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mentioned in the preceding clause and that "any person convicted on a trial" held by such officer, means on a trial held by the officer as a Court of Session.

It appears that, in other cases of like appeals, several Division Benches of the Court have entertained the appeal, and therefore it seems to be necessary to refer the point for the decision of a Full Bench. It is a matter of importance, because if the High Court be required to hear appeals from Magistrates who are invested with this jurisdiction, no matter what the nature of the offence or the amount of punishment may be, a very considerable amount of additional business will be thrown upon the Court.

MITTER, J.—I concur in the order of reference, but I express no opinion on the point referred.

The opinion of the Full Bench was delivered by

JACKSON, J.—We are of opinion that an appeal lies to the High Court, only when the conviction has been come to under the powers specified in section 445 A, Act VIII of 1869.

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Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice Kemp, Mr. Justice L. S. Jackson, and Mr. Justice Phear.

THE QUEEN *v.* NARAYAN NAIK AND ANOTHER.*

9 B.L.R. 60.

Code of Criminal Procedure (Act XXV of 1861), Chap. XI—Complaint, Irregularity in recording—Power of the Court of Session.

A Court of Session is competent to proceed to the trial of a prioner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint to authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district, sent with the record of the case notwithstanding an irregularity ou defect or form in recording the complaint.

The complaint or authorization of the Court before which or against the authority of which, an offence mentioned in Chap. XI of the Code of Criminal Procedure is alleged to have been committed, is a sufficient warrant for commencement of criminal prodeedings.

The Queen v. *Mahim Chandra Chuckerbutty* (1) overruled

* Case called for from the Sessions Judge of Cuttack, on revision of the Jail Delivery Statements of his District for the month of May last.

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QUEEN
v.
NARAYAN
NAIK.

THE following questions were referred to a Full Bench by L. S. JACKSON and MITTER, JJ.

1*st*.—Whether a Court of Session is not competent to proceed to the trial of a prisoner brought before it upon the charge of a Magistrate who is authorised to make a commitment, although it should be objected that there has been some irregularity or defect of form in recording the complaint.

2*nd*.—Whether in the class of cases to which the 11th Chapter of the Code of Criminal Procedure relates, the complaint or authorization of the Court, before which or against the authority of which such offence is alleged to have been committed, is not sufficient warrant for commencement of criminal proceedings.

The questions were referred under the following remarks by

L. S. JACKSON, J—The case of Narayn Naik and Ram Naik was called for by this Court on a review of the abstract statements of the Court of Session of Zilla Cuttack. The proceedings having come up, it appears that these persons were severally charged with having given false evidence in a judicial proceeding under section 193 Indian Penal Code, and that the Court of Session, without proceeding to trial, has discharged the accused persons on the ground of certain irregularities set forth fully in the case of Narayan Naik, on reference to the judgment in which case that of Ram Naik has been disposed of.

It seems that these persons gave the evidence which was charged as being false before the Deputy Magistrate, who, after disposing of the case in which the evidence was given, sent the record to the Magistrate of the district with a letter saying that he charged the prisoners with giving false evidence. Thereupon the Magistrate made an order referring the case to another Deputy Magistrate, who thereupon summoned the parties, and after taking evidence committed the prisoners to the Sessions.

The Judge is of opinion that as no formal complaint was made under section 66, Code of Criminal Procedure, nor charge preferred under section 135 before the Police, the Deputy Magistrate or the Magistrate of the district was not authorised to take up the case, and consequently the preliminary proceed-

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ings were illegal and void, and the commitment also illegal. He comes to this conclusion on the authority of the case of *The Queen* v. *Mahim Chandra Chuckerbutty* (1), in which the prisoners, who had been convicted under the 183rd and other sections of the Indian Penal Code, had their conviction quashed, and were discharged.

The decision in question was one of Justices Kemp and Markby. It has, undoubtedly, gone the length of holding that no trial in a Court of Session can be properly held in which the proceedings had not commenced in one of the three modes described in sections 66, 68, and 135, Code of Criminal Procedure.

With great respect to the learned Judges who held this opinion, it seems to me that Courts of Session are required to take congnizance of offences upon a charge preferred by a Magistrate empowered under the Code to make commitments to such Courts, and that if such commitment has been made, and the trial in the Court of Session has been properly held, the accused person should not be allowed to have the trial and conviction quashed upon the ground of any defect in the mode of recording the original complaint; and it also appears to me that in the class of cases referred to in section 169, the letter of the Deputy Magistrate, before whom the alleged false evidence was given, was an amply sufficient ground for the commencement of the proceedings. I should have thought, if it had not been for the decision already cited, that in the case of offences specified in section 168 of the Code of Criminal Procedure, the letter of the Judge of the Court of Small Causes, which was the foundation of the proceedings in that case, was still more abundantly sufficient, because the Code says that " a charge of contempt of " the lawful authority of any Court or public servant shall not be " entertained in any Criminal Court except with the sanction or " on the complaint of the Court or public servant concerned." It appears to me that when that Court addresses a public proceeding to the Magistrate complaining of the offence described, that that is a sufficient foundation for criminal proceedings, and

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that the Judge of that Court is not bound to come before the Magistrate and lodge a complaint and sign it in the ordinary manner, though it might be necessary for him to give evidence.

But even if the recording of a complaint were prescribed, it seems to me that the omission to record such a complaint, through the usual forms, would not be a ground on which the prisoner would be entitled to have the conviction set aside. If this case had come before me, and the case of *The Queen* v. *Mahim Chandra Chuckerbutty* (1) had not occurred, I should certainly have been disposed to set aside the order of the Sessions Judge, and to direct the prisoners to be tried. It appears to me that we cannot make that order without coming in direct conflict with the ruling referred to; and therefore it is necessary to make a reference in this case to a Full Bench.

The opinion of the Full Bench was delivered by

L. S. JACKSON, J.—We are of opinion that the Court of Session is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint.

Also that, in the class of cases specified in the second question referred, the complaint or authorization of the Court concerned is a sufficient warrant for the commencement of criminal proceedings.

[APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Markby.

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June 22.

BABOO MOHAN LAL BHAYA GYAL AND ANOTHER (PLAINTIFFS.) *v.* LACHMAN LAL (DEFENDANT).*

Act VIII of 1859, *s.* 2—*Act XIV of* 1859, *s.* 1—*Cause of Action—Res judicata.*

A. a Hindu of Gya, died, leaving a sister B., and C. the son of a deceased sister. On A's death B took possession of the property left by A. In a suit by C against B for recovery of possession thereof, as heir to his maternal uncle the Court of first

* Regular Appeal, No 8 of 1870, from a decree of the Subordinate Judge of Gya, dated the 2nd October 1869.

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