therefore, any one in the procession should commit this act, he would be liable to arrest and punishment under that clause. The proclamation, we think, directs attention to this fact. It does not prohibit the act, so as to make the commission of it punishable as a breach of the order, but it says such an act will not be permitted, and that if it is done, the perpetrator will be proceeded against according to law; that is, that proceedings will be taken against him on the ground that he has committed an offence by reason of the commission of the act itself. In those proceedings the question whether the act is or is not an offence will have to be considered and determined. On this view of the case we decline to interfere.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE BASTOO DUMAJI.*

Criminal Procedure Code (Act X of 1882), Sec. 545—Compensation—Award of compensation illegal where no fine is inflicted.

Where an accused is discharged and no fine is imposed, no order for payment of compensation can be legally passed under section 545 of the Criminal Procedure Code (Act X of 1882).

THIS was a reference under section 438 of the Code of Criminal Procedure (Act X of 1882) by R. E. Candy, District Magistrate, Thána.

The material portion of the reference was as follows :—

"The accused was committed by the Bassein Police to the Court of the Third Class Magistrate for trial under section 379 of the Indian Penal Code in respect of palm leaves cut and removed by the accused from palm trees standing on Government land and farmed out to one Ramchandra Anant.

"The Magistrate found the accused not guilty of the charge on the ground of absence of dishonest intention in him in cutting and removing the leaves worth Rs. 2, and passed an order of discharge under section 253 of the Code of Criminal Procedure.

* Criminal Reference, No. 95 of 1896.

" In this order of discharge the Magistrate directed the accused Bastoo to pay Rs. 2 to the complainant as compensation for the loss of the palm leaves. This order is presumed to have been passed under section 545, Criminal Procedure Code, though the Magistrate has not quoted the section. The Magistrate cannot, I hold, legally pass such order when the accused is discharged. Such order can only be given on conviction of the accused, as the amount of compensation is laid down by section 545 to be paid from the amount of fine recovered. If no fine is imposed, I believe that no compensation could be awarded."

The reference was heard by a Division Bench (Parsons and Ranade, JJ.)

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

PER CURIAM :—As no fine was imposed in this case, an order for payment of compensation could not legally be passed under section 545 of the Criminal Procedure Code. We reverse the order.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Tyabji.

CHANDARSANG VERSABHAI AND OTHERS (ORIGINAL DEFENDANTS Nos. 1 TO 3), APPELLANTS. *v.* KHIMABHAI RAGHABHAI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS. *

Practice—Procedure—Right of appeal—Death of one of several appellants pending appeal—Death of one of several respondents pending appeal—Civil Procedure Code (Act XIV of 1882), Secs. 366, 368, 544 and 582.

Any plaintiff or defendant has a right to appeal without the concurrence of any of the parties to the suit. The mere fact of the death of one of several appellants cannot affect the right of the other appellants to proceed with the appeal if they choose to do so.

One of several appellants (defendants) died after appeal filed, but before the hearing. An application to have the name of his heir entered on the record as an appellant was rejected as too late. One of the respondents (plaintiffs) also died pending the hearing of the appeal, and an application to enter the name of his heir as respondent was rejected for the same reason. When the appeal came on for hearing it was dismissed as defective for want of parties.

* Second Appeal, No. 533 of 1896.