

APPELLATE CRIMINAL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Innes.

THE EMPRESS *v.* ACHI.*

Jurisdiction—Act III of 1865 (Madras)—Act X of 1872, Sec. 8—Act XVI of 1874—Magistrate.

1880.

January 27.

Madras Act III of 1865 declared every Magistrate in the Madras Presidency authorized to take cognizance of every offence committed against any special or local law then in force in the said Presidency, notwithstanding any provision to the contrary in any Act or Regulation then existing, and also of any offence against any special or local law which might thereafter be passed unless such law should make the offences to which it might refer punishable by some other authorities therein specially mentioned. The effect of this Act was to remove the restrictions imposed by special or local laws theretofore passed and to enable Magistrates within the limits of their ordinary powers to deal with offences punishable under any such special or local law notwithstanding the special or local law indicated a particular tribunal as alone competent to try such offences, and to confer upon them jurisdiction also in the case of any special or local laws that might be passed after the enactment of Act III of 1865, unless jurisdiction was in any such later law specially conferred upon some other authority. Section 8 of the subsequent enactment, Act X of 1872 (the Criminal Procedure Code), limited the jurisdiction of Sub-Magistrates over offences punishable under special and local laws, a third-class Magistrate's jurisdiction being restricted to the trial of offences punishable under such laws with less than one year's imprisonment, while a second-class Magistrate's jurisdiction was similarly restricted to the trial of offences punishable with less than three years imprisonment. Act XVI of 1874, while repealing Act III of 1865, left unaffected the jurisdiction of the Sub-Magistrate under that Act so far as it still remained in existence as limited by the provisions of Section 8 of Act X of 1872 (Criminal Procedure Code).

THIS case came before the Court on the following reference from the District Magistrate of South Arcot :—

“In their Proceedings of the 29th September 1876, No. 2,230, the High Court ruled that Magistrates in the Madras Presidency were not divested of their jurisdiction over offences against special and local laws, which was conferred on them by Madras Act III of 1865, notwithstanding its repeal by Act XVI of 1874. Again in their Proceedings of the 30th August 1879, No. 1,382, and 4th September 1879, No. 1,424, the High Court have held that Second-class Magistrates have no jurisdiction over offences created by the Indian Arms Act 1878, whereas they have jurisdiction over such offences by virtue of the abovesaid Act III of 1865,

* Revision Case No. 1 of 1880.

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“ Now four cases of offences under the Arms Act have occurred in this district, and they have been tried by the Second-class Magistrate of Cuddalore Taluk.

“ As the aforesaid two rulings are inconsistent with the ruling of 1876, I beg to submit the matter for the consideration of the High Court, as instructed in G.O., dated 28th November last, No. 3,009, of which a copy is herewith submitted.”

The order of Government referred to in the District Magistrate's letter is in the following terms :—

“ It is observed that the ruling of the High Court, dated 30th August 1879, No. 1,382, cannot be reconciled with their F. B. ruling, dated 29th September 1876, No. 2,230.

“ The Magistrate of any district where another similar case arises will submit the aforesaid two rulings as inconsistent for the consideration of the High Court, and instruct the Government Pleader to appear and argue the question.”

Upon perusing the letter of the District Magistrate, the Proceedings of the Second-class Magistrate of Cuddalore submitted therewith, and the Order of Government, dated 28th November 1879, No. 3,009, and upon hearing the arguments of Mr. *H. H. Shephard*, Acting Government Pleader, the Court (TURNER, C.J., and INNES, J.,) recorded the following opinions :—

INNES, J.—The Magistrate is mistaken in supposing that there is any inconsistency between the ruling of the Court of the 29th September 1876, No. 2,230, and the more recent rulings which he quotes relating to the Arms Act.

The ruling of the 29th September 1876 simply decided that the jurisdiction conferred upon Sub-Magistrates in the Madras Presidency by Act III of 1865 (Madras) was unaffected by the repeal of the Act itself by Act XVI of 1874.

The Act III of 1865 gave all Magistrates authority to try offences against all special and local laws notwithstanding any provision to the contrary in any Act or Regulation existing at

the date of the enactment, and also any offence against any special or local law which should thereafter be passed unless such law should make the offences to which it refers punishable by some other authorities therein specially mentioned.

Before the enactment of the Repealing Act of 1874, the Criminal Procedure Code had already in 1872 worked a partial repeal of the jurisdiction conferred by Act III of 1865, by means of the provisions of the second clause of Section 8, which, in the case of Second and Third Class Sub-Magistrates, limited their jurisdiction to deal with charges of offences under special and local laws to offences punishable with less than one and three years' imprisonment respectively. This being a provision of a later Act than III of 1865, and inconsistent with the unrestricted jurisdiction conferred by Act III of 1865, to this extent repealed it, but the jurisdiction existing at the date of Act XVI of 1874 was left unaffected by that Act, as was laid down by the High Court in the ruling of the 29th September 1876. The question then before the Court related to the jurisdiction of Subordinate Magistrates in offences against the Salt laws, and the Court had not then to consider the effect upon the jurisdiction under Madras Act III of 1865 of Section 8 of the Criminal Procedure Code in regard to offences punishable with one or three years respectively.

TURNER, C.J.—I can find nothing necessarily inconsistent in the rulings to which our attention is invited. The Criminal Procedure Code of 1861 declared that the Criminal Courts of the several grades should have jurisdiction in respect of offences punishable under any special or local law except offences which were by any such law made punishable by any other authority therein specially mentioned. The Madras Act III of 1865 declared every Magistrate in the Madras Presidency authorized to take cognizance of every offence committed against any special or local law then in force in the said Presidency notwithstanding any provision to the contrary in any Act or Regulation then existing, and also of any offence against any special or local law which might thereafter be passed unless such law should make the offences to which it might refer punishable by some other authorities therein specially mentioned. The effect of this Act was then to remove the restrictions imposed by special or local laws theretofore passed and to enable Magistrates within the

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The Act XVI of 1874, in repealing Madras Act III of 1865, left untouched any "existing jurisdiction, but did not restore any jurisdiction" "not then existing or in force." The Second and Third Class Magistrates in Madras were deprived of jurisdiction to the extent above indicated by Act X of 1872, and the jurisdiction so curtailed was the established jurisdiction when Act XVI of 1874 was passed and the larger jurisdiction was not then existing nor in force. The ruling in 1876 while it noticed the abolition of the restrictions imposed by Special or Local Acts did not go on to notice the more limited restrictions imposed by the General Act, the Code of Criminal Procedure 1872. Seeing that the case in which the ruling was given did not fall within the limited restriction of the Act of 1872 for the offence (an offence under the Salt laws) did not render the offender liable to conviction to imprisonment for three years and had been tried by a Second-class Magistrate, it was unnecessary that reference should be made to the provisions of the Act of 1872. The rulings of the Court are, therefore, substantially not in conflict.

Order.—The conviction of the accused in the case of *The Empress v. Achi* and in three other cases on the file of the Second-class Magistrate of Cuddalore, for an offence punishable under Section 19 of Act XI of 1878, are accordingly hereby annulled. The fines paid by the accused must be refunded.