

1897
 QUEEN-
 EMPRESS
 v.
 GOBINDA.

imprisonment. The Magistrate found that Gobinda was a Dalera and twelve years of age. Daleras are excluded from the purview of Act No. VIII of 1897 in these Provinces under rules made on the 18th of June 1897, by the Local Government. Consequently the order for substitution was illegal. It was further illegal in that it transgressed the rule which regulates the period for which a youthful offender of that age might be sent to a Reformatory School. Under section 16 of Act No. VIII of 1897, this Court is precluded from altering or reversing that order, as the order was an order for detention in a Reformatory School in substitution for an order of imprisonment. Consequently, even if Gobinda had been a youthful offender who was not excluded from the operation of the Act by the rules made by the Local Government, we could not interfere with that portion of the order which directed him to be detained in a Reformatory School for four years. We dismiss this application.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.

QUEEN-EMPRESS v. BILLAR.*

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 November 27.

Act No. VIII of 1897 (Reformatory Schools Act) sections 8 and 16—Order for detention in a Reformatory School under section 8—Revision—Powers of High Court.

The prohibition contained in section 16 of Act No. VIII of 1897, does not apply to an order for detention in a Reformatory School passed when the person to whom it relates has not been convicted of any offence and has not been sentenced to any term of imprisonment or transportation for which detention in a reformatory could be substituted.

THIS was an application for revision made by the Government Advocate in respect of an order of the District Magistrate of Gorakhpur.

On inquiring into a charge under section 457 read with section 75 of the Indian Penal Code, the Joint Magistrate of Gorakhpur had recorded the following order:—"I should have dealt with the case myself, but accused was convicted of an

* Criminal Revision No. 577 of 1897.

offence under section 454 of the Indian Penal Code in January this year. He is aged about 10. Sarju says his parents are badly off, and I do not think it would be any use binding him over to be of good behaviour. I consider he should be sent to a Reformatory. As I have not been empowered to pass such an order under section 8 of Act. No. VIII of 1897, I forward the case with this opinion to the District Magistrate under section 9 of the said Act."

The District Magistrate, without noticing that the accused had not been convicted and sentenced by the Joint Magistrate, passed an order that the accused be confined in a Reformatory for six years.

Revision of this order was applied for on the grounds that the accused could not be sent to a Reformatory without first having been convicted of the offence with which he was charged, and, secondly, that the age of the accused had not been definitely ascertained.

The Government Advocate (Mr. E. Chamier), for the Crown.

EDGE, C. J. and BURKITT, J.:—A Magistrate investigated a charge of theft in a dwelling house preferred against Billar. Without having convicted Billar of any offence, and of course without having sentenced him, the Magistrate sent the case to the Magistrate of the District. The Magistrate of the District, omitting to notice that Billar had not been convicted and had not been sentenced, and that he had no jurisdiction to make an order for detention in a Reformatory School in his case, ordered that Billar should be detained in a Reformatory School for six years. That order was entirely illegal. There was no jurisdiction to make it. It was not an order for detention in a Reformatory School passed in substitution for an order for transportation or imprisonment; consequently this Court is not precluded by section 16 of Act No. VIII of 1897, from dealing with the order of the Magistrate of the District. We set aside the order of the Magistrate of the District, and direct that the Magistrate of the District, or some other competent Magistrate to whom the case may be assigned by him, shall proceed with the investigation of the charge according to law.

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