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plaintiff was not an owner or share-holder in the share sold, nor had she any interest in it; consequently the High Court was right in deciding that she was not entitled to the right of pre-emption.

Under these circumstances, their Lordships will humbly advise her Majesty that the decree of the High Court be affirmed, and the appeal dismissed.

Solicitors for the appellant: Messrs. *Oehme* and *Summerhays*.

REVISIONAL CRIMINAL.

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Before Mr. Justice Mahmood.

IN THE MATTER OF THE PETITION OF LACHMAN *v.* JUALA AND OTHERS.

Improper discharge—Powers of Magistrate making inquiry in Sessions case—Act X. of 1872 *(Criminal Procedure Code), ss.* 195, 196, 297—*High Court's powers of revision.*

A Magistrate inquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial, where the evidence for the prosecution, if believed, would end in a conviction; but is competent, if he discredits such evidence, to discharge the accused.

The High Court can only interfere under s. 297 of Act X of 1872 (Criminal Procedure Code) in such a case, if it comes to the conclusion that the Magistrate has illegally and improperly under-rated the value of such evidence.

The meaning of the words "sufficient grounds" in s. 195 of that Act explained.

ONE Juala and certain other persons were accused of murder. Among the witnesses examined at the inquiry into this charge, there were some who stated themselves to be eye-witnesses to the offence. The Magistrate making the inquiry, after examining the witnesses for the prosecution, was of opinion that the direct evidence in the case had been fabricated and was false, and that putting aside such evidence there was no case against the accused. He accordingly discharged them.

The persons prosecuting applied to the High Court to revise the Magistrate's order, and to direct that the accused persons should be committed for trial.

Mr. *Spankie* and Munshi *Kashi Prasad*, for the applicants.

Mr. *Leach*, for the accused persons.

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MAHMOOD, J.—The learned counsel who has appeared in support of the application contends that the action of the Joint Magistrate in discharging the accused was illegal and improper, inasmuch as the discretion given to him by s. 195 of the Criminal Procedure Code did not extend to weighing evidence; that the expression "sufficient grounds" as used in that section did not include the power of discrediting eye-witnesses; that in a case of this nature and in consideration of the kind of evidence produced before him, the Magistrate was bound to commit the accused to the Court of Session, whose duty it would be to weigh the evidence produced by the prosecution and to arrive at its own conclusions. In support of this contention the learned counsel has referred to the change of language in s. 215, where, instead of the expression "sufficient grounds," the phrase "if he finds that no offence has been *proved*" has been used; and similarly in s. 216 the phrase "if the Magistrate finds that an offence has been apparently *proved*" has been used, instead of another phraseology in s. 196, Criminal Procedure Code. The argument in support of the application is, that this circumstance necessarily indicates that the powers of Magistrates in cases triable by himself, and in which he is empowered to convict or acquit the accused, were intended by the Legislature to be greater than in those triable exclusively by the Court of Session; and that in the latter class of cases he is bound to commit the accused if the evidence produced by the prosecution is such that, if it were believed, it would end in a conviction.

I am of opinion that this contention, though plausible, is not sound. The object of the law in providing that the inquiry shall be held by the Magistrate before the accused has to undergo a trial in the Court of Session, seems to be to prevent the commitment of cases in which there is no reasonable ground for conviction. This provision of the law is calculated, on the one hand, to save the subjects from prolonged anxiety of undergoing trials for offences not brought home to them; and, on the other hand, to save the time of the Court of Session from being wasted over cases in which the charge is obviously not supported by such evidence as would justify a conviction. Taking this view of the law, I am of opinion that the power given to Magistrates under s. 195 extends to weighing

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of evidence, and the expression "sufficient grounds" must be understood in a wide sense. I must not, however, be understood to lay down that this discretionary power should be exercised by the Magistrate without due caution, or that he should take upon himself to discharge the accused in Sessions cases in the face of evidence which might justify a conviction. But when the evidence against the accused is such that, in the opinion of the Magistrate, it cannot possibly justify a conviction, I hold that there is nothing in the law which prohibits the discharge of the accused, even though the evidence against him consists of witnesses who state themselves to be eye-witnesses, but whom the Magistrate entirely discredits. This being so, I could interfere in revision only, if, on considering the evidence produced on behalf of the prosecution, I came to the conclusion that the Magistrate had made a "material error" in discharging the accused, or had illegally and improperly under-rated the value of the evidence. But having examined the record, I can arrive at no such conclusion. I therefore decline to interfere, and reject this application.

FULL BENCH.

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August 26.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, Mr. Justice Tyrrell, and Mr. Justice Mahmood.

NARSINGH DAS (PLAINTIFF) *v.* MANGAL DUBEY AND OTHERS (DEFENDANTS).*

Misjoinder of causes of action—"Multifarious" suit—Act X of 1877 (Civil Procedure Code), ss. 28, 45.

Defendant No. 1, the tenant of certain land at fixed rates, on the 12th November 1877 sold his interest in the land to the plaintiff. At the time of the sale the land was in the actual possession of defendant No. 2, defendant No. 1's sub-tenant, against whom however defendant No. 1 had obtained an order for ejectment on the 25th June preceding. On the 25th March 1878 defendant No. 1 applied a second time for the ejectment of defendant No. 2, and while this matter was pending the plaintiff endeavoured to obtain possession of the land, but was resisted by defendant No. 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crop

* Second Appeal No. 1415 of 1881, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 21st July, 1881, affirming a decree of Babu Mritonjoy Mukarji, Munsif of Benares, dated the 11th February 1881.