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R. C. No. 3
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that the legislature meant the words "lease" or "landlord and tenant" to be applied in a more restricted sense than their ordinary legal meaning. Subject to the qualification expressed in the exemption, the word "lease" must have the same meaning as it has in Article 40. If the relation of landlord and tenant had not been created by the written instrument, it would not have been a lease. But, creating that relation, as we think it did, it is a lease within the meaning of the exemption, and therefore not liable to a stamp under Article 40. For these reasons we answer the questions submitted in the negative.

Appellate Jurisdiction (a)

Criminal Petition No. 121 of 1868.

RANGASAWMI GOUNDEN.....*Petitioner.*

SABAPATHY GOUNDEN and 5 others...*Counter-Petitioners.*

A Magistrate is bound at least to examine a complainant before he can exercise the discretionary power to issue process or dismiss the complaint which is given to him by Section 67 of the Code of Criminal Procedure.

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THIS was an application under Section 404 of the Criminal Procedure Code praying the High Court to call for the proceedings in the case referred to in the order of the Deputy Magistrate of Namkul division, Salem district, dated 23rd January 1868, and to direct that the complaint of the petitioner may be inquired into and disposed of according to law.

The petitioner stated, in a verified petition, that his office, which adjoined his house, was entered on the night of the 28th December 1867, and property of the value of Rupees 54,000, consisting of jewels, bonds, securities, and money, taken away. Each of the doors of the office had two padlocks owing to disputes which then existed between the petitioner and his three undivided brothers regarding the family property, and all the locks were broken in effecting an entrance. On the 29th of December a report of the occurrence was made to the Police Inspector of Trichengode, distant from petitioner's house about fifteen miles,

(a) Present: Scotland, C. J. and Ellis, J.

No report was made to the Village Munsif, because he was one of six persons charged with the offence by the petitioner. On the 31st December the Inspector of Police arrived at the petitioner's house and searched the house of one of the persons charged, and some property was found, which the petitioner identified as part of the stolen property, but only one house was searched. On the 1st January 1868 the Head Constable, who remained in petitioner's village after the Inspector had left, applied to the Deputy Collector and the Subordinate Magistrate for warrants for the arrest of the persons charged and to search their houses. No warrants were given. On the 4th of January the petitioner made a complaint in writing to the Deputy Collector as a Magistrate, and the Deputy Collector, on the 7th of January, referred the inquiry to the Subordinate Magistrate of Trichengode. The Police Inspector, in his charge sheet, dated the 8th of January, expressed his opinion that the charge was not well founded. On the 9th of January the petitioner complained in writing to the Deputy Collector of the manner in which the Inspector of Police had dealt with the case. On the 13th of January the Deputy Collector issued notices to the complainant and the persons accused requiring their attendance before him, and such attendance was given on the 15th of January. On the 15th of January neither the complainant nor any of his witnesses was questioned or examined by the Deputy Collector, although they waited in his Office the whole day. The Deputy Collector made no inquiry of any sort in the presence of the complainant. The complaint was dismissed by the Deputy Collector on the 15th of January. On the 16th of January the petitioner applied to the Deputy Collector for a copy of the sentence or order. On the 23rd January the Deputy Collector made an endorsement upon the petitioner's application stating that he had orally examined some persons and found the case unworthy of belief. Three petitions were presented by the petitioner to the Session Court of Salem praying for the interference of that Court, or that the Session Judge would submit the case to the High Court. The applications were refused.

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Snell, for the petitioner.

Gould, for the counter-petitioner.

The Court delivered the following

JUDGMENT:—As this case is now presented to the Court, we are of opinion that the Deputy Magistrate has dealt with it in an irregular manner.

The Inspector of Police having recorded, as the result of the legal inquiry which he had made, that the charge was not in his opinion well founded, the complainant and now petitioner presented a written complaint of the offence to the Deputy Magistrate in order to his proceeding to require the attendance of the accused persons and hear the case. This took place on the 4th January, and on the 7th the Deputy Magistrate appears to have referred the complaint for inquiry before a Subordinate Magistrate (whether because of the opinion recorded in the “referred charge sheet” is not clear), and on the 9th January the complainant was given notice to attend before the Subordinate Magistrate. But further proceeding in the matter was interrupted by the Deputy Magistrate’s issuing, on the 13th January, notices requiring the attendance before him on the 15th of the complainant, and also it seems of his witnesses and the accused, and so in effect withdrawing the case from the Subordinate Magistrate. The complainant and his witnesses accordingly attended and remained in attendance all day. But the Deputy Magistrate, without examining either of them, dismissed the complaint, recording that on the “oral examination of some persons” he had found the case unworthy of belief, and that he had accepted the report of the Police.

We are of opinion that the Deputy Magistrate, on the presentation of the complaint, ought to have complied with Section 66 of the Code of Criminal Procedure, or allowed the Subordinate Magistrate to do so, and that until he had at least examined the complainant, he was not in a position to exercise the discretionary power to issue process or dismiss the complaint given by Section 67. On the report of the Police being submitted, the Magistrate might make any inquiry

and order he thought proper ; but the Inspector's opinion therein expressed did not affect the complainant's right to make his complaint before the Deputy Magistrate, nor, we think, warrant its being dealt with otherwise than it would have been if there had been no such report. We have no reason to believe that the case is one in which a summons or warrant should have been issued. Probably it is not ; but there has been a material miscarriage in procedure which the petitioner is entitled to have set right. There must be an order setting aside the Magistrate's proceeding and directing him to take the examination of the complainant on his attending for that purpose, and thereupon to proceed, or to dismiss the complaint, as he is empowered to do, by Section 67 of the Code of Criminal Procedure.

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Appellate Jurisdiction (a)

Special Appeal No. 206 of 1868.

V. SINGAMMA and another... ..*Special Appellants.*

VINJAMURI VENKATACHARLU,
natural father and guardian
of SRINIVASA CHARLU *alias* } *Special Respondent.*
RAMANUJA CHARLU,..... }

In order to establish a valid adoption in a Brahmin family, proof of the performance of the datta homam is not essential.

The giving and receiving a boy who is capable of being adopted is sufficient to constitute a valid adoption according to Hindu Law.

THIS was a Special Appeal against the decree of G. D. Leman, the Acting Civil Judge of Guntoor, in Regular Appeal No. 86 of 1865, confirming the decree of the Court of the District Munsif of Bapatla in Original Suit No. 736 of 1864.

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Parthasarathy Aiyangar, for *Rama Row*, for the special appellants, the 1st and 2nd defendants.

The facts sufficiently appear from the following

JUDGMENT:—This was a suit to recover certain inam lands which had been alienated by the 1st defendant to the 2nd and 3rd defendants. The plaintiff sued as the

(a) Present : Bittleston and Ellis, JJ.