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however, no analogy to the present case; and, though it may be that, if the minors had been suing in this case to recover possession of their shares of the property, they might have been compelled, on the principle that he who seeks equity must do equity, to refund the consideration-money of the mortgage to the extent to which they had benefited by it, and though it may be anomalous that they should be in a better position when sued instead of suing, yet this does seem to be the effect of the cases above cited for the appellants, especially of the decision in *Nizamuddin Shah v. Ananda Prasad* (1) which no authority relied on by the respondent's pleader in any way controverts. In Mr. Justice Ameer Ali's work on Mahomedan Law, Vol. II, it is laid down that "the mother is not a natural guardian. She is entitled to the custody [478] of the persons of her minor children, but she has no right to the guardianship of their property. If she deals with their estate without being specially authorized by a Judge or by the father, her act should be treated as acts of a *fazuli*. If they are to the manifest advantage of the children, they should be upheld; if not, they should be set aside." To this it may be replied that, in the first place, it does not appear to be for the manifest advantage of the minors that their property should have been mortgaged for a sum carrying interest at the rate of 18 per cent. per annum, and, in the second place, that this passage does not seem to us to be of sufficient authority to justify our disregarding the judicial decisions to the contrary effect above referred to.

We accordingly decree this appeal with costs, subject, of course, to the payment of the *ad valorem* Court-fee mentioned in the commencement of this judgment. If that fee is not paid within seven days from this date, the appeal will stand dismissed with costs.

This decision does not, of course, affect the decree which has been given against the defendant No. 1. It sets aside the decree of the Lower Appellate Court only so far as it makes the defendant No. 1 and the other defendants personally liable, and so far as it directs that the defendants Nos. 2 and 3 do make restitution to the plaintiffs, and that their shares in the property be sold.

Appeal allowed.

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[479] CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

KINA KARMAKAR v. PREO NATH DUTT. [4th February, 1901.]

Complaint—Dismissal of complaint as false, vexatious and malicious—False charge with intent to injure—Prosecution—Compensation—Criminal Procedure Code (Act V of 1898) s. 250—Penal Code (Act XLV of 1860) s. 211.

Where in a criminal trial it is found by the Magistrate that, owing to the previous relations between the principals of the complainant and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceedings:

Held, that it was a case in which proceedings under s. 211 of the Penal Code should have been instituted against the complainant, and that the Magistrate,

* Criminal Revision No. 1069 of 1901, made against the order passed by Babu Jadu Nath Sarkar, Deputy Magistrate of Rangpur, dated the 10th of October 1901.

(1) (1896) I. L. R. 18 All. 373.

in passing an order under s. 250 of the Criminal Procedure Code directing the complainant to pay compensation to the accused, did not exercise a proper discretion.

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OWING to a dispute between the zemindars, the Tushbander estate was placed in charge of a Receiver appointed by the Collector. The contending parties were Sarojinee Dabya on the one side and Shoshi Bhusan Mookerjee and others on the other. The party of Sarojinee Dabya objected to the appointment of the Receiver, and after his appointment endeavoured to hinder him in carrying out his duties by inducing the tenants to refuse to pay him rent and by instigating them to bring false cases against the Receiver and his servants. In consequence of these instigations several cases, both civil and criminal, were brought against the Receiver and his subordinates, all of which were decided in favour of the Receiver. The petitioner Kina Karmakar, a tenant of the estate, one of Sarojinee's party, charged the accused, who was a tahsildar under the Receiver and two *peadas* with having forcibly dragged him, the petitioner, to the Receiver's kutcherry and confined him there.

The accused was tried by the Deputy Magistrate of Rangpur under s. 342 of the Penal Code, and was on the 10th October 1901 acquitted and compensation of Rs. 25 was awarded to the accused.

[480] The Deputy Magistrate in his judgment stated as follows:—

"The evidence therefore is not at all satisfactory to support the charge. On the contrary, it shows that it is a false and vexatious case. Such cases of which there have already been enough ought not to recur, and it is necessary to check any attempt at it in the future. As I found the complaint to be false and vexatious, I direct the complainant to show cause why he should not pay compensation of Rs. 25 to the accused. Complainant failed to show any cause. The accused is acquitted under s. 258 of the Criminal Procedure Code, and the complainant is directed to pay to the accused a compensation of Rs. 25 under s. 250 of the Criminal Procedure Code."

Babu *Dwarkanath Mitter* for the petitioner.

PRINSEP AND STEPHEN, JJ. In this case the Magistrate has dismissed the complaint; and finding it to be false and vexatious he has passed an order under s. 250 of the Code of Criminal Procedure, giving compensation to the accused. In his judgment the Magistrate clearly indicates that in his opinion from the previous relations between the principals of the parties concerned, the complaint made was both false and malicious and made with some deliberation. It seems to us therefore that this was essentially a case coming within s. 211 of the Penal Code, inasmuch as the Magistrate has found that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceeding or charge. We are, therefore, of opinion that, in passing the order for compensation, the Magistrate did not exercise a proper discretion. We accordingly set aside that order. The Magistrate is at liberty, if he is so advised, to institute proceedings under s. 211 of the Penal Code. The money, is paid, will be refunded.

Rule made absolute.