

The Magistrate, purporting to act under section 8 of Act No. VIII of 1897, substituted for that order of imprisonment an order for detention in a Reformatory School. The Magistrate found that Himai was fifteen years of age. Consequently Himai was not a "youthful offender" within the meaning of section 4 of Act No. VIII of 1897 at the time of his conviction. The order substituting detention in a Reformatory School for imprisonment was therefore illegal.

But section 16 of Act No. VIII of 1897*, precludes this Court from interfering in appeal or revision with an order for detention in a Reformatory School passed in substitution for an order of transportation or imprisonment. We can put no other construction upon section 16. We accordingly dismiss this application for revision.

1897

 QUEEN-
EMPERESS
v.
HIMAI.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt,
QUEEN-EMPRESS v. GOBINDA.†

 1897
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.

THIS case is similar in principle to that of *Queen-Empress v. Himai (supra)*.

The facts of this case are sufficiently stated in the judgment of the Court which was as follows:—

EDGE, C. J. and BURKITT, J.:—Gobinda was convicted of the offence punishable under section 379 of the Indian Penal Code and was sentenced therefor to one month's rigorous imprisonment. The Magistrate substituted an order of detention in a Reformatory School for four years for the order of

* Section 16 of Act No. VIII of 1897 is as follows:—"Nothing contained in the Code of Criminal Procedure, 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment."

† Criminal Revision No. 576 of 1897.

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.*

1897
 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.