KRISHNÁ v. READE.

the intention, and there are no words of which the effect is, to take away the ordinary remedy in cases in which the special procedure provided by the Act is not availed of.

A case was cited before us, *Mussamat Harasundari Baistabi* v. *Mussamat Jayadurga Baistabi* (1), in which it is said by Mr. Justice Hobhouse that the Court of a District Múnsif not being a principal court of original civil jurisdiction in the district had no power to entertain what in the last words of the judgment is described as a suit. The case was one in which a mother applied for the custody of her minor daughter after recovery of the child from another woman in whose charge she had left it, and it would appear from the wording of the first part of the judgment that "an application" had been made: if so, if the mother had "applied" under the provisions of Act IX of 1861, then no doubt, as is observed by the learned Judge "the application should have been made to the District Court" and we think we may assume this was so, and that the word "suit" was used inadvertently or unadvisedly. If not, we feel constrained, for the reasons given in this judgment, to differ. Of the other cases cited, some go rather to support the view we take, while in others the question either did not arise or was not necessarily or not directly decided.

We are then of opinion that the District Múnsif had jurisdiction to entertain and dispose of this suit, and accordingly set aside the decree of the Lower Appellate Court, and direct the District Judge to hear and dispose of the appeal on the merits.

Costs in this Court and in the Lower Appellate Court to abide and follow the result.

APPELLATE CRIMINAL.

Before Mr. Justice Hutchins.

1885. September 10.

QUEEN EMPRESS
against
NÁRÁYANASÁMI.*

Criminal Procedure Code, ss. 15, 264, 407, 414—General Clauses Act, s. 2 (13)—Bench of Magistrates with second-class powers—Conviction—Appeal.

An appeal lies under s. 407 of the Code of Criminal Procedure from a conviction by a Bench of Magistrates invested with second or third class powers.

(1) 4 B.L.R., App. 36. * Criminal Revision Case 476 of 1885.

THIS was a case referred for the orders of the High Court by H. R. Farmer, Acting District Magistrate of Trichinopoly.

NárayanasámiNáyak and another having been tried summarily by a Bench invested with the powers of a second-class Magistrate were convicted and fined.

On appeal the District Magistrate reversed the sentence and acquitted the accused. At the instance of G. Salisbury, a member of the Bench of Magistrates, the case was referred to the High Court in order to obtain a ruling as to whether the Bench were bound to record a judgment as provided by s. 264 of the Code of Criminal Procedure, or, in other words, whether the Code contemplated an appeal from a conviction by a Bench of Magistrates exercising second or third class powers.

Counsel did not appear.

The Court (Hutchins, J.) delivered the following

JUDGMENT:—This case was tried summarily by a Bench of Magistrates invested with powers of a Magistrate of the second class. The District Magistrate reversed the conviction on appeal, and the question raised is whether an appeal lay. The question hinges on this—Is a Bench invested with such powers a Magistrate of the second class within the meaning of s. 407 of the Criminal Procedure Code? If it is, it is quite clear that an appeal lies under that section and that the Bench is bound to record a judgment under s. 264. Section 414 precludes appeals in certain cases tried summarily by a Magistrate empowered to act under s. 260, but s. 260 itself refers only to Magistrates of the first class or a Bench having the powers of a Magistrate of the first class.

The District Magistrate has referred to the General Clauses Act, s. 2 (13), which provides that the term "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure. But s. 15 of the Code itself is still more explicit. Every Bench, as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class, *i.e.*, of the highest class to which any one of its members belongs. It is true that this clause is exceptional, "except as otherwise provided" by any order of Government under the section conferring or limiting the powers of the Bench, but it renders it pretty clear that the Legislature intended that a Bench with the powers of a Magistrate of any class should be deemed to be itself a Magistrate of that class.

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In Criminal Revision Case 3 of 1882 from the Godávari District a judgment was passed containing the following expressions:—"The Bench tried the case summarily, being duly authorized; there is, therefore, no appeal." But in that judgment, as explained very shortly afterwards by the learned Judges who delivered it, it was erroneously assumed that the Bench had been duly authorized to act as a first-class Magistrate. They, therefore, informed the District Magistrate of Godávari that they never intended to hold that no appeal lay against the decision of a Bench with only second or third class powers.

I entertain no doubt that the District Magistrate had jurisdiction to entertain the appeal, and, consequently, I refuse to disturb his order.

APPELLATE CRIMINAL.

Before Mr. Justice Parker.

1885. August 24.

OOTACAMUND MUNICIPALITY

against

O'SHAUGHNESSY.*

Towns Improvement Act, 1871, (*Madras Act III of* 1871), *ss.* 62, 169—*Profession tax, Non-payment of—Offence, Nature of—Prosecution—Limitation.*

A complaint having been laid (on the 26th March 1885), under s. 62 of Act III of 1871 (Madras) against O for having exercised his profession for more than two months in the official year 1884-85 in a municipality without paying the tax in respect thereof, the Magistrate dismissed the complaint, on the ground that the prosecution was barred by s. 169 of the Act, inasmuch as five months had elapsed since the last payment in respect of the tax became due:

Held, that the complaint if laid within three months from the close of the official year, or, if O ceased to exercise his profession before the close of the official year, within three months from such date, was not barred by s. 169 of the Act.

THIS was a case referred to the High Court under s. 438 of the Code of Criminal Procedure by L. R. Burrows, District Magistrate of the Nílgiris.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Parker, J.)

Counsel were not instructed.

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* Criminal Revision Case 287 of 1885.