

We think that the Magistrate committed an error in taking this course. It has always been held by this Court that the proper officer to issue the warrant is the officer who has heard the complaint made, because it is he who can best exercise a discretion with regard to the *primâ facie* merits of the complaint. When that officer had issued the warrants the case ought to go on in due course according to the procedure prescribed by the Code, unless something occurs to show that the Magistrate who had issued the warrant had from some cause or another made a wrong exercise of his discretion, which has certainly not been the case here. It appears to me that when the Magistrate took the case from the Joint Magistrate's file, he ought to have proceeded with it as from the stage at which he found it; and I think he committed a material error by not doing so. In my opinion therefore the order of the Magistrate which suspended the warrants and dismissed the complaint should be set aside.

I do not think it necessary that we should transfer the case to any other Magistrate for complete investigation and decision, because I feel confident that the Magistrate whose order is now in question, when he is made acquainted with the opinion of this Court, will duly carry out the investigation which the complaint initiated, and will come to a fair and judicious determination of the matter.

Before Mr. Justice Macpherson.

IN RE EDULJEE RUTTONJEE.

Act VIII of 1859, ss. 280, 281 — Plaintiff.

S. 281 of Act VIII of 1859 does not apply to a plaintiff in custody for the cost of a suit.

THIS was an application under s. 281 of Act VIII of 1859 for the release of a prisoner confined in the Presidency Jail, who was in custody at the suit of the defendant for the costs of a suit in which he had been unsuccessful. The terms of s. 280 had been complied with by the prisoner.

Mr. *Kennedy*, in support of the application, contended, that s. 281 applied to this case; that the words of the section applied, as laid down by s. 280, to "any person in confinement under a decree;" and therefore would apply to a plaintiff-debtor, as well as a defendant-debtor.

Mr. *Woodroffe*, *contra*, referred to a decision by Levinge, J., in *In the matter of Beenarussee Dossee* (1).

Mr. *Kennedy*, in reply.

MACPHERSON, J.—I shall follow the decision of Levinge, J., that s. 281 does not apply to such case as this. The application is dismissed with costs.

(1) Cor. Rep., 123.

1873

IN THE  
MATTER OF  
THE PETITION  
OF RAGHOO  
PAMRAH.

1873

March. 4.