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Magistrate, and on this a judicial inquiry was ordered to be held by the Subordinate Magistrate. On receipt of the report of the Subordinate Magistrate, the District Magistrate recorded that in his opinion it was hopeless to call for an A Form, that is, to consider the evidence tendered by the complainant, the Subdivisional Magistrate had already passed final orders in the case, namely, "enter true." It seems to us that the complainant has not had what he is entitled to ask for—a trial before the Magistrate. He has had an informal inquiry; and although his complaint has been recorded as true, the District Magistrate has never examined him or heard what he had to say, and has never given him an opportunity of tendering the evidence of his witnesses. We think, therefore, that the complainant is entitled to be examined under s. 200 of the Code of Criminal Procedure; and as his complaint has already been recorded as true, he is entitled to a process against the accused and for the attendance of his witnesses.

D. S.

# CRIMINAL REVISION.

*Before Mr. Justice Prinsep and Mr. Justice Stephen.*

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*Jan.* 22.

## ABDUL GHANI
*v.*
## EMPEROR.*

*Magistrate—Conviction—Offence exclusively triable by Court of Session—Accused, discharge of, by Sessions Judge on appeal—Retrial, no order for—Retrial and commitment of accused—Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 215, 403, 423 and 530—Indian Post Office Act (VI of 1898) s. 52.*

Where an accused was convicted by a Magistrate of an offence exclusively triable by a Court of Session, and on appeal the Sessions Judge, without ordering further proceedings to be taken, set aside the conviction and discharged the accused on the ground that the Magistrate had no jurisdiction to hold the trial and fresh proceedings in respect of the same offence were taken by another Magistrate against the accused, who was committed for trial to the Court of

* Revision No. 731 of 1901, made against the orders passed by [illegible] Esq., Assistant Commissioner, Assam Valley District, dated the 23rd

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*Held*, that where a Sessions Judge on appeal is empowered to order the retrial of an accused person and does not do so, but merely discharges him, there is nothing in law to prevent a Court of competent jurisdiction from instituting fresh proceedings against the accused and committing him.

*Held*, further, that inasmuch as s. 423 of the Criminal Procedure Code contemplates an order for a retrial by a Court of competent jurisdiction, and the trial in this case had been set aside owing to the Magistrate having had no jurisdiction to hold it, no trial had in fact taken place, so that the Sessions Judge could not possibly have ordered a retrial.

THE petitioner Abdul Ghani obtained a Rule calling upon the District Magistrate of the Assam Valley District to show cause why the order committing the petitioner to the Court of Session, dated the 23rd July 1901, should not be set aside upon the ground that, having regard to the order of the Sessions Judge, dated the 10th May 1901, the Magistrate had no authority to make such commitment.

In this case the petitioner was convicted by a Magistrate under s. 52 of the Post Office Act. On appeal the Sessions Judge of the Assam Valley District on the 10th May 1901 set aside the conviction and discharged the petitioner on the ground that the case was triable exclusively by a Court of Session and that the Magistrate had no jurisdiction to hold the trial. Further proceedings in respect of the same offence were then commenced against the petitioner by another Magistrate in the district, who on the 23rd July 1901 committed him for trial to the Court of Session.

*Babu Dasarathi Sanyal* for the petitioner.

PRINSEP and STEPHEN JJ. The petitioner was convicted by the Magistrate under s. 52 of the Post Office Act (VI of 1898). On appeal the Sessions Judge discharged the accused on the ground that the Magistrate had no jurisdiction to hold the trial. Further proceedings were then commenced by another Magistrate, who has committed the accused for trial to the Sessions Court, and on objection taken by him, a Rule has been granted by a Bench of this Court to show cause why the order of commitm should not be set aside upon the ground that, having regard order of the Sessions Judge, the Magistrate has no auth make such commitment. A commitment, it may be ob

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be quashed only on a point of law (see s. 215 of the Code of Criminal Procedure). The point of law for which the learned Pleader for the petitioner contends is that, inasmuch as the Sessions Judge in appeal was empowered to make an order for retrial by a Court of competent jurisdiction and had not done so, therefore the Magistrate was without jurisdiction in taking further proceedings. The proceedings taken by the first Magistrate are under s. 530 (*b*) void, and therefore the proceedings, since taken, cannot in any sense be regarded as a retrial. Now, even on the argument of the learned Vakil, the Sessions Judge could not pass the order which he contends for. S. 423 contemplates an order for a retrial by a Court of competent jurisdiction. No trial having taken place, there could not possibly be a retrial.

In the next place we are of opinion that there was no bar to the proceedings taken by the Magistrate. The only bar which could be applied to such a case would be by the application of s. 403 of the Code of Criminal Procedure. But clearly s. 403 does not apply, because the explanation to it declares that the discharge of the accused is not an acquittal for the purposes of that section, and we may observe that s. 403 expressly deals with an order of acquittal or conviction passed by a Court of competent jurisdiction. We cannot in any way accede to the argument of the learned Pleader that, assuming that it could have been so, because the Sessions Judge on appeal could have ordered a trial by a Court of competent jurisdiction and did not do so, it must be understood that he thought that such proceedings should not be held. We cannot understand how any such omission can amount to an impediment to a trial, when no trial has taken place. We may observe that we have constantly cases before us of the same nature in which proceedings of the Magistrate are set aside for want of jurisdiction, and it has never occurred to us that it was necessary in every such case to declare whether further proceedings should or should not be taken. Occasionally it has happened that the Criminal Bench has expressly declared that under the circumstances of a particular case no further proceedings should be

The Rule is therefore discharged.

*Rule discharged.*