REVISIONAL CRIMINAL.

Before Mr. Justice Scott-Smith.

MAULU AND OTHERS—PETITIONERS,

versus

THE CROWN—RESPONDENT.

1923

Jan. 13.

Criminal Revision No. 1270 of 1922.

Criminal Procedure Code, Act V of 1898, Chapter XVIII, Section 209—Preliminary inquiry into cases triable by the Court of Session—Sufficient grounds for committing the accused for trial—duty of the Magistrate.

M. and three others were chalaned by the police under sections 304/147, Indian Penal Code, for the culpable homicide of one Ahmada. The Magistrate who was invested with powers under section 30, Criminal Procedure Code, after hearing all the evidence for the prosecution discharged the accused persons. An application was made to the Sessions Judge under section 436, Criminal Procedure Code, who set aside the order of discharge, and ordered the Magistrate to commit the accused persons for trial to his Court. From this order the persons committed filed the present application for revision to the High Court.

Held, that where there is no credible evidence on which a Court could convict it is the duty of a Magistrate to discharge and he should not commit to the Court of Session. But where, as in the present case, there is evidence which is sufficient to make out a *prima facie* case, the Magistrate should have committed the accused for trial and the order of the Sessions Court was consequently correct.

Sultani v. *Crown* (1), and *Mir Abdullah* v. *Emperor* (2), distinguished.

Empress v. *Namdev Satvaji* (3), *Emperor* v. *Varjivandas* (4), *Chiranji Lal* v. *Ram Lal* (5), *Fattu* v. *Fattu* (6), and Mussammat *Makhni* v. *Farzand Ali* (7) referred to.

Application for revision of the order of Khan Bahadur Mirza Zafar Ali, Sessions Judge, Lyallpur, dated the 17th August 1922, reversing that of Chaudhri

(1) 10 P. R. (Cr.) 1909.
(2) (1910) 8 Indian Cases 1044.
(3) (1887) I. L. R. 11 Bom. 372.
(4) (1902) I. L. R. 27 Bom. 84.
(5) (1908) 1 Cr. L. J. 56.
(6) (1903) 1 Cr. L.J. 519.
(7) (1910) 55 Indian Cases 478.

1923

MAULU
v.
THE CROWN.

Ghulam Mustafa Khan, Magistrate, 1st Class, Jhang, dated the 27th March 1922.

NIAZ MUHAMMAD, for Petitioners.

CARDEN NOAD, Assistant Legal Remembrancer, for the Crown, and M. L. PURI, BRIJ LAL, and QALANDAR ALI KHAN, for Complainants.

SCOTT-SMITH J.—Maula and three others were chalaned by the police under sections 304/147, Indian Penal Code, for the culpable homicide of one Ahmada. The Magistrate, who was invested with powers under section 30, Criminal Procedure Code, after hearing all the evidence for the prosecution discharged the accused persons. An application was made to the Sessions Judge under section 436 of the Criminal Procedure Code and that officer set aside the order of discharge and ordered the Magistrate to commit the accused persons for trial to his Court. From this order the persons committed have applied to this Court on the revision side.

The prosecution produced direct evidence for the purpose of establishing that the petitioners deliberately murdered Ahmada. Having regard to this the learned Sessions Judge was of opinion that it was no function of the Magistrate to weigh the evidence but that he should have committed the accused persons for trial to the Sessions Court. Counsel for the petitioners has referred to *Sultani* v. *Crown* (1) and *Mir Abdullah* v. *Emperor* (2), also a Punjab case, in which it was held that a Committing Magistrate is entitled, at any rate to some extent, to weigh the evidence of direct witnesses and to pronounce as to their credibility. In *Sultani* v. *Crown* (1) Williams J., after discussing the law went into the merits of the case and was of opinion that the evidence for the Crown in that case was of a kind on which no Court would convict and that that being so the Committing Magistrate exercised a sound discretion in discharging the accused. In *Mir Abdullah* v. *Emperor* (2) Chevis J. also pointed out that there was no credible evidence on which a conviction could be based. I have no quarrel with the decisions in those cases. I fully agree that, where there is no credible evidence on which a Court

