

Before Mr. Justice Walsh.

EMPEROR v. ABDUL AZIZ.\*

1916  
September, 23.

Act No. VIII of 1897 (*Reformatory Schools Act*), section 31—"Youthful offender"—*Punishment—Powers of courts dealing with youthful offenders.*

Section 31 of Act VIII of 1897, read with the definition of 'youthful offender,' enables practically any court in the case of an offender under 15 to deliver him to his parents with or without sureties for his future good behaviour.

ONE Abdul Aziz, a boy of under 15 years of age, was convicted by a Magistrate of the offence of theft in respect of certain parts of a bicycle. There were extenuating circumstances, and the trying Magistrate first referred the case to the District Magistrate for orders. The District Magistrate, however, merely returned the record, instructing the trying Magistrate to dispose of the case in accordance with the directions laid down for dealing with juveniles. Thereupon, the trying Magistrate, without referring to any law, bound over the accused in his own recognizance of Rs. 50 and two sureties of Rs. 50 each for a period of one year to appear and receive judgement when called upon and meanwhile to be of good behaviour. The District Magistrate afterwards referred the case to the High Court upon the ground that section 562 of the Code of Criminal Procedure could not be applied in the circumstances.

The parties were not represented.

WALSH, J.—This case has been referred to the High Court under a misapprehension. A boy named Abdul Aziz was employed in an electrical workshop. He took a bicycle away belonging to one of the engineers, as he says, at the instance of another person who apparently laid some claim to it, and he, the accused, actually changed some of the parts. It was a wicked theft, but it was a very clumsy one. It was done in broad daylight and the bicycle remained upon the premises, although changes were made in it. Every single witness called for the prosecution gave the boy a good character. The boy himself protested that he had been used as a tool and that he was not aware that he was engaged in a theft. In fact, he objected to doing something to the bicycle on the ground that he might be implicated, and he said he was satisfied by the answers he got. It would not be fair to form any opinion as to whether this other person in the

\* Criminal Reference No. 684 of 1916.

1916

EMPEROR  
v.

ABDUL AZIZ.

works was really the guilty party. I therefore assume that this youth of 14 did in fact yield to temptation and commit a deliberate theft such as he has been convicted of. He is fourteen. It is quite clear that he was not alone in the transaction, and, as I have said, everybody gives him a good character. When he was charged, the Magistrate, on the 24th of July, referred the case to the District Magistrate for orders, pointing out the age of the boy, and the District Magistrate sent it back to him to dispose of in accordance with the directions laid down for dealing with juveniles. The Magistrate, without making any reference to the law, punished the accused by binding him over in his own recognizance of Rs. 50 and two sureties of Rs. 50 each for a period of one year to appear and receive judgement when called upon, and in the meantime to be of good behaviour. The District Magistrate of Jhansi drew attention to the fact that section 562 of the Code of Criminal Procedure did not apply, because the offence under section 411, Indian Penal Code, was not included therein, being punishable by more than two years' imprisonment, and at the instance of the District Magistrate the Sessions Judge has referred it to this Court. The explanation, which it is usual for the Magistrate responsible for the conviction to submit, simply states that he has nothing to say. Now it is quite true that section 562 is not applicable to this case, but section 31 of Act VIII of 1897 read with the definition of 'youthful offender' enables practically any court, at any rate any of the courts concerned in this matter; in the case of an offender under 15, to deliver him to his parents with or without sureties for his future good behaviour. It is to be regretted that the existence of this section should apparently be unknown, although the Act has been in existence for 19 years, either to the District Magistrate or to the Sessions Judge in this particular case. It is a little odd that the Magistrate himself did not refer to it and possibly he acted under it without being aware of the reference and where it was to be found. It clearly extends very considerably the provisions of section 562 of the Code of Criminal Procedure, which, although later in date, is a reproduction of earlier legislation. The case must go back to the Magistrate who tried the case with the following direction:—If he already has two sureties of Rs. 50 each which are satisfactory to him his order

will stand. On the other hand, if nothing has been done, I modify the order by cancelling the provision for a surety by the boy himself, and direct that he be delivered to such person as the Magistrate finds to come within the description of clause (b) of sub-section (1) of section 31 of Act No. VIII of 1897, on the condition that such person shall execute a bond for the sum of Rs. 50 with one additional surety of Rs. 50, to be responsible for his good behaviour for twelve months.

*Order modified.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice|Sir Pramada  
Charan Banerji.*

1916  
October, 20.

HUMMI AND ANOTHER (DEFENDANTS) v. AZIZ-UD-DIN (PLAINTIFFS).  
*Civil Procedure Code, 1908, order IX, rule 13; order XVII, rule 9—Procedure—  
Non-appearance of defendant—Decree passed on merits in absence of defend-  
ant—Appeal—Application for re-hearing.*

On a date to which the hearing of a suit before a Munsif had been adjourned the plaintiff and his witnesses were present, but the defendants were not. The Munsif heard the plaintiff's witnesses and decreed his claim. The defendants filed an application for a rehearing before the Munsif, who, however, rejected it. They then appealed against the decree to the District Judge, who dismissed the appeal.

*Held*, on second appeal by the defendants against the District Judge's decree that the defendants might and should have appealed against the rejection by the Munsif of their application for a re-hearing; but they had no right in their appeal from the decree to raise any question as to their non-appearance in the court of first instance.

THE facts of this case are fully set out in the following order referring the appeal to a Division Bench:—

KNOX, J.—In the suit out of which this second appeal arises the plaintiff sued the defendants for possession of a house. The first date fixed for hearing the suit was the 3rd of December, 1914. Apparently both parties were present on that date, but for some reason the court was not able to take up the case on that date and postponed it to the 19th of January, 1915. On the 19th of January, 1915, the case was taken up. The defendants failed

\* Second Appeal No. 1050 of 1915, from a decree of D. R. Lyle, District Judge of Agra, dated the 12th of April, 1915, confirming a decree of P. K. Roy, Munsif of Agra, dated the 19th of January, 1915.