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the character of manager, and to sue in that character, raises a question of fact and law which varies as the other members of the family are minors or adults, whose assent is usually required in important matters, and we think, therefore, that the defendant is always entitled, when the objection is taken at an early stage, to have the other members of the family, when they are known, placed on the record to insure him against the possibility of the plaintiff's acting without authority. Moreover, the reasons which are given in *Kalidas Kevaldas* v. *Nathu Bhagvan* (1) for requiring the other members of the family to be made parties, are equally applicable, whether or no the plaintiff describes himself in the plaint as suing as manager of the family. On both grounds **[161]** we think, therefore, that the defendant was entitled to have the plaintiff's uncle and minor brother placed on the record either as co-plaintiffs or defendants.

We think, however, that under the circumstances of this case, and having regard to the state of the law on the subject, the plaintiff should be, and we hereby direct that he be allowed to amend his plaint by making the other members of the family mentioned by the defendant parties to the suit, and reverse the decree of the Court below for that purpose. Such amendment to be made within a month of the papers being received by the Court of first instance; but, in default, the decree of the lower Court of appeal is to stand confirmed. In any case, the plaintiff must pay the defendant his costs up to the present time.

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REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

In re JANKIDAS GURU SITARAM.* [17th August, 1887.]

Criminal Procedure Code (Act X of 1832), ss. 155, 202, 203—Magistrate's power to direct a local investigation by the police—Complaint of an offence cognizable by a Magistrate—Examination of complainant.

Section 155 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police, or call for a police report.

It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer. He is bound to receive the complaint, and after examining the complainant to proceed according to law.

THIS was an application for the exercise of the revisional jurisdiction of the High Court under s. 435 of the Code of Criminal Procedure (Act X of 1882).

The applicant Jankidas lodged a complaint before Mr. Ryan, the Acting Second Presidency Magistrate, charging one Gangadas and twelve other persons with criminal trespass and house-trespass, under ss. 447 and 448 of the Indian Penal Code (Act XLV of 1860). He alleged that he was the *pujari* and manager of the temple of Shri Mahadev at Nagpada; that on the 13th June, **[162]** 1887, at about 8 o'clock in the morning, the accused unlawfully entered the temple during his absence, assaulted his brother's widow, who was then engaged in worshipping the idol, and

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* Criminal Revision; Application No. 157 of 1887.

(1) 7 B. 217.

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turned her out by force ; that the tenants, who came to her rescue, were also assaulted and turned out ; and that when he himself returned soon afterwards he found the temple closed, and some of the accused standing near the entrance, and that they used abusive and threatening language towards him.

The Magistrate referred this complaint to the police for inquiry and report. On receipt of the police report he refused to interfere in the matter.

The complainant thereupon applied to the High Court for a revision of the Magistrate's proceedings.

Ganpat Sadashiv Rav, for the complainant.—The Magistrate's action was irregular. He had no power to refer the complaint to the police for investigation or for report. Such power is given only to the Chief Presidency Magistrate : see s. 202 of the Code of Criminal Procedure (Act X of 1882). Under s. 203 the Magistrate is bound to examine the complainant before he dismisses the complaint. In the present case the complainant was not examined ; nor was any order made dismissing the complaint. The proceeding is irregular and illegal, and should, therefore, be set aside. He referred to *Queen-Empress* v. *Puran*(1) and *Baidya Nath Singh* v. *Muspratt* (2).

At this stage the Court (West and Birdwood, JJ.) adjourned the further hearing of the case, and directed the Magistrate to state whether he was empowered by the local Government, under s. 202 of the Code of Criminal Procedure, to order a local investigation to be made by the police, or to call for a police report.

The Magistrate made the following report :—

"The undersigned has the honour to report that a Presidency Magistrate is authorized by s. 155 of the Criminal Procedure Code (Act X of 1882) to direct the police to make an investigation in non-cognizable cases.

