were guilty of that offence. The Second Class Magistrate was empowered by law to try them for that offence. Therefore, the proceedings of the Second Class Magistrate are not void. We could, interfering under s. 439, Criminal Procedure Code, set aside the proceedings and order a re-trial if the interests of justice required such a course; *e.g.*, if, considering the facts on the record, the sentence was inadequate, or if the procedure followed by the Magistrate had deprived the accused persons of their right of appeal. Such is not the case here. No representation has been made to this Court that the sentences are inadequate, and the accused persons attorned to the appellate jurisdiction of the First Class Magistrate and here made no objection. With regard to the case of *Queen-Empress* v. *Husein Gaibu* (2), it may be noticed that there was no distinct ruling that the Magistrate's proceedings were void. **[506]** And with regard to the case of *Empress* v. *Abdool Karrim* (3) it may be noted that it was unnecessary to rely on s. 34 of Act X of 1872 as an authority for quashing the proceedings and ordering a re-trial. In

(1) 30 L. J. N. S. Mag. Cas. 19. (2) 8 B. 307. (3) 4 C. 18.

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that case the Magistrate, who had been invested with summary powers, tried an offender summarily for an offence which could not be tried summarily. But in so acting the Magistrate deprived the accused of his right of appeal, and therefore, the High Court could, under s. 297 of Act X of 1872, have annulled the proceedings and ordered a new trial. In the present case, on the point before us, I see no cause for interference.

13 B. 502 = 13 Ind. Jur. 469.

13 B. 506.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Candy.

QUEEN EMPRESS *v.* GANESH KHANDERAO AND GANESH DAULAT.* [29th January, 1889.]

Indian Penal Code (Act XLV of 1860), s. 182—Giving false information to a public servant—Construction.

Under s. 182 of the Indian Penal Code (Act XLV of 1860) the giving of false information to a public servant is penal, when either of two consequences is intended to be caused, or is known to be likely to be caused, by the false information; the first being the causing the public servant "to use the lawful power of such public servant to the injury or annoyance of any person," the second being the causing the public servant "to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known to him."

To constitute an offence under the latter part of the section, it is not necessary to show that the act done would be to the injury or annoyance of any third person.

A personated *B* at an examination, called the Vernacular Sixth Standard Examination. *A* passed the examination, and obtained a certificate from the educational authorities in *B's* name. *B* thereupon applied to the Assistant Collector to have his name entered in the list of candidates for service in the Revenue Department. He attached to this application the certificate issued in his name as it was a rule of Government that only those who had passed the Sixth Standard Examination were eligible for employment in the Revenue Department. On receipt of this application the Assistant Collector ordered *B's* name to be entered on the list of candidates.

[507] *Held*, that *B* was guilty of the offence of giving false information to a public servant within the meaning of the latter part of s. 182 of the Indian Penal Code.

[F., 22 B. 768 (769); Rat. Unr. Cr. Cas, 584; Rat. Unr. Cr. Cas. 761 (762); 1 Weir. 118 (120); Appr., 15 A. 210 (218); R., 19 B. 363 (368)=19 B. 717 (723); 21 B. 517 (518); 28 M. 90 (98) (F. B.)=1 Weir 538—A; 13 Cr. L. J. 737=17 Ind. Cas. 49=7 P. L. R. 1913=2 P. R. 1913 Cr.=43 P. W. R. 1912 Cr.; 4 M. L. T. 324; 10 P. R. 1902 Cr.; Rat. Unr. Cr. Cas. 564 (569); Rat. Unr. Cr. Cas. 792.]

APPEAL by the Government of Bombay from the order of acquittal passed by E. Hosking, Sessions Judge, in criminal Appeal No. 13 of 1888.

The facts of this case were briefly as follows :—In October 1886 an examination, called the Vernacular Sixth Standard Examination, was held at Ahmednagar. At that examination the accused No. 2, Ganesh Daulat, personated accused No. 1, Ganesh Khanderao. He passed the examination, and obtained a certificate from the educational authorities in the name of accused No. 1.

* Criminal Appeal, No. 190 of 1888.