

the Court of Madras, were we, sitting, as we do, as a Court of revision on the past action of the Magistrate, to express an opinion on the subject, which is undoubtedly one of some difficulty.

We must, therefore, return the complaint to the Magistrate, for him to deal with it according to law.

Order reversed and case remanded.

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[600] REVISIONAL CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Jardine.

IN RE GANESH NARAYAN SATHE.* [19th June, 1889.]

Criminal Procedure Code (Act X of 1882), ss. 203, 248, 485—Dismissal of complaint—Withdrawal of complainant in a warrant case not a ground for dismissal of complaint—Who may complain—Complainant not a witness punishable for refusal to answer.

As a general rule any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The exceptions to this rule, of which ss. 195 and 198 of the Criminal Procedure Code are examples are exceptions created by statute. There is nothing in the Code showing an intention to confine prosecutions to the persons directly injured.

Where the offence charged is a "warrant" and not a "summons" case a Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal of the complainant, if he finds the elements of an offence on the facts set forth in the complaint.

Section 248 of the Code of Criminal Procedure applies only to a "summons" case.

Semble—A complainant is not a witness punishable for refusal to answer under s. 485 of the Code of Criminal Procedure, or under s. 179 of the Penal Code.

[F., 18 A. 465; 19 A. 64 = 16 A.W.N. 149; R., 14 B. 331 (349); 19 B. 51 (61); 20 B. 617 (622); 21 B. 517 (521) 21 C. 536 (538); 3 Bur.L.T. 124 = 11 Cr.L.J. 738 = 8 Ind. Cas. 952 = 5 L.B.R. 241; 8 Cr.L.J. 213 = 1 S.L.R. 83; 14 Cr.L.J. 409 = 20 Ind. Cas. 233; Rat. Unr. Cr. Cas. 740 (742); Rat. Unr. Cr. Cas. 844 (846); 15 Cr.L.J. 369 = 23 Ind. Cas. 737 = 7 S.L.R. 77.]

THIS was a complaint filed by Ganesh Narayan Sathe in the Court of the District Magistrate of Poona against Balkrishna Govind Sindekar and five other Mamlatdars, charging them with purchasing judicial offices through the instrumentality of one Hanmantrao Jaghirdar, who was alleged to have had influence with Mr. A. T. Crawford, Revenue Commissioner, C. D.

The complaint was dismissed by Mr. Vidal, the District Magistrate, under s. 203 of the Code of Criminal Procedure.

A Full Bench of the High Court set aside the order of dismissal, and remanded the case for investigation (1).

When the inquiry was resumed, the complainant at first avoided attending the Court. When he at last appeared before the Magistrate, he asked to be allowed to withdraw from the prosecution, alleging that he had no personal knowledge of the facts stated in his complaint. Thereupon Mr. East, who had succeeded Mr. Vidal as District Magistrate, examined

* Criminal Review, No. 180 of 1889.

(1) *Vide Supra*, 13 B. 590.

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the [601] complainant at great length as to the motives which had induced him to file the complaint, and the names of the persons at whose instigation he was acting. The complainant refused to answer these questions. The Magistrate ordered him to be imprisoned for seven days, and dismissed the complaint.

The Magistrate gave the following reasons for the dismissal of the complaint:—

"The facts I extracted from him were, that his personal knowledge of the matter of his complaint was absolutely *nil*, that he could not read his own complaint correctly, and that he was the mere mouth-piece of one Shridhar Vithal Date and certain other persons personally interested in Mr. Crawford's defence. There was thus *no prima facie* evidence before me of a criminal offence 'which, in my judgment, called upon the alleged offenders to answer.' But, further there was before me no complaint at all in my opinion, as their Lordships had ruled that the complaint was incomplete without complainant's examination; and before that examination could be taken, complainant refused to proceed, and gave elaborate reasons for so doing."

Another reason for dismissing the complaint was stated by the Magistrate as follows:—

"The alleged acts of the persons he (the complainant) accused did him no harm directly; and the indirect or consequential harm,—whether it took the form of a shock to his feelings, lessened faith in his fellowmen, or otherwise,—was of so infinitesimally small a kind that the law could not be expected to regard it."

A Divisional Bench of the High Court (consisting of SCOTT and JARDINE, JJ.) sent for the record and proceedings of this case under s. 435 of the Code of Criminal Procedure.

The following judgments were recorded by the Court:—

JUDGMENTS.

SCOTT, J.—This was a complaint lodged in the District Magistrate's Court, at Poona, by one Ganesh Sathe against certain subordinate officials who had given evidence in the case of *Empress v. Hanmantrao*, and the complaint was grounded on the evidence given by them, the record of which was in the archives of the [602] Magistrate's own Court. The complaint was dismissed by the District Magistrate, but the dismissal of the complaint was set aside by a Full Bench of the High Court. The High Court remanded the case for investigation, on the ground that the Magistrate had erred in allowing his decision to be influenced by consideration of the motives of the complainant. He ought, the Court said, to have confined himself to the consideration whether there was *prima facie* evidence of a criminal offence. The complaint, on remand, came before another Magistrate and was again dismissed. The papers were once more sent for by the High Court, and have now come before this Division Court for disposal. After a careful consideration of the proceedings, I am of opinion that the Magistrate in his conduct of the case did not follow the ruling of the High Court, and did not pursue the proper procedure applicable to the investigation of complaints, as laid down in the Criminal Procedure Code. I have formed no opinion whatever as to whether the complainant made out any case against the persons complained against, and in view of events which have occurred since the complaint was first lodged, I do not think the High Court is called upon, in its discretionary exercise of the revisional powers

conferred on it by s. 439, Criminal Procedure Code, to remand the complaint once more. It is, however, of the highest importance that the proper procedure should be strictly followed in the investigation of complaints, and I, therefore, think it necessary to show where, in my opinion, it has been departed from.

I. There is no doubt that any person having knowledge of the commission of an offence may set the law in motion by complaint, even though he is not personally injured or affected by the offence (Stephen's General View of the Criminal Law, p. 154). It is important to observe in the present case that the offence charged is one that is against public policy. Had the matter been merely a private fraud, the Magistrate might perhaps have refused to listen to a complainant who was used as a tool by persons seeking to set justice in motion from a corrupt motive. But when the offence is against the public interests, the truth of the complaint, and the amount of evidence of crime [603] it discloses are alone considered—*The King v. Steward* (1). The Magistrate, therefore, was wrong in assigning the absence of personal injury to the complainant and the fact of his being a mere instrument, as sufficient ground for the dismissal of the complaint.

