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AKBARI
BEGAM
v.
WILAYAT
ALL.

v. *Wazir* (1)—held that, when a memorandum of objections had not been presented by a party, he might with the permission of the Court urge them orally at the hearing. In the case now before us it may be that the Subordinate Judge allowed objections to the Munsif's finding on remand to be taken orally. But, even if no objection to it was preferred in writing or orally, we are not of opinion that the lower appellate Court's duty was to accept it blindly, without examining the evidence on which it was founded and satisfying itself that it was correct and fit to be accepted.

No doubt an appellate Court would hesitate to set aside such a finding in the absence of objections, and would deem it proper to record its reasons at length for coming to a contrary conclusion. In the present case the Subordinate Judge has fully stated the grounds on which he differs from the Munsif, and makes it clear that he has given a close and intelligent attention to the points in issue and the evidence relating to them. It is impossible to hold that his action has contravened the terms of s. 567 of the Code, which merely direct that "after the expiration of the period fixed for presenting such memorandum, the appellate Court shall proceed to determine the appeal." But even had we been of opinion that the lower appellate Court's action in the matter was irregular, we should be precluded from reversing its decree or remanding the case on account of the irregularity which is not of a nature affecting the merits of the case or the jurisdiction of the Court.

CRIMINAL JURISDICTION.

1887
May 31.

Before Mr. Justice Oldfield.

EMPRESS OF INDIA v. ILAHI BAKHSI.

Inquiry into case triable by Court of Session—Commitment.

Held, where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial.

(1) I. L. R., I All., 165.

THIS was a reference to the High Court by Mr C. J. Daniell, Sessions Judge of Moradabad, under s. 296 of Act X of 1872. One Ilahi Bakhsh preferred a complaint to Mr. J. J. D. LaTouche, Magistrate of the first class, charging a certain person with robbery. That officer, being of opinion that such charge was false and made with intent to injure such person, proceeded to try Ilahi Bakhsh for the offence of making a false charge of an offence punishable with imprisonment for seven years, an offence punishable under s. 211 of the Indian Penal Code, and on the 28th January, 1880, convicting him of such offence, sentenced him to one year's rigorous imprisonment. On appeal by Ilahi Bakhsh, the Court of Session annulled the conviction and sentence on the grounds that the Magistrate was not competent to try an offence committed against his own office or person, and that Ilahi Bakhsh was charged with committing an offence exclusively triable by the Court of Session. The Magistrate thereupon without further inquiry committed Ilahi Bakhsh for trial to the Court of Session, stating in his committing order that the grounds of committal were set forth in his decision of the 28th January, 1880. Mr. C. J. Daniell, the Sessions Judge, was of opinion that the commitment was illegal and should be quashed. His reasons for so thinking appear from the following extract from his letter referring the case to the High Court: "The decision alluded to is that given in the trial concluded on the 28th January, which trial the Sessions Judge had on 3rd April quashed, as being irregular and held by a Magistrate who was not competent to hold it. If it were otherwise regular, this order of the Sessions Judge would deprive the evidence taken in the trial of Ilahi Bakhsh held in January of any value, but it appears to me to be opposed to the provisions of Chapter XV of the Criminal Procedure Code, that a Magistrate should commit an accused person on evidence which has not been taken for the purposes of the commitment, but for the purpose of holding a trial, more specially as that trial was itself illegal. It appears to me that none of the provisions of Chapter XV have been observed in the inquiry into this case, and I do not consider myself at liberty to go on with a trial thus commenced or pass a sentence either of acquittal or conviction. Any sentence passed would be of doubtful legality."

1880

 EMPRESS OF
 INDIA
 v.
 ILAHI
 BAKHSH.

1889

The following order was made by the High Court:

PRESS OF
INDIA
F.
ILAHY
BANKSH.

OLDFIELD, J. —The commitment is not vitiated because the Joint Magistrate did not commence a fresh inquiry and take evidence *de novo*. The inquiry and the evidence at the trial are sufficient for the purposes of commitment. The proceedings held at the trial were not set aside by the Judge, whose order only set aside the conviction and sentence of the accused, and though those proceedings could not form the basis of a conviction by the Magistrate, there is no reason why a commitment by the same Magistrate should not be based on them. In the analogous case when in the course of a trial the Magistrate finds that he must commit the accused to the Sessions Court, s. 221 of the Criminal Procedure Code directs that he "shall stop further proceedings under this Chapter (*i.e.*, Chapter XVII, for trial of warrant cases) and shall commit the prisoner under the provisions hereinbefore contained," that is, under the provisions contained in Chapter XV. This direction does not mean that the Magistrate is to commence the inquiry and take the evidence *de novo*, since his procedure under Chapter XVII in the matter of examination of the complainant and witnesses has been conducted under ss. 190 to 194 of Chapter XV (see s. 214), but only that the further procedure necessary for commitment shall be taken as directed in Chapter XV. Moreover, trial is not vitiated by mere irregularity in the proceedings up to trial. The Judge should proceed with the trial.