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tiff must show that he has sustained by the act he complains of some injury which materially affects his position.

I agree in the rule laid down in this last case, and I hold that the mere circumstance of a building being erected by a joint owner of land without the permission of his co-owners, and even in spite of their protest, is not sufficient, *in itself*, to entitle such co-owners to obtain the demolition of such building, unless they can show that the building has caused such material and substantial injury, as a Court of equity could not remedy in a suit for partition of the joint land.

Holding these views I do not think I can dispose of this case finally, without distinct findings on the following points :—

1. Has the building sought to be demolished in this suit caused such material and substantial injury to the plaintiffs-respondents as cannot be remedied by partition of the joint land, and, if so, to what extent of the area covered by the building?

2. Did the plaintiffs-respondents object to the building at the time when it was commenced, and did they take due steps in time to prevent the continuance of such building?

I remand the case under s. 566 of the Code of Civil Procedure for clear findings upon these points, and upon receipt of the findings ten days will be allowed to the parties for objections under s. 567 of the Code.

Issues remitted.

CRIMINAL REVISIONAL.

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April 18.

Before Mr. Justice Mahmood.

QUEEN-EMPRESS v. MURPHY.

Criminal Procedure Code, s. 203—“Examining”—Written complaint attested by complainant on oath—Irregularity—Criminal Procedure Code, s. 637—Act XLV of 1860 (Penal Code), s. 405.

Where a deposition in the shape of a complaint is made orally or in writing and is sworn to, the requirements of s. 203 of the Criminal Procedure Code in regard to the examination of the complainant, are sufficiently satisfied.

Held therefore, where a Magistrate dismissed a complaint of criminal breach of trust without examining the complainant on oath, but after the complainant had sworn to the truth of the matters alleged in the complaint, that the provisions

of s. 203 had been sufficiently complied with, and, if not, that the irregularity was covered by the terms of s. 537.

Held also that inasmuch as the complaint only amounted to a statement that the accused had, in consequence of certain arrangements made with the complainant's father, received certain moneys and had refused to render accounts, but contained no allegation that he had in fact realized and dishonestly misappropriated any particular sum, and obviously was made for the purpose of forcing him to render accounts, the Magistrate was right in dismissing it, since the facts alleged did not constitute criminal breach of trust.

THIS was an application by the complainant, J. W. Jervis, for revision of an order of the District Magistrate of Dehra Dún, dated the 7th September, 1886, dismissing his complaint against the defendant, G. Murphy, of the offence of criminal breach of trust. In August, 1886, upon some date which does not appear, the complainant filed the following written petition in the Court of the District Magistrate:—

“1. That the petitioner's late father, Captain Jervis, employed Mr. G. Murphy, pleader of Meerut, to recover moneys due to him from Mrs. Julian McCutchan, deceased.

“2. That the petitioner cannot without the assistance of the Court ascertain the exact amount received by Mr. Murphy. In his letter of the 16th August, 1883, he says that he had recovered Rs. 1,000. In his letter of 28th November, 1883, he says that he had invested Rs. 600 of that money at 12 per cent. On the 26th April, 1884, he sent Captain Jervis Rs. 500, and says in his letter of that date:—‘The amount now due to you is Rs. 350 *plus* interest at 12 per cent. on the Rs. 600.’ At first sight this Rs. 500 would appear to be half of the Rs. 1,000 and to include a portion of the Rs. 600, but, on consideration, it appears doubtful for the following reasons;—Mr. Murphy's fee could have been at the most Rs. 100 only (10 per cent. on Rs. 1,000), and therefore the balance would have been Rs. 400, not Rs. 350; he must have recovered Rs. 1,500 to have charged a fee of Rs. 150. Again, in his letter of the 3rd December (1884 apparently) he says:—‘I am glad my having put out some of the money at interest has your approval;’ implying that it was still out at interest.

“3. That whatever the amount may be that Mr. Murphy recovered, he at least admits on the 26th April, 1884, a balance in

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hand of Rs. 350 *plus* interest at 12 per cent. on Rs. 600, and for the purpose of this prosecution it is immaterial whether he held any additional amount.

“4. That Mr. Murphy has never accounted for the above sum, and though written to on the subject has sent no reply.

“5. That petitioner charges Mr. Murphy with having dishonestly misappropriated the said money and committed criminal breach of trust in respect thereof, and prays that he may be punished according to law.”

The Magistrate, upon receiving this petition, did not examine the complainant on oath under s. 200 of the Criminal Procedure Code; but the complainant was sworn, and attested the petition in the following terms:—“The contents of my petition given in to-day are correct and true.” This attestation was headed by the words, “J. W. Jervis sworn” in the hand-writing of the Magistrate, and was followed by the complainant’s and the Magistrate’s signatures. The Magistrate thereupon passed the following order:—“Send copy of this petition to Mr. Murphy and ask him for an explanation. The sheristadar to put up in presence of Mr. Melvill.”

On the 7th September, 1886, the accused Murphy submitted an explanation in the form of a letter addressed to the Magistrate, and upon this the following order was passed:—“On reading Mr. Murphy’s explanation and the second petition of Mr. Jervis, I have no hesitation in saying that this is no case for a criminal Court. Mr. Jervis has the civil Courts to go to if he is so disposed. The petition is dismissed.” The second petition here referred to was a petition filed by the complainant, Mr. Jervis, apparently in reply to the defendant’s explanation. Among the papers received by the Magistrate before passing his order, and placed by him on the record, were certain “opinions” which had apparently been obtained by the defendant from various legal practitioners and forwarded by him to the Magistrate for the purpose of showing that the facts alleged by the complainant did not in law amount to the offence of criminal breach of trust as defined in s. 405 of the Penal Code.

