

England had in no way touched or affected the power claimed by the Court of Chancery to grant relief in such matters. I entirely concur in, and approve, the order proposed by my brother Mahmood.

*Appeal dismissed.*

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v.  
RAM PRASAD.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Brodhurst.*

QUEEN-EMPRESS v. PURAN AND OTHERS.

*Complaint, dismissal of—Revival of proceedings—Criminal Procedure Code,  
ss. 203, 437.*

A complaint was made, before a Magistrate of the first class, of an offence punishable, under s. 323 of the Penal Code. The Magistrate recorded a brief statement by the complainant, but did not ask him if he had any witnesses to call. An order was passed directing that "a copy of the petition of complaint should be sent to the police-station, calling for a report on the matter," and on receipt of the report the Magistrate dismissed the complaint under s. 203 of the Criminal Procedure Code. There was nothing in the Magistrate's original order to show that he saw reason to distrust the truth of the complaint, nor did he direct any local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint. Subsequently to the dismissal of the complaint, the same complainant brought a fresh charge upon the same facts against the same persons in the same Court, and upon this charge the accused were tried, convicted, and sentenced.

*Held* that the Magistrate had not complied with the provisions of s. 202 of the Criminal Procedure Code, and ought not, merely on the report he had received, to have dismissed the first complaint under s. 203.

*Held* also that the Magistrate in ordering a further inquiry, on receiving the complainant's second petition, did not act contrary to any provision of the law, and that, considering the circumstances under which the first complaint had been dismissed, a further inquiry was necessary.

THIS was a case reported to the High Court for orders by Mr. W. Crooke, Officiating Magistrate of Aligarh. The Magistrate stated as follows in reporting the case:—

"The facts of this case are as follows:—On the 28th May, 1886, the complainant Tika Ram laid a charge, under s. 323, Penal Code, against Kapuriya, Puran, Choteh, Jhanda, Behari, Asa, Ram Ratan, Pema, and Budha. The charge was laid in the Court of Munshi Intizam-ud-din, Deputy Magistrate, who referred the matter to the police for inquiry, and on receipt of the police report, which was to the effect that the evidence against the defendants was

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insufficient, dismissed the charge under the provisions of s. 203, Criminal Procedure Code, by his order dated the 30th June, 1886.

“Again, on the 10th July, 1886, the complainant laid a charge on the same facts under the same section in the same Court against eight out of the above nine defendants.

“Owing to the transfer of Munshi Intizam-ul-din from the district, the case came before his successor Sardar Lachman Singh, who finally, on the 30th August, 1886, decided the case, and sentenced the applicants Pema, Choteh, and Puran to ten days’ rigorous imprisonment under s. 352, Penal Code.

“The question now is, was the revival of the case in this way legal? I believe that the order is illegal. Mr. Prinsep, in his edition of the Procedure Code, under s. 203, lays down the law as follows:—‘The dismissal of a complaint under s. 203 is not an acquittal (s. 403, Explan.), but a complaint so dismissed cannot be re-heard, except on an order made under s. 437, which provides that the High Court or Court of Session may direct the District Magistrate, by himself or by any of the Magistrates subordinate to him, to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under s. 203, or into the case of any accused person who has been discharged.’ The same view of the law seems to have been taken by the Madras Court in their proceedings of the 28th March, 1878, quoted by Mr. Prinsep under s. 203.

“It would appear, then, that the revival of this case under the above circumstances, without an order under s. 437, Criminal Procedure Code, was illegal, and this can only be set right by an order from the Honourable Judges of the Court directing a re-trial of the case. I may add that the appellants served five days of their sentence in jail. I have admitted them to bail on Rs. 50 each, and it is a question whether the punishment which they have already suffered is not sufficient to meet the justice of the case, and whether they may not now be finally released.”

BRODHURST, J.—This case has been referred merely because the Officiating Magistrate of the District is of opinion that the Magistrate of the first class, who originally received the complaint, and

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who dismissed it under s. 203 of the Criminal Procedure Code, was not empowered to re-open the case on the mere application of the complainant, and without a further inquiry having been directed by the District Magistrate, the Court of Session, or the High Court, under s. 437 of the Code. The first complaint was made on the 25th May, 1886. In his petition the complainant stated that the accused had given him a severe beating, had then falsely charged him with theft, and had taken him to the police-station. He added that the thanadar had made an inquiry, had obtained no proof to support the charge of theft, and had therefore released him. His evidence was very briefly recorded by the Magistrate on the 2th May. He deposed to the same effect as stated in his petition, and he referred to *lathi* marks as the result of the assault that had been committed upon him. The Magistrate ordered that a "copy of the petition be sent to the police-station, calling for a report on the matter." The Magistrate apparently passed this order because the complainant alleged that the thanadar had already made the inquiry above referred to. There is nothing in the order to show that the Magistrate saw "reason to distrust the truth of the complaint." He did not record any "reasons for distrusting the truth of the complaint," nor did he "direct a local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint." The Magistrate did not comply with the provisions of s. 202 of the Criminal Procedure Code, and he ought not, merely on the report he received, to have dismissed the complaint under s. 203 of the Code.

Sardar Lachman Singh, Magistrate of the first class, referred to a note under s. 437 in Mr. Prinsep's edition of the Criminal Procedure Code as supporting his view. The note is as follows:— "If, however, fresh evidence be forthcoming there would apparently be no objection to the Magistrate who passed the order of discharge re-opening the case." The note is represented to be based on three rulings of High Courts in India.

The Magistrate of the district has not made any allusion to the note and rulings relied upon by his subordinate, but has referred to a note under s. 203 of the same edition, and to a Madras High Court ruling of the 28th March, 1878. The note is to the effect

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that a complaint dismissed under s. 203, Criminal Procedure Code, "cannot be re-heard except on an order made under s. 437." All of the four judgments above referred to under either s. 203 or s. 437 were apparently delivered before the present Criminal Procedure Code came into force. Neither of the Madras rulings is obtainable here, and in all probability neither of the lower Courts has had an opportunity of perusing either of them. Neither of the two judgments appear to be precisely in point. In the present case the complainant was not, on the first occasion, asked if he had any witnesses to call, and beyond his own brief statement no evidence whatever was recorded.

I think that when the Magistrate who had dismissed the original complaint ordered a further inquiry, on receiving the complainant's second petition, he did not act contrary to any provision of the law; and considering the circumstances under which the complaint had been dismissed, a further inquiry was, in my opinion, necessary.

I see no reason for interference. The applicants will work out the unexpired portions of their short sentences, and the record will be returned to the District Court.

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## FULL BENCH.

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*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oulfield,  
Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

**JUGAL (JUDGMENT-DEBTOR) v. DEOKI NANDAN (DECREE-HOLDER).\***

*Ex-proprietary tenant—Trees—Sale in execution of decree—Act XII of 1881  
(N.-W. P. Rent Act), ss. 7, 9.*

*Held* by the Full Bench that an ex-proprietor, who under s. 7, of Act XII of 1881 (N.-W. P. Rent Act) gets occupancy-rights in his sir-land, obtains analogous rights in the trees upon such sir-land.

A purchaser of proprietary rights in zamindari property at a sale in execution of a decree for money held by himself applied in execution of the decree for the attachment and sale of certain trees growing on the judgment-debtor's ex-proprietary holding.

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\* Second Appeal No. 43 of 1886, from an order of M S. Howell, Esq., District Judge of Aligarh, dated the 24th February, 1886, reversing an order of Baba Madho Das, Munsif of Aligarh, dated the 25th September, 1885.