

trate, in the exercise of his judicial discretion, should exempt from stamp duty—a discretion he can exercise under the provisions of the exemption clause of Art. 10 of Sch. B of the Stamp Act (substituted, under Act XXVI. of 1867, for the former Sch. B of the Stamp Act).

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“The short way of looking at the case appears to be, that the ‘*yádi*’ was a complaint by the Civil Court, and though not sealed with the official seal of the Munsif, yet a complaint of such court notwithstanding, for there is nothing in the Criminal Procedure Code by which such complaint is required to be sealed. If the Magistrate was, therefore, unable to take judicial notice of the Munsif’s signature (as he was unable), he should have required proof of it. It might have been better if the ‘*yádi*’ had been sealed with his official seal.”

PER CURIAM (NEWTON and TUCKER, JJ.): We are of opinion that the Magistrate was in error in requiring the Munsif to prefer a complaint on stamped paper. Under Sec. 168 of the Code of Criminal Procedure, the sanction of the Civil Court was all that was necessary, and, under Sec. 171, on the Munsif sending the case to the Magistrate, he was required to proceed thereupon according to law.

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Dec. 17.

Recognisance Bond—Security to keep the Peace—Legal Evidence—Crim. Proc. Code, Secs. 282, 288, and 307

Order of District Magistrate, requiring certain persons to enter into recognisance and find security to keep the peace, reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by Sec. 307 of the Crim. Proc. Code.

CASE referred, for the orders of the High Court, by N. M. W. Daniell, Acting Session Judge of Súrat, under Sec. 434 of the Code of Criminal Procedure.

The facts of the case sufficiently appear from the following extracts from the judgment of the Session Judge:—

“The facts, as stated before this Court, are that Dalpat-rám was accused, before the Subordinate Magistrate, by Dulbá Devlá and Devlá Díál, of committing assault.

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“The Subordinate Magistrate dismissed the complaint, no evidence being adduced; but he considered that a breach of the peace was likely to occur, and, therefore, sent up the case to the Magistrate of the District (Mr. Mulock, Magistrate F. P. in charge) with a report recommending that recognisance and security should be taken from the complainants (Dulbá Devlá and Devlá Diál). The District Magistrate, on the proceedings submitted by the Subordinate Magistrate on the oral examination (*rúbrú bolávi tapás karlá*) of the complainants and the other party, DalpatráM, required both DalpatráM and Dulbá Devlá to enter into recognisance and find security. He demanded nothing from Devlá Diál.

“It is now argued that the Magistrate’s proceedings were irregular, and that his order must be reversed.

“The recognisances and security must have been taken under Sec. 288 of the Criminal Procedure Code.

“No section is quoted by the Magistrate; but, as there has been no conviction, Sec. 280 was not applicable.

“On the first point raised by the pleader, I consider that the papers before the Magistrate, and the investigation made by him, are sufficient information, under Sec. 282, against DalpatráM, although the Subordinate Magistrate did not send up the case with the object of bail being required from him; and that the Magistrate of the District could at once proceed against him, under Sec. 288.

“On the second point, namely, the proceedings of the Magistrate under that section, I consider that the proceedings have been irregularly conducted, and that the order of the Magistrate of the District should be reversed.

“In a recent case adjudicated on by the High Court of Calcutta, *Nursingh Narain, prisoner (a)*, the proper course to be followed by the Magistrate is laid down. It is ruled that there must be a judicial adjudication under Sec. 288, and that it must be based on legal evidence and be duly recorded.

“There is no record in this case of a judicial investigation beyond the words ‘*rúbrí bolávi tapás kartá.*’ No evidence before the District Magistrate is recorded, nor have the provisions of Sec. 429 of the Criminal Procedure Code been complied with.”

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PER CURIAM (NEWTON and TUCKER, JJ.) :—The Court reverses the order of the Magistrate, as it would appear to have been made without any legal evidence having been taken and recorded, as required by Sec. 307 of the Criminal Procedure Code. The Magistrate should be referred to the judgment of the Calcutta High Court (in which the Court concurs) in the case of *Nursingh Narain*.