

The case came on for hearing this day before COUCH, C.J.,
and NEWTON, J.

1867.

REG.

v.

BA'GU

OWSARI

et al.

PER CURIAM:—The Court annuls the conviction and sentence passed upon Bagu valad Owsari.

Conviction and sentence annulled.

REG. V. RANCHODDA'S NATHU'BHA'I.

Nov. 14.

Session Court—Informal Commitment—Magistrate F. P.—Reference.

A Court of Session cannot treat as a nullity the commitment of a Magistrate F. P. on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course.

THIS case was referred for the orders of the High Court by C. G. Kemball, Session Judge of Surat.

The facts appear from the following remarks of G. Aycrst, Assistant Session Judge:—

“ In this case, before the prisoner was arraigned, it was urged by the counsel for the defence that the case could not be proceeded with, as the same had been ‘improperly committed.’ The facts of the case in connection with this point are as follows:—This case was originally sent by the District Judge of Surat to the Magistrate of the District for investigation. The latter, without proceeding in the matter himself, directed a Full Power Magistrate of the same zilla to investigate the same. The latter investigated the case, and committed the accused for trial to the Sessions Court. But that Magistrate had no jurisdiction whatever. The Magistrate of the District had no power to refer the case for trial to a Full Power Magistrate, who is, for all the purposes of the present case, an officer of equal authority with himself. That F. P. Magistrate, therefore, acted contrary to law in proceeding with a case of this nature, concerning which no complaint had been preferred before him, or no order received from the District Judge. On this point I refer to the orders of the High Court which have recently been given respecting a case of a similar nature, which was

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tried by a Full Power Magistrate of the Ratnágiri Zillá, the *Queen v. Dipchand Khushál* :—' The Court annuls the conviction and sentence passed upon Dipchand Khushál, on the ground that the Full Power Magistrate had no jurisdiction to try the case without a complaint, as it was not sent to him by the Munsif for investigation ; and the Magistrate of the District had no power to refer the case to the Full Power Magistrate.' Such being the order of the High Court upon this point, I am unable to entertain the plea urged by the Government Pleader,—viz., that the committal was merely irregular, and as such should be considered valid, according to the provisions of Sec. 439 of the Criminal Procedure Code. I hold, therefore, that the F. P. Magistrate acted contrary to law. Such being the case, I am unable to proceed further with a case improperly committed. The accused, Ranchoddás Nathúbhái, is ordered to be discharged."

The case was considered this day by COUCH, C.J., and NEWTON, J.

COUCH, C.J. :—By Sec. 359 of the Code of Criminal Procedure, in order to give a Court of Session jurisdiction, it is only necessary that there should be a charge preferred by a Magistrate or other officer specially empowered to make commitments to such court. In this case, there was a charge made by a Magistrate so empowered, and the Court of Session had not the power, when the case came before it for trial, to treat it as a nullity, on the ground that the Magistrate of the District had not power to refer the case to the Magistrate F. P. ; but should have proceeded with the trial. This court has held in another case that a conviction by the Session Court is not invalidated by the committal having been made upon such a reference. We annul the order of the Assistant Session Judge, and direct him to proceed with the trial.

Order annulled.