

1897

FAKIR  
v.  
TASADDUQ  
HUSAIN.

was independent of, and separate from, and inconsistent with, the title set up by the other defendants. Their claims were mutually exclusive. There was no contract between them. One was not acting as the servant of the other; and there was no equity between these persons, whose cases were antagonistic to each other.

It appears to us that the principle upon which *Kristo Chunder Chatterjee v. Wise* (1) and *Sreeputty Roy v. Lohgram Roy* (2) were decided is the correct principle to apply in this case. It is the principle which we believe the Privy Council would have applied; at least so we conclude from the judgment of their Lordships in *Abdul Wahid Khan v. Shaluka Bibi* (3). That there may in some events be contribution between wrong-doers is shown from the judgment in *Suprit Singh v. Imrit Tewari* (4). No facts were alleged or proved here, and no facts existed, which would entitle the plaintiff to obtain contribution from the defendants in respect of these costs.

We dismiss this appeal with costs.

*Appeal dismissed.*

1897  
May 6.

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

SHAM LAL (DEFENDANT) v. CHOKHE (PLAINTIFF).\*

*Act No. XII of 1881 (N.-W. P. Rent Act), section 42—Landholder and tenant—Assessment of crops of evicted tenant—Effect of such assessment.*

*Held* that where a landholder, having ejected a tenant upon whose holding there are growing crops, applies under section 42, cl. (c) of Act No. XII of 1881 for assessment of the price of such crops, he is bound by the assessment which the Revenue Court may make, and cannot afterwards refuse to pay the price so fixed.

THIS was an appeal under section 10 of the Letters Patent from the judgment of Aikman, J., in Second Appeal, No. 1019 of 1894, *Sham Lal v. Chokhe* (5). The facts of the case will be

\* Appeal No. 31 of 1896 under section 10 of the Letters Patent.

(1) 14 W. R., Cr., 70.

(3) I. L. R. 21 Calc. 496, at p. 503.

(2) 7 W. R. 384.

(4) I. L. R. 5 Calc. 720.

(5) I. L. R. 19 All. 68; s.c., Weekly Notes, 1896, p. 179.

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.