

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.

QUEEN-EMPRESS

v.

BARTLETT.*

Criminal Procedure Code, s. 454—European British subject—Relinquishment of right to be dealt with as such British subject—Trial by Second-class Magistrate.

A European British subject was prosecuted in the Court of a Second-class Magistrate, who was a Hindu, on a charge of mischief. The accused appeared and did not plead to the jurisdiction of the Magistrate, who proceeded with and disposed of the case :

Held, that the Magistrate had not acted *ultra vires* since the accused had relinquished his right to be dealt with as a European British subject.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by J. Thompson, District Magistrate of Chingleput.

The case was stated as follows :

“ I have the honour to submit for the orders of the High Court, under section 438, Criminal Procedure Code, the records in calendar No. 83 of 1892, on the file of the Sheristadar Second-class Magistrate of Saidapet taluk.

“ The defendant in the case, Mr. W. H. Bartlett, was accused under section 429, Indian Penal Code, of mischief by killing a horse over Rs. 50 in value. The witnesses examined having failed to give evidence against him, he was discharged under section 253, Criminal Procedure Code.

“ I have no doubt, on perusal of the record and on hearing the station-house officer who is entered in the charge-sheet as a witness, but was not examined, that the case was compromised, a chief witness kept out of the way, and that the three other witnesses perjured themselves.

“ The inquiry has been grossly gone about by the Magistrate ; but apart from that, Mr. Bartlett being a European British subject, was not, under section 443, Criminal Procedure Code,

* Criminal Revision Case No. 234 of 1892.

“ triable by this particular Magistrate, who is neither a Magistrate
 “ of the first class nor a European British subject. Mr. Bartlett
 “ waived his right to be specially dealt with, and the Second-class
 “ Magistrate considered he had jurisdiction under section 454,
 “ Criminal Procedure Code. That section apparently has refer-
 “ ence to cases where the Magistrate has no reason to consider that
 “ the accused is a European British subject and the accused is
 “ silent ; but when the Magistrate was satisfied, as in the present
 “ case, his jurisdiction was ousted.

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“ The whole proceedings appear, therefore, to be void, and I
 “ request the orders of the Honorable the Judges that the pro-
 “ ceedings held be quashed and the case be tried before a com-
 “ petent Court.”

Mr. R. F. Grant for the accused.

The Acting Government Pleader and Public Prosecutor
 (*Subramanya Ayyar*) for the Crown.

JUDGMENT.—We are unable to accept the view of the District
 Magistrate as to the interpretation of section 454, Criminal Proce-
 dure Code, which must, we think, be read along with section 443.
 The Second-class Magistrate was disqualified to try the accused
 solely because the accused was a European British subject. When
 the accused appeared before the Magistrate he relinquished his
 right to be dealt with as such British subject and therefore lost all
 the benefit of the special procedure laid down in chapter XXXIII.
 This is the view taken of the law by both the Calcutta and Bom-
 bay High Courts, and we think it is the proper construction to be
 put upon sections 443 and 454.

We decline to interfere.