

1899

QUEBAN
HUSAIN
v.
CHOTE.

the existence of any such right of pre-emption in himself, and would dismiss the appeal with costs.

ORDER.—Appeal dismissed with costs.

Appeal dismissed.

1899

November 7.

REVISIONAL CRIMINAL.

Before Mr. Justice Blair and Mr. Justice Burkitt.

QUEEN-EMPRESS v. ADAM KHAN AND ANOTHER.*

Procedure—Complaint—Criminal Procedure Code, Section 203—Dismissal of complaint—Subsequent complaint arising out of the same matter.

When a competent tribunal has dismissed a complaint another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it. *Niratan Sen v. Jogesh Chundra Bhattacharjee* (1) and *Komal Chandra Pal v. Gourchand Audhikari* (2) followed *Queen-Emress v. Puran* (3) and *Queen-Emress v. Umedan* (4) referred to.

THIS was a reference, under section 438 of the Code of Criminal Procedure, made by the Superintendent of Dehra Dun through the Sessions Judge of Saharanpur. One Hira Lal brought a complaint against Adam Khan and Pandey Khan under section 406 of the Indian Penal Code in the Court of an Honorary Magistrate. The Magistrate took the complainant's statement and dismissed the complaint under section 203 of the Code of Criminal Procedure. The complainant then made a similar complaint arising out of the same circumstances against the same men in the Court of a Deputy Magistrate. The Deputy Magistrate entertained the complaint and issued warrants for the arrest of the accused, who were put in the lock-up.

The case being brought to the notice of the Magistrate of the District, he made the present reference to the High Court with a view to having the order of the Deputy Magistrate set aside.

Mr. C. Dillon, in support of the reference.

Pandit Moti Lal (for whom Babu Durga Charan Banerji), for the complainant, Hira Lal.

* Criminal Reference No. 463 of 1899.

(1) (1896) I. L. R., 23 Calc., 983.

(2) (1897) I. L. R., 24 Calc., 286.

(3) (1886) I. L. R., 9 All., 85.

(4) Weekly Notes, 1895, p. 86.

BLAIR and BURKITT, JJ.—This case has been referred to a Divisional Bench upon the ground of the extreme probability that similar cases occur and are likely to occur with great frequency, and it is therefore important that there should be a clear decision of this Court upon the point at issue. The case comes before us upon a reference from the District Magistrate of Mussoorie, forwarded through the Sessions Judge of Saharanpur. It contains a recommendation that the proceedings in the Court below should be set aside as illegal.

The facts are that one Hira Lal lodged a complaint before a Bench of Honorary Magistrates at Mussoorie against Adam Khan and others, charging them with criminal breach of trust under section 406 of the Indian Penal Code. The Bench after examining the complainant dismissed the complaint upon the ground that the matter complained of was one which ought to be tried in a Civil and not in a Criminal Court. At a later period the same Hira Lal preferred precisely the same complaint in the Court of another Magistrate, who thereupon took cognizance of it and issued warrants for the arrest of the accused. The warrants were executed. The accused were taken into custody, and remained there for a month before they were liberated by an order of a superior Court. It is upon the petition of the person so imprisoned that this reference, with the recommendation of the District Magistrate, has been forwarded to us. Mr. Dillon, who appears to support the recommendation, has cited to us two recent rulings of the High Court at Calcutta: one *Nilratan Sen v. Jogesh Chundra Bhut-tashâjee* (1) and the other *Komal Chandra Pal v. Gour Chand Audhikari* (2) which simply follows the ruling in the previous case. We have also been referred by Mr. Dillon to a recent unreported decision of this Court in *Karim Bahsh v. Adil Khan*, decided by Mr. Justice Aikman on the 17th of June of the present year. The facts in the Calcutta cases are on all fours with those in the case which we have to decide. The rule laid down in those cases appears to us to be founded upon thoroughly satisfactory

1899

 QUEEN-
 EMPRESS
 v.
 ADAM KHAN.

(1) (1896) I. L. R., 23 Cal., 983.

(2) (1897) I. L. R., 24 Cal., 286.

1899

QUEEN-
EMPERESS.
o.
ADAM KHAN.

reasons. The facts in the case decided by our brother Aikman in no way resemble those in the Calcutta cases, and our brother Aikman's decision is not inconsistent with the rule laid down in them. On the other hand, we have had cited to us the case of *Queen-Emperess v. Puran* (1) and the case of *Queen Emperess v. Umedan* (2), in which it has been held that a Magistrate who has dismissed a complaint is not thereby precluded from himself entertaining again what is in substance the same complaint. That is the only authority upon which Mr. *Durga Charan* relies. It does not, in our opinion, conflict with the rulings either of the Calcutta Court or of our brother Aikman. We think it utterly contrary to sound principles that one Magistrate of co-ordinate jurisdiction should, in effect and substance deal with, as if it were an appeal or a matter for revision, a complaint which had already been dismissed by a competent tribunal of co-ordinate authority. For these reasons, we accept the recommendation of the District Magistrate and set aside the proceedings pending in the Court below. We desire it to be distinctly understood that we decide nothing except the question actually raised by the facts in this case, which is, that when a competent tribunal has dismissed a complaint, another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it.

1899

November 10.

APPELLATE CIVIL.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.
DAULAT SINGH AND ANOTHER (DEFENDANTS) v. JUGAL KISHORE
(PLAINTIFFS).*

Execution of decrees—Civil Procedure Code, section 244—Question “arising between the parties to the suit”—Sale of property by the Collector as ancestral property—Suit to set aside sale on the ground that property was not ancestral.

Certain property of a judgment-debtor having been sold by the Collector acting under section 320 of the Code of Civil Procedure as being ancestral

* Second Appeal No. 937 of 1896 from a decree of Pandit Rajnath Sahib, Subordinate Judge of Moradabad, dated the 3rd August, 1896, confirming decree of Babu Shiva Charan Lal, B. A., Munsif of Nagina, dated the 27th May 1896.