1900 NOV. 28.

CRIMINAL REVISION.

28 C. 423.

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[423] CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Stevens.

REASUT (*Petitioner*) *v.* COURTNEY (*Opposite Party*).*
[28th November, 1900].

Jurisdiction—Reformatory School—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence—Reformatory Schools Act (VIII of 1897), ss. 8 and 16.

S. 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is made.

The power of the High Court remains intact to consider the propriety or legality of any sentence passed upon a youthful offender.

THE accused, a boy, was found abstracting a piece of coal valued about six pies from a wagon. He was tried summarily by a Deputy Magistrate of Sealdah, who convicted him of theft and sentenced him to rigorous imprisonment for one month, and, in lieu thereof, directed that he be detained in the Reformatory School for four years.

Babu *Horendra Nath Mitter*, for the petitioner.

No one appeared for the opposite party.

The judgment of the Court (AMEER ALI AND STEVENS, JJ.) was as follows :—

In this matter a Rule was issued on the District Magistrate to show cause, why the sentence should not be modified on the ground that this was a very trifling theft, and that, so far as appears from the record, it was the petitioner's first offence.

The trial before the Deputy Magistrate was summary, but the age of the accused, who is a mere boy, has not been found. He is stated to have been found abstracting a piece of coal from a waggon, the value of which is said to be about six pies. The trying Magistrate, as already observed, without finding what the age of [424] the boy was and without stating whether, in his opinion, he was a proper person to be an inmate of the Reformatory School, sentenced him to rigorous imprisonment for one month and in lieu thereof directed that he be detained in the School for four years. The evidence recorded is extremely slight. There is nothing to show that the petitioner was ever before convicted or what his antecedents are, and we certainly think that a sentence of one month's rigorous imprisonment was not a proper sentence for the offence committed.

Our attention has been called to the Provisions of ss. 8 and 16 of the Reformatory Act. S. 16 provides that a Court of Appeal or Revision should not alter or reverse 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. But it does not in any way take away the jurisdiction of this Court to alter or set aside the sentence, in substitution of which the order for detention is made. The power of the Court remains intact to consider the propriety or legality of any sentence passed upon a youthful offender. In that view, we are of opinion that the sentence of one month's rigorous imprisonment is

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*** Criminal Revision No. 790 of 1900, made against the order passed by Moulvie Buzlul Karim, Deputy Magistrate of Sealdah, dated the 21st of August 1900.**

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an improper sentence. The accused is a young lad, for even in the descriptive roll sent up from the police, he is put down as 15 years of age, And this appears to be his first offence. We accordingly set aside the sentence of imprisonment for one month and in lieu thereof, considering the nature of the offence, direct that the petitioner do undergo a whipping of five stripes by way of school discipline and then be discharged from custody.

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28 C. 424.

ORIGINAL CIVIL.

Before Mr. Justice Stanley.

GURMUK ROY AND OTHERS *v.* TULARAM.* [3rd June, 1901.]

Practice—Documents, inspection of—Civil Procedure Code (Act XIV of **1882). s. 130—*Discovery.***

Where inspection of documents is objected to on the ground of immateriality, the Court will, if necessary, order them to be produced for its own inspection, in order to judge of their materiality.

[425] THIS was a chamber application by the defendant for inspection of the plaintiff's books of account.

The plaintiffs were commission agents employed by the defendant and were bringing a suit to recover certain money alleged to have been expended on behalf of the defendant.

The plaintiff filed their affidavit of documents on the 20th of March and claimed the right of sealing up certain portions of their account, which they alleged did not relate to the matter in question and of which they refused to allow inspection to the defendant.

The defendant alleged in his W. S. that the plaintiffs had agreed to chagre the defendant with the actual prices of the goods supplied, but had in fact overcharged and wrongly charged him.

The defendant now made this application for discovery of those portions of the plaintiff's books of account, which he alleged the plaintiff had wrongfully sealed up, and which he further alleged, would show the actual prices paid for the goods supplied and the persons from whom tney were purchased.

Mr. *Jackson* (in support of the application):—They refuse us inspection of that portion of their accounts which sets out the amounts they themselves actually paid for the goods bought for us. The amounts put down in their account to us are overcharges. Under Order XXXI, Rule 1 of the Annual Practice it is stated there are only four grounds on which discovery can be resisted, and not one of those applies here.

Mr. *Garth* (contra).—The Court cannot make the order asked for. The matters sought to be inspected are not the subject of the suit. *Nittomoye Dassee* v. *Soobul Chunder Law* (1); *Dhoroney Dhur Ghose* v. *Radha Gobind Kur* (2).

Here the defendant says there are entries in our books, which would show so and so. We say there are not. How can he get discovery? We have put in our affidavit every entry which has **[426]** anything to do with the account, and the defendant is not entitled to roam over the whole of our books.

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* Suit No. 864 of 1900.

(1) (1895) I. L. R. 23 Cal. 117, 127. (2) (1896) I. L. R. 24 Cal. 117.