

SUNDARA
 AYYAR AND
 PHILLIPS, JJ.
 ———
 NANJAPPA
 CHETTIAR
 v.
 GANAPATHI
 GOUNDEN.

suit. We hold therefore that the plaintiff is entitled to a decree for damages in this suit. The Subordinate Judge in assessing the amount reduced the sum awarded by the District Munsif on the ground that the defendant was not a man of large means and that the costs payable to the plaintiff would amount to Rs. 260. He was not right in taking the former of these circumstances into consideration. The District Munsif observes that the defendant did not object to the amount of compensation claimed by the plaintiff in his plaint, viz., Rs. 2,000 nor do we find any objection taken to the amount decreed by the Munsif in the grounds of appeal to the Lower Appellate Court. In all the circumstances of the case we think that the Subordinate Judge was wrong in making a reduction in the sum awarded by the Munsif. We shall therefore modify the decree of the Subordinate Judge by awarding to the plaintiff the sum of Rs. 500 allowed by the District Munsif. The Second Appeal is dismissed with costs and the memorandum of objections is allowed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Spencer.

*Re VELU NATTAN (PETITIONER), COMPLAINANT.**

1911.
 September
 29.

Criminal Procedure Code, s. 203—Dismissal of complaint under s. 203 without taking sworn statement of complainant.

A Presidency Magistrate may dismiss a complaint under section 203 of the Criminal Procedure Code on a police report without examining the complainant. The verification on oath of a complaint before a Magistrate is a sufficient compliance with the provisions of section 203.

The omission to examine will, at the most, amount to an irregularity of the description covered by section 537, Criminal Procedure Code.

PETITION under sections 435 and 439 of Criminal Procedure Code praying the High Court to revise the order of Mr. W. S. Marshall, Third Presidency Magistrate, Georgetown, Madras, in Application No. 2991, dated 10th May 1911.

P. Sambandam for petitioner.

The Crown Prosecutor on behalf of the Government.

ORDER.—It is argued that the Presidency Magistrate had no power to dismiss a complaint under section 203, Criminal

* Criminal Revision Case No. 333 of 1911.

Procedure Code, without examining the complainant. It was held in *Queen-Empress v. Murphy* (1) that a verification on oath of a complaint before a Magistrate, was a sufficient compliance with the provisions of section 203, and this has been followed in Criminal Revision Case No. 398 of 1908 on the file of this Court with special reference to the procedure provided for Presidency Magistrates under section 200 (b). In the present case the petitioner's vakil was present when the Magistrate passed orders under section 203, Criminal Procedure Code, dismissing the complaint and in the absence of any affidavit saying that he was precluded from showing cause against accepting the result of the police enquiry, I am not prepared to find that the complainant was in any way prejudiced by the Magistrate's procedure, assuming that the law required him to make a more detailed examination. At the most the omission to examine in this case amounts to no more than an irregularity of the description covered by section 537, Criminal Procedure Code. The petition is dismissed.

SPENCER, J.

Re. VELU
NATTAN.

PRIVY COUNCIL.

SHAMU PATTAR (PLAINTIFF),

v.

ABDUL KADIR RAVUTHAN AND ANOTHER (DEFENDANTS) AND
ANOTHER APPEAL CONSOLIDATED.

P.C.*
1912.
June 19, 20.
July 30.

[On appeal from the High Court of Judicature at Madras.]

Transfer of Property Act (IV of 1882), s. 59—Attestation of deed—Presence of witnesses at actual execution—Acknowledgment of his signature by executant. Civil Procedure Code (Act XIV of 1882), s. 149—Issue raised by Court at late stage of case—Power of Court as to issues.

Held (affirming the decision of the Madras High Court) that attestation of a mortgage deed within the meaning of section 59 of the Transfer of Property Act (IV of 1882) must be made by the witnesses signing their names after seeing the actual execution of the deed. Mere acknowledgment of his signature by the executant is not sufficient.

(1) (1887) I. L. R., 9 All., 666.

* Present:—Lord SHAW, Sir JOHN EDGE and Mr. AMBER ALL.