goes not to the endowment but into his own pocket, and any increase or decrease in the Government assessment is in the same way to damnify or to benefit Vithoba personally and not the endowment.

It seems to us clear from the particular words in this deed that all that is given to the endowment is that specific amount 8½ khandies of rice, Rs. 17 in cash and 920 cocoanuts which is expressly stated in more than one passage and that endowment is merely a burden placed upon the larger gift which is made to Vithoba. If we are right in thinking that that is the meaning of the deed considered as a whole, our opinion need not be shaken by the clause in which it is sought to prohibit Vithoba Prabhu from mortgaging or selling the lands in question. For that clause would merely be an attempt to impose restrictions repugnant to the gift such as are frequently made in such documents and would be of no avail.

For these reasons we are of opinion that the decree already made by this Court is the right decree.

We affirm it and dismiss this appeal with costs.

Appeal dismissed.

G. B. R.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Rao.

IN RE BAI PARVATI.*

1910.
September 23.

Criminal Procedure Code (Act V of 1898), section 209—Magistrate—Inquiry—The case not committed to the Court of Session for want of sufficient grounds—Appeal against the order—Order reversed by the Sessions Judge—Commitment when to be made—Discharge of accused.

Where a Committing Magistrate finds that there is no evidence whatever or that the evidence tendered for the prosecution is totally unworthy of credit, it is his duty under section 209 of the Criminal Procedure Code (Act V of 1898) to discharge the accused.

* Criminal Revision No. 182 of 1910.

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Where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session.

Emperor v. *Ravji Hari Yelgaumkar*(1), followed.

Queen-Empress v. *Namdev Satvaji*(2), distinguished.

Lachman v. *Jwala*(3), approved.

THIS was an application, under section 435 of the Criminal Procedure Code (Act V of 1898), to revise an order passed by R. E. A. Elliott, Additional Sessions Judge of Ahmedabad, reversing an order passed by G. R. Dabholkar, Resident Magistrate of Borsad.

One Bai Jadav instituted a complaint against Bai Parvati (the applicant) in the Court of the Resident Magistrate of Borsad charging the latter with an offence punishable under section 307 of the Indian Penal Code (Act XLV of 1860).

The Magistrate heard the evidence tendered by the prosecution and disbelieving it declined to commit the accused to the Court of Session and discharged her under section 209 of the Criminal Procedure Code.

The complainant appealed against this order to the Additional Sessions Judge of Ahmedabad who reversed the order passed by the Magistrate, and ordered him to draw up a charge against the accused and commit her for trial under section 307 of the Indian Penal Code.

The accused applied to the High Court.

Branson, with *Manmukhram K. Mehta*, for the applicant :—

Where a Committing Magistrate wholly disbelieves the evidence tendered on behalf of prosecution, it is his duty to discharge the accused under section 209 of the Criminal Procedure Code. See *Lachman* v. *Jwala*(3); *In re the petition of Kalyan Singh*(4); *Queen-Empress* v. *Munisami*(5); *Emperor* v. *Ravji Hari Yelgaumkar*(1).

(1) (1907) 9 Bom. L. R. 225.
(2) (1887) 11 Bom. 372.
(3) (1882) 5 All. 161.
(4) (1889) 21 All. 265.
(5) (1891) 15 Mad. 39.

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The decision of Mr. Justice West in *Queen-Empress* v. *Namdev Satvaji*[1] may at first sight appear against our contention. It only decides that a Magistrate should commit a case to the Court of Session when credible witnesses make statements which, if believed, would sustain a conviction. The learned Judge has himself explained the case in *Dhanjibhai* v. *Pyarji*[2].

R. W. Desai, for the Crown:—

The question here is not whether the Magistrate had power to discharge the accused under sections 209-210 of the Criminal Procedure Code, but whether the Sessions Judge committed any error of law in directing a committal which would justify any interference by this Court with the order which has been passed by him under section 436 of the Criminal Procedure Code. The Sessions Judge is a Judge of fact, whether the evidence adduced is or is not sufficient to warrant a committal. With his finding this Court will not interfere. See *Fattu* v. *Fattu*[3] and *Emperor* v. *Varjivandas*[4].

As to the cases relied on by the other sides the case of *Lachman* v. *Jaula*[5] was decided under the Criminal Procedure Code of 1872 and does not apply. In *Dhanjibhai* v. *Pyarji*[2], the Magistrate who had committed the accused had himself jurisdiction to try all the charges except one with which the accused was charged. In the other cases the High Court was requested to interfere with the order of discharge or to direct a retrial or committal.

