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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 in 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.

D. S. *Rule made absolute.*

Before Mr. Justice Prinsep and Mr. Justice Stephen.

1901
Dec. 3.

KULDIP SAHAI
v.
BUDHAN MAHTON.*

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 Subdivisional Officer, who ordered the case to be entered as true, recording the offence under s. 147 of the Penal Code. He, however, declined

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

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to order a judicial inquiry because 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 Subdivisional 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 Subdivisional 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 Magistrate. On receipt of his report the District Magistrate passed an order on the 22nd June 1901 stating that it was hopeless to call for A Form, and that the Subdivisional Magistrate had already passed final orders in the case, namely, "enter true."

Mr. Caspersz and *Moulvie Murruddin Ahmed* for the petitioner.

PRINSEP and STEPHEN JJ. In this case there appears to have been a police investigation and a report made, so far as we can learn, to the effect that the case had been proved and the Subdivisional Magistrate thereupon directed the case to be entered as true, recording the offence under s. 147 of the Indi Penal Code, but he declined to order a judicial inquiry, be in his opinion there was no chance of a conviction and i not serve any useful purpose. This order was passe standing a petition made by the complainant to the S Magistrate. The complainant then petitioned

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Magistrate, and on this a judicial inquiry was ordered to be held by the Subordinate Magistrate. On receipt of the report of the Subordinate Magistrate, the District Magistrate recorded that in his opinion it was hopeless to call for an A Form, that is, to consider the evidence tendered by the complainant, the Subdivisional Magistrate had already passed final orders in the case, namely, "enter true." It seems to us that the complainant has not had what he is entitled to ask for—a trial before the Magistrate. He has had an informal inquiry; and although his complaint has been recorded as true, the District Magistrate has never examined him or heard what he had to say, and has never given him an opportunity of tendering the evidence of his witnesses. We think, therefore, that the complainant is entitled to be examined under s. 200 of the Code of Criminal Procedure; and as his complaint has already been recorded as true, he is entitled to a process against the accused and for the attendance of his witnesses.

D. S.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

1902
Jan. 22.

ABDUL GHANI
v.
EMPEROR.*

Magistrate—Conviction—Offence exclusively triable by Court of Session—Accused, discharge of, by Sessions Judge on appeal—Retrial, no order for—Retrial and commitment of accused—Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 215, 403, 423 and 530—Indian Post Office Act (VI of 1898) s. 52.

Where an accused was convicted by a Magistrate of an offence exclusively triable by a Court of Session, and on appeal the Sessions Judge, without ordering further proceedings to be taken, set aside the conviction and discharged the accused on the ground that the Magistrate had no jurisdiction to hold the trial and fresh proceedings in respect of the same offence were taken by another Magistrate against the accused, who was committed for trial to the Court of

* Revision No. 731 of 1901, made against the orders passed by [illegible] Esq., Assistant Commissioner, Assam Valley District, dated the 23rd