II. Next as regards the attempted withdrawal of the complaint being a ground for dismissal. The offence charged is a "warrant" and not a "summons" case, and s. 248 does not apply. Under s. 191, Criminal Procedure Code, a Magistrate may take cognizance of any offence upon receiving the complaint of facts which constitute such offence. The Magistrate, therefore, might under that section have proceeded with this case, in spite of the withdrawal of the complainant, if he found the elements of an offence in the facts set forth in the complaint. He was, moreover, wrong, under ss. 200—203 of the Criminal Procedure Code, if he dismissed the case without examination of the complainant and the complaint. The Calcutta High Court in *Baidya Nath Singh v. Muspratt* (2) lays it down that, under those sections, a Magistrate must dismiss a complaint (1) if he, upon the statement of the complainant (*i.e.*, the complaint), finds no offence has been committed, (2) if he distrusts the truth of the statement, and (3) if, after further enquiry he holds there is not sufficient ground for proceeding. "The above," says the Court, "are the three cases in which a Magistrate has power to dismiss the complaint under s. 203." I follow this view of the law. He did not examine the evidence on which the complaint was based, although the record of that evidence was in the archives of his own Court. He dismissed the complaint solely because (1) he believed the complainant to have no personal ground to complain, and (2) because he believed the complainant had allowed himself to be used as a tool by others in bringing forward the complaint. In this decision, the Magistrate did not, in my opinion, follow the ruling of the High Court, which had been sent to him for his guidance.

III. In order to ascertain who were the real complainants, the Magistrate interrogated the complainant, and, on his refusing [604] to answer, he directed his imprisonment. Such questions, however, were irrelevant to the real issue—whether there was a *prima facie* case made out of an offence. Even assuming that the Magistrate thought the questions relevant, it is very doubtful whether he could force a complainant, voluntarily preferring a complaint to answer. A complainant can hardly be held a witness punishable for refusal to answer under either

(1) 2 B. & Ad. 12.

(2) 14 C. 141.

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s. 485, or s. 179, of the Penal Code, or the Criminal Procedure Code respectively. I find no case which includes a complainant in those penal provisions. The imprisonment was, in any case, an improper exercise of discretion, as the sole duty of the Magistrate was to ascertain whether the complainant, by his complaint, made out a *prima facie* case, and not to inquire into the motives and reasons why the complaint was lodged. If the Magistrate had followed the law, as laid down in the Full Bench ruling of last January when this matter came before the High Court, he would have confined himself to the consideration "whether there was *prima facie* evidence of a criminal offence which, in his judgment, called upon the alleged offenders to answer." This was held by the High Court to be "the nature and extent of the discretion which the Magistrate has under s. 203." The complaint was returned to him with that ruling, in order to deal with it according to law, and I am of opinion he has not done so. But, in consequence of the action of the Executive, and of other events which have occurred since the complaint was lodged, I do not think it necessary that any further steps should be taken in this particular case, the record of which can be returned to the Poona Court.

JARDINE, J.—I am of the same opinion. I think that mistakes of procedure have been committed by Mr. East similar to those made by Mr. Vidal in this same case which were dealt with by a Full Bench, consisting of Sargent, C. J., Bayley, Scott, and Nanabhai, JJ., on the 28th January last, in a judgment of much importance (1). The result of the mistakes in each instance is the same; the truth of the complaint has not been inquired into: and the persons complained against have thus [605] enjoyed until this day an immunity from investigation of the corrupt offences to which the complaint relates. Before dealing with the Magistrate's procedure, I may say that I think the mistakes are rather mistakes of law than errors of judgment, and due partly to the attitude of the complainant, partly also to the want of any reported decisions on two points—who may complain, and what sort of diligence a Magistrate is to use when a complainant capriciously, or corruptly, tries to withdraw from prosecuting a serious crime. To avoid all ambiguity in this judgment, and all chance of injustice to men who have not been tried, I may also say that I treat the accused persons merely as such, and am not to be understood as in any way assuming that they committed an offence, or that any offence was committed. These matters have not been inquired into. I think the recurrence of mistakes imposes a duty on the Court to declare the law on the two points noted, and this will lead me to discuss the offence as a matter of law only, leaving the facts alone. The offences in question are the purchases of judicial offices, a matter which affects the purity of the administration of justice, and I will, therefore, treat this matter as fully as I do the ancillary law of procedure. The mistakes in procedure are, I think, partly due to the Magistrates not reflecting sufficiently on the evil arising from any contamination of the sources of justice.

The complaint is of abetment of taking bribes. It is in writing, and as follows:—(The learned Judge then read the complaint, which is printed *supra*, p. 591, and continued:—) When Mr. Vidal had refused to proceed on this complaint, the refusal was inquired into by this Court, and the order of the Full Bench directed the complaint to be returned to the District Magistrate to be dealt with according to law.

(1) Reported *ante* 13 B. 590.

Mr. East, who has succeeded Mr. Vidal as District Magistrate of Poona, had some difficulty in procuring the attendance of the complainant. When he appeared, he asked to be allowed to withdraw from the prosecution, and alleged that he had no personal knowledge of the facts. The question then arises, what was the duty of the Magistrate under these circumstances?

[606] I am of opinion that the Magistrate had no authority to allow the complaint to be withdrawn, and that he ought to have so informed the complainant. In *Queen-Empress v. Lilladhar* we ruled as follows about a complaint of theft:—"The Magistrate had no power, under s. 345 of the Criminal Procedure Code, to permit the case against her to be compounded. The offence was not one regarding which a Magistrate can offer a pardon under s. 337, or in which a Magistrate can permit a withdrawal of a complaint under s. 248, the complaint in the present case being a warrant case, not a summons case." Section 248 only applies to cases punishable with not more than six months' imprisonment; and even a complaint of a minor offence of this sort cannot be withdrawn by the complainant unless he satisfies the Magistrate that there are sufficient grounds. But the complaint in the present case relates to offences that bring down heavier punishment, and the facts alleged deeply concern public policy and the administration of justice: see *Whitmore v. Farley* (1) and *Keir v. Laeman* (2). So that the enacted law does not allow the indulgence given in s. 248: and, therefore, as matter of strict law, the wish of the complainant to withdraw was irrelevant and immaterial. It has been held that, even in the absence of a prosecutor, the Grand Jury may return a true bill if the other evidence sustains the indictment. As pointed out by the Full Bench, the object of criminal procedure is the punishment of crime. I think the diligence exerted by a Magistrate ought to depend on all the circumstances of the case, the gravity of the offence, and the presence or absence of what is alleged as proof. It is plain that many crimes would go unpunished if the Magistrates refrained from investigating them as soon as a complainant or informant expressed a wish to withdraw. It is well known that this desire arises, not only from the wish to avoid expense or trouble, but also in many cases because the complainant or informant is solicited by the person accused, or his friends. This is matter of old experience—old as the Statute of Winton. It is pointed out in *Lambard's Eirenarcha*, or Office of the Justices of the Peace in the time of Queen [607] Elizabeth, p. 215, edition of 1619, where, speaking of the reason for requiring a complainant to take oath of the truth of his complaint, the author writes:—"I have found by experience that without such an oath many informers will speak coldly against a felon before the face of the Justice, having belike first made their bargain with the offender or his friends before that the Justice did hear of the cause." This is one reason why complainants are bound over to appear at the trial. It may be mentioned that, in the Regulations passed nearly a century ago by Lord Cornwallis, in order to restrain bribery and corruption on the part of officials, provision was made that the person who came into the local Court and gave the information should be bound over to appear. The Magistrates are also required to act with diligence, as well as discretion, in enforcing the laws which punish crimes. In the Petition of Right one complaint is that sundry grievous offenders "had escaped the punishments due

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(1) 14 Cox & T. 617.

