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that case laid stress upon was that the liability which the plaintiff had satisfied was a joint liability as between himself and the defendants at the moment when the payment was made. moreover, a liability attaching to a joint tenancy and therefore attaching to property jointly held by the parties to the suit. It was therefore a suit for contribution in the full sense of the word. We hold accordingly that no second appeal lies in this case and we dismiss this petition of appeal accordingly with costs.

WALSH, J.—I entirely agree. One thing is quite clear that it is only suits for contribution of a peculiar and special character which are included in this exemption. If what is ordinarily known as a suit for contribution was intended to be exempted nothing would have been easier than to say so. I think it must be taken that a litigant who wants to bring himself within article 41 must clearly establish that his suit in every respect complies with the very precise definition.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Justice Sir Pramada Charan Banerji.*

EMPEROR v LIAQAT HUSAIN AND OTHERS, \*

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December, 13.

*Criminal Procedure Code, sections 303 and 437—Complaint—Summary dismissal of complaint—Order for further inquiry made without notice to show cause being given to accused.*

*Held* that it is not necessary to the setting aside of an order under section 203 of the Code of Criminal Procedure, where the person against whom the complaint was made has never been called on to appear, that notice to show cause should be given to such person. *Angan v. Ram Pirbhan* (1) and *Hari Dass Sanyal v. Saritulla* (2) followed.

In this case a complaint was made by one Ganga Sahai against Liaqat Husain and others charging them with offences under sections 342, 323 and 454 of the Indian Penal Code. The magistrate before whom the complaint was filed examined the complainant and ordered an inquiry under section 202 of the Code of Criminal Procedure by a magistrate of the third

\* Criminal Revision No. 850 of 1917, from an order of W. F. Kirton, Sessions Judge of Aligarh, dated the 15th of September, 1917.

(1) (1912) I. L. R., 35 All., 78. (2) (1887) I. L. R., 15 Cal., 608.

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class. A report was made by that magistrate, and as a result of that report the complaint was dismissed under section 203 of the Code without issuing any notice to the persons against whom the complaint was made. Upon application made to the Sessions Judge, he set aside the order of dismissal and directed that the case should be tried by another magistrate. Before making his order the Sessions Judge did not issue notice to the accused persons to show cause why the order of dismissal should not be set aside. Upon the ground of such omission the accused persons applied in revision to the High Court to have the Sessions Judge's order set aside.

*Mr. C. Dillon and Mr. C. Ross Alston*, for the applicants.

*Mr. G. P. Boys, Mr. G. W. Dillon and Mr. J. M. Banerji*, for the opposite party.

**BANERJI, J.**—The applicants in this case were charged under sections 342, 323 and 454 of the Indian Penal Code by one Ganga Sahai who filed a petition of complaint in the court of a magistrate of the first class. The magistrate apparently after examining the complainant ordered an inquiry under section 202 of the Criminal Procedure Code by a magistrate of the third class. A report was made by that magistrate and as a result of that report the complaint was dismissed under section 203 without issuing any notice to the persons against whom the complaint was made. Upon application made to the learned Sessions Judge, he set aside the order of dismissal and directed that the case should be tried by another magistrate. Before making his order he did not issue notice to the accused persons to show cause why the order of dismissal should not be set aside. On the strength of this omission the present application for revision has been made and the only contention put forward on behalf of the applicants is that the court ought to have issued notice to them, and for not having done so its order ought to be set aside. It is conceded that the order of the learned Sessions Judge is not illegal by reason of his omission to issue notice, but it is urged that as the order was to the prejudice of the applicants, notice ought to have been issued. No doubt it has been held in this Court that when an order is made to the prejudice of an accused person, it is desirable that he should be afforded an opportunity

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of showing cause against the making of the order, but this rule has been held to have certain limitations. Where the accused person was not called upon to appear in the court below in the first instance and where an order was only made under section 203, the issue of a notice was unnecessary. This was held by Mr. Justice TUDBALL in *Angan v. Ram Pirbhan* (1). The learned Judge observed:—"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," and he held that the cases in which a notice was necessary before an order could be made to the prejudice of an accused person were cases in which after an accused person was tried and discharged a further inquiry was ordered behind his back and without notice to him. A similar view was held in the Calcutta High Court by certain of the Judges who decided the case of *Hari Dass Sanyal v. Scaritulla* (2). In the course of his judgement Mr. Justice PRINSEP observed:—"A notice certainly would not be necessary before an order to set aside an order of dismissal under section 203 could be passed, since that order was not passed with a notice to the accused person or in his presence and therefore is probably unknown to him." The learned CHIEF JUSTICE made remarks to the same effect at page 617. In view of these authorities, from which I see no reason to differ, I do not think that the application is sustainable and that notice was necessary. I accordingly reject the application and discharge the order staying proceedings.

*Application rejected.*

*Before Justice Sir George Knox.*

EMPEROR v. LALJI AND OTHERS.\*

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December, 14.

*Criminal Procedure Code, sections 107, 125, 438—Security to keep the peace—Revision—Jurisdiction of Sessions Judge and High Court.*

A Magistrate of the first class ordered certain persons to give security for keeping the peace. The persons to be bound over applied to the Sessions Judge to revise the order. The Sessions Judge was of opinion that the applicants should not have been bound over and accordingly referred the case to the High

\* Criminal Reference, No. 1014 of 1917.

(1) (1912) I. L. R., 35 All., 78. (2) (1887) I. L. R., 15 Calc., 608.