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assumed to act judicially, and is, therefore, according to the ruling in *The Collector of Thanav. Bhaskar Mahadev Sheth*⁽¹⁾, to be treated as a Court under the superintendence of the High Court whose proceedings can be revised under the extraordinary jurisdiction. The question then is what order should be passed under section 115. We declare that the order of the District Deputy Collector is a nullity as being without jurisdiction of any kind, and direct that the application of the defendant for revision under the Mamlatdars' Courts' Act be taken on the file of the Collector, and be disposed of by him according to law. Having regard to the decision in *Keshav v. Jairam*⁽²⁾, we think that there should be no order as to costs of this application.

Order set aside.

J. G. R.

(1) (1884) 8 Bom. 264 at p. 268.

(2) (1911) 36 Bom. 123.

CRIMINAL REVISION.

1915.

April 30.

Before Mr. Justice Beaman and Mr. Justice Macleod.

EMPEROR v. A. GOODHEW.*

Merchant Seamen Act (I of 1859), section 33, clause 4—Merchant Shipping Act (57 and 58 Vic. C. 60), sections 114, clause 3, and 225, clauses (b) and (c)†—Wilful disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clause about transfer in articles of agreement not ultra vires.

* Criminal Appeal No. 120 of 1915, subsequently turned into Revisional application.

† The material portions of the sections run as follows :—

SECTION 114, clause (3).—"The agreement with the crew shall be so framed as to admit of such stipulations, to be adopted at the will of the master and seamen in each case, whether respecting the advance and allotment of wages or otherwise, as are not contrary to law."

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The accused signed articles of agreement in London with the Master of the SS. Arcadia (a steamer belonging to the Peninsular and Oriental Steam Navigation Company), under which he agreed *inter alia* to obey the lawful commands of the Master or the superior Officers, and to transfer to any other vessel of the Company, when required during the period of service. These articles were initialled by an Officer of the Board of Trade. When the SS. Arcadia arrived in the Bombay Harbour it was sold by the Company to an Indian Merchant. The accused was then ordered by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS. Arcadia to transfer himself to the SS. Salsette, another boat belonging to the Company. For a wilful disobedience of this order, the accused was convicted under section 83, clause 4 of the Merchant Seamen Act (I of 1859). The accused applied to the High Court against the conviction, contending, first, that the article respecting transfer was *ultra vires*, and secondly, that the order as to transfer given by the Marine Superintendent of the Company was not a lawful command :—

Held, that having regard to section 114, clause 3 of the Merchant Shipping Act (57 and 58 Vic. C. 60) and to the fact that the articles of agreement had been initialled by an Officer of the Board of Trade, the article as to transfer was not *ultra vires*.

Held, further, the order to transfer having been given by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS. Arcadia was a lawful command of the latter, failure to obey which was punishable under section 83, clause 4 of the Merchant Seamen Act (I of 1859).

THIS was an application, under the criminal revisional jurisdiction of the High Court, against conviction and sentence recorded by A. H. S. Aston, Chief Presidency Magistrate of Bombay.

SECTION 225 (1).—“ If a seaman lawfully engaged or an apprentice to the sea service commits any of the following offences, in this Act referred to as offences against discipline, he shall be liable to be punished summarily as follows ; that is to say,

(b) If he is guilty of wilful disobedience to any lawful command, he shall be liable to imprisonment for a period not exceeding four weeks, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay : ”

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The accused, a British Seaman, signed, on the 24th November 1914 at London, articles of agreement with the Master of the SS. Arcadia, a steamer belonging to the Peninsular and Oriental Steam Navigation Company. Those articles were initialled by an Officer of the Board of Trade. The material articles ran as follows :—

“ And the crew agree to conduct themselves in an orderly, faithful, honest and sober manner and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any Person who shall lawfully succeed him, and of their Superior Officer, in everything relating to the said ship.

“ And it is also agreed that the crew or any member thereof may be transferred if required, at any port and at any time during the period of this agreement to any other vessel of the Company, wages, capacity and turn of service being the same.”

When the SS. Arcadia arrived in the Bombay Harbour in January 1915, she was sold by the Company to an Indian Merchant. The accused was then asked to transfer himself to the SS. Salsette, another steamer belonging to the same Company. The order to transfer was given by the Marine Superintendent of the Company in the presence and within the hearing of the Chief Officer of the SS. Arcadia.

The accused having failed to obey the order was charged with wilful disobedience of lawful commands under section 83 of the Merchant Seamen Act (I of 1859) and section 225, clauses (b) and (c) of the Merchant Shipping Act (57 and 58 Vic. C. 60).