(1) 9 Q.B. 371.

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to them by the laws and statutes of this your realm by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the said laws and statutes." Her Majesty has an interest in the matter, for she is to see that all in authority under her do their duty, and that justice is duly administered to all her subjects—*Harrison v. Bush* (1). If the Magistrates were to cease to investigate whenever a complainant wished to withdraw or refused to answer, many crimes would pass unpunished; it would be difficult to preserve the peace or protect property; the subject would often fail to receive the protection due to him from the Crown; the Crown itself might be assailed by secret or open conspiracies. The Crown is often at a difficulty in securing detection; has sometimes to act on suspicion; and often to make use of such mean instruments as approvers and informers, who disclose their own nefarious doings and betray their companions in guilt—*Rex v. Despard* (2). Accordingly, the officers to whom the protection of the peace is entrusted by the Crown are armed with powers which enable them to act with diligence and vigour, even where no complainant comes forward. The District Magistrate, [608] and other Magistrates of certain grades, or specially empowered, may, under s. 191 of the Criminal Procedure Code, act upon information received from any person other than a police officer, or upon his own knowledge or suspicion that any offence has been committed. This may be done where an offence against public justice has been committed by bringing a false charge, and the prosecutor does not go on with it—*Empress v. Nipcha* (3). I agree with Phear, J., in *In the matter of the petition of Surendra Nath Roy* (4), that this "is a provision of the law for enabling a public official to take care that justice may be vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute." "Persons invested with judicial authority must put the law in force, although they may think that in the case before them it will have an unjust operation, and although they are by statute clothed with a discretion"—*Per* Bramwell, L. J., in *The Queen v. Bishop of Oxford* (5). "A Justice has no authority to select whom he pleases to pardon or prosecute, and the prosecutor himself has even a less power, or rather pretence, to select than the Justice of the Peace"—*Per* Lord Mansfield in *Rex v. Rudd* (6).

I think it follows from the above that the District Magistrate ought to have examined the record of the trial of Hanmantrao mentioned in the complaint, in order to see whether it was true that the persons accused had themselves made statements which might be used as evidence of their guilt. The existence of such evidence is alleged in para. 3 of the complaint. The Magistrate was bound to follow the interpretation of s. 132 of the Indian Evidence Act laid down by this Court in *Queen-Empress v. Ganu Sorba* (7) so long as that judgment remains not overruled. Instead of forming an opinion whether such evidence existed, and whether it constituted a *prima facie* case, the Magistrate made a rigorous inquiry into what, following the judgment of the Full Bench, were irrelevant matters—I mean the motive which had induced the complainant to make the [609] complaint and the names of the persons who had helped him to frame it. It is important to notice that the

(1) 5 E. & B. 344 = 25 L. J. (N. S.) Q. B. 25.

(3) 4 C. 712.

(6) 1 Cowp. 331 (336).

(4) 5 B.L.R. 274 (289).

(2) 28 Howell's State Trials, 489.

(5) L.R. 4 Q.B.D. 525 (545).

(7) 12 B. 440.

judgment of the Full Bench alludes to the admissions made by the person now complained against at the trial of one Hanmantrao, and suggests the question whether there was other evidence besides. The record of this trial was a record of the District Magistrate's own Court, and in his own control and custody. The case of Hanmantrao went on appeal to the Sessions Judge, Mr. Candy, and in the judgment in appeal, which that learned Judge sent to the District Magistrate, occurred the following passage, which refers to three of the persons now accused by name:—"How, then, are Dabir, Satbhai, and Javarkar accomplices with Hanmantrao in the alleged offence? The answer is, because they say they gave, or assisted in giving, the money. Illustration (a) to s. 109, Indian Penal Code, runs:—"A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in s. 161.'" Now, although this judicial utterance was not intended to settle the question of the guilt or innocence of men not on their trial, it was an intimation from the Sessions Judge to a Court subordinate to him sufficient to put that Court, the District Magistrate, on inquiry and examination of the record, at the time when it behoved the District Magistrate to consider whether it was true, as alleged, that the record contained proof of the offence. The following part of Mr. East's order of dismissal regards this question. He says of the complainant: "He knows nothing of the facts but what he has read in the newspapers. The alleged act of the persons he accused did him no harm directly; and the indirect or consequential harm,—whether it took the form of shock to his feelings, lessened faith in his fellow-men, or otherwise,—was of so infinitesimally small a kind that the law could not be expected to regard it." It may be assumed that if the complainant had related to treason, or murder, or any of the other great pleas of the Crown, the Magistrate, in spite of any desire of the complainant to withdraw the complaint, would have taken the trouble to see whether it was the fact that his own record contained proof of the crime. The same may be said of complaint as [610] regards some greater offence which any person accused may intend to commit. So if a Coroner were referred to documents in his possession as evidence of a murder, or asked to walk a few steps to convince himself that there was a dead body, I doubt not that he would use that amount of easy diligence, although the person complaining had expressed his regret that he had ever put the peace officer on the scent. The present case, however, is a complaint against certain Magistrates, who are also, as Mamlatdars, Civil Judges, exercising a wide jurisdiction, without appeal, under Bombay Act III of 1876. The complaint relates to their purchasing of the judicial office. The question then is, whether this offence is to be regarded as so slight as to justify a Magistrate in dismissing the complaint without discussing the incriminating evidence pointed out by the Sessions Judge. Let us see how this matter stands on authority.

In *Harrison v. Bush* (1) the Lord Chief Justice of England, Lord Campbell, delivered a judgment, declaring the right of the subject to petition Her Majesty's Secretary of State to remove a Magistrate guilty of misconduct. The Court of Queen's Bench was of opinion that it is not only the right, but the duty, of the subject to get the misconduct inquired into and punished. Lord Campbell said: "In the present case, little need be said to show that the communicator had both an interest and a duty in

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(1) 5 E. & B. 344 (348) = 25 L.J. (N. S.) Q.B. 25.

