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[381] REVISIONAL CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Candy.

QUEEN-EMPRESS v. MANAJI.* [26th November, 1889.]

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The Reformatory Schools Act (V of 1876), s. 8—Magistrate's duty under that section to ascertain the prisoner's age—Proceeding under that section is a judicial proceeding—High Court's power of revising such proceeding—Criminal Procedure Code (Act X of 1882), ss. 4 and 435—Judicial proceeding.

A Magistrate acting under s. 8 of the Reformatory Schools Act (V of 1876) (1) is bound to ascertain the age of the prisoner, and, in accordance with that finding, to direct the confinement in a reformatory according to the rules made under s. 22 of the Act. It is not sufficient for the Magistrate merely to find that the prisoner is under a particular age.

Under s. 8 of the Act, evidence may be taken by the Magistrate as to the age of the prisoner; and as the proceeding of the Magistrate involves the alteration of a sentence after the exercise of judicial discretion, such proceeding is clearly a judicial proceeding within the meaning of ss. 4 and 435 of the Code of Criminal Procedure (Act X of 1882). The High Court is, therefore, competent to exercise its revisional jurisdiction in such cases.

[F., 25 C. 333 (340); Rat. Unr. Cr. Cas. 726; R., 13 P.R. 1891, Cr.]

REVISION of an order passed by M. C. Gibb, First Class Magistrate, Poona, under s. 8 of the Reformatory Schools Act (V of 1881).

The accused was a juvenile offender convicted of theft and sentenced by a Bench of Magistrates at Poona to six months' rigorous imprisonment. The superintendent in charge of the Yerrowda Jail brought him before the First Class Magistrate of Poona, in order that he might be sent to a reformatory school. The Magistrate, without taking any evidence as to the age of the accused, passed an order, under s. 8 of Act V of 1876, directing the accused to be detained in the reformatory school at Yerrowda for five years, or until he attained the age of eighteen.

[382] The High Court in the exercise of its revisional jurisdiction sent for the record and proceedings of this case, and issued a notice to the Government Pleader to show cause why the Magistrate's order should not be set aside.

Shantaram Narayan, Government Pleader, for the Crown.—I submit that this Court has no jurisdiction to revise the Magistrate's order, under s. 435 of the Code of Criminal Procedure (X of 1882). The proceedings under s. 8 of Act V of 1876 are not judicial; and the Magistrate who acts under that section does not act in his judicial capacity. He acts rather as an executive officer. Section 11 of the Act invests the local Government, and not the High Court, with the power of discharging the offender from a reformatory school at any time, or removing him from one school to another. I submit, further, that this Court cannot revise the order in

* Criminal Review, No. 353 of 1889.

(1) Section 8 of Act V of 1876 provides as follows:—

"Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such jail is situate; and the Magistrate, if he thinks the offender (a) under the age of sixteen years, and (b) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under s. 22 and for the time being in force."

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question, under s. 28 of the Letters Patent. The present is not "a case" tried by the Magistrate whose order is sought to be revised. As to the merits, I admit that the Magistrate has not acted in strict conformity with the provisions of s. 8 of the Act. It was his duty undoubtedly to ascertain the age of the accused.

There was no appearance for the accused.

OPINION.