(1) 10 P.R. (Cr.) 1909. (2) (1918) 8 Indian Cases 1044.

could convict, it is the duty of the Magistrate to discharge, and that he should not commit to the Court of Session. In the present case there is a good deal of direct evidence. The Magistrate has given reasons for rejecting the evidence of each of the witnesses. His chief reasons are that the witnesses are inimical to the petitioners or are interested in the prosecution. I shall not go into the reasons given by him in detail, but I am not prepared to say that the evidence for the prosecution is of a kind on which no Court could possibly convict. In *Empress* v. *Namdev Satvaji* (1) it was held that a Magistrate holding a preliminary enquiry ought to commit the accused to the Court of Session when the evidence is enough to put the party on his trial and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction. Similarly in *Emperor* v. *Var Jivandas* (2) it was held that the words in section 209, Criminal Procedure Code, "sufficient ground for committing" mean not sufficient ground for convicting, but refer to a case in which the evidence was sufficient to put the accused on his trial, and such a case arises when credible witnesses make statements which, if believed, would sustain a conviction. It is the duty of a Magistrate to commit when the evidence for the prosecution is sufficient to make out a *primâ facie* case against the accused.

A similar view was taken in the cases reported as *Chiranji Lal* v. *Ram Lal* (3) and *Fattu* v. *Fattu* (4). Mussammat *Makhni* v. *Farzand Ali* (5) may also with advantage be referred to.

I have read the judgment of the Magistrate. It is more that of a Magistrate who is himself trying a case than that of one who is holding a preliminary enquiry under Chapter XVIII of the Criminal Procedure Code. I do not think it expedient to go any further into the merits of the case as I do not wish to prejudice the trial. It is sufficient to state that I do not think that the Magistrate was justified in discharging the accused persons, and I see no grounds for interfering with the order of the Sessions Judge, directing that they be committed to his Court. The revision is, therefore, rejected.

(1) (1887) I. L. R. 11 Bom. 372. (3) (1908) 1 Cr. L.J. 56.
(2) (1902) I. L. R. 27 Bom. 84. (4) (1903) 1 Cr. L. J. 519.
(5) (1920) 55 Indian Cases 478.

The order admitting the petitioners to bail will now be set aside and they should be re-arrested.

A. R.

Revision rejected.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Zafar Ali.

1923

Jan. 6.

GULLI (PLAINTIFF)—APPELLANT,

versus

SAWAN AND OTHERS (DEFENDANTS)
PURAN CHAND, ETC. (PLAINTIFFS) } RESPONDENTS.

Civil Appeal No. 2053 of 1920.

Legal representative—whether competent to carry on an appeal when a similar claim by himself personally would be barred by limitation—proper legal representative for the purpose of the suit—Abatement.

Held, that when a party to a suit dies, a legal representative is appointed merely in order that the suit may proceed, and a decision be arrived at. It is the original parties' rights and disabilities that have to be considered and the mere fact that the legal representative so appointed could not have brought a suit himself to set aside the alienation concerned in the suit, as a suit by him would be barred by limitation, is not sufficient to render the suit by the original plaintiff liable to dismissal.

Held also that, where in a suit by a son challenging an alienation made by his father the son dies during the pendency of an appeal by the vendees, in which he is one of the respondents, the father is not the proper legal representative for the purposes of the appeal; and if the proper legal representative has not been brought on the record, the appeal abates.

Second appeal from the decree of Rai Bahadur Misra Jwala Sahai, District Judge, Ludhiana, dated the 12th June 1920, reversing that of Lala Chuni Lal, Senior Subordinate Judge, 1st Class, Ludhiana, dated the 13th July 1919, and dismissing the plaintiffs' claim.

JAI GOPAL, SETHI, for Appellant.

TEK CHAND and B.A. COOPER, for Respondents.