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The effect of the Magistrate's order was to dismiss the complaint. The complainant Jervis then presented an application to the High Court, impugning the validity of the Magistrate's order of the 7th September, 1886, for reasons stated in his petition of the 15th February, 1887. Upon that petition for revision the following order was passed on the 25th March, 1887, by Brodhurst, J:—
 “The Magistrate was not required to send a copy of the complainant's petition to Mr. Murphy for an explanation, but he was, I think, bound to examine the complainant before dismissing his complaint under s. 203 of the Criminal Procedure Code. I therefore direct that notice issue to Mr. Murphy to show cause why the Magistrate's order of the 7th September, 1886, should not be set aside, and why the Magistrate should not be directed to examine the complainant and then pass whatever order he may consider requisite.”

On the 18th April, 1887, the rule came on for hearing before Mahmood, J.

Mr. A. Strachey, for the defendant, Murphy, showed cause.

Mr. J. D. Gordon, for the petitioner, supported the rule.

MAHMOOD, J. (after stating the facts of the case, continued):—
 Amongst the reasons given for this rule, my learned brother Brodhurst stated that the provisions of s. 203 of the Criminal Procedure Code were imperative in respect of the examination of the complainant before the dismissal of any such complaint. That section runs as follows:—“The Magistrate before whom a complaint is made or to whom it is transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under s. 202, there is in his judgment no sufficient ground for proceeding.”

The general effect of the order of my brother Brodhurst was to call upon the accused to show cause why the infringement of the provisions of this section should not result in the exercise of this Court's revisional powers, directing the Magistrate to examine the complainant and to proceed according to law.

Mr. Strachey appeared on behalf of the accused, and I think the argument which he addressed to me upon the subject is sufficient

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to enable me to discharge the rule. Mr. *Strachey* argued that the original petition which initiated the prosecution was sworn to by the complainant himself as I have already stated, and the learned counsel argued that the words I have quoted are in substance sufficient to satisfy the requirements of s. 203, and that even if swearing to the contents of the petition is not covered by and included within the meaning of the word "examine" as used in s. 203, the omission to examine could amount only to an irregularity of such a character as would be covered by the somewhat extensive provisions of s. 537.

I accept the contention because it appears to me that in using the word "*examine*" in s. 203, the Legislature could only have intended (putting the highest interpretation on the word) to provide that such examination should be made under the sanction of an oath or solemn affirmation, with such checks upon untruthful statements as the law provides as penalties for perjury. Where a deposition in the shape of a complaint is made orally or in writing, and when it is sworn to, I hold that the provisions of s. 203 are sufficiently satisfied. I have no doubt on the subject, and if there is any reason to doubt this proposition, s. 537 fully covers any such irregularity in this particular case. The main reasons therefore, why the rule was issued on the 25th March, are shown by Mr. *Strachey* to be such as disable me from making the rule absolute.

But the rule went further, because it generally makes it necessary for me to consider whether or not the case is one in which, irrespective of the provisions of s. 203, I should not direct the prosecution to be taken up again with such results as may follow. For this purpose I have carefully read the original complaint of *Jervis* on which the Magistrate passed his order of the 7th September last and I am satisfied that the allegations contained in that petition, even if held to be perfectly true, are not sufficient in law to furnish grounds for a charge of an offence such as that contemplated by s. 405 of the Indian Penal Code. The complaint amounts only to saying that because as between the father of the complainant and the accused *Murphy* certain arrangements were made, in consequence of which certain moneys were received by the accused,

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and inasmuch as the accused declined to render accounts, therefore the accused has been guilty of the offence of criminal breach of trust. There is no allegation in the complaint that the money had, as a matter of fact, been realised by the accused Murphy; no allegation that the money so realised was wrongfully appropriated to his own use, and obviously the object of the complaint was simply to force Murphy to render account. The object in fact was to obtain a remedy which a civil Court can alone properly award, in a suit which is known here as a suit for rendition of accounts, or in other words, a suit for accounts. The relations between the complainant and the accused were not of a direct character, because the moneys alleged to have been realised by Mr. Murphy, or the transactions to which the prosecution relates, were transactions between the father of the complainant and the accused.

Upon these grounds I hold that the Magistrate was right in declining to proceed further, that he did substantially comply with the provisions of s. 203, and that upon the facts stated in the petition of Jervis, no such case is disclosed as would constitute the *corpus delicti* of the offence defined in s. 405 of the Indian Penal Code, and that the Magistrate acted rightly in dismissing the complaint.

I, however, wish to add that in dealing with this case the Magistrate in calling upon the accused to furnish an explanation, in entering into a correspondence with the accused, and in placing upon the record correspondence and opinions of professional men and lawyers and making them part of the record, has acted in a very irregular manner. It is not necessary for the purposes of this judgment for me to say more. But I may say that my judgment is limited to the documents which are strictly parts of this record, and irrespective of other papers which have been sent up here as if they were legal evidence to enable this Court to determine the question. I reject the application.

Rule discharged, and application rejected.