for and confers on the respondent the exclusive right to continue the suit or not. Unless the declaration by the Collector is given retrospective effect, it can scarcely affect the arrears of rent which had already accrued and had been sued for; and there is no reason to suppose that such effect should be given to it. If the Collector's order is to take effect only from its date, petitioner will be the land-holder *qua* the rent sued for, under section 3, clause (5), if his claim to collect it under the will is established. See *Sundaram Iyer* v. *Kulathu Iyer*(1). In that case it was held that a person to whom arrears of rent were due was a landholder though his estates had terminated. If he is such a landholder, petitioner will be the proper person to continue the suit under the Estates Land Act in the revenue court. I therefore agree that the order of the Collector under section 3, clause 5, is not shown to affect the question who the proper legal representative of the deceased plaintiff is; and for the purpose of deciding it, it seems necessary that the genuineness and the validity of the petitioner's will should be enquired into. I therefore agree in the order proposed by my learned brother.

KRISHNAN, J.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

THE CROWN PROSECUTOR (COMPLAINANT), PETITIONER,

v.

BHAGAVATHI (ACCUSED), RESPONDENT. *

1918. August, 23.

Criminal Procedure Code (Act V of 1898), sections 254 and 347, commitment to Sessions by Magistrate competent to try and adequately punish, legality of.

The terms of section 347 of the Criminal Procedure Code are general and give a Magistrate who is empowered to commit a discretion in committing cases for trial which is not limited by section 254 so as to make it obligatory on him to try every case which he can adequately punish.

(1) (1915) 31 I.C., 81.

* Criminal Miscellaneous Petition No. 403 of 1918.

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Queen-Empress v. *Kayemullah Mandal* (1897) I.L.R., 24 Calc., 429, *King-Emperor* v. *Dharam Singh* (1906) 1 M.L.T., 61 and *Emperor* v. *Jagmohan* (1909) 11 Cri. L.J., 54, not followed.

In the matter of Chinnamarigadu (1876) I.L.R., 1 Mad., 289 (F.B.), applied.

PETITION against the order of MUHAMMAD IBRAHIM, the Third Presidency Magistrate, Georgetown, dated the 26th July 1918, in Calendar Case No. 13163 of 1918.

The Third Presidency Magistrate committed a jutka driver to the Sessions of the High Court on a charge under section 304-A of the Indian Penal Code of having caused the death of a person by rash and negligent driving.

The Crown Prosecutor moved Mr. Justice SPENCER, who was presiding at the Sessions to which the accused had been committed, to quash the commitment on the ground that the offence being one which could be adequately punished by the Magistrate if the accused were found guilty, he was bound under section 254 of the Criminal Procedure Code to try the case himself. His Lordship held that the application to quash the commitment should be made on the Appellate Side of the High Court. This application was then made by the Crown Prosecutor on the Appellate Side for quashing the commitment.

C. Sidney Smith, Acting Crown Prosecutor.

Viswanatha Sastri for accused.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—This is an application by the Crown Prosecutor for quashing the commitment made by the Third Presidency Magistrate, Georgetown, Madras, to the High Court of Sessions of a case falling under section 304-A of the Indian Penal Code punishable with two years' imprisonment of either description or fine (of unlimited amount) or both and triable by a Court of Session or a Presidency Magistrate or a Magistrate of the first class. The ground on which we are asked to quash the commitment is that under section 254 of the Criminal Procedure Code a Magistrate ought to try a case himself till it ends either in a conviction or acquittal before him (see section 258) unless he thinks that the offence could not be adequately punished by him, and that in this case it was impossible for the Magistrate to entertain such an opinion because he had powers under the Code to inflict imprisonment of either description up to two years, which is the maximum punishment provided for the offence. This argument, in the first place, ignores the fact that

the offence is also punishable with fine of unlimited extent, whereas the Presidency Magistrate's powers of fining are limited to the amount of Rs. 1,000 [see section 32, Criminal Procedure Code, clause (*a*)], and cases are conceivable where a rich man guilty under section 304-A could more appropriately be sentenced to a fine of five thousand rupees by a Sessions Court than by a Presidency Magistrate with imprisonment and a fine of Rs. 1,000. However this is a minor point.

