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that one plaintiff had nothing to do with the others and that a collective suit on behalf of all the plaintiffs could not be entertained. He evidently meant that there was a misjoinder of plaintiffs and causes of action. The first issue raised in the Court below had reference to this plea, and it is evident from the judgment of the Subordinate Judge that he understood the plea to be one of misjoinder of plaintiffs and causes of action. The Subordinate Judge, however, overruled that plea and on the merits found in favour of the plaintiffs. The objection as to misjoinder of causes of action has been raised again in the memorandum of appeal to this Court, and we are of opinion that it must prevail. The same question arose in the case of *Salima Bibi* v. *Sheikh Muhammad* (1) and it was decided in that case that the cause of action of an assignee, like the respondent, Muhammad Hasan, was not the same as that of his assignor. This case cannot be distinguished from the ruling referred to above. Applying the ruling laid down in that case, we hold that there was a misjoinder of causes of action in this suit and that the three plaintiffs were not entitled to bring or maintain a joint suit in respect of their separate causes of action.

We allow this appeal with costs here and in the Court below, and we set aside the decree below, and direct the Court below to return the plaint to the plaintiffs for amendment, so that the plaintiffs may elect which of them will proceed with the suit.

Appeal decreed.

REVISIONAL CRIMINAL.

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January 31.

Before Mr. Justice Knox and Mr. Justice Blair.

KESRI (APPLICANT) v. MUHAMMAD BAKHSH (OPPOSITE PARTY).

Criminal Procedure Code, section 200—*Examination of the complainant—Complainant merely called upon to attest complaint in writing.*

It is not a sufficient compliance with the provisions of section 200 of the Code of Criminal Procedure where a complainant, who has presented a written complaint, is merely called upon to attest the complaint on oath, no separate sworn statement of the complainant being recorded by or under the orders of the Magistrate to whom the complaint is presented. *Queen-Empress* v. *Murphy* (2) distinguished.

(1) Supra, p. 181. (2) I. L. R. 9 All., 666.

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THIS was a reference under section 438 of the Code of Civil Procedure made by the Additional Sessions Judge of Moradabad. The facts of the case sufficiently appear from the judgment of the Court.

KNOX and BLAIR, J.J.—This case has been very properly referred to us by the learned Additional Sessions Judge of Moradabad. A complaint was instituted before a Magistrate of the first class. That Magistrate took cognizance of it, and under section 200 of the Code of Criminal Procedure, it was imperative upon him to at once examine the complainant upon oath and also to reduce the substance of that examination to writing. The learned Magistrate did not examine the complainant and did not reduce the substance of the examination or have it reduced to writing. He contented himself with taking the complaint as it was filed in his Court and asking the complainant to swear to it and sign it. He defends this procedure by reference to the precedent of *Queen-Empress* v. *Murphy* (1). That case was of an exceptional character. The complaint was made by an Englishman against an Englishman. The contents of the complaint, which was drawn up in English, had evidently been drawn up with a great deal of care, and not in the way in which complaints are so often prepared for the Courts of Magistrates. With all due respect to the learned Judge who decided that case, we are of opinion that the Legislature does require that every complainant shall, as soon as he has prevailed upon the Magistrate to take cognizance of his complaint, be examined upon oath. The substance of that examination is by law required to be reduced to writing, and it is obvious that that writing must be and was intended to be distinct from the complaint.

The learned Magistrate committed another irregularity. The case before him was what is technically known as a summons case. The procedure that the law requires Magistrates to observe in the trial of summons cases is laid down in Chapter XX of the Code of Criminal Procedure. Presumably the accused appeared and did not admit that he had committed the offence of which he was accused. In such cases the Magistrate is bound to hear the

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

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complainant and take all the evidence that he produces in support of the prosecution. He is then bound to hear the accused and take such evidence as the accused may produce. Until all this has been done he has no power and no jurisdiction to record an order of acquittal. In the present case the Magistrate acquitted the accused, as he was pleased to call his procedure without taking the evidence produced in support of the prosecution. The order was passed without jurisdiction. It was not an order of acquittal, and we set it aside. So far as we can judge of the case at all from the record, which is very meagre, there would appear to have arisen a dispute which might or might not have resulted in a breach of the peace. Seeing that Magistrates are responsible that public peace is not broken, it would have been well if the Magistrate had considered it necessary to send for the accused, gone thoroughly into the evidence of both sides and ascertained whether, apart from the assault, there was or was not danger of a breach of the peace. The learned Magistrate says that his time would have been wasted if he had heard the whole of the evidence. He will find, as his experience extends, that the greatest safeguard against time being wasted is a proper, diligent and thorough examination of the complainant made by the Magistrate himself in an intelligent manner and not in a perfunctory way. A Magistrate by a disinterested inquiry is often able to satisfy himself that the complaint is imaginary or unnecessary, and by dismissing it as he can, and only can on being so satisfied before he calls upon the accused to appear, prevent much needless harrassment and irritation. The order of the Magistrate is set aside.

APPELLATE CIVIL.

1896

February 6.

Before Sir John Edge, Kt., Chief Justice; Mr. Justice Knox and Mr. Justice Blair.

JAGGAR NATH PANDE (OPPOSITE PARTY) *v.* JOKHU TEWARI (APPLICANT).*

Civil Procedure Code, section 214—Pre-emption—Effect of an appeal from a decree for pre-emption on the time limited for paying in the pre-emptive price.

A decree was given in favor of the plaintiff in a suit for pre emption. The plaintiff paid in a portion only of the pre-emptive price within the time limited by

* First Appeal No. 35 of 1895, from a decree of Pandit Rai Indar Narain, Subordinate Judge of Mirzapur, dated the 4th February 1895.