

1871.  
PREMSHAN-  
KAR RAGHU-  
NATHJI  
v.  
GOVERNMENT  
OF BOMBAY.

animated the Government in framing the Elphinstone Code of 1827. The merits or demerits of this policy we do not intend to discuss, but we must note the fact as throwing light on the probable intentions of the Legislature in passing Bombay Act VII. of 1863. Thus viewing the subject, we do not think it improbable that the Government intended to withdraw the whole class of cases to which our attention has now been directed from the cognisance of the tribunals to which it was content to leave the adjudication of its subjects' mutual rights and duties where its own interests were not concerned. Neither the general purpose of the Act, therefore, nor the circumstances under which it was passed, seem to enable us to give to the words we have had to construe any other than their literal interpretation.

We must, therefore, confirm the decree of the District Judge, but, looking to all the circumstances, without costs.

*Decree confirmed.*

Dec. 8.

*Regular Appeal No. 36 of 1871.*

BINDA'CHARI ..... *Appellant.*  
I. DRACUP, Magistrate F. P., Dhárwar... *Respondent.*

*Preliminary Proceedings—Vakil's Right to appear for Complainant—Crim. Proc. Code, Sec. 180.*

At an inquiry held by a Magistrate under Sec. 180 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of a complaint, the complainant has no right to be represented by a *vakil*, who, therefore, cannot sue the Magistrate for damages for not allowing him to appear for the complainant upon such an inquiry.

THIS was an appeal from the decision of Baron De H. Larpent, Acting Judge of the District of Dhárwár, in Original Suit No. 15 of 1869.

The plaintiff, who was a *vakil* in the Dhárwár District, sued to recover damages incurred by him in consequence of the defendant having, in his capacity of a Full Power Magistrate in the same district, refused to accept a *vakálatnáma* presented in the defendant's court by the plaintiff on behalf of his client, one Samnúji, who had charged one Dhuláji and another

person with the offence of criminal breach of trust before the said defendant.

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The defendant stated that the plaintiff had no right to appear for the complainant in a preliminary inquiry; that it was within his discretion to allow the plaintiff to appear, and that he *bonâ fide* exercised his discretion in not allowing him to appear.

The District Judge was of opinion that the complainant, Samnáji, had no right to appear by the plaintiff. He gave the following reasons for coming to that conclusion:—

“ A Magistrate, it appears to me, is not bound to recognise the appearance of a complainant in a criminal case by a *vakíl*. A Magistrate, under the Procedure Code, is vested with the double functions of prosecutor and judge. The complainant is not a prosecutor, for Government undertakes this duty and provides funds for meeting all the costs. When a case is committed to the sessions, it is the Magistrate who conducts the prosecution through the Government Pleader or other officer appointed by Government (Sec. 23), and no complainant could claim as a matter of right to appear in the Sessions Court through a *vakíl*.

“ The complainant's personal appearance is exacted by the Code. He must appear to make his complaint (Secs. 65, 66), and he is bound to appear personally on the hearing of the case (Sec. 259). There is also a special rule (Sec. 432) regarding the right of an accused to be defended by counsel, but no analogous provision regarding complainants. Admitting, however, that a complainant must appear personally, has he a right to be assisted by counsel? There is no provision of law which gives him this right, although it is doubtless the practice in all the courts, so that it appears to me entirely at the discretion of the court to refuse or allow a complainant such assistance.”

The District Judge was further of opinion that, though the defendant did not exercise a proper discretion in refusing to allow the plaintiff to appear, it was not proved that he had acted except with proper care, and that he was protected by Act XVIII. of 1850. He, therefore, decreed for the defendant.

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The appeal was heard by LLOYD and KEMBALL, JJ.

*Bahiravnáth Mangesh*, for the appellant:—The Judge's view is erroneous. Neither the Statute nor the Common Law ever denied the complainant's right to appear by counsel. The Judge says the *vakíl* had no right to appear in the inquiry, under Sec. 180 of the Code of Criminal Procedure. This section speaks of the Magistrate *directing* an inquiry. Here the inquiry was held by the Magistrate himself, and was, therefore, not under Sec. 180.

The inquiry by the Magistrate was a judicial proceeding, for if the complainant had made a false statement in his examination he would have been liable to the charge of giving false evidence. In a proceeding of such a serious character, the complainant should be allowed the assistance of counsel.

According to the theory of Criminal Law, the Sovereign is the prosecutor in every criminal case, and has the right to examine the informant. Such a right is expressly recognised by this court in a circular \* at page 58 of the Circular Book.

*Dhirajlál Mathurádás*, Government Pleader, for the respondent:—The plaint discloses no cause of action.

PER CURIAM:—We think that the rejection of the *vakálat-námá* at the preliminary inquiry, when the Magistrate was bound by law merely to inquire in the "mode he shall judge most proper" for the purpose of ascertaining the truth or falsehood of the complaint," was a matter in which he was at liberty to use his discretion; that being so, it is clear that the Magistrate was exempted from civil liability for the damage alleged to have resulted. But assuming that the act of the Magistrate was without the limits of his jurisdiction, we observe that there is no allegation in the plaint that the Magistrate did not in good faith believe himself to have jurisdiction to make the order complained of.

*Decree confirmed.*

\* "As there appears to be a doubt in the minds of some of the Session Judges as to the extent of the right of the Crown to be heard by counsel or by pleader in criminal cases, all courts are informed that the Queen is entitled, as a matter of right, to be heard by counsel or pleader in support of each prosecution, whether it be in an appellate or an original court of criminal jurisdiction."