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the subject matters of the communication. Assuming that Dr. Harrison had misconducted himself as a Magistrate in the manner alleged, all the electors and inhabitants of Frome had suffered a grievance by a Magistrate having fomented the riot instead of quelling it, and having endangered instead of protecting life and property within the borough. They have an interest that they may not longer remain subject to the jurisdiction of a Magistrate who so violates the law. Again, if Dr. Harrison had so misconducted himself as a Magistrate, he had committed an offence; and it was the duty of those who witnessed it to try by all reasonable means in their power that it should be enquired into and punished. 'Duty,' in the proposed canon, [611] cannot be confined to legal duties which may be enforced by indictment, action, or *mandamus*, but must include moral and social duties of imperfect obligation. One mode of proceeding for this offence would have been by applying to us for a criminal information, and seeking to have the offender punished by fine and imprisonment. But another, which, though milder, may be more effectual, is to try by lawful and constitutional means to have the offender removed from his office, without calling down upon him the sentence of a criminal Court. In this land of law and liberty, all who are aggrieved, may seek redress; and the alleged misconduct of any who are clothed with public authority may be brought to the notice of those who have the power and the duty to inquire into it, and to take steps which may prevent the repetition of it." I will refer later on to the observations of the Lords of the Privy Council in *In re Grant* (1), which are in the same tenor. It is an ancient principle of English justice that Magistrates and Judges must be law-abiding men. In the 45th Article of Magna Charta the Crown promises as follows:—"We will not make any justices, constables, sheriffs, or bailiffs, but such as know the law of the realm and mean duly to observe it." It is, no doubt, desirable that the accuser of a Magistrate should come into Court with clean hands; but this is not material where the matter is one materially affecting the public (*Shortt on Informations*, pp. 24, 36; *The King v. Norris* (2); *The King v. Steward* (3). In *The King v. Steward*, Lord Tenterden, C. J., in granting a criminal information for bribery in the election of an alderman, on the sole testimony of a *particeps criminis*, uncontradicted, distinguished the case from one of private fraud in the following terms (p. 13):—"This is an offence against public policy, and concerns an office which, in addition to its other duties, involves those of a justice of the peace. The distinction is very important." In estimating the gravity of an offence, the Courts look to other considerations besides the amount of punishment, and whether the law allows it to be compounded or not. The circumstances have to be considered, as in the case just quoted, especially in reference to the public policy which is bound up with the purity of the persons who administer [612] justice. The Courts must look on these offences in the same light as they are regarded by Imperial Parliament, the supreme legislature, and by the Judicial Committee of Her Majesty's Privy Council, the supreme judicature.

In one celebrated case, the purchase of judicial offices was treated as a breach of Magna Charta, which, I need hardly say, is one of the laws on which the allegiance of the subject depends. (See Norman, J.'s remarks, in *In the matter of Ameer Khan* (4). The case I refer to is the impeachment

(1) 7 Moo. P. C. C. 141.

(3) 2 B. & Ad. 12.

(2) 2 Kenyon 300.

(4) 6 B.L.R. 392 (452).

of the Earl of Macclesfield, Lord High Chancellor, in 1725 (1), for high crimes and misdemeanors, of which he was convicted by the unanimous judgment of the House of Lords. The impeached Earl urged that his selling of judicial offices was legal; and the long report of the State trial shows that he tried to meet the argument of the Commons of England, drawn from Magna Charta, by the reply that there was a great distinction between his own act, of selling an office of justice, and that of Lord Chancellor Bacon, of selling decisions by taking bribes from suitors. This reply was pressed over and over again. But the Commons insisted that the famous 40th article of the Great Charter of King John—“We will sell to no man, we will deny to no man either justice or right”—had been broken by the sale of offices, which they said was forbidden by the ancient law of England, by the Acts of Parliament they recited, and by the Charters of the Kings. It was urged that the difference between the Justice of the Peace who bought or bargained for his office and the best and most lawful men who were alone to be appointed, was well ascertained centuries ago, as appeared from the directions to the Chancellors, in 12 Rich. II, c. 2, and 11 Hen. IV Roll, Parl. Num. 28. It was urged that such indulgence as had been allowed in the purchase and sale of offices, and the permission to the officials to make private profits out of judicial places, had caused many oppressions of the people. The following are passages from the argument of the Commons of England.

At page 1335 :—“But the Common Law, and the several Acts of Parliament before mentioned, do not only still remain in force, [613] with respect to the Lord Chancellor, but have been confirmed and enforced by other statutes. And the great charter of our liberties—Magna Charta, c. 29, Co. 2 Inst., 55, 56—does imply this, ‘*nulli vendemus Justitiam aut Rectum*’; which, according to my Lord Coke’s comment, is spoken in the person of the King who in law is present in his own Courts of Justice, and repeating these words, which (says he) extend to the end, which is justice, and to the mean whereby justice may be attained, which is the law, or, as it must be understood, the administration of the law by the officers of justice; unless it can be supposed, that the statute provides against the lesser evil, but allows the greater mischief; that it prohibits the sale of a particular decree or order, which may be right and just in itself; but leaves the King’s superior officer at liberty to sell the whole body of the suitors of the Court in the gross, to the exaction and oppression of the under officers, in the fees which they shall demand against law and right. So that if the Earl impeached had exemplified this rule of my Lord Coke in the Court of Chancery, where he immediately represented the King’s Royal person, and once in a term, sitting in Court between his Masters, who paid for their places out of the suitors’ effects, had repeated to the suitors this glorious declaration, ‘*nulli vendemus justitiam*’—he must have made a very inconsistent figure, in the opinion of the meanest capacity. It will then be plain, that as to such offices, which are in the immediate gift and disposal of the Crown, they cannot in their own nature be saleable or disposed of for money; because the King himself cannot be supposed to suffer them to be put to sale. And the Ministers of the Crown, who have no immediate right in the office, and are only to execute and confirm the King’s pleasure in the disposal of the office, cannot sell that which is not their own; nor ought, nor can they lawfully take

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(1) 16 Howell’s State Trials, 767.

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any fee or reward for accepting resignations, or making new grants, or admissions into places, or for conferring inferior offices with which they are entrusted by virtue of their own office; which would be the taking money for the doing of their office, contrary to the law and the before mentioned statute."

(P. 1339) "So that is a breach of his trust in the Lord Chancellor to confer any of these offices for gift or brocage, or to [614] name and appoint unfit and insufficient persons; since it is the duty of his high office to provide a supply of proper officers to carry on the due execution of justice in that Court."

(P. 1343) "And some instances were cited out of the Roman Law, where part of the revenue of the Emperors did arise out of perquisites of this kind; from whence it was inferred that the taking of these sums for sale of offices was not against natural justice. But these are of no authority in this kingdom when they are repugnant to the law of the land, and have never been received; and the common law of England must be the rule of justice in this case."

(P. 1345) "And when it is said that a good officer may give money for his place and may resist the temptation of extortion, it is what the law of England would not trust to human frailty."

The connection of the law against brocage of offices with Magna Charta is more apparent when the history of our law is considered. The 24th article enacted as follows:—"No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the Crown." In commenting on this article, in his History of our Constitution, Sir Edward Creasy remarks that the Anglo-Norman Kings used to make a regular profit by selling the office of sheriff:—"The effect of this, of course, was to produce great oppression of the people, as the officials, who paid thus largely for their places, strove to indemnify themselves by exacting immoderate fees, by unjust confiscations, by imposing excessive fines, and every other species of extortion." The variety of the abuses at which the 24th and 45th articles of Magna Charta struck are set forth in the *Mirroure of Justices*, the passages being extracted by Mr. Finlayson in his edition of Reeve's History of the English Law, Vol. I, p. 288, where he pronounces the 24th article to be "one of the most important to the people of any to be found in the Charter."

The effect of the Stat. 5 and 6 Edward VI, c. 16, an Act against buying and selling offices, was much argued at this great State trial. It has since been extended to offices held under the Government of this country, and the statute itself, the judicial interpretations of it, and the Act extending it to all the [615] colonies, are plain indications of the view taken by the Parliament of England of the impolicy of allowing judicial offices to be sold. The preamble begins:—"For the avoiding of corruption which may hereafter happen to be in the officers and ministers in those Courts, places, or rooms wherein there is requisite to be had the true administration of justice or services of trust; and to the intent that persons worthy and meet to be advanced to the place where justice is to be ministered, or any service of trust executed, should hereafter be preferred to the same and no other." It is then enacted that the person who gives or pays any sum of money, reward, or fee for such a place, or makes a corrupt agreement, about it, *shall immediately*, upon making the gift, payment, or agreement, be adjudged a disabled person in the law, to all intents and purposes, to have, occupy, or enjoy the said office."

