

Before Mr. Justice Markby.

ISWAR CHANDRA DUTT v. ISWAR CHANDRA GHOSE.

1872
August 7.

Compromise by parties out of Court, and without Intervention or Knowledge of their Attorneys—Costs, Taxation and Payment of.

THIS was a suit for dissolution of partnership, with the usual prayer for an account, &c. After the filing of the plaint, the suit was compromised out of Court by the parties, without the intervention or knowledge of their attorneys. The plaintiff's attorney, on becoming aware of what had been done, applied to his client for payment of his costs, and, payment being refused, the attorney applied to the Court for an order directing the taxing officer to tax his bill on scale No. 2, and for an order that the client should pay the costs when taxed.

MARKBY, J., having taken time to consider and to look into the practice of the Court, subsequently made the order in terms of the application.

Before Mr. Justice Kemp and Mr. Justice Glover.

IN THE MATTER OF THE PETITIONS OF SHISTIDHUR PARUI AND OTHERS.*

1872
July 2.

Penal Code (Act XLV of 1860), s. 441—Criminal Trespass—Intention.

An Act does not amount to criminal trespass under s. 441 of the Penal Code, unless it was committed with an intention of committing some offence, or of intimidating, insulting, or annoying some one. Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass.

THE accused in this case fished in a lake or Bhowur. This lake was one resumed by Government, and subsequently released in favor of the zemindar. The izardar under the zemindar instituted against the accused a suit in the Deputy Collector's Court for rent, which was dismissed. In appeal the Judge upheld the decision of the lower Court, on the ground that the relationship of landlord and tenant did not exist between the parties, adding that, "if the defendants continue in possession, and do not pay rent to the landlord, they may be sued for trespass."

The izardar next preferred a charge of criminal trespass against the accused before the Deputy Magistrate, alleging that notice had been served on

* Miscellaneous Criminal Case, No. 102 of 1872, against the order of the Sessions Judge of 24-Pergunnas, dated the 6th May 1872, affirming that of the Deputy Magistrate of that district, dated the 26th February 1872.