

certain remarks made in the concluding portion of the Commissioner's judgement. It is there stated that this man Sobha had left his home and was living as an out-caste and leper on the banks of the Ganges. A man suffering from a virulent type of leprosy would naturally leave his home and take up his residence somewhere outside his village. It does not seem to have formed any part of the plaintiff's case in the courts below that Sobha had renounced the world and had adopted the life and status of a Hindu ascetic. The fact that he executed the sale deed in suit in satisfaction of a debt previously contracted by him shows in itself that he retained an interest in mundane affairs and did not consider himself to have renounced all his rights to his property. We do not think that the order of the Commissioner can be supported upon this or upon any other ground.

Our answer therefore to this reference is that in our opinion the Commissioner should have dismissed the second appeal preferred to his court, and that the costs of the entire proceedings, including this reference, should be borne by the unsuccessful plaintiff. The petitioner, that is to say, the original defendant in the suit, should be allowed to charge pleader's fee in this Court at the rate actually certified.

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## REVISIONAL CRIMINAL.

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*Before M. Justice Tudball.*

EMPEROR v. BAHAWAL SINGH.\*

*Criminal Procedure Code, section 250—Fivolous or vexatious accusation—*

*Compensation—Against whom order for compensation can be made.*

It is not necessary that the person against whom an order for compensation under section 250 of the Code of Criminal Procedure is made should be the person who himself gives information to a Magistrate in consequence of which another is accused of an offence provided that he is the person upon whose information an accusation is made.

THE facts of this case were as follows:—

One Jagmohan Dom gave information to the Revd. G. Spooner of the Wesleyan Mission to the effect that the accused constable had extorted from him the sum of Rs. 10. The Revd. G. Spooner made an inquiry on his account and then reported the matter to

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\* Criminal Reference No. 838 of 1917.

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the District Magistrate. The District Magistrate thereupon directed the prosecution of the constable. The court trying the case found the charge frivolous, acquitted the accused, and directed Jagmohan to pay compensation. The District Magistrate referred the case to the High Court with the recommendation that the order passed under section 250 of the Code of Criminal Procedure by the trying Magistrate should be set aside on the ground that it did not appear to him to be legal.

The parties were not represented.

TUDBALL, J.—The District Magistrate of Benares has referred the case to this Court with the recommendation that the order passed under section 250 of the Criminal Procedure Code, directing Jagmohan Dom to pay Rs. 10 as compensation to the police constable be set aside. Jagmohan Dom gave information to the Revd. G. Spooner of the Wesleyan Mission to the effect that the accused constable had extorted from him the sum of Rs. 10. The Revd. G. Spooner made an inquiry on his account and then reported the matter to the District Magistrate. The District Magistrate thereupon directed the prosecution of the constable. The court trying the case found the charge frivolous, acquitted the accused, and directed Jagmohan to pay compensation. The Magistrate in his reference merely states that the order does not appear to him to be legal. He does not give any grounds for his belief or opinion. Section 250 says “that if in any case instituted upon information given to a Magistrate, a person is accused of any offence before a Magistrate and the Magistrate by whom the case is heard, discharges or acquits him and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, direct the person upon whose information the accusation was made to pay compensation to the accused.” The question, therefore, is whether it was upon the information of Jagmohan Dom that the accusation against the constable was made. The information in the present case no doubt was conveyed to the District Magistrate through the Revd. G. Spooner. If Jagmohan Dom gave the information to the Missionary with the intention that it should be conveyed to the District Magistrate with a view to a

prosecution, then clearly Jagmohan Dom was the person upon whose information the accusation was made. The mere fact that he utilized the Missionary for the purpose of conveying the information to the District Magistrate cannot protect him. If on the other hand he merely in conversation told the Missionary about the case without any desire for or view to a subsequent prosecution or to the conveyance of the information to the District Magistrate, then he was hardly liable for the intervention of a busy body who took it upon himself to make a complaint to the District Magistrate. In this latter circumstance it would be the Revd. G. Spooner who would be liable to pay compensation. I have examined the letter sent by the Missionary to the District Magistrate, and that letter is sufficient to show that Jagmohan did intend to make a complaint with a view to securing the punishment of the constable. It clearly, therefore, was upon his information that the accusation against the constable was made in court before the trying Magistrate. In these circumstances I do not think that the order passed was illegal. Let the record be returned.

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## APPELLATE CIVIL.

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*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

NARAIN DEI (APPLICANT) v. PARMESHWARI AND OTHERS (OPPOSITE PARTIES).\*

1917

November, 7.

*Act No. VII of 1889 (Succession Certificate Act), sections 7 and 9—Certificate of succession—Security—Application by widow of separated Hindu.*

Where, under section 9 of the Succession Certificate Act, 1889, the requiring of security is optional, security should not be taken from the widow of a separated Hindu asking for a certificate to enable her to collect debts due to her husband, in the absence of special circumstances rendering the taking of security necessary.

IN this case one Musammat Narain Dei made an application under Act VII of 1889, for a succession certificate to collect certain debts due to her husband. The reversioners of the deceased objected to the granting of the certificate till some security was furnished to safeguard their interest. The lower court allowed

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\* First Appeal No. 69 of 1917, from an order of Muhammad Ali, District Judge of Moradabad, dated the 3rd of April, 1917.