

1897.

QUEEN-
EMPRESS
v.
BABAJI
LAXMAN.

PARSONS, J. :—The Magistrate has adjudged the seizure of the cattle in question illegal and awarded compensation to the owner under section 22 of the Cattle Trespass Act, 1871, because he was of opinion that they had done no damage even if they had strayed into the reserved forest in which it is alleged they were found straying, and were seized by the accused who was the forest officer in charge of the reserved forest. The Magistrate has apparently lost sight of the words “or found straying thereon” which occur in section 11 of the Cattle Trespass Act, 1871, which is applicable to forests by section 69 of the Indian Forest Act, 1878. If the cattle were found straying in a reserved forest, as alleged by the accused, the seizure would be legal even if no damage had actually been done. There is no finding, that we can see, by the Magistrate on this point. We reverse the order and remand the case for retrial.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS v. SAKAR JAN MAHOMED.*

1897.

September 16.

Criminal Procedure Code (Act X of 1882), Sec. 560—Compensation for vexatious complaint—Compensation illegal where the complainant is a police officer.

Section 560 of the Criminal Procedure Code (Act X of 1882) does not authorize a Magistrate to pass an order for compensation to be paid by the complainant to the accused, where the complaint is instituted by a police officer.

Ramjeevan Koormi v. Durga Charan Sadhu, Khan⁽¹⁾ followed.

THIS was a reference by R. B. Steward, District Magistrate of Násik, under section 438 of the Criminal Procedure Code (Act X of 1882).

The reference was in the following terms :—

“The complainant, Abdul Sheikh Rahmia, Constable of the Násik District Police, filed a complaint against Sakar Jan Mahomed and three others of committing an affray.

* Criminal Reference, No. 63 of 1897.

(1) I. L. R., 21 Cal., 979.

1897.

 QUEEN-
 EMPRESS
 v.
 SAKAR
 JAN
 MAHOMED.

“The Magistrate discharged all four accused, and considering that the complaint against the fourth accused, Rasul Habibulla, was vexatious, fined the complainant Rs. 5, which he awarded to Rasul as compensation under section 560 of the Criminal Procedure Code.

“I would submit the following points for their Lordships’ consideration :—

“(a) The complainant was a public servant acting in his official capacity.

“(b) It is admitted by the Magistrate that there was public loud abuse and a crowd collected.

“(c) There is nothing whatever to show that complainant was actuated by any wrong motives in making the complaint.

“At the most, there is a want of sufficient evidence against accused No. 4, who is admitted to be a man of means and position. The witnesses all appear to have said as little as possible. I think this fine is wrongfully inflicted on the facts, and it is contrary to the interests of justice and good administration.”

This reference came on for hearing before a Division Bench (Parsons and Ranade, JJ.).

There was no appearance for the Crown or for the complainant.

PER CURIAM:—Following the decision in the case of *Ranjeevan Koormi v. Durga Charan Sadhu Khan*⁽¹⁾, we reverse the order passed under section 560 of the Code of Criminal Procedure (Act X of 1882).

(1) I. L. R., 21 Cal., 979.