

1895  
MILAN KHAN  
v.  
SAGAI  
BEHARI.

case in the ordinary sense of the term. It is merely a charge of taking away crops the title to which is disputed. There is evidence of possession apparently, which has been accepted by one Court. That this is not really a case where public justice requires any further proceedings, adds to our reasons for not directing a re-trial.

We set aside the conviction and direct the discharge of the accused.

S. C. B.

*Rule made absolute.*

*Before Mr. Justice Trevelyan and Mr. Justice Beverley.*

1895  
December 16.

MISRI LAL (PETITIONER) v. LACHMI NARAIN BAJPIE (OPPOSITE PARTY.) \*

*Criminal Procedure Code (Act X of 1892), section 423—over of Appellate Court—Commitment to the Court of Sessions—Offences triable exclusively by the Court of Sessions.*

Section 423 of the Criminal Procedure Code is not limited to cases triable exclusively by the Court of Sessions. An Appellate Court has under that section the power to order an accused person to be committed for trial by the Court of Sessions in cases which are not exclusively triable by the Court of Sessions.

*Queen-Empress v. Sukha* (1), dissented from; *Queen-Empress v. Abdul Rahiman* (2), followed.

THE petitioner was convicted by the Deputy Magistrate of Chupra of the offences of cheating under section 417, and criminal misappropriation under section 403, of the Penal Code, and sentenced to pay a fine of Rs. 200 for each offence. The petitioner appealed to the District Magistrate of Sarun, who reversed the finding and sentence of the Deputy Magistrate, and directed him to commit the accused for trial before the Sessions Court under section 417 of the Penal Code. The petitioner moved the High Court, and obtained a rule on the ground that an Appellate Court, acting under section 423 of the Criminal Procedure Code, can only direct a committal in cases exclusively triable by the Court of Sessions, and the offence of cheating under section 417 of the Penal Code not being triable exclusively by the Court of Sessions,

\* Criminal Revision No. 700 of 1895, against the order passed by F. A. Slack, Esq., District Magistrate of Sarun, dated 24th of August 1895.

(1) I. L. R., 8 All., 14.

(2) I. L. R., 16 Bom., 580.

the District Magistrate was wrong in directing the committal of the petitioner.

No one appeared at the hearing.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was as follows :—

In this case the learned pleader for the petitioner does not appear in support of the rule. The rule was granted on the authority of the decision of Mr. Justice Brodhurst in *Queen-Empress v. Sukha* (1), in which he holds that the Appellate Court, acting under section 423 of the Criminal Procedure Code, can only direct a committal in cases exclusively triable by the Court of Sessions. There is a contrary decision by two learned Judges of the Bombay High Court in the case of *Queen-Empress v. Abdul Rahiman* (2) differing from Mr. Justice Brodhurst's decision. We prefer the Bombay authority, and we are of opinion that the words of the section are quite wide enough to warrant the Magistrate in doing what he has done here, and that the section is not limited to cases exclusively triable by the Court of Sessions.

We, therefore, discharge the rule.

S. C. B.

*Rule discharged.*

## APPELLATE CIVIL.

*Before Mr. Justice Prinsep and Mr. Justice Banerjee.*

AMIR DULHIN *alias* MAHAMDIJAN (ONE OF THE OBJECTORS) v.  
ADMINISTRATOR-GENERAL OF BENGAL (DECREE-HOLDER) AND  
OTHERS (AUCTION-PURCHASERS).<sup>a</sup>

1895  
December 19.

*Injunction—Temporary injunction—Specific Relief Act (I of 1877), sections 53 and 56—Jurisdiction to grant temporary injunction—Injunction to stay sale in execution of decree—Civil Procedure Code (Act XIV of 1832), sections 492, 311—Material irregularity.*

In a proceeding for execution of a decree pending before the District Judge, certain immoveable properties having been ordered to be sold, an application

<sup>a</sup> Appeal from Order No. 288 of 1894, against the order of W. H. Page, Esq., District Judge of Tirhoot, dated the 1st of June 1894.

(1) I. L. R., 8 All., 14.

(2) I. L. R., 16 Bom., 580.