

## GUNIJEE v. SILVA.

1895.

July 12.

*P. C., Colombo, Letter B.**Criminal Procedure—Refusal to issue process—Examination of complainant—Cheating—Proof of invalid deed in support of charge.*

On a plaint being presented to a Police Magistrate he refused to issue process, being of opinion, having read the plaint, that the complainant would not be able to prove his case—

*Held*, that the Magistrate ought to have examined the complainant, and until he had done so it was impossible for him to say that no charge could be made out against the accused.

In a prosecution for cheating by dishonest inducement to part with a sum of money, it is open to the complainant to show the circumstances in which he parted with his money; and if one of those circumstances was an agreement of no force or avail in law, as it had not been reduced to writing as required by section 21 of Ordinance No. 7 of 1840, the complainant would still be entitled to prove such agreement.

THE facts of the case sufficiently appear in the judgment.

*Pereira*, for complainant, appellant.

*Morgan*, for accused, respondent.

12th July, 1895. BONSEE, C.J.—

This is an appeal from a decision of Mr. Moor, Acting Police Magistrate of Colombo, purporting to be given under section 159 of the Criminal Procedure Code, by which he refuses to issue process. The complainant presented a written complaint to the Magistrate, alleging certain facts which he says show that the accused has committed a breach of the Criminal Law, *i.e.*, cheating.

The Magistrate, instead of doing what the law requires him to do—*i.e.*, examine the complainant, take down his statement in writing, and then get him to sign it—appears to have merely read over the complaint, and after reading it to have decided that it was clear that the complainant would be unable to prove his case, and therefore refused to issue process. But that order was premature. The Magistrate ought to have examined the complainant, and until he had done so it was impossible for him to say that no charge could be made out against the accused. It would be sufficient simply to remit the case to the Magistrate to be proceeded with according to law. But the question has been raised whether, assuming the complaint to contain all that the complainant had to say, the Magistrate would have been justified in declining to issue summons.

1895.     The case alleged by the complainant is shortly this : He says  
*July 12.*   that he agreed with the accused that the accused should sell, and  
BONGER, C.J. he should purchase, a piece of land ; that, on the faith of that  
agreement, Rs. 1,400 was paid by him to the accused, but that the  
accused never had any intention to carry out his agreement ; and  
that he got the Rs. 1,400 dishonestly. The agreement was not  
reduced to writing, and therefore, under section 21 of Ordinance  
7 of 1840, it is of no force or avail in law ; but the Magistrate is  
not right in stating that the agreement could not be proved. It  
would be open to the complainant to show the circumstances  
under which he parted with his money ; and if one of these  
circumstances was such an agreement as he alleges, he would be  
entitled to prove that there was such an agreement.

The case must go back to be proceeded with according to law.  
I express no opinion whether the complainant will be able to  
make out a good case. That the Magistrate must determine after  
hearing what the complainant has to say.

