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is in his individual, and not his official, character in which he is sought to be made liable. The fact that the defendant was mámlatdár of Chálisgáon when he prosecuted the plaintiff, cannot affect the character in which he is sued in the present action, which simply raises the question whether the defendant is personally liable for proceeding with that prosecution. The Subordinate Judge should, therefore, proceed with the case.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

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February 10.

QUEEN EMPRESS *v.* NA'MDEV SATVA'JI.*

Criminal Procedure Code (Act X of 1882), Secs. 209, 210—Discharge of accused—Magistrate bound to commit when primâ-facie case is made out against accused.

Under sections 209 and 210 of the Criminal Procedure Code (Act X of 1882) a Magistrate holding a preliminary inquiry 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.

THIS was an application, under the revisional criminal jurisdiction of the High Court, for the revision of an order of discharge made under section 209 of the Criminal Procedure Code (Act X of 1882) by Ráv Báhádur Narayan B., Magistrate, (First Class), of Sholápur.

The accused was charged with having set fire to the complainant's crops on the 28th March, 1886.

At the preliminary inquiry held by the First Class Magistrate of Sholápur, two of the witnesses for the prosecution deposed to having seen the accused committing the offence. The third witness stated that he had seen the accused running away from the complainant's field soon after the crops had been set on fire.

The Magistrate discharged the accused, under section 209 of the Criminal Procedure Code (Act X of 1882), for the following reasons:—

* Criminal Review, No. 312 of 1886

"That the complainants' crop was burnt, is established by the evidence of the witnesses for the prosecution and the report of the *panch* and the police *patel's* report. The only difficult point for determination in this case is—who set fire to the crop?

"There are three witnesses on behalf of the complainant; but their statement, that they recognised the accused in the darkness of night from a good distance, cannot be at once believed. Further, the inquiry shows that the accused, Námdev, was single-handed, and yet the three witnesses, who are able-bodied men, were unable to apprehend him. This also throws some doubt on the veracity of the evidence of these witnesses. I, therefore, do not think it safe to commit the accused to the Court of Session for trial."

The complainant applied to the Sessions Judge of Sholápur for a revision of the aforesaid order of discharge; but he declined to interfere.

Thereupon the present application was made to the High Court, under section 439 of the Criminal Procedure Code (Act X of 1882), on the grounds that there was sufficient evidence in the case to justify the committal of the accused to the Sessions Court, and that a failure of justice had been occasioned by the Magistrate's having discharged the accused without any valid reason for distrusting the witnesses for the prosecution. The High Court sent for the record and proceedings in this case, and issued a notice to the accused to show cause why the order of discharge should not be set aside, and he be committed to the Sessions Court for trial.

Shámráv Vithal for the complainant.

Ganpat Sadáshiv Ráv for the accused.

WEST, J.:—In the present case three persons deposed to having seen the accused setting fire to the complainant's crop, or immediately afterwards. It is not alleged that these witnesses are of infamous character, nor does it appear that any evidence was adduced, tending to show that they could not possibly have spoken the truth. The accused was the brother of the police *patel;* and owing, as the Magistrate says, to the *patel's* desire to get the

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matter arranged, there was a delay of nearly a month before the case was brought before the higher authorities. In the case of *The Queen* v. *Kishto Doba*[1], it is said that proper inquiries must be made before a Magistrate commits an accused for trial, and when the law prescribes a preliminary inquiry, it intends of course that the inquiry should be a serious one. But, as the case just referred to shows, an accused ought to be committed when there is a *primâ-facie* case substantiated against him by the testimony of credible witnesses. According to the English law, a commitment ought to be made whenever one or two credible witnesses give evidence showing that the accused has perpetrated an indictable offence (see Hale's Pleas of the Crown, II, 121; Hawkins' Pleas of the Crown, Ch. XVI; *Cox* v. *Coleridge*[2]. And the sort of *primâ-facie* case that warrants a committal, is defined by Stat. 11 and 12 Vic., Ch. 42, sec. 25, as one "that is sufficient to put the party upon his trial for an indictable offence." According to our Criminal Procedure Code, secs. 209 and 210, the Magistrate is to commit, or not, as there are or are not, in his opinion, "sufficient grounds for committing." What are "sufficient grounds for committing" is not in any way defined, but it is manifest that they are not identical with grounds for convicting, since, taken in that sense, the provisions would enable the Magistrate virtually to supersede the Court of Session to which the cognizance of the case for actual trial belongs. The true principle appears to be that expressed in the English statute. The Magistrate ought to commit 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. The weighing of their testimony with regard to improbabilities and apparent discrepancies is more properly a function of the Court having jurisdiction to try the case. Here there was manifestly a *primâ-facie* case, such that the Magistrate ought to have committed the accused for trial. And we direct that he be committed accordingly by the District Magistrate or by such Magistrate subordinate to him to whom he may refer the case for that purpose.

Order of discharge set aside.

(1) 14 Calc. W. R., Cr. Rul., 16. (2) 1 B. & C., 37, 43, 46