

that Zipru could not inherit the property of Dhaklu ;  
and his claim to that property must fail.

1921.

ZIPRU  
v.  
BOMTYA.

The decree of the lower appellate Court is right and  
must be affirmed with costs.

MACLEOD, C. J. :—I agree.

*Decree affirmed.*

R. R.

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CRIMINAL APPELLATE.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

EMPEROR v. ABDUL REHMAN ISMAIL.\*

1921.

Septem-  
ber 12.

*Reformatory Schools Act (VIII of 1897)—Juvenile prison at Dharwar—  
Sentence passed on juvenile offender—Severity of sentence.*

Of two accused, who were found guilty of the offence of theft, one, a boy of 16, was ordered to be detained under rigorous imprisonment in the Juvenile Prison at Dharwar for a period of two years, the other, an adult with three previous convictions, was sentenced to rigorous imprisonment for one year. On appeal:—

*Held*, that the sentence passed on the juvenile offender should not exceed one year which was the sentence passed on the other accused.

THIS was an appeal from the conviction and sentence passed by B. N. Athavale, Presidency Magistrate of Bombay.

Two accused persons were found guilty of the offence of theft. The principal offender, who was an adult, was sentenced to rigorous imprisonment for one year in view of three previous convictions against him. The other accused was a boy of sixteen : he was sentenced to be detained in the Juvenile Prison at Dharwar for a period of two years.

\* Criminal Appeal No. 473 of 1921.

1921.

EMPEROR  
v.  
ABDUL  
REHMAN.

The juvenile offender appealed to the High Court.

There was no appearance.

MACLEOD, C. J.:—If the second accused is sentenced to be detained under rigorous imprisonment in the Juvenile Prison at Dharwar for two years as he is a lad of 16, and the first accused who is an adult, although he admittedly has three previous convictions, is sentenced to one year's rigorous imprisonment, it follows that the Magistrate gave the 2nd accused a longer sentence because he considered that it would be for his benefit to remain within the walls of the Dharwar Institution for two years. It is nowhere laid down that a Magistrate has such powers to increase the sentence of imprisonment on this ground. However desirable it might be for the Magistrate to have such powers, the sentence is one under the Indian Penal Code, but, as the rules with regard to the detention of a juvenile in the Dharwar Jail provide that no one should be admitted into the jail unless he has been sentenced to a period of one year or upwards, the result is, that in the case of juveniles Magistrates increase the sentences in many cases up to one year, so as to enable them to be sent to the Dharwar Jail instead of to the ordinary jail, and to that extent we might overlook the fact that they increase the sentences on juveniles beyond what the sentences would amount to in the case of adults, in order that juveniles should get the advantage of being detained in the Juvenile Prison. We doubt very much whether they are entitled to go beyond that, and to sentence a juvenile to a period, as in this case, of two years, merely because they think that such detention will be to the benefit of the accused. We have to consider in the first instance the offence committed. Clearly, since the first accused, who not only was an adult but also had

been previously convicted, only got one year's rigorous imprisonment, the second accused would, in the ordinary course, have been sentenced to less than one year. For these reasons we think the sentence must be reduced to one year.

SHAH, J. :—I agree.

*Sentence reduced.*

R. R.

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APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

SENAJI KAPURCHAND (ORIGINAL DEFENDANT NO. 1), APPELLANT *v.*  
PANNAJI DEVICHAND (ORIGINAL PLAINTIFF), RESPONDENT<sup>o</sup>.

*Civil Procedure Code (Act V of 1908), section 10, Order XXXVIII, Rule 5  
—Stay of suit—Attachment before judgment.*

It is competent to the Court to pass interlocutory orders, e. g., orders for a Receiver, or an injunction or an attachment before judgment, where a suit has been stayed under section 10 of the Civil Procedure Code, 1908.

Before granting an attachment before judgment, under Order XXXVIII, Rule 5 of the Civil Procedure Code, 1908, the Court must be satisfied that the defendant with intent to obstruct or delay the execution of the decree that may be passed against him has brought himself within the terms of the rule. It is not sufficient that there are merely vague allegations that the defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court.

APPEAL from Order passed by J. H. Betigiri, First Class Subordinate Judge at Dharwar.

In October 1918, the plaintiff filed a suit in the Court at Bellary against the defendants for dissolution of partnership and account.

<sup>o</sup> Appeals Nos. 23 and 26 from Order.

1921.

EMPEROR  
*v.*  
ABDUL  
REHMAN.

1921.

September 14.

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