

## APPELLATE CRIMINAL.

Before Mr. Justice Birch and Mr. Justice Miller.

1879 IN THE MATTER OF THE EMPRESS v. FUTTEH JYA KHAN AND  
 Jan. 31. OTHERS. \*

*Sessions Court, Jurisdiction of—Power to commit to itself Cases not triable exclusively by Court of Sessions—Criminal Procedure Code (Act X of 1872), ss. 231, 471, and 472.*

A Court of Sessions has no power to commit to itself for trial a case not triable exclusively by such Sessions Court.

The words "commit the case itself" in s. 471 of the Code of Criminal Procedure cannot (when read in connection with s. 231) be held to empower a Sessions Court to commit such a case to itself.

THE accused in this case was charged, under s. 193 of the Indian Penal Code, with intentionally giving false evidence in a stage of a judicial proceeding held before the Sessions Court of Burdwan. The Judge, before whom the alleged false evidence had been given, held a preliminary enquiry, and committed the accused for trial to his own Court.

The accused applied to the High Court, under the revisional section of the Code of Criminal Procedure, to set aside the proceedings held under the preliminary enquiry and commitment, on the ground that such proceedings were made without jurisdiction.

Baboo Gooroodass Banerjee for the petitioner.

The judgment of the Court was delivered by

BIRCH, J.—In this case the Sessions Judge of Burdwan has committed the petitioner before us to take his trial before the Court of Sessions on a charge of having given false evidence in a stage of a judicial proceeding,—*viz.*, a trial held in the Court of Sessions under s. 193 of the Indian Penal Code. The

\* Criminal Motion, No. 2 of 1879, against the order of C. D. Field, Esq., Sessions Judge of Burdwan, dated the 16th December 1878.

Sessions Judge had himself held the preliminary enquiry, and committed the case to the Court of Sessions.

We are asked to set aside this commitment as made in contravention of the provisions of the Code of Criminal Procedure.

The Sessions Judge, in the explanations which he has submitted, states that, in his opinion, s. 471 empowers him to commit this case, and that that power is not limited or restricted by the provisions of the following section (472).

We think that the learned Judge has taken an erroneous view of the law, and that the interpretation he would put upon these sections cannot be supported.

The offence with which Futteh Jyab Khan is charged, is admittedly not one that is triable by the Court of Sessions exclusively. It is only in cases exclusively triable by the Court of Sessions that the Judge is empowered to commit or hold to bail and try an accused person charged with the offences mentioned in ss. 467, 468, and 469. In cases of a like nature, which are not triable by the Court of Sessions exclusively, all that the Judge is empowered to do is to send the case for enquiry to any Magistrate having power to try or commit for trial the accused person under s. 471.

The words "commit the case itself," occurring in s. 471, do not mean that the Court of Sessions may commit the case to itself as the Judge would interpret. If the section would bear this interpretation, it would be opposed to the distinct provisions of s. 231, which restricts and limits the action of the Court of Sessions as a Court of original criminal jurisdiction, save and except in the cases provided for by ss. 435 and 472.

We are of opinion that the procedure adopted by the Sessions Judge in this case is not warranted by law, and we, therefore, quash the commitment to the Court of Sessions, and direct the Sessions Judge to send the case for enquiry to the Magistrate, who will deal with it as he thinks fit.

This order will govern the application in the case of Dwarka Nath Banerjee, No. 1 of 1879.

1879

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