

**In Re: Musa Asmal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/330895](http://sooperkanoon.com/330895)

**Court :** Mumbai

**Decided On :** Dec-22-1884

**Reported in :** (1885)ILR9Bom164

**Judge :** West and ;Nanabhai Haridas, JJ.

**Appellant :** In Re: Musa Asmal and ors.

**Judgement :**

**West, J.**

1. Act XXIX of 1845, which first gave power to the Government of Bombay to appoint Joint Sessions Judges, vested such Judges with all the powers of the Sessions Courts, but at the same time prescribed that they were to exercise these powers only on such business as should be made over to them by the Sessions Judge. This Act remained in force until 1872, when it was repealed by Act X of that year. The same Act, by Section 17, provided for the appointment of Joint Sessions Judges The section says that these 'Joint Sessions Judges shall exercise all the powers of a Court of Session, but shall try such cases only as the Local Government directs, or as the Sessions Judge of the Division makes over to them for trial.' On these mere words it might be argued that it was intended to restrict the powers of the Joint Sessions Judge only in relation to the trying of cases, and not in other respects in which he might desire to exercise the jurisdiction of a Court of Session, as, for instance, in directing a committal or making a reference. Section

18, however, shows that this was not the real intention, for in that section similar words were used in the case of an Assistant Judge, who clearly was not meant to be given a quasi-revisional power over the Magistrates of his district and at the same time no appellate jurisdiction. It is admitted that the new distribution of the matter of Section 17 of Act X of 1872 between Section 9 and Section 195 of Act X of 1882 has not made, any difference in the sense. Under the latter Act, therefore, as under the former, the Joint Sessions Judge cannot exercise the powers of the Sessions Judge under chapter 32 of the Criminal Procedure Code (Act X of 1882). We must set aside Mr. Shaker's proceedings as held without jurisdiction, leaving it to the Sessions, Judge of the Division, if a proper case is made out, to order a committal, or to give such other direction disposing of the application as he shall think just and expedient.