

For these reasons this application must be refused, but it must be understood that it does not follow because the owners of the injured ship have not an action *in rem* in the Admiralty Court that they may not have their remedy against the persons who may be responsible for the injury caused by the fire in an ordinary action founded on negligence.

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[Mr. *Edwards*. Your Lordship has dealt with this matter as an admiralty action.]

29 C. 402.

HARINGTON, J. Yes.

[Mr. *Edwards*. It may be that I will have to apply for the admission of a plaint and for an order to arrest the vessel.]

HARINGTON, J. As to that I do not express any opinion.

Application refused.

Attorneys for the applicants: Messrs. *Orr, Robertson and Burton.*

29 C. 409.

CRIMINAL REVISION.

[409] *Before Mr. Justice Prinsep and Mr. Justice Stephen.*

BISHU SHAIK v. SABER MOLLAH.* [5th February, 1902.]

Summary trial—Complaint disclosing facts constituting offence of a graver nature—Process, issue of—Trial for minor offences—Magistrate, jurisdiction of—Illegality—Criminal Procedure Code (Act V of 1898) s. 260.

Where the complaint stated that the accused with a large number of other persons armed with swords and other deadly weapons came upon the complainant's land, threatened him, and, in spite of his remonstrances, cut his paddy, and the Magistrate in examining the complainant recorded merely the fact the complainant stated that his paddy had been cut by the accused, and thereupon tried the accused summarily and convicted them under ss. 143 and 379 of the Penal Code. *Held*, that as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and the examination of the complainant, which had not been properly recorded, did not show that such offence had not been committed, the Magistrate had acted without jurisdiction, and it was ordered that he should hold a regular trial.

THE accused Bishu Shaik obtained a Rule calling upon the District Magistrate to show cause why his conviction and sentence should not be set aside and a regular trial ordered on the ground that the offence disclosed in the petition of complaint was not triable summarily.

In this case the petition of complaint of the complainant Saber Mollah stated that the accused persons, Bishu Shaik and another, with some ninety or a hundred men armed with swords and other deadly weapons came upon his land, threatened him, and, in spite of his remonstrances, cut his paddy. In examining the complainant the Deputy Magistrate of Magurah recorded merely the fact that the complainant had stated that his paddy had been cut by the accused persons. He then issued processes for the attendance of the accused to answer charges of offences under ss. 143 and 379 of the Penal Code. A summary trial was thereupon held and the accused were convicted.

Mr. *P. M. Guha* for the petitioner.

PRINSEP and STEPHEN, JJ. The Rule must be made absolute. In this case the petition of complaint stated that the accused with [410]

* Criminal Revision No. 904 of 1901, made against the order passed by R. Banerjee, Esq., Deputy Magistrate of Magurah, dated the 20th of September 1901.

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others to the number of some 90 or 100 armed with swords and other deadly weapons came upon the complainant's land and, in spite of his remonstrances, threatened him and cut his paddy.

The Magistrate examining the complainant recorded merely the fact that the complainant stated that his paddy had been cut by the persons accused by him, and he accordingly issued processes for the attendance of the accused to answer charges of offences under ss. 143 and 379 of the Indian Penal Code, both of which offences are triable summarily. A summary trial was thereupon held and the accused has been convicted.

We have no doubt that on the facts before the Magistrate the offences complained of were not triable summarily. The petition of complaint discloses the commission of a much more serious offence than the offences for which the Magistrate has held a summary trial. The examination of the complainant, which has not been properly recorded, does not show that the offence so complained of was not committed. We must therefore hold that the Magistrate acted without jurisdiction. The conviction and sentence are set aside. The Magistrate will proceed to hold a regular trial.

Rule made absolute.

29 C. 410.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

KULDIP SAHAI v. BUDHAN MAHTON.* [3rd December, 1901.]

Complaint to Police—Report by Police—Case ordered to be entered as true by Magistrate—Judicial enquiry—Right of complainant to be examined and to have his case tried—Criminal Procedure Code (Act V of 1898) ss. 173, 200 and 202.

The complainant lodged information with the police charging certain persons with assault and with forcibly carrying off grain. The complaint was investigated and a report made to the Sub-Divisional Officer, who ordered the case to be entered as true, recording the offence under s. 147 of the Penal Code. He, however, declined to order a judicial inquiry because [411] in his opinion there was no chance of a conviction. The District Magistrate subsequently on an application by the complainant ordered a judicial inquiry by a Subordinate Magistrate, but on receipt of his report he declined to interfere in the matter.

Held that the complainant was entitled to be examined under s. 200 of the Criminal Procedure Code; and as his complaint had already been recorded as true, he was entitled to a process against the accused and for the attendance of his witnesses.

On the 14th May 1901 the petitioner, Kuldip Sahai, lodged information at thana Mokamah, charging certain persons with assaulting one Choa Mahto and with forcibly carrying off grain of considerable value.

A police investigation was held and a report made to the Sub-Divisional Magistrate of Barh that the case had been proved. That officer directed the case to be entered as true and recorded the offence under s. 147 of the Penal Code. The accused persons not having been sent up for trial, the petitioner applied to the Sub-Divisional Magistrate, who on the 13th June declined to order a judicial enquiry, because in his opinion there was no chance of a conviction.

The petitioner then applied to the District Magistrate of Patna, who on the 22nd June ordered a judicial enquiry to be held by a Subordinate

* Criminal Revision No. 1050 of 1901, made against the order passed by J. G. Cumming, Esq., District Magistrate of Patna, dated 22nd June 1901.