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 COURTNEY.

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 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.

D. S.

ORIGINAL CIVIL.

Before Mr. Justice Stanley.

GURMUK ROY AND OTHERS v. TULARAM.*

1901
 June 3.

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.

* Suit No. 864 of 1900.

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

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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.

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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 charge 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 they 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 Dasse v. *Soobul Chunder Law* (1); *Dhoroney Dhar 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

(1) (1895) I. L. R. 23 Calc. 117, 127.

(2) (1896) I. L. R. 24 Calc. 117.

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anything to do with the account, and the defendant is not entitled to roam over the whole of our books.

Mr. *Jackson* in reply.—We say they have overcharged us. That is relevant enough to the suit, and we want to know the actual prices they paid for the goods. We know what we paid them.

In *Heeralal Rukhit v. Ram Surun Loll* (1) a similar case Pontifex, J., directed a reference to an officer of the Court to report on the relevancy of the documents, of which inspection was sought.

This was followed by Sale, J., in an unreported case, *Mughlu Bibee v. Heeralal* appearing in the records of 2nd May 1894.

A man can always, alleging a person to be his agent, claim an account.—*Makepeace v. Rogers* (2).

Under Order XXXI, Rule 1, documents of which inspection can be obtained are not confined to those that would be admissible in evidence. In the case cited by my friend the learned Judge's remarks as to discovery are mere dicta and not necessary to the decision of the case. The judgment of Pontifex, J., followed by Sale J. is in point. Here we allege overcharge and give instances. They haven't met our affidavit.

STANLEY, J.—Let the books be produced before me on Saturday next at 11 o'clock for the purposes of inspection under s. 130 of the Civil Procedure Code. I reserve costs and adjourn this application.

Attorneys for the Plaintiffs: Messrs. *Leslie & Hinds*.

Attorney for the Defendant: *Babu Kally Mohan Rukshit*.

J. E. G.

(1) (1879) 1. L. R. 4 Cal. 835.

(2) (1865) 34 L. J. Ch. 396, 398.