

found in the report of the Second Appeal, *q. v.* In this appeal the Court (Edge, C. J., and Blair, J.) simply affirmed the judgment and decree appealed from, and accordingly dismissed the appeal.

1897

SHAM LAL
v.
CHOKRE.

REVISIONAL CRIMINAL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

QUEEN-EMPRESS *v.* SCHADE AND ANOTHER.*

1897

May 7.

Act No. I of 1878 (Opium Act), section 9—Criminal Procedure Code, section 29—Commitment by Magistrate to Court of Session—No jurisdiction in Court of Session—Commitment quashed.

Held that, inasmuch as a conviction of an offence punishable under Act No. I of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. Indrobeer Thaba (1) and Regina v. Donoghue (2) referred to.

THIS was a reference under section 215 of the Code of Criminal Procedure made by the Sessions Judge of Allahabad. Two persons, one of them a European British subject, had been charged before a Magistrate of the first class with being, on different dates and at different places, in the possession of opium in contravention of the rules made by Government under Act No. I of 1878. The Magistrate committed both the accused to the Court of Session. The Sessions Judge, being of opinion that, having regard to section 9 of the Opium Act, 1878, a conviction, if any, could only be arrived at by a Magistrate, referred the case to the High Court with a view to the commitment being quashed.

Messrs. *J. E. Howard* and *C. Dillon* for the accused.

The Public Prosecutor (*Mr. E. Chamier*) for the Crown.

EDGE, C. J., and BLAIR, J.—A Magistrate of the first class having taken cognizance of a case in which two men were charged with offences under Act No. I of 1878, committed them for trial to the Court of Session. One of the men is a European British subject. It is quite clear from section 9 of Act No. I of 1878 that the Court of Session has no jurisdiction in the matter. The

* Criminal Revision No. 231 of 1897.

(1) 1 W. R., Cr. R., 5.

(2) 5 Mad. H. C. Rep., 277.

1897

QUEEN-
EMPRESS
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conviction, if there is one, must be before a Magistrate, for a Magistrate, and not the Judge of the Court of Session, is the person empowered to pass sentence. Similar questions arose in *Indrobeer Thaba* (1) and *Regina v. Donoghue* (2). It is probable that the Magistrate who took cognizance of the case has not power to award a sufficient punishment in case these men are proved to be guilty of the offence. As to whether or not these men, or either of them, are guilty, we express no opinion. We set aside the order of commitment, the result of which is that the case goes back to the Court of the Magistrate who made the order of commitment, and we transfer the case from the Court of that Magistrate to the Court of the District Magistrate of Allahabad. As to the question whether these men should be tried separately or together, that the Magistrate must decide. If any application for separate trials is made to him, he will no doubt consider it; but we make no suggestion that they should be tried separately.

APPELLATE CIVIL.

1897
May, 11.

Before Mr. Justice Banerji and Mr. Justice Aikman.

AMIR HASAN (PLAINTIFF) v. RAHIM BAKHSH AND OTHERS
(DEFENDANTS).*

Pre-emption—Muhammadan Law—Rights of third persons having a claim to pre-emption where the vendee is also a person who would have a similar claim were the sale to a stranger.

Under the Muhammadan law, even when the buyer is himself a pre-emptor, that is a person who would have the right of pre-emption against an outsider, other persons having a similar right of pre-emption are entitled to claim pre-emption against the buyer; and, in such a case, the rights of the claimants to pre-emption should be determined in the same way in which they would have been determined had the buyer acquired the property by enforcing his right of pre-emption against a stranger, in the absence of the other pre-emptors, and the absentee pre-emptors had appeared subsequently and claimed pre-emption.

*Second Appeal No. 203 of 1896 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 23rd December 1895, confirming a decree of Maulvi Muhammad Shafi, Munsif of Koel, dated the 8th April 1895.

(1) 1 W. R., Cr. R. 5.

(2) 5 Mad. H. C. Rep. 277.