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we should re-introduce the confusion which the Act was designed to remove. If the plaintiff relies upon a grant of probate or letters of administration, he must show that the grant was made to him, and we see no reason why it should be otherwise in the case of a succession certificate. The result is that the plaintiff, in our opinion, was not entitled to maintain this suit.

It was suggested that we might adjourn the case in order that the plaintiff might apply for a certificate. We cannot allow this, as the plaintiff cannot be permitted to convert a suit by him as assignee of Farzand Ali into a suit by him as holder of a certificate authorizing him to collect debts due to Bahadur Khan. The appeal is allowed and the suit is dismissed with costs.

Appeal allowed.

REVISIONAL CRIMINAL.

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November, 23

Before Mr. Justice Tudball.

ANGAN AND OTHERS *v.* RAM PIRBHAN.*

Criminal Procedure Code, sections 203, 437 – *Complaint summarily rejected— Further inquiry.—Notice to person complained against not necessary.*

A notice to a person against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order rejecting the complaint in a proceeding to which he was actually no party.

A complaint made against Angan and others was summarily rejected by a magistrate of the first class without calling upon persons complained against. Subsequently a fresh inquiry into the subject matter of the complaint was ordered by the District Magistrate, again without notice to Angan and others. Angan and others applied to the High Court for revision of this order upon the ground that it could not have been legally passed without notice to them.

Mr. *R. K. Sorabji*, for the applicants :—

It is a well-established principle of criminal law that no order should be passed to the prejudice of any party by a court exercising appellate or revisional powers without giving that party an opportunity of showing cause against the passing of such order. Although section 437 of the Criminal Procedure Code does not expressly provide for the giving of such an opportunity, yet precedents have

*Criminal Revision No. 822 of 1912 from an order of E. M. Nanavatty, District Magistrate of Budaun, dated the 21st of September, 1912.

laid down the rule that it should be given. I rely on the case of *Queen-Empress* v. *Ajudhia* (1) and on the cases cited therein. It is true that those were cases where the accused person was discharged, and not cases where the complaint was dismissed forthwith under section 203, without making the accused person a party, but as regards the advisability or desirability of giving notice to the party affected there is no difference in principle between the two cases.

[TUDBALL, J., referred to *Mir Ahwad Hossein* v. *Mahomed Askari* (2) and *Queen-Empress* v. *Puran* (3)].

Mr. *G. W. Dillon*, for the opposite party, was not called upon.

TUDBALL, J.—One Ram Pirbhan *alias* Ram Parpan filed a complaint in the court of a first class magistrate against the present applicants, preferring a charge of defamation against them. The petitioner's complaint was dated the 21st August, 1912, but was filed in court on the 22nd of August. The Magistrate recorded the complainant's statement on oath and forthwith dismissed the complaint. The complainant at once went to the District Magistrate in revision and the latter ordered a further inquiry. The applicants come to this Court in revision against that order and the main contention is that the order was passed behind their back and without notice to them and is therefore bad in law. In my opinion there is no substance in the contention for the simple reason that there has been no order of discharge whatsoever. They at no time had been called upon to appear and defend. The Magistrate has simply dismissed the complaint without any inquiry whatsoever. Under rulings of this Court it would have been open to the same magistrate to accept a fresh complaint by the complainant on the same facts and to have taken action thereon and to have made an inquiry. To the same effect is the decision of a Full Bench of the Calcutta High Court. In my opinion a notice to a person against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order in a proceeding to which he was actually no party. In the present instance the complaint was dismissed without inquiry and at the very least the complainant was entitled to an inquiry even though only under section 202, Criminal Procedure Code. It was open to the court to make

(1) (1898) I.L.R., 20 All., 339. (2) (1886) I.L.R., 9 All., 85.
(3) (1902) I.L.R., 29 Calc., 726.

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an inquiry under section 202 of the Code or after issue of summons to the accused person. My attention has been called to certain rulings of this Court, e.g. *Queen Empress* v. *Ajudhia* (1), but an examination of these rulings shows that they were all cases in which the accused was tried and discharged and a further inquiry was ordered behind his back and without notice issued to him. The present is not a case in which it was necessary to issue notice to the accused persons before ordering further inquiry. I therefore reject the application. The proceedings which have been stayed will be continued.

Application rejected.

PRIVY COUNCIL.

*P. C. 1912, November, 7, 8. December, 10.

SURAJ NARAIN AND ANOTHER (PLAINTIFFS) v. IQBAL NARAIN AND OTHERS (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh, at Lucknow.]

Hindu law—Joint family—Allegation of separation in suit by some members for separate share—Expression of intention to hold share separately not proved—Right to mesne profits on separation—Exclusion from joint family, allegation of—Non-receipt of share of profits of joint property—Voluntary residence not with joint family—Refusal of allowance as being inadequate.

The appellant, a member of a joint undivided Hindu family, brought a suit in 1905 against the respondents, the other members of the family, alleging a separation by him in 1901, when he had expressed his intention to hold his share separately, and claiming possession of his share, with mesne profits.

Held that what may amount to a separation, or what conduct on the part of some of the members may lead to separation of a joint undivided Hindu family, and convert a joint tenancy into a tenancy in common, must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation: but to have that effect the intention must be unequivocal and clearly expressed. Separation from commensality does not as a necessary consequence effect a division [*Rewun Persad* v. *Radha Beeby* (2)]. A separation in mess and worship may be due to various causes, and yet the family may continue joint in estate.

In this appeal it was held (affirming the decision of the court of the Judicial Commissioner) that on the evidence in, and under the circumstances of, the case and the conduct of the party alleging division of the family there had been no separation in 1901, and the appellant was consequently not entitled to mesne profits on that ground.

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* *Present*:—Lord MACNAGHTEN, Lord MOULTON, Sir JOHN EDGE, and Mr. AMEER ALI.

(1) (1898) I.L.R., 20 All., 339. (2) (1846) 4 Moo. I. A., 137.