In 1769 the case of *Rex v. Vaughan* (1) came before Lord Mansfield and the Judges of the King's Bench. It was held that the Statute of Edward VI did not extend to the colonies, but that an attempt to bribe a Privy Councillor to procure an office was a misdemeanor. The case of Lord Macclesfield was discussed at the Bar, and it was argued that "the sale of any office is not *malum in se* : it is no offence at common law, 'tis no crime; no object of positive punishment. It is not immoral, if a good man and a sufficient one is promoted to the office." But Lord Mansfield held that such transactions must be put a stop to. He mentioned the terrible consequences that might result to the public.

He says (at 2500) :—"I suppose that most of the impeachments against ministers have been for taking money to procure offices grantable by the Crown. Wherever it is a crime to take, it is a crime to give : they are reciprocal. And in many cases, especially in bribery at elections to Parliament, the attempt is a crime : it is complete on his side who offers it." In 1809 Lord Ellenborough followed this decision in *Rex v. Pollman* (2), and seems to have held that a person who agreed to keep the money in deposit until the time for paying it over as a bribe might be indicated for conspiracy. Whatever doubts might exist at Common Law were finally ended [616] by the passing of the Stat. 49 George III, c. 126, which declares, as well as enacts. This statute extends that of Edward VI to Indian appointments. The effect of the combined statutes is thus stated by Mr. Justice Stephen, in regard to the sale of offices, at p. 39 of his Digest of Criminal Law.

"Article 132—Definition of Offices.—The word 'office' in arts. 133 and 134 includes :—'Every office in the gift of the Crown, or of any officer appointed by the Crown, and all Commissions, civil, naval, and military, and all places or employments in any public department or office whatever, in any part of Her Majesty's dominions whatever, and all deputations to any such office, and every participation in the profits of any such office or deputation.'"

"Article 133—Selling Offices. Every one commits a misdemeanor who does any of the following things in respect of any office, or any appointment to, or resignation of, any office, or any consent to any such appointment or resignation, that is to say, every one who directly or indirectly (a) sells the same, or receives any reward or profit from the sale thereof, or agrees to do so; (b) purchases, or gives any reward or profit for the purchase thereof, or agrees or promises to do so. Whoever commits either of these misdemeanors upon its commission forfeits to the Queen any right which he may have in the office, and is disabled to hold it for life, and it is not lawful for the Queen to dispense him from such disability."

The view expressed by the learned writer as to the forfeiture of the office is confirmed by the authorities mentioned in Bacon's Abridgment, tit. Pardon, H. I ought not to omit mention of the case of *Godolphin v. Tudor* (3). It is important because the House of Lords confirmed the unanimous judgment of the Queen's Bench which had interpreted the reason of the Statute of Edward VI, *viz.*, "that the purchaser of the office was manifestly under a temptation to oppress and exact in his office to save himself, which was the chief inconvenience the statute intended to provide against." The date to this decision, 1704, is near to that

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(1) 4 Burr. 2494 (2497).

(2) 2 Camp. 229.

(3) 1 Brown's Parl. Cases, 135.

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of the Revolution, just as the impeachment of Lord Macclesfield [617] occurred not long after the settlement of the Crown under the Hanoverian dynasty. Those were times when the atrocities committed by unjust Judges under the Stuart Kings were in fresh recollection. One cause of such injustices which, the historians say, were the chief cause of the expulsion of the Stuarts, was that offices were sold, unfit men appointed, and often the Judge had some pecuniary interest in getting a conviction, which at first insensibly, and afterwards mechanically, biased his judgment. In the first year of William and Mary, Parliament passed an Act to do away with the judgments passed on Algernon Sydney, Lord William Russell, and others. See, too, 6 Foss' Judges, 208, as to the sale of judicial offices in the reigns of James I, and Charles I, being a cause of the Great Rebellion: and for the way in which corrupt Judges can deal with evidence, 2 Phillips' State Trials, 66 and 110. In his speech in Parliament against the Magistrate of Guiana for oppression of the missionary Smith, Lord Brougham said that the Judge Jeffreys altered the record of Sydney's trial in order to put his own conduct in a more favourable light. The 4th article of Impeachment of Archbishop Laud was for sale of judicial offices—4 Howell's State Trials, 326 (1). [618] See also Chief Justice Vaughan's remarks on Judges in *Bushell's case* (2).

I have endeavoured to show the very serious view taken by the Parliament of England of the sale of judicial offices. Parliament has enforced its views by means of legislation, and, as Lord Mansfield points out, by way of impeachment. It has always been the practice and duty of the Courts to pay great heed to that august assembly. The Court of Parliament is superior to the Courts of Law. "The House of Commons, being one branch of the Legislature, to which Legislature belongs the making of laws, is superior in dignity to the Courts of Law, to whom it belongs to carry those laws into effect, and, in so doing, of necessity, to interpret and ascertain the meaning of those laws. It is superior also in this, that it is the grand inquest of the nation, and may inquire into all alleged abuses and misconduct in any quarter, of course in the Courts of Law or any of the members of them." (*Per Patteson, J., in Stockdale v. Hansard* (3).) Were any further reasons required for pointing out these Acts of Imperial Parliament to the Courts below, I think they are to be found in the fact that Parliament has, in its control of the affairs of India,

(1) "The disgraceful trading in ministerial and judicial offices which prevailed in the last reign was continued in this. In the Chancery they were notorious objects of traffic. Archbishop Laud, when consulted by Sir Charles Caesar about the vacancy in the Mastership of the Rolls, plainly told him 'that as things then stood, the place was not like to go without more money than he thought any wise man would give for it.' a. Sir Charles, notwithstanding this caution, appears to have given £15,000 with a supplemental loan of £2,000 to the king. On Sir Charles' death, Dr. Buck offered a good sum for the office, and actually paid £3,000 in advance; but the king returned the money, having resolved to keep a promise he had made to Sir John Colepeper. b. Nor were the Common Law Judges exempt from the same imputation. Chief Justice Richardson was said to have given £17,000 for his place; c and according to Sir James Whitelocke's Diary, Justice Vernon '*dedit aurum*' for his promotion. d The shameful practice was no doubt general, though many instances remain unrecorded, the details being as discreditable to the giver as to the receiver, to the tempted as to the tempter. One inevitable consequence of this was, that men were afraid of losing the place they had paid for; and another, that the public, to whom the corruption of some was known, attributed it to all, and distrusted the motives of an adverse judgment, though that judgment might be rightly pronounced."—6 Foss., 208.

a State Trials IV. 417.

c Walter Yonge's Diary, 97.

b Life of Clarendon I, 170.

d Bacon's Works (Montague), XVI, CCCIV.

(2) 6 Howell's State Trials, 1003.

