APPELLATE CRIMINAL—FULL BENCH.

Before Mr. Justice Kernan, Mr. Justice Muttusami Ayyar, Mr. Justice Parker, and Mr. Justice Wilkinson.

1888.
Sept. 7, 26.

QUEEN-EMPRESS

against

MADASAMI.*

Criminal Procedure Code, s. 399—*Reformatory Schools Act*, 1876, ss. 2, 7.

The Reformatory Schools Act, 1876, provides only for male juvenile offenders being sent to reformatory schools by magistrates of the first class, and s. 399 of the Code of Criminal Procedure, 1882, so far as it authorises a magistrate not of the first class to direct that a male juvenile offender be sent to a reformatory is repealed:

Held, therefore, when a second-class magistrate directed a boy to be sent to a reformatory under s. 399 of the Code of Criminal Procedure that the order was illegal.

CASE referred by C. F. MacCartie, Acting District Magistrate of Tinnevelly, under s. 438 of the Code of Criminal Procedure.

The facts are stated in the judgments of the Full Bench (Kernan, Muttusami Ayyar, Parker, and Wilkinson, JJ.).

The Government Pleader (Mr. *Powell*) for the District Magistrate.

PARKER, J. (Kernan and Wilkinson, JJ., concurring). The second-class magistrate has sentenced a juvenile offender (a boy) to rigorous imprisonment for six months and has directed, under s. 399, Criminal Procedure Code, that he be sent to a reformatory instead of being imprisoned in the criminal jail. The question referred to us is whether the direction that the accused be sent to a reformatory is illegal.

The sentence is clearly within the legal powers of the second-class magistrate under s. 399, Criminal Procedure Code, unless the introduction of the Reformatory Schools Act V of 1876 operates to repeal, or partially to repeal, that section. Act V of 1876 was extended to the Madras Presidency by notification in the official gazette in August 1887.

* Criminal Revision Case No. 581 of 1887.

The Criminal Procedure Code of 1882 was passed subsequently to Act V of 1876. By s. 2 of the latter Act it was enacted that on and from the date in which Act V of 1876 came into force in any province, s. 318 of the then Code of Criminal Procedure should be repealed therein. Section 399 of the present Code is the section corresponding to s. 318 of the old Code, and in s. 3 of the present Code it is enacted: "In every enactment passed before this Code (1882) comes into force in which reference is made to any chapter or section of the Code of Criminal Procedure, Act XXV of 1861, or Act X of 1872 or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section."

We may, therefore, take it that the introduction of the Reformatory Schools Act repeals the operation of s. 399, Criminal Procedure Code, in this Presidency "so far as may be practicable."

Section 399, Criminal Procedure Code, is a general section, which empowers *any* criminal court to send *any* sentenced person (of either sex) under sixteen years of age to a reformatory instead of sending him or her to a criminal jail. Act V of 1876 on the other hand is a special Act dealing with "Reformatory Schools for male youthful offenders." The legislature apparently contemplated the introduction of "reformatories," and also of "reformatory schools for male youthful offenders only," and provided that, when the latter institutions had been established, the provision of s. 399 should be repealed "so far as may be practicable."

The boy sentenced by the second-class magistrate could only, therefore, be sent to a "reformatory school" by a first-class magistrate under the provisions of s. 7 or 8 of the Reformatory Schools Act, and that part of the order of the second-class magistrate which directs that the accused "shall be sent to a reformatory" must be cancelled.

We may observe that, though the legislature apparently contemplated the institution of reformatories as well as "reformatory schools for male youthful offenders," yet, as a matter of fact, the latter institution only has been established, and, therefore, the order of the second-class magistrate could not have been carried out in the form in which it was passed.

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As the District Magistrate has already taken steps under s. 8, Act V of 1876, to send the accused to a reformatory school, no further orders are necessary.

MUTTUSAMI AYYAR, J.—In this case the second-class magistrate of Tinnevelly sentenced a juvenile offender to suffer rigorous imprisonment for six months and directed, under s. 399, Criminal Procedure Code, that he be sent to a reformatory instead of being imprisoned in a criminal jail. The District Magistrate refers the sentence for revision, on the ground that the direction that the accused shall be sent to a reformatory is illegal. According to s. 399 of the Code of Criminal Procedure it is competent to any criminal court which sentences a person under sixteen years of age to imprisonment for any offence to make the order, to which exception is taken by the District Magistrate. Act V of 1876 was passed specially with reference to reformatory schools, and under s. 7 of that enactment the power to direct that a prisoner shall be sent to a reformatory school cannot be exercised by any magistrate inferior to a first-class magistrate. That Act repealed s. 318 of the Code of Criminal Procedure which was then in force and corresponded to s. 399 of the present Code from such day as the local Government might by notification in the official gazette direct in that behalf. The local Government published a notification as mentioned above on the 20th August 1887 after the present Code of Criminal Procedure came into force. It is provided by s. 3 of the present Code that in every enactment passed before it comes into force in which a reference is made to any section of the Code of Criminal Procedure (Act XXV of 1861 or Act X of 1872) or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding section. It is suggested that, under this section, the reference made in Act V of 1876 to s. 318 of the former Code for the purpose of repealing it ought to be treated as a repeal (by reason of s. 3) of s. 399 of the present Code. Act V of 1876 provides only for male juvenile offenders being sent to reformatory schools and s. 399 is repealed by it, so far as it empowers a magistrate, who is not a first-class magistrate, to direct that the male juvenile offender be sent to a reformatory. In the result there are two enactments, both of which are partly in force, but the one is special and the other general. According to the former no male juvenile offender can be admitted into a

reformatory school except under the order of a first-class magistrate or other officer specially mentioned in s. 7 of Act V of 1876. According to the latter, any criminal court which passes the sentence may do so. The reasonable construction according to which effect may be given to both enactments in force is that the admission of a male juvenile offender into the reformatory school must be made under the order of a first-class magistrate or other officer as provided by s. 7, Act V of 1876, and that any criminal court acting under s. 399 may direct that a female juvenile offender be sent to a reformatory when one is established. It is urged by the Government Pleader that Act V of 1876 expressly repealed s. 318 of the former Code of Criminal Procedure and that the question before us is one of express and not of implied repeal. But the words in s. 3 of the present Code, "so far as may be practicable," appear to me to limit the repeal to cases in which s. 399 is necessarily inconsistent with the provisions of Act V of 1876. No grounds are shown for assuming that Government may not hereafter provide a reformatory for the benefit of female juvenile offenders. In the case before us, however, the accused is a boy and the District Magistrate has taken the necessary steps under s. 8 of Act V of 1876. I also think no further orders are necessary, and it is sufficient to declare that the order made by the second-class magistrate is hereby declared to be illegal.