The important question is whether section 254 does make it imperative on the Magistrate, if the offence could be adequately punished by him, to try the case till the end and whether it imperatively forbids him from committing the case to the Sessions. So far as the words of section 254 go, that section only directs the Magistrate to frame a charge against the accused. What the Magistrate has to do after framing the charge must depend upon the provisions contained in the succeeding sections of the Code dealing with the further proceedings in the trials of warrant cases. In Chapter XXIV containing general provisions as to enquiries and trials, we have got three sections—sections 346, 347 and 349—which we were invited in the arguments to consider in this connexion. Section 346 relates to the procedure of a Magistrate other than a Presidency Magistrate in certain contingencies. That section may therefore be ruled out. As regards section 349, it relates to the procedure of a Magistrate of a second or a third class under certain circumstances. That also has therefore no material bearing in the consideration of the question before us. Then we have got section 347 which gives very wide powers to a Magistrate. In any trial or proceeding before him and at any stage he can, even just before signing judgment, commit a case before him to a Court of Session or the High Court (provided, of course, he is empowered to commit cases to that Court), if it appears to him that the case is one which ought to be tried by a Court of Session or the High Court. It does not restrict the grounds on which he should arrive at his opinion to want of jurisdiction himself or to his inability in his own opinion to sentence the accused adequately. If he considers, for instance, that a complicated question of law arises or that some connected matter is already before the Court of Session or that the facts are such that trial with the aid of a jury or with the aid of assessors (who may be chosen from experts in

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the particular matters involved in the case) would be a more satisfactory procedure, I see nothing in section 347 to prevent a Magistrate from committing the case to a Court of Session. Section 347 does not say that the Magistrate is bound to put his reasons on record for entertaining the opinion that the case is one which ought to be tried by the Court of Session or the High Court. No doubt the decision of a Bench in *Queen-Empress* v. *Kayemullah Mandal*(1), and the decisions of single Judges of the Allahabad High Court reported in *King-Emperor* v. *Dharam Singh*(2) and *Emperor* v. *Jagmohan*(3) do support the contention of the Crown Prosecutor that unless the Magistrate thinks that he is unable to punish the accused adequately he ought not to commit the accused to the Court of Session. There are however two decisions, one in the *Empress* v. *Kudrutoolah*(4), and the other (of a Full Bench in this Court) *In the matter of Chinnamarigadu*(5), where there are observations which, in my opinion, indicate that the committal by a competent Magistrate on the ground that in the Magistrate's opinion the case is a fit one to be tried by a Court of Session, cannot be interfered with by the High Court. And I think that the Calcutta Case [*Queen-Empress* v. *Kayemullah Mandal*(1)] and the two Allahabad cases [*King-Emperor* v. *Dharam Singh*(2) and *Emperor* v. *Jagmohan*(3)] have given much wider effect to the language of section 254 than that language could properly support. That section makes it imperative on the Magistrate only to frame a charge and not to complete the trial to the conviction or acquittal. I would therefore dismiss this petition.

NAPIER, J.

NAPIER, J.—I entirely agree. We are asked to exercise our powers under section 215 of the Criminal Procedure Code and quash a commitment to the High Court made by the Presidency Magistrate. We can of course only do so on a point of law and we are therefore not concerned with the reasons given by the Magistrate for making the commitment.

But it has been argued before us by the Crown Prosecutor that the commitment is bad in law, that the Magistrate has not certified that he cannot adequately punish the accused who

(1) (1897) I.L.R., 24 Calc., 429. (2) (1906) 4 M.L.T., 61.
(3) (1909) 11 Cri. L.J., 54. (4) (1878) I.L.R., 3 Calc., 495,
(5) (1876) I.L.R., 1 Mad., 289 (F.B.).

is put up before him for trial and that even if he had done so his reason would have been bad because he has in fact power to inflict the maximum punishment. The offence for which the accused has been committed is section 304-A, Indian Penal Code. Now, offences under this section are specifically stated in the second schedule of the code to be triable by a Court of Session, a Presidency Magistrate or a Magistrate of the first class. Therefore at the outset this suggestion of the Crown Prosecutor leads to a somewhat extraordinary position, that a Court of Session which is specifically empowered under the section, cannot try the case because it cannot be committed to it by a first class Magistrate.

It is suggested however by the Crown Prosecutor that schedule II, where it speaks of the Court of Session, had in mind that although the commitment for offences is not one of the ordinary powers of the Magistrates of second and third class, still those courts can be empowered under section 206 and therefore that the trial by a Court of Session provided for in the eighth paragraph of the second schedule would arise in cases where the accused had been committed by a second or third class Magistrate empowered in that behalf. It is a somewhat strained application of the provision. A more reasonable hypothesis seems to me to be that this allocation of this offence to the Court of Session as well as Magistrates of the first class is an indication that in some circumstances a Court of Session would be the proper tribunal to try the case.