PER CURIAM.—In this matter the record and proceedings were brought before us in revision under s. 435 of the Criminal Procedure Code. The Magistrate, within whose jurisdiction lies the Yerrowda Jail, has, under s. 8 of the Act of 1876, altered a sentence of six months' rigorous imprisonment to one of five years' detention in a reformatory, or until the offender shall attain the age of eighteen. The Government Pleader on behalf of the Crown took exception to the jurisdiction of this Court, on the ground that the intervention of the Magistrate under s. 8 of the Reformatory Act (Act V of 1876) was an executive act, and not a "proceeding" before an inferior criminal Court subject to the revisional jurisdiction of the High Court within the meaning of s. 435 of the Criminal Procedure Code, nor a "case" tried within the meaning of s. 28 of the amended Letters Patent. Section 8 of the Reformatory Act says that [383] "if the officer in charge of a jail is of opinion that any offender, sentenced to imprisonment, is under sixteen years of age, he may bring him before the Magistrate within whose jurisdiction the jail is situated, and the Magistrate may, if he thinks the offender under sixteen years of age and a proper person to be an inmate of a Reformatory, direct him to be sent to a Reformatory." Thus a certain discretion is invested in the Magistrate, and he is empowered to alter the original sentence. It is to be observed that the discretion is to be invoked and this power of altering a judicial sentence exercised, not under the power of commutation possessed by Government under its prerogative of pardon, but merely by the particular jail officer and Magistrate in the course of their official duty. No mention is made of Government in the section, although by a subsequent section Government is empowered to discharge from a reformatory, or to remove from one reformatory to another. In the interpretation clause of the Criminal Procedure Code (s. 4) the expression "judicial proceeding" means "any proceeding in the course of which evidence is or may be legally taken." Under s. 8 of the Reformatory Act, clearly, evidence may be taken by the Magistrate as to the age of the offender. This would seem, therefore, to be a judicial proceeding. The proceeding, moreover, involves an alteration of a sentence of a competent Court, as in the present instance, of six months' imprisonment to some years in a reformatory. The alteration is made by a Magistrate only after he is satisfied on two points which are submitted for his decision. Supposing he does not exercise proper discretion on these two points, what authority is there to revise his decision and set him right? The case seems to us to come within the meaning of a "proceeding" under s. 435 of the Criminal Procedure Code, and the High Court is, therefore, the revising authority. It seems to us impossible to hold that the proceeding, involving, as it does, the alteration of a sentence after the exercise of judicial discretion, is not of a judicial character, and that the Magistrate is not referred to in the Act *qua* Magistrate. It is doubtful whether it is 'a case' under s. 28 of the Letters Patent, but it seems to us to come within s. 435 of the Criminal Procedure Code.

[384] Holding, therefore, that we possess revisional jurisdiction, we proceed to deal with the case before us. It appears that the Magistrate directed the prisoner to be sent "to the reformatory at Yerrowda for five years, or until he shall attain the age of eighteen." The question arises, whether the Magistrate was not bound to ascertain the age of the prisoner, and in accordance with that finding to direct the confinement in the reformatory according to the rules. It is not enough to simply find that the offender is under the age of sixteen. Otherwise it will be necessary for the superintendent of the reformatory to make inquiries on this point. In the criminal return the prisoner's age is apparently entered as fourteen, but in the record of the prisoner's statement before the Bench of Magistrates the age is entered as seventeen, while in the proceedings the Clerk to the Bench of Magistrates entered the age as *sixteen*. We, therefore, reverse the order of the Magistrate and return the proceedings to him, that he may ascertain the prisoner's age and then pass an order in accordance with s. 8 and with the rules under s. 22 of Act V of 1876.

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Order reversed.

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APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Candy.

VISHNU ATMARAM (*Original Defendant*), *Appellant v. ANANT VISHNU (Original Plaintiff), Respondent.** [2nd December, 1889.]

Landlord and tenant—Lessee—Sub-lessee—Rights and liabilities of a sub-lessee—Sale of lessee's interest—Determination of sub-lease.

B. held certain land as a lessee under M. The lease did not contain any covenant against sub-letting, or any forfeiture clause. B. sub-let a portion of the land demised to A. M. obtained a decree against B. for arrears of rent, and in execution attached and sold the entire holding, including A's interest, as a sub-lessee.

Held, that the sale in execution did not affect the sub-lessee's interest in the land, or put an end to the sub-lease.

THIS was a second appeal from the decree of R. S. Tipnis, Acting Assistant Judge of Ratnagiri, in appeal No. 397 of 1886.

One Babaji's Nalavade held a certain *thikan*, as lessee, under Narayan Mahale for a term of twenty-four years. The lease [385] under which he held, did not contain any covenant against sub-letting, nor any forfeiture clause.

Babaji sub-let a portion of the *thikan* to the plaintiff for a term of thirteen years.

Narayan Mahale obtained a decree against Babaji for arrears of rent. In execution of this decree, Babaji's interest in the whole *thikan* was attached. Nobody intervened to raise this attachment. But the Court, acting under s. 287 of the Code of Civil Procedure (Act XIV of 1882), summoned the plaintiff and other persons with a view to ascertain the incumbrances to which the property was liable, and passed an order, dated 11th August, 1885, to the effect that the plaintiff must either

* Second Appeal, No. 575 of 1888.