

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight,
Mr. Justice Brodhurst and Mr. Justice Tyrrell.

1885
June 13.

QUEEN-EMPRESS v. LASKARI.

Criminal Procedure Code, ss. 17, 435, 437—"Inferior"—"Subordinate"—
First class Magistrate "subordinate" to Magistrate of District.

A Magistrate of the first class is, within the meaning of s. 437 of the Criminal Procedure Code, "subordinate" to the Magistrate of the District, who is therefore competent to call for the record of the former, and to deal with it under s. 437.

THIS case was referred to the High Court for orders, by the Sessions Judge of Gorakhpur, under s. 438 of the Criminal Procedure Code. The question raised by the reference was, whether a Magistrate of a District was competent to call for the record of a Magistrate of the first class, and to deal with it under the provisions of s. 437 of the Criminal Procedure Code. The reference was made in consequence of the ruling of Duthoit, J., in *Jhinguri v. Bachu* (1) to the effect that the Magistrate of the District was not competent to send for the file of a first class Magistrate in the manner contemplated by s. 437. The case came on for hearing before Straight, J., who, in view of the importance of the question involved, and the conflict of opinion that appeared to exist on the subject, referred it to the Full Bench.

The *Public Prosecutor* (Mr. C. H. Hill) for the Crown.

The following judgments were delivered by the Full Bench:—

STRAIGHT, J.—The question which we are asked by this reference virtually is, whether a Magistrate of the first class is, within the meaning of s. 437 of the Criminal Procedure Code, "subordinate" to the Magistrate of the District. In my opinion this question should be answered in the affirmative; and I wish to add a few observations with the object of explaining some mistakes which appear to me to have been made in reference to some of the sections in Chapter XXXII of the Code. By s. 435 it is provided that "the High Court or any Court of Session, or District Magistrate, or any Sub-Divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any *inferior* Criminal Court." I am of opinion that the word "inferior" was here used because in former rulings it had been held that the Magistrate of the Dis-

(1) *Ante*, p. 134.

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trict was not "subordinate" to the Sessions Court. Under s. 435 it is obvious that a Court of Session has a right to call for the record of the Magistrate of the District, not as "subordinate," but as "inferior" to the former Court, and therefore the word "inferior" has been used to meet the rulings to the effect that the District Magistrate is not "subordinate" to the Sessions Court. The section goes on to provide that "if any Sub-Divisional Magistrate, acting under this section, considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate." The result is that, under s. 435, certain tribunals are invested with the power of calling for the records of Courts "inferior" to them, that is, inferior for purposes of jurisdiction. Now, when the record has come up under s. 435, s. 436 provides that the Court of Session or the District Magistrate alone may do certain things, and s. 437 confers a power upon the Court of Session and the District Magistrate, which they did not possess under the old Code, of directing Magistrates "subordinate" to the District Magistrate to make further inquiry into any case which has been dismissed. The term "subordinate" is explained by s. 17 of the Code, and that section seems to show beyond question that a Magistrate of the first class is subordinate to the District Magistrate. It follows that an order passed by a District Magistrate under s. 437 to a Magistrate of the first class in his District, is an order which the latter is bound to obey, and I am therefore of opinion that this reference should be answered in the affirmative.

PETHERAM, C. J., concurred.

BRODHURST, J.—I concur in holding that a District Magistrate is competent to call for the record of any Magistrate in his District, and to deal with it under s. 437 of the Criminal Procedure Code.

TYRRELL, J.—I am of the same opinion. In reference to my brother Straight's observations as to the reason why the word "inferior" is used in s. 435 instead of the word "subordinate," I may add that the rulings which gave rise to that expression have been embodied in the last sentence of s. 17 of the Code.