Passing from that, we have to consider what are the powers possessed by Magistrates with regard to warrant cases. The Crown Prosecutor has suggested to us—and indeed this is the basis of the whole of his argument—that section 254 of the Criminal Procedure Code is exhaustive and that there is no power in a Magistrate to commit a case for trial where he is competent to try it and it can be adequately punished by him. This is a somewhat startling proposition because, as my learned brother has pointed out, it is frequent practice of magistrates in this country to commit cases for trial to the Court of Session for other reasons, namely, convenience, complexity of facts or other matters. The Crown Prosecutor would have us hold that the whole of this procedure is wrong. Now the whole of this argument hinges on the word 'shall' which is to be found in section 254. The Crown Prosecutor argues that the section

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requires that he shall frame in writing a charge against the accused and carried with it a further requirement that having done so, he shall proceed under the remaining sections of that chapter. I should have some difficulty in appreciating this argument were it not that it has found favour with a bench of the High Court of Calcutta in a case reported in *Queen Empress* v. *Kayemullah Mandal*(1). But with deference to the learned Judges, it seems to me that in that decision they ignore the very wide powers given by the Code to a Magistrate under sections 207 and 347. Section 207 provides the procedure on enquiry in cases which are exclusively triable by a Court of Session or the High Court, or in the opinion of the Magistrate ought to be tried by such Court. There are therefore a class of cases which are not triable exclusively by a Court of Session but which ought to be so tried. If we turn to section 347 which is in the chapter containing general provisions as to inquiries and trials, we find a wide and general power given to Magistrates with regard to cases coming before them for trial. The words are "If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained." If he is not empowered to commit for trial he should proceed under section 346. That section says that if it appears to the Magistrate that the case is one which should be tried or committed for trial by some other Magistrate he shall stay proceedings and submit the case with a brief report to any Magistrate to whom he is subordinate or to such other Magistrate having jurisdiction, as the District Magistrate directs. That is to say, whether the Magistrate has power to commit or not, if he thinks that the case is one which ought, in his opinion, to be tried by a Court of Session, he has absolute power to stop any further proceedings in the trial by himself. If he can commit, he may. If he cannot commit, he may send it to a Magistrate who will commit. It seems to me to be impossible to argue successfully that a specific provision like this in section 347 read together with section 207 which lays down the procedure in enquiries in

(1) (1897) I.L.R., 24 Calc., 429.

such cases, can be limited because section 254 says that the Magistrate trying a warrant case shall frame a charge. Even if those words which are to be found in section 254 had been repeated in sections 255 and 256, I should still be of opinion that they were no bar to the exercise by a Magistrate of his power to commit a case. That section simply lays down the procedure for the trial of warrant cases where the Magistrate considers it proper and right for himself to go on with the trial, and it is in no way a limitation of the right of a Magistrate given to him under section 347 to commit a case for trial if he thinks that he should do so. The Crown Prosecutor has been unable to refer us to any section authorizing a Magistrate to commit for trial where he cannot inflict a proper sentence which according to him is the proper course, whereas there is a distinct provision for submission to a higher-class Magistrate in such cases to be found in section 349. I am at a loss therefore to comprehend why the wide words of section 347 should be curtailed by reference to section 254 when there is a specific section, namely, section 349, which deals with the circumstances referred to in section 254. My learned brother has referred to one case of this Court [(*In the matter of Chinnamarigadu*(1)] and it seems to me to be conclusive on the point, for, it lays down as axiomatic that it is competent to a Magistrate to say whether from the gravity of the matter or for any other sufficient reason the Sessions Court is the proper tribunal for the disposal of the case.

To sum up, the powers of a Magistrate, who has taken a warrant case on his file for trial, are as follows:—He may try it through himself if he has jurisdiction; he may, if he thinks he cannot inflict a proper sentence, act under section 346 or 349 and send it to a higher Magistrate; or he may, if he thinks that it is a proper case for Sessions, commit the accused under section 347, or if he has not power to commit, send it to another Magistrate to commit under section 346. This being my view of the law, I am of opinion that we have no jurisdiction to quash the committal in this case and that the trial before the Judge sitting in Sessions must go on.

N.R.

(1) (1876) I.L.R., 1 Mad., 289 (F.B.).