

Queen-empress Vs. Schade and anr.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1897)ILR19All465

Judge : John Edge, Kt., C.J. and; Blair, J.

Appellant : Queen-empress

Respondent : Schade and anr.

Judgement :

John Edge, Kt., C.J. and Blair, J.

1. A Magistrate of the first class having taken cognizance of a case in which two men were charged with offences under Act No. I of 1878, committed them for trial to the Court of Session. One of the men is a European British subject. It is quite clear from Section 9 of Act No. I of 1878 that the Court of Session has no jurisdiction in the matter. The conviction, if there is one, must be before a Magistrate, for a Magistrate, and not the Judge of the Court of Session, is the person empowered to pass sentence. Similar questions arose in *Indrobeer Thaba* 1 W.R. Cr. R. 5, and *Regina v. Donoghue* 5 Mad. H.C. Rep. 277. It is probable that the Magistrate who took cognizance of the case has not power to award a sufficient punishment in case these men are proved to be guilty of the offence. As to whether or not these men, or either of them, are guilty, we express no opinion. We set aside the order of commitment, the result of which is that the case goes

back to the Court of the Magistrate who made the order of commitment, and we transfer the case from the Court of that Magistrate to the Court of the District Magistrate of Allahabad. As to the question whether these men should be tried separately or together, that the Magistrate must decide. If any application for separate trials is made to him, he will no doubt consider it; but we make no suggestion that they should be tried separately.

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