BATCHELOR, J.:—This is an application by one Bai Parvati who was accused before the Magistrate of having attempted to commit murder by pushing another woman named Jadav into a well.

Parvati, the applicant, was the mistress of Jadav's husband. A good deal of evidence was summoned for the prosecution and the Magistrate having heard all the evidence tendered came to the conclusion which he expressed in these words: "After having closely gone through the evidence as a whole I find that

(1) (1887) 11 Bom. 372.
(2) (1884) Ratanlal's Unrep Cr. C. 201.
(3) (1904) 26 All. 564.
(4) (1902 27 Bom. 84, 88.
(5) (1882) 5 All. 161.

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it will be a mere waste of the Sessions Court's very valuable time if I commit the accused to it to take her trial there when I myself see that there are not sufficient grounds for committing her. I, therefore, discharge her under section 209 of the Criminal Procedure Code."

From this order an application was preferred by Jadav to the Sessions Judge who, reversing the Magistrate's order, directed the Magistrate to draw up a charge against the accused Parvati and commit her for trial under section 307 of the Indian Penal Code.

The question before us now is whether this order of the Sessions Judge should be sustained.

Upon the facts underlying this application it is not necessary to say more than this that the First Class Magistrate went into them at some length, that he examined the evidence of the witnesses with great care and in the end found that there were no grounds to commit.

The Sessions Judge, as we read his Judgment, does not materially dissent from the Magistrate in this view of the effect of the evidence tendered. He says that "on a small foundation of probabilities an enormous superstructure of untruth has been gradually built up" and he proceeds to show that most of the important witnesses are totally unworthy of credit. But having thus disposed of the witnesses, he says that there still remains the story of Bai Jadav herself, though at the same time he admits that "having regard to the relation between the two women it is improbable that Bai Parvati should have been allowed to accompany Bai Jadav to the well."

Upon the Sessions Judge's own estimate of the value of the evidence we think that the Magistrate was within his rights in ordering the discharge of Bai Parvati and that she should not be exposed to the expense and harassment of a Sessions trial which is practically foredoomed to failure. No doubt in a case of this kind the line between the Magistrate's duty and the Sessions Court's prerogative is not easy to draw. We think, however, that it is not difficult to show that in this case the Magistrate did not exceed his authority.

The point before us was considered by Mr. Justice Mahmood in *In the matter of the petition of Lachman* v. *Jaula*[1] where the learned Judge after pointing out that the object of these provisions of law is to save the subject from the prolonged anxiety of undergoing trials for offences not brought home to them, and also to save the time of the Court of Session from being wasted over unsuitable cases, goes on to say "I am of opinion that the power given to Magistrates under section 195 extends to weighing 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 construction commends itself to us as an accurate statement of the meaning of section 209 of the Criminal Procedure Code. Nor do we think that there is anything in it which is in real conflict with what Mr. Justice West said in the case relied upon by the respondent, *Queen-Empress* v. *Namdev Satvaji*[2]. For, the operation of that decision is limited to this that 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." It seems to us that the whole point of this passage lies in attaching due emphasis to the word "credible," and some confirmation of that construction of the decision may be obtained from the observations of the same learned Judge in *Dhanjibhai* v. *Pyarji*[3].

Apart also from authority it seems to us that the words of the section themselves leave little room for ambiguity. The

(1) (1882) 5 All. 161. (2) (1887) 11 Bom. 372.
(3) (1884) Ratanlal's Unrep. Cr. C. 201.

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section provides that if a Magistrate finds that there are not sufficient grounds for committing the accused person for trial he shall discharge him. It is not merely therefore that the Magistrate in the case put is empowered to discharge the accused; he is bound to do so. What then is the case put? It is the case where the Magistrate finds that there are no sufficient grounds for committing the accused person for trial. He may so find either because there is no evidence whatever or because the evidence tendered for the prosecution appears to him to be totally unworthy of credit. But in this latter case, equally with the former case, it would be his duty under the section to discharge the accused, since the grounds relied on for a commitment would, in his opinion, be insufficient. That is the construction which the words of the section suggest to us and which we understand was accepted by this Court in *Emperor* v. *Ravji Hari Yelgaumkar*[1]. It is perhaps unnecessary to add that where the Magistrate entertains any real doubt as the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session; but that is not the case before us now.

For these reasons, therefore, we must set aside the order of the Sessions Judge and restore that of the Magistrate.

Order set aside.

R. R.

(1) (1907) 9 Bom. L. R. 225.