The trying Magistrate convicted the accused under section 83, clause 4 of the Merchant Seamen Act (I of 1859), and sentenced him to simple imprisonment for one day and to forfeit two days' pay.

The accused applied to the High Court against this conviction and sentence.

Kolaskar, with *K. F. Nariman*, for the accused.

F. S. Taleyarkhan, with *Little and Co.*, for the P. and O. S. N. Company.

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BEAMAN, J.:—The applicant has been convicted by the Chief Presidency Magistrate of an offence under section 83 of the Merchant Seamen Act and sentenced to one day's simple imprisonment and to forfeit two days' pay. He has applied to this Court and a rule was issued by Heaton and Shah JJ. We take it then that we are dealing with this case in revision. It was contended that the applicant had a right of regular appeal ; but in view of what had already passed and the applicant's counsel being unable to support his contention by reference to any section in the Code of Criminal Procedure, it is clear that this was not the view of Heaton and Shah JJ., and the present contention cannot be sustained.

Now the material facts are that the applicant signed the usual articles of agreement with the Captain of the Steamship "Arcadia" for a term of one year's service. In addition to the stereotyped form certain clauses were added under which *inter alia* the applicant agreed to accept a transfer from that to any other of the P. and O. Company's Steamship. These additional terms have been challenged in the course of this argument as being *ultra vires*. Having regard, however, to section 114, clause (3) of the Merchant Shipping Act, and to the fact that they have been initialled by an officer of the Board of Trade, we cannot accede to that contention. We have no doubt that the terms were *intra vires* and that they were subscribed by the applicant with full knowledge.

That being so, the next question which arises is whether or not when the Ship "Arcadia" had been disposed of by the P. and O. Company and this member of the crew was ordered by the Marine Superintendent

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to tranship to the Salsette, that order was one which he was bound to obey under section 83. He has been convicted of disobedience of a lawful order and the only question, in our opinion, of any importance here is whether or not the order given by the person and in the circumstances stated is such a lawful order as was contemplated in the section. Of the liability of the applicant to tranship under the clause, we can entertain no doubt whatever, but, looking to the language of that agreement, it appears, that the applicant bound himself to obey the Master of the Ship his successor in office, should any such be appointed, and the other superior officers (for such we take to be the meaning of the words "their superior officers") of the ship. This would not ordinarily comprise the Marine Superintendent and had the order been given by the Marine Superintendent alone, it might reasonably have been contended that the applicant was under no obligation to obey such an order or recognize the authority of that individual. This point has not been made as clear as it should have been, in the Chief Presidency Magistrate's Court, considering the importance attached to the case by the P. and O. Company. This much, however, is clear that when the order was given by Captain Dalry to the applicant, the Chief Officer of the Arcadia was standing by. It has been stated to us on behalf of the Company that what in fact happened was that the Marine Superintendent had sent his orders for the transhipment of this member of the crew of the 'Salsette' to the Chief Officer and that the Chief Officer had given that order to the applicant. The applicant refused to obey it in consequence of which the Marine Superintendent in the presence of the Chief Officer repeated the order. Unfortunately these statements are not supported by any evidence. It appears clear, however, on the virtually admitted fact that the order was given in the presence of the Chief Officer, that the

applicant could have been under no real misunderstanding as to the authority behind it. We think, therefore, that the contention is little better than quibbling and no substantial effect ought to be given to it.

All the requirements of section 83 have been sufficiently complied with. The applicant was liable to be transhipped. He was ordered to tranship, if not actually by, still in the presence of, the Chief Officer and obviously with his sanction and approval. And we take it that he knew perfectly well that the order came to him weighted with that authority which, by his own agreement, he was bound to acknowledge and obey.

We are, therefore, satisfied that no injustice has been done to the applicant and that the conviction and sentence which are made the subject of this revisional application ought not to be disturbed. We, therefore, discharge the rule.

Rule discharged.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

AMIRBIBI (PLAINTIFF) *v.* AZIZABIBI AND OTHERS (DEFENDANTS).^o

Mussalman Wakf Validating Act (VI of 1913), section 3—Construction of Statute—Whether effect retrospective—Wakf—Mahomedan Law.

The Mussalman Wakf Validating Act, 1913, has no retrospective effect and consequently the old law applies to wakfs created before the passing of that Act.

ONE Shaik Abdulla bin Shaik Ibrahim died on the 14th of August 1906 leaving him surviving as his only

^o O. C. J. Suit No. 29 of 1914.

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