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superior title by reliance on any period of limitation. Resting as he does on the interest of mortgagee he is liable to be redeemed. The period of redemption began, it is true, in the lifetime of Thomas Skinner, and article 140 has no application but the statutory period runs for 60 years and had not expired when the plaintiff filed the present suit.

Their Lordships therefore are of opinion that this appeal should be allowed with costs here and below and the order of the Subordinate Judge restored, and that the case should be remitted to the High Court to make such additions to the decree as may seem just to the plaintiff in view of the fact that possession has been withheld from him and his testatrix since the date fixed in the preliminary decree. The right to possession will be governed by the preliminary decree with which, as their Lordships are informed, the plaintiff has complied. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *Chapman-Walker and Shephard*.

Solicitors for respondent: *Douglas Grant and Dold*.

## MISCELLANEOUS CRIMINAL

Before Mr. Justice Dalal.

EMPEROR v. BHAIRON PRASAD.\*

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July, 24.

*Criminal Procedure Code, sections 190, 197, 202, 561A—Cognizance—Jurisdiction of Magistrate to take cognizance—Search and seizure of property by District Magistrate on complaint of an offence requiring sanction under section 197—High Court's power of interference—Act (Local) No. II of 1916 (U. P. Municipalities Act), section 82(1)—Public servant.*

Where a District Magistrate, on receipt of a complaint that a member of a Municipal Board had by contravening section 82(1) of the U. P. Municipalities Act committed an

\*Criminal Miscellaneous No. 178 of 1928.

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offence under section 168 of the Indian Penal Code, and in the absence of sanction of the Local Government required by section 197 of the Code of Criminal Procedure, took cognizance and started an inquiry and under his orders a Subordinate Magistrate searched the house of the accused and seized his account books: *Held*, that the District Magistrate had no jurisdiction to take cognizance as he had done and that the High Court had inherent power to interfere, under section 561A of the Code of Criminal Procedure, and even independently of the Code.

THE facts of the case are fully set forth in the judgement of the Court.

• *Mumshi Kumuda Prasad*, for the applicant.

The Government Advocate (*Pandit Uma Shanker Bajpai*), for the Crown.

DALAL, J. :—This Court is much handicapped by neither the Deputy Magistrate Mr. Wali Bakht nor the District Magistrate of Agra quoting (except in one instance in one report) a single section of the Code of Criminal Procedure, which is the only Code laying down rules for the guidance of Magistrates in the procedure that they should follow. It appears that a complaint, possibly anonymous, was made to the District Magistrate against Babu Bhairon Prasad to the effect that he being a member of the Municipal Board of Agra acquired a share in a contract with the Board. Such conduct on the part of a member of a Municipal Board is prohibited by the provisions of section 82(1) of the U. P. Municipalities Act of 1916 and is made punishable as if the member who acquired an interest in the contract had committed an offence under section 168 of the Indian Penal Code. It appears that (though it cannot be said for certain as no specific details are given by either Magistrate, and the learned Government Advocate was not in possession of all the details), the District Magistrate immediately took cognizance and started an inquiry, which inquiry could only be under section 202

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of the Code of Criminal Procedure. The account-books of B. Bhairon Prasad were taken possession of after a search of his house and examined under the order of the District Magistrate to discover whether the complaint as to his contract with the Municipality contrary to law was correct or not. It appears further from the report of Mr. Wali Bakht that the examination has revealed further alleged offences committed by B. Bhairon Prasad.

In my opinion the District Magistrate had no jurisdiction whatsoever to take cognizance as he has done. The learned Government Advocate was inclined to think that the District Magistrate was acting in his capacity as executive officer. An "executive officer" is nowhere defined so far as I know, and the argument possibly means that Mr. Nethersole, being head of the Agra district, can do what he pleases within the limits of that district without reference to the Code of Criminal Procedure. The District Magistrate himself, however, does not lay claim to any such power and has specifically stated in his report that Mr. Bakht undertook the inquiry in consequence of orders passed by Mr. Nethersole as District Magistrate for inquiry into a specific complaint of misconduct as a Municipal member on the part of Lala Bhairon Prasad in connection with certain gram contracts. Obviously, therefore, Mr. Nethersole claims to have taken action under sections 190 and 202 of the Code of Criminal Procedure. This disposes of the question whether the High Court has jurisdiction or not to interfere in this case. In whatever capacity any officer of the Crown in certain actions taken by him orders search of the house of a public servant or of a subject of the Crown, I think that this Court would have jurisdiction independently of the Code. "Nothing in the Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent

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abuse of the process of any court, or otherwise to secure the ends of justice" (section 561A of the Code of Criminal Procedure). I have no doubt whatsoever as to the authority or ability of this Court to interfere in the present matter.

Section 190 of the Code does give a District Magistrate authority to take cognizance of an offence upon information received from any person or upon his own knowledge or suspicion that such offence has been committed. Even if the knowledge or suspicion was based on an anonymous letter, that will be sufficient to entitle him to take cognizance, provided there was no bar to the taking of such cognizance. In the present case, however, cognizance is barred under the provisions of section 197 (1) of the Code of Criminal Procedure. When any public servant who is not removable from his office save by or with the sanction of the Local Government or some higher authority is accused of any offence alleged to have been committed by him while acting, or purporting to act, in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Local Government. Not only the sanction of the Local Government is necessary, but by sub-section (2) of section 197 the Local Government has to determine the person by whom and the manner in which the prosecution is to be conducted, and may specify the court before which the trial is to be held. Until such sanction is received no Magistrate can take cognizance under section 190 of the Code of Criminal Procedure. So far as I understand the two reports of the Magistrates, no such sanction has so far been received. Under the circumstances the action of the District Magistrate, and under his orders of the Deputy Magistrate, has been entirely without jurisdiction. If we go further and inquire as to how proceedings may be taken

under section 202, we find the same bar. Any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance may postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct an inquiry to be made by any Magistrate subordinate to him. Here also the complaint has to be of an offence of which the Magistrate has authority to take cognizance. I have already pointed out that the District Magistrate in this particular case was barred under the provisions of section 197 from taking cognizance, and so he had no authority to direct inquiry by a Magistrate subordinate to him. When the law has provided safeguards, there must be some reason for providing them, and a Magistrate cannot be permitted to behave as if no safeguards had been provided by law.

Reference was made by the learned Government Advocate to the provisions of section 523 of the Code of Criminal Procedure. Those provisions have no application whatsoever to the present case.

In the result I direct both the District Magistrate and the Magistrate in charge of the inquiry to stay all proceedings and to return whatever property may have been obtained on search of the house of Babu Bhairon Prasad.

A copy of this order shall be sent to the District Magistrate.

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