(3) 9 A. & E. 193.

taken the stoppage of corrupt practices into its consideration time after time, and has given effect to its will, not only by impeachments, but also by legislation. I need not particularly mention statutes like 10 Geo. III, c. 47, and 49 Geo. III, c. 126, which make provision for trial in England by the King's Bench of oppression and corrupt practices in India; or 24 Geo. III, c. 25, and 26 Geo. III, c. 57, which provide for a trial by members of both Houses of Parliament. The practice of public servants accepting presents or rewards is forbidden by the Regulating Act, 13 Geo. III, c. 63, s. 23. Again, 33 Geo. III, c. 52, s. 62, enacts that the demanding or receiving of presents shall be deemed and taken to be extortion, and a misdemeanour at law. Section 66 enacts that "the making, or entering into, or being a party to any corrupt bargain or contract, for the giving up, or for obtaining, or in any other manner touching or concerning the trust and duty of any office or employment under [619] the Crown, or the said United Company, in the East Indies, by any British subject whomsoever, there resident, shall be deemed and taken to be a misdemeanour at law, and shall be proceeded against and prosecuted as such by virtue of this Act." Then we have 49 Geo. III, c. 126, extending, in a most ample manner, the provisions of the statute of Edward VI to Indian appointments, and declaring those who buy or sell them, or give or receive money for them, guilty of misdemeanours. When Parliament had provided a delegated Legislature for India, local statutes began to be passed in the same sense and with the same aims. So that we have two bodies of Legislation still existing—the above Statutes of Imperial Parliament, and those Acts whereby, from the time of Lord Cornwallis, attempts have been made to stop and punish the corruption of which the student finds abundant traces in the "Memoir of Lord Cornwallis," that of Sir Elijah Impey, by his son, and in the "Story of Nuncomar" by Sir J. F. Stephen.

It would be as unbecoming as it is unnecessary for me to find reasons for the utterance of the Lords of Her Majesty's Privy Council in *Kerakoose v. Serle* (1). "It is of great importance in all countries—and more particularly in a country like India—that no officer of a Court of Justice should be even exposed to the suspicion, that in the discharge of his official duties, his conduct may be influenced by any personal consideration. . . . When there is room for the operation of sinister motives, the belief of their operation can hardly be excluded from the minds of the parties." Again, in the case of *In re Grant* (2), where a Master of the Supreme Court at Fort William appealed from his dismissal by the Judges, their Lordships, in their reasons for confirming the order, use most solemn language. They say: "The administration of justice must be kept most pure, and free from suspicion, and the public, who are so deeply interested in the due discharge of the duties incident to the offices of Master, Accountant-General, and Examiner, are entitled to require that those to whom such great interests are submitted should be free from all suspicion of disregarding the sacred obligation of duty." These words coming [620] from the very highest judicature I take to be authority for the spirit in which the Courts of Justice are to administer the law. I am of opinion that Mr. East, in using the powers with which the law supplied him, ought to have brought more into his consideration the seriousness of the offence complained of as viewed by Parliament, the Judicial Committee of the Privy Council, and the Indian Legislature. He ought to have given more

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(1) 3 M. I. A. 329 (346).

(2) 7 Moore's P. C. C. 141, (159).

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attention, to begin with, to the question whether the complaint was true. The obvious way was to look at the record of the case mentioned in the complaint and in the judgment of the Full Bench. In England, where testimony has been given in a Court of Justice impeaching the conduct of Magistrates, the matter has been frequently ordered by the Courts of superior jurisdiction to be laid before the Lord Chancellor "to enable him to judge whether or not such Magistrates ought to be continued in the Commission of the Peace"—*The King v. Jolliffe* (1). If any of the persons complained of were, as Magistrates or as civil Judges under the Bombay Act III of 1876, subordinate judicially to the District Magistrate, there would, in my opinion, have been no impropriety in his bringing to the notice of the Government anything in the depositions which, in England, ought to be brought to the notice of the Lord Chancellor. Under s. 26 of the Criminal Procedure Code the power of suspending or removing Magistrates from office is reposed in the local Government. The High Court of Calcutta have, in the case in *Baidya Nath Singh v. Muspratt* (2), mentioned the three sets of circumstances under which the present complaint might lawfully have been dismissed. I agree with my brother Scott in opinion that the circumstances of the present case did not come under any of these three categories. It was the truth of the complaint which the Magistrate ought to have concerned himself with, and into this question, it seems to me from the record, that inquiry was not made. If the complaint was true, there was, in my view of the law, sufficient ground for proceeding. The judgment of the Full Bench rules that the complainant's motives were not a reason for refusing inquiry into the complaint. As regards the order imposing imprisonment on the [621] complainant for seven days under s. 485 of the Criminal Procedure Code, I am of opinion that this section did not give the Magistrate the power to imprison. It applies only to witnesses: complainant was not a witness: the two words are plainly distinguished in the Criminal Procedure Code, as e.g. in ss. 171, 216, 244, 252, 449. A penal statute must be construed strictly, and Magistrates ought to be very careful before they proceed to inflict imprisonment in a summary manner. They must avoid all appearance of oppression. (See *The Oath Ex-officio Case* (3) and Coke's comment on chap. 29 of Magna Charta, 2 Inst., 53). Section 480 of the Criminal Procedure Code applies to witnesses. But the witness cannot be punished for not answering a question which he was not legally bound to answer—*Queen-Empress v. Hari Lakshman* (4). I am of opinion that as the questions about motive were already pronounced irrelevant by the Full Bench, the Magistrate ought not to have put them: and certainly ought not to have proceeded against the complainant with such rigour. The words of Lord Campbell already quoted in *Harrison v. Bush* (5), show that a complainant fulfils a duty when he informs against magisterial misconduct: it was, therefore, not proper to examine him about his motives, and force him to name the persons who had written the complaint for him, or helped him with legal advice, as if, in making the complaint, he had done something wrong. All that Mr. East says about the man Shridhar Date, who suggested the complaint, is quite irrelevant, as there was nothing wrong in so doing, provided the complaint was true; and the only thing the Magistrate had to do was to inquire whether the complaint was true, and this has not

(1) 4 T. R., 290 (291).

(3) 12 Coke, R. 229.

(5) 5 E. & B. 344; 25 L. J. (N. S.) Q. B. 25.

(2) 14 C. 141.

(4) 10 B. 185.

been done. I regret that in his explanations rendered to this Court Mr. East should, in mentioning the complainant's recent application here, say that complainant "had again had the impudence to trouble their Lordships." It was for the Judges of this Court to deal with that petition with all patience and gravity. The decisions of Lord Mansfield, which I have already quoted, show that the Courts must, in certain circumstances, where the public policy is in question, hearken even to an accomplice in crime tainted with criminal contamination, which [622] the present complainant is not, in order to ensure the proper investigation of crimes alleged to have been committed. This is often done in cases of false coining, of bribery, and secret conspiracies, and in many other crimes.