[163] "The complaint made by Jankidas Sitaram Bawa against Gangadas Jamnadas and twelve others alleged that they had committed criminal trespass on the premises of the temple at Nagpada, and as it appeared the police had already taken action with a view to prevent any possible breach of the peace, the information presented by the complainant was forwarded to the police superintendent of the district for inquiry and report.

"A second information was presented by Jankidas, superadding a charge of theft, and this being a cognizable offence he was directed to make his complaint, in the first instance, to the police superintendent, to whom also the second information was forwarded.

"It does not appear that the local Government has authorized the Presidency Magistrate to direct a local investigation by a police officer under s. 202 of the Criminal Procedure Code (Act X of 1882). But a Magistrate having a jurisdiction appears, by intendment and implication of the law, to possess such a discretional authority in cognizable cases."

On receipt of this report the Court (West and Birdwood, JJ.) made the following order :—

Section 155 is conversant only with the powers of police officers. It confers no power or authority on Magistrates. Section 202 enables only the Chief Presidency Magistrate to direct a local investigation by the police, except when a like authority has been specially conferred on a Presidency Magistrate of lower rank.

(1) 9 A. 85.

(2) 14 C. 141.

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It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he has cognizance, to refer the complainant to a police officer. He is bound, when the circumstances giving him jurisdiction exist, to receive the complaint, and deal with it according to law. A different course would foster abuses, and defeat the purpose of the law, which is to give to persons, who have been injured, an access to justice independent of the police.

The Magistrate, therefore, will take the examination of the complainant, and proceed thereon according to law.

Proceedings set aside.

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12 B. 164.

[164] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Nanabhai Haridas.

HORMUSJI NAVROJI (*Original Applicant*), *Appellant v.* BAI DHANBAIJI, JAMSETJI DOSABHAI AND OTHERS (*Original Caveators*), *Respondents.** [17th August, 1887.]

Will—Letters of administration—Citation—Defective citation—Revocation of letters of administration—Probate, nature and effect of—Act V of 1881, *ss.* 16 *and* 50.

S., a Parsi, died, leaving a will, whereby he directed that after his death his estate should be managed by his widow Jivibai, and after her death by his sister-in-law Hirabai, and after Hirabai's death by the appellant, his adopted son Hormusji. On Jivibai's death the testator's brother Dosabhai applied for letters of administration, and issued a citation to the appellant Hormusji. Hirabai entered a caveat. No further proceedings were taken, and the matter remained pending. On Hirabai's death, Dosabhai applied for a fresh citation to the appellant Hormusji, but the District Judge held it to be unnecessary, and declined to issue it. Letters of administration were then granted to Dosabhai. The appellant Hormusji subsequently applied for probate of the testator's will. The respondents filed caveats, alleging that the will was void, on the ground of certain bequests contained in it. They further contended that as the appellant had been cited to appear when application was made by Dosabhai for letters of administration, he could not now apply to have letters of administration cancelled. *Held*, that the letters of administration granted to Dosabhai should be revoked, and that probate should be granted to the appellant. The only citation which had been issued to the appellant was in 1882, when Dosabhai commenced his proceedings to obtain letters of administration. At that time Hirabai, who was the executrix named in the will (the appellant Hormusji being only named as executor on her death), was still alive, and the citation did not, therefore, call on him to accept or renounce executorship. On Hirabai's death, however, which took place before the actual grant of administration was made to Dosabhai, such a citation was necessary under s. 16 of Act V of 1881, before the grant could be legally made. In default of such a citation the proceedings were defective in substance—a circumstance which constituted good cause for the revocation of the letters of administration, under s. 50 of Act V of 1881.

Held, also, that the District Judge was wrong in refusing probate of the will, on the ground that the bequests contained in it were illegal and void. Probate is only conclusive as to the appointment of executors and the validity and contents of the will; and in an application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose, or the validity of such disposition.

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* Appeal No. 52 of 1885.