The decree-holder objected that the boundaries of the land in question were not sufficiently specified either in the decree or in the mortgage, and that the decree, not having been made in accordance with the Transfer of Property Act, gave the decree-holder no right to have the property sold and could not be executed.

The Subordinate Judge dismissed the application and permitted execution to proceed.

The petitioner preferred this appeal.

The memorandum of appeal comprised, among others, the following paragraphs :—

"The suit having been brought after the coming into operation "of the Transfer of Property Act, the decree herein in the form in "which it has been passed cannot be executed by attachment and "sale of the mortgaged properties.

"Under section 99 of the Transfer of Property Act the pro-"perty cannot be sold, unless the suit had been brought under sec-"tion 67 and the decree be passed under section 88 of the Act."

Tiagaraja Ayyar for appellant.

Respondent did not appear.

JUDGMENT.—The decree was not so formal as it should have been under the Transfer of Property Act. This is no doubt due to the fact that that Act had only just come into force at the time when the decree was passed. The decree is in reality a decree for sale. There is nothing to show that the property to be sold is not liable to the debt.

The appeal is dismissed under section 551, Code of Civil Procedure.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

QUEEN-EMPRESS

v.

NANJUNDA RAU.*

1896. October 29.

Penal Code, s. 211—False charge of dacoity made to a police station-house officer.

A false charge of dacoity was made to a Police Station-house officer, who, after some investigation, referred it to the magistrate as false, and the magistrate

* Criminal Appeal No. 384 of 1896.

QUEEN-EMPRESS v. NANJUNDA RAU.

ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under Penal Code, s. 211, and was found to have acted with the intent and the knowledge therein mentioned, and he was convicted and sentenced to four years' rigorous imprisonment:

Held, that the prisoner had instituted criminal proceedings within the meaning of that section, and that the conviction and sentence were in accordance with law.

APPEAL against the conviction and sentence of T. M. Horsfall, Acting Sessions Judge of Bellary, in session case No. 57 of 1896.

The accused was convicted of having made a false charge against the complainant with intent to injure him and was sentenced to four years' rigorous imprisonment under section 211, Indian Penal Code. The charge in question was one of dacoity, and it was made to the Police Station-house officer of Bellary. That officer being of opinion, after some investigation, that the charge was unsupported, referred it as false, and the case was struck off the police file. The Sessions Judge and assessors were of opinion that the charge was substantiated and the prisoner was sentenced as above.

The prisoner preferred this appeal.

Mr. *Smith* and *Venkatarama Sarma* for appellant.

The Public Prosecutor (Mr. *Powell*) for the Crown.

JUDGMENT.—The appellant was convicted of having made to the police a false charge of dacoity against certain persons and was sentenced under section 211, Indian Penal Code, to suffer four years' rigorous imprisonment.

In appeal it is urged that, though the charge to the police may have been false, yet, as they referred the charge to the magistrate as false, and as the magistrate ordered the charge to be dismissed as false without taking any action against the accused, there was no 'institution of criminal proceedings' within the meaning of section 211, and the offence was therefore only punishable with a maximum of two years' imprisonment under the first part of the section, instead of with seven years' imprisonment under the second part of the section.

In support of this view the rulings of the Allahabad High Court in *Empress of India* v. *Pitam Rai*(1) and *Queen-Empress* v. *Bisheshar*(2) and *Queen-Empress* v. *Karim Buksh*(3) were relied

(1) I.L.R., 5 All., 215. (2) I.L.R., 16 All., 124. (3) I.L.R., 14 Calc., 638.

upon. These cases no doubt support the construction of the section for which the appellant contends, but that construction was considered and dissented from by a Full Bench of five Judges of the Calcutta High Court in the case of *Karim Buksh* v. *Queen-Empress*(1), when they followed a long series of earlier rulings of the same Court. We think that the view taken in the latter case is correct. We are unable to find any warrant for holding that the words 'the institution of criminal proceedings' should be limited to the bringing of a charge before the magistrate, or to action by the magistrate or police against the person charged. It seems to us that when, as in this case, a charge of a cognizable offence is made to the police against a specified person, criminal proceedings within the meaning of the section have been instituted just as much as if the charge had been made before the magistrate. It is argued that, when a charge is preferred to the police, it merely sets them on enquiry, and they may find the charge to be false and refuse to proceed with the charge without the accused being even aware that any complaint has been made against him; but precisely the same may be the case when a complaint is made to a magistrate. He is not bound to take any action against the person accused. He may refer the charge to the police for enquiry, and on receipt of their report may refuse to proceed or take any action against the accused person. In such a case the accused might be unaware that any complaint had ever been made, yet it could hardly be contended that the complaint to the magistrate did not amount to 'the institution of criminal proceedings' within the meaning of the section.

We are of opinion, as already stated, that the true construction of the section is that laid down by the Calcutta High Court in the case we have referred to. Adopting that construction we find that the offence of the appellant in the case before us falls under the latter part of section 211, Indian Penal Code, and the sentence is not illegal.

Looking to the gravity of the offence charged and the malice of the complainant, we certainly do not consider the sentence excessive. We confirm it and dismiss this appeal.

(1) I.L.R., 17 Calc., 574.