Reverting to another point on which I think the District Magistrate did not fully understand the law, I am of opinion that, as a general rule, if a general law has been broken, any person has a right to complain, whether he has suffered any particular injury or not. It is so laid down in Mr. Broughton's edition of Sir Benson Maxwell's work on Magistrates, p. 16. I have not been able to find any decision dealing fully with the point of law. Mr. Justice Stephen, an eminent writer on procedure, and author of the Criminal Procedure Code of 1872, thus states the law of England:—"The practical result of them is that the Law of England, as it now stands, makes no special provision either for the detection or for the apprehension of criminals. It permits any one to take upon himself that office, whether or not he is aggrieved by the crime." (General view of the Criminal Law, p. 154). It is lawful for a private person to do any thing to prevent the perpetration of a felony (*Handcock v. Baker* (1), and see *Rex v. Pinney* (2).) *Midelton v. Gale* (3), is a strong case showing the principle. The right of a private person to complain of great infractions of the laws is closely connected with his duty to prevent and help to detect crime—a duty recognized and imposed by certain provisions of our Indian procedure. In s. 44 of our Code appears a list of above thirty crimes about which everybody is bound under the penal law to give information to the nearest Magistrate or Police officer. The doctrine in England dates from Anglo-Saxon times, long before the Statute of Winchester, or the writings of Britton. (See 2 Stubb's Const. Hist., 123; and 2 Reeve's Hist., Eng. Law 119, 121). The freemen were bound in frank pledge, they were required to keep arms, to pursue felons, to attend armed when the Sheriff called out the power of the country, and to contribute compensation to the person robbed within their hundred. The procedure by appeal [623] differed from prosecution by indictment in the name of the Crown in so far that the appeal was the complaint of the private person. But it was something more, as it was seen at a very early date that in prosecuting for a crime a public duty is being performed. So appeal is defined as the party's private action, prosecuting also for the Crown in respect of the offence against the public. (2 Hawkin's Pl. C., 224.) The subject is discussed in Allen on Prerogative, where (p. 99) the learned writer says: "It was the object of that proceeding to combine with satisfaction to the private party, reparation to the public for the offence." Stephen's History of Criminal Law, Chap. VII, shows the processes whereby the practice arose of persons aware of a felony informing the Justice of the Peace. I find nothing in our Code of Criminal Procedure showing an intention to confine prosecutions to the persons directly injured. This

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(1) 2 B. & P. 260.

(2) 5 C. & P. 254.

(3) 8 A. & E. 155.

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restriction would conflict with the duties of citizens and the welfare of society. The Judicial Committee of the Privy Council in *In re Grant* (1) treat the whole public as interested in the purity of judicial administration. So does *Harrison v. Bush* (2) and *Butt v. Conant* (3). There are some exceptions of procedure about complaints of offences against marriage, about defamation, about the stamp laws, about lotteries. But such restrictions, of which ss. 195 and 198 of the Criminal Procedure Code are examples, are exceptions made by statute. The case of Governor Eyre may be mentioned, as an instance of the general rule. Distinguished counsel advised that any person in England might prosecute him in Middlesex for acts done in Jamaica. (Forsyth's Const. Law, 563.) Our law substantially conforms to the Civil Law of *Judicia Publica*. *Judicia Publica* are criminal prosecutions which every citizen is allowed to institute against any person who has been guilty of a wrongful act, in order that the penalty fixed by the law to such act may be inflicted upon him. (Cumin's Manual, 347; Justinian Lib. 4, Tit. 18.) The proceeding by complaint to a Magistrate is different to that by application to a superior Court for an information. Where the Queen's Bench has been moved at the suit of a private person for an information against a Magistrate or high public officer, [624] it has sometimes refused on the ground that the misdemeanour was so grievous, or so dangerous to the public interest, that it ought to be prosecuted by the Crown itself. (Shortt on Informations, 33; *Ex parte Crawshaw* (4). But this is not a consideration for a Magistrate to notice—at least, to induce him to refuse a hearing—although it may in many cases induce him to represent the matter to the Crown in order that such offences may be prosecuted with more diligence and impartiality than a private complainant always shows. The remedy by application to our Queen's Bench jurisdiction for an information is in many ways different to that by indictment in England, or by complaint here to a Magistrate. It is remarkable that there seems to be no reported decision in our Indian books on the question who may complain. The Code of Criminal Procedure is silent, and thus some of the Magistrates may not be aware of the general right of the subject to petition the Crown, in its Courts, for justice on offenders against the laws. In the absence of decisions I am ready to make excuse for mistakes of inferior Courts, while their occurrence renders it important that we should declare how the law stands.

Lastly, we have now to determine what order we should pass in the case before us. What Mr. East has inquired into is not the matter of the complaint: what he has elicited by stress of imprisonment is irrelevant information as to the advice on which the complainant acted, the names of his advisers, and the motives for complaining. Thus the persons accused have, through the mistakes of two Magistrates, escaped the preliminary investigation which might or might not have led to their arraignment, and the public justice has not been vindicated, the accused were not summoned, and the complainant was sent to prison. Now, as a matter of strict law, we ought perhaps to enforce obedience to the judgment of the Full Bench, and, after hearing the accused, determine whether we should order the Magistrate to inquire into the truth of the complaint, and let the motives of the complainant and his advisers alone. It is true that the complainant deserves no sympathy from us, except as to his imprisonment; indeed, [625] his vacillation and his statements cause doubts whether his motives are proper,

(1) 7 Moore's P.C.C. 141.

(2) 5 E. & B., 344; 25 L.J. (N.S.) Q.B. 25.

(3) 1 Bro. & Bing. 548 (587).

(4) 8 Cox. C. C. 356.

and if he came here, either in this jurisdiction of revision, or for an information, we should have to consider whether he has clean hands. I take it that the judgment of the Full Bench seems to require that we should issue notice to the accused Magistrates and Mamlatdars; as their Lordships ignored the circumstance that the complainant took no steps to revive the prosecution, so it might be argued we should ignore his endeavour to withdraw from it; especially as such prosecutions have a public aim; and as the complainant would be bound, when examined as a witness, to answer all relevant questions. I feel pressed also by the remarks of Lord Mansfield in *The King v. Norris* (1), where he said the Court would be glad to lay hold of an opportunity, from what quarter soever the complaint came, to show their sense of the crime: and by those of Lord Tenterden, C. J., in *The King v. Steward* (2), where the Judges took notice of the judicial positions of the persons accused as an important fact. We, as Judges, have no prerogative to sanction any violation of the law—*Entick v. Carrington* (3); we have power to put mistakes right, and restore a case to the *forum* where it was pending until the mistake of law was made. If the enacted law bound us to a particular course, we would follow it. I agree with West, J., in *Tulsidas v. Virbussapa* (4), and all the array of Chancellors and Judges he cites, that an Act of Parliament must not be frittered away. See also the note by Mr. Amos to chap. XVI of Fortescue's *De Laudibus Legum Angliæ*. But in the exercise of our revisional jurisdiction the Court has a certain amount of judicial discretion: we ought not to appear to violate any of the certain rules of judicature which are the foundation of the confidence reposed in the Courts. Lest I should seem to apply the crooked cord of discretion where, it might be argued, I should use the golden metewand of the law, I must give my reasons in larger detail. Now it is against public policy, as a general rule, that persons should be vexed often by repeated prosecutions. Again it is, on the whole, desirable that when other means of securing justice exist, the High Court should not assume [626] the function of initiating prosecutions, or pass orders of its own motion which have the same sort of effect, as there is some resemblance between ordering a prosecution, and, without any motion, ordering a renewal of a prosecution in which there has been no inquiry. In its jurisdiction over informations, and in granting the writ of *mandamus*, the Queen's Bench has often considered whether there are other remedies, and whether the ordinary remedies are sufficient. If the persons complained of were not Magistrates, and Civil Judges exercising enormous powers, I would have less difficulty in coming to a judgment. But, as the Lords of the Privy Council say, it is specially in India that purity in the administration of justice must be secured. It is in India that Magistrates exercise enormous powers, often far greater than those of a Justice of the Peace, or several Justices sitting together in Sessions. Many of us, who have served as Magistrates, must have felt, as I did, astonished at the extent and variety of the powers, the enormous confidence, reposed in us by the Queen's Government. Magistrates of the First Class can pass sentences of two years' imprisonment and Rs. 1,000 fine, can whip, can start prosecutions on their own suspicion. Magistrates of the Second Class can sentence to imprisonment for six months. Mamlatdars have a very considerable jurisdiction in suits about land, houses, and easements (*Mahadaji v. Sonu* (5)), and

