

by the rules will be followed. If he decides not to intervene, the petitioner will be entitled to a decree absolute, unless some third party steps in.

[Pursuant to his Lordship's order the Government Advocate intervened on the 5th February 1936 and took time to investigate the case. On the 18th March 1936 he intimated to the Court that the evidence was not sufficient, and withdrew his intervention. His Lordship thereupon made the decree *nisi* absolute.]

1935

WILLIAMS
v.
WILLIAMS.
LEACH, J.

CRIMINAL REVISION.

Before Mr. Justice Dunkley

KING-EMPEROR

v.

NGA BALA.*

1936

Jan. 15.

Prevention of Crime (Young Offenders) Act (Burma Act III of 1930), ss. 24 (b), 25 (1)—Detention in senior training school—"Beyond the age of 18," meaning of.

Under clause (b) of s. 24 of the Prevention of Crime (Young Offenders) Act a person ordered to be detained at a senior training school cannot be detained there beyond the age of 18. The magistrate, therefore, ought to fix the age of the offender. In accordance with usage a person is 18 years of age until he reaches his 19th birthday. Therefore the expression "beyond the age of 18" must mean and include the period up to the nineteenth birthday of the person.

DUNKLEY, J.—The respondent was convicted by the Subdivisional Magistrate of Amherst of an offence under section 307 of the Indian Penal Code and, under the provisions of section 24 of the Prevention of Crime (Young Offenders) Act, was ordered to be detained in the Senior Training School at Thayetmyo for a period of three years.

* Criminal Revision No. 866A of 1935 from the judgment of the Sessions Judge of Amherst in Criminal Appeal No. 257 of 1935.

1936
 KING-
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 DUNKLEY, J.

This revision has been opened in order to decide the legality of the Magistrate's order. The proceedings of the Magistrate were carelessly conducted. The order of detention states that the respondent "having been born on or about the year 1919 is now under 16 years." I am astonished that this order of detention was ever accepted at the Training School. As the learned Sessions Judge pointed out on appeal, the Magistrate ought to have fixed the age of the respondent. As he concluded that the respondent was under 16 years of age at the time he delivered his judgment, *viz.*, the 6th October, 1935, I can only conclude that he intended to fix the respondent's date of birth at the 1st January, 1920, under paragraph 791 of the Burma Courts Manual, as substituted by item 27 of Circular No. 23.

Now, under clause (b) of section 24 of the Prevention of Crime (Young Offenders) Act, a person ordered to be detained at a senior training school cannot be detained there beyond the age of 18. This expression "beyond the age of " occurs also in section 25 (1) of the Act, but it is not defined in the Act, although certain similar expressions are defined in section 2 thereof. Consequently, the expression must be defined in accordance with common usage. According to common usage, a person is said to be of a certain age until he reaches his next birthday ; for instance, if a person, on being asked his age, stated that his age was 18, he would mean by that that he had passed his eighteenth birthday but had not yet reached his nineteenth birthday. Consequently, in accordance with ordinary usage, a person is 18 years of age until he reaches his nineteenth birthday. Therefore, the expression "beyond the age of 18" must mean and include the period up to the nineteenth birthday of the person. Hence, as the respondent was just under

16 years of age at the time when the order was passed, the order of detention for a period of three years was legal under clause (b) of section 24 of the Act, and, therefore, no ground for interference in revision arises.

A copy of these remarks may be sent to the learned Sessions Judge and to the trying Magistrate for their information.

1936
KING-
EMPEROR
v
NGA BALA.
DUNKLEY, J.

APPELLATE CIVIL.

Before Mr. Justice Ba U.

S.A.S. CHETTYAR FIRM

v.

U MAUNG GYI AND ANOTHER.*

1936
Mar. 16.

Burmese customary law—Desertion of husband by wife—Automatic divorce at end of one year—Eindaunggyi couple—Loss by wife of her right in the hnazon property.

In the case of a Burmese Buddhist couple if the wife deserts her husband the marriage becomes automatically dissolved at the end of one year from the date of desertion.

Ma Nyun v. Maung San Thein, I.L.R. 5 Ran. 537—referred to.

Where on account of the wife's adultery and desertion a divorce has automatically taken place the wife loses all her right in the hnazon property, and her share therein is forfeited to her husband. It makes no difference whether the parties were married for the first time or were *eindaunggyis*.

Maung Yin Maung v. Ma So, (1897-1901) 2 U.B.R. Budd. Law, Div. 34—referred to.

Chari for the appellant.

Tun Aung for the respondent.

BA U, J.—This appeal arises out of a suit filed by the appellant Chettyar for a declaration that the second defendant-respondent, Ma Htwe, is entitled to a half share in the suit land and that her share is liable to

* Civil Second Appeal No. 156 of 1935 from the judgment of the District Court of Pyinmana in Civil Appeal No. 5 of 1935.