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(1) 2 Kenyon, 300.

(2) 2 B. & Ad. 12.

(3) 19 Howell's State Trials, 1030.

(4) 4 B. 624.

(5) 9 B. H. C. R. 249.

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there is no appeal from their decrees. I think, therefore, that if judicial officers possessing these very considerable powers are accused of misconduct, the law of procedure ought to be enforced where it provides for inquiry. Magistrates may make mistakes, and refuse inquiry on the complaint. As said by Littledale, J., in *Rex v. Pinney* (1), it is often difficult for a Magistrate to hit the precise line of his duty; but still, as said by the same learned Judge, he is bound to hit that precise line. "Whether a man has sought a public situation, as is often the case of Mayors and Magistrates, or whether as a peace-officer, he has been compelled to take the office that he holds, the same rule applies; and if persons were not compelled to act according to law, there would be an end of society." Ought we then to compel the District Magistrate to make [627] inquiry whether the complaint is true, whether the Judges and Magistrates accused did buy their offices; whether the record in his Court contains the confessions of these Judges and Magistrates?

I think *The King v. Norris* (2) and *The King v. Steward* (3) may perhaps be distinguished on the ground that the Court of Queen's Bench was dealing in each case with an application for an information at the instance of a suitor who was anxious to prosecute. I do not think there is, as regards the particular persons accused, any binding necessity for our expressing our sense of the crime, as in the absence of inquiry there is no presumption that they are guilty of the crime. I do not think the complainant deserves any particular consideration. By these judgments we declare the law that any private person may complain of public wrongs; any private person aggrieved has his remedy in his own hands; he can go to a Magistrate and complain. He may also apply here for an information. He may represent his grievance to the Governor in Council or to the Secretary of State—*Harrison v. Bush* (4).

But, then, we have to consider the Crown and the public interest. The cases of buying and selling offices are collected in Russell on Crimes (Vol. I, c. 15). Those of forfeiture of such offices are collected in Bacon's and Viner's Abridgments, and Cruise's Digest. The reason for prosecutions quoted by Russell from Hawkins, seems to me borne out by the Acts of Parliament, the Indian Legislation, the impeachments in Parliament, the decisions of the Queen's Bench and the House of Lords, the solemn observations of Her Majesty's Privy Council. "It is palpably prejudicial to the good of the public to have places of the highest concernment, on the due execution whereof the happiness of both king and people depends, disposed of, not to those who are most able to execute them, but to those who are most able to pay for them; neither can there be any greater temptation to officers to abuse their power by bribery and extortion and other acts of injustice than the consideration of having been at a great expense in gaining their places, and the necessity of sometimes [628] straining a point to make their bargain answer their expectations." I think these reflections are more weighty where the judicial officer, who has purchased his office, sits under apprehension or liability to a criminal prosecution at the suit of either a private person or the Crown. I notice that at the hearing before the Full Bench where these Magistrates were represented, no pardon was pleaded; that may be because they are innocent and need no pardon, but they remain liable to prosecution.

(1) 5 C. & P., 254 (270).
 (3) 2 B & Ad. 12.

(2) 2 Kenyon, 300.
 (4) 5 E. & B. 344; 25 L.J. (N.S.) Q.B. 25.

There is, however, a power in the Crown, as representing the public interests, to prosecute by complaint, before a Magistrate; and under s. 144 of Act X of 1875 the Advocate-General may, with the leave of the Government, exhibit to the High Court informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer. Thus the Crown has in its own hands ample means to protect the dignity of its Courts, the character of the Judges, and the interests of the suitors. It is, therefore, less necessary for us, Her Majesty's Judges, to act as if there were obligation on us to show our sense of the alleged crime by issuing a rule which might revive the prosecution of this particular complaint of a private person who does not wish to go on with it. We declare what the law is, and leave it to others to enforce it.

As the final reason for distinguishing the present case from *The King v. Norris* (1) and *The King v. Steward* (2), and for appearing to deviate from the principle applied by the Full Bench (3), I may say that two of the Judges of this Court have already made use of a means similar to that mentioned by Lord Campbell in *Harrison v. Bush* (4), namely, representation to the proper authority. Mr. Justice Birdwood and myself, (who happened to be vacation Judges) brought to the notice of the Government certain sworn statements contained in the record of a trial, which statements, in our opinion, afforded reasons for an inquiry by the Government into the conduct of certain Magistrates and Judges who said they had paid money for their offices. This was done in our [629] jurisdiction of superintendence of the Courts of civil and criminal jurisdiction in this Presidency, last November. Mr. Justice Scott has alluded to events that have happened subsequent to the filing of the complaint in this case; and I agree with him that they, as fresh facts, may weigh in our judgment as to what is the proper order to pass now. But as the result is that the order of the Full Bench will not be carried out, and the persons accused will escape any investigation of the complaint, although our law is no respecter of persons, I think it right, for reasons already given, and out of my respect for the Judges composing the Full Bench; to be explicit about what events I mean. I mean public proceedings in Parliament. It is now matter of common notoriety that questions about the conduct of certain Magistrates and Mamlatdars, alleged to have purchased their offices, have been raised in the House of Commons, and that directions about them have been issued by Her Majesty's Secretary of State, and inquiries begun by the Governor in Council. I think we may reasonably take into our consideration, in dealing with the present case in the jurisdictions of superintendence and revision, that the question of judicial purity is in the hands of these the highest executive authorities—the responsible Minister of the Crown, and its representative here. The Courts take notice of, and respect, all constituted authorities and powers. The Government can gather information about what is mentioned in the complaint; it is the judge of what the public interests require; it has the prerogative of mercy; and I would incline, where my judgment was balanced, or pressed by authorities, as much against any action which might intermeddle with the executive authority in the performance of such a public duty, so purely executive, as against any action which might be hard or vexatious to individual suitors.

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13 B. 600.

(1) 2 Kenyon, 300.
(3) 13 B. 590.

(2) 2 B. & Ad. 1.
(4) 5 E. & B. 344; 25 L.J. (N.S.) Q.B. 25.