

B. L. R. Vol. V, p. 45.

(Appendix.)

The 2nd July 1870.

Before Mr. Justice Kemp and Mr.
Justice E. Jackson.

In the Matter of the Petition of NABA
KUMAR BANERJEE.

*Miscellaneous Criminal Appeal No. 47 of 1870, from
an order of the Deputy Magistrate of Serampore,
dated the 13th April 1870.*

**Code of Criminal Procedure. (Act XXV of
1861), s. 36—Removal of a case by the
Magistrate from the File of a Subordinate
Magistrate.**

Interference by the High Court in a case where
the Magistrate had improperly exercised his discre-
tion in removing a case from the file of a Deputy
Magistrate.

Baboo Hem Chandra Banerjee for Peti-
tioner.

Kemp, J.—THE prisoner in this case is
one Naba Kumar Banerjee, a late stamp-
vendor of the Moonsiff's Court of Seram-
pore. It appears that the Nazir of the
Sub-Division of Serampore had absconded
with certain property and moneys in his
charge, in respect of which a charge was
laid against him. There were also, it
appears, two register books of stamps
missing; and the prisoner, Naba Kumar
Banerjee, being suspected of having some-
thing to do with the books being missing,
is charged with the theft of the said
registers by the Deputy Collector of Seram-
pore. The case was made over for trial
to the Deputy Magistrate of Serampore.
The Deputy Magistrate, after taking the
evidence for the prosecution, recorded his
opinion that the discrepancies in the evi-
dence for the prosecution were of so glaring
a nature that it was impossible to sustain
the charge brought by the prosecution
against the prisoner, Naba Kumar Banerjee;
but as the mooktear for the prosecution had
asked the Court to postpone the case to
enable him to procure copies of the evidence,
stating that he would then be able to show
to the Deputy Magistrate that the prisoner
ought not to be discharged, he appears to
have acceded to the request of the mooktear,

and admitted the accused to bail. On
another occasion, the mooktear for the
prosecution appears to have made a similar
application, and the case was again post-
poned. After the Deputy Magistrate had
given the above expression of opinion, the
case, it appears, was suddenly removed from
his file by the Officiating Magistrate of
Hooghly.

In the order removing the case, no reasons
whatever have been given for doing so.
The transfer is made under Section 36 of
the Code of Criminal Procedure; and
although that section does not say that the
Magistrate is bound to give any reasons,
and enacts that the Magistrate is competent
to withdraw any criminal case from any
Court subordinate to such Magistrate with-
in his district or division, and to try the
case himself, or to refer it for trial to any
other such Court competent to try the same,
we think that, under the circumstances of
this case, considering that the case was
complete; and that the Deputy Magistrate
had expressed an opinion that the evidence
for the prosecution was not sufficient to
support the charge, the Magistrate has not
exercised a wise or proper discretion in
removing this case from the file of the
Deputy Magistrate of Serampore to that
of the Joint Magistrate of Hooghly. When
the case came up on a former occasion,
before the Chief Justice and myself, we
thought it necessary to call upon the
Magistrate to show cause why he had acted
in this manner, and he has now submitted
an explanation. He refers, first, to the
fact of the Deputy Magistrate being to a
certain extent subordinate to the prosecutor;
secondly, to a rumour that the Deputy
Magistrate had made improper remarks to
a mooktear in the case; thirdly, that the
Deputy Magistrate, residing in a small place
like Serampore, and being in a position to
hear much talk and rumour about the case,
was unfit to try it; and, fourthly, that his
amlas were related to parties in the case.
These reasons, we think, are wholly insuffi-
cient for removing the case from the Deputy
Magistrate's file at the late stage at which
it was so removed. They may be very
good reasons for not making the case over
to the Deputy Magistrate, but not sufficient
reasons after he had expressed an opinion
unfavorable to the prosecution to suddenly
withdraw it from his file. We think there-
fore that the Magistrate has not acted
wisely in removing this case from the file

of the Deputy Magistrate to that of the Joint Magistrate of Hooghly. It will therefore be replaced on the file of the Deputy Magistrate, who will dispose of it in due course.

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(Appendix.)

The 8th June 1870.

Before Mr. Justice Norman.

GANES SING and others (Plaintiffs),

versus

RAMGOPAL SING (Defendant).

**Suit for Declaration of Trusts of a Temple—
Act XX of 1863.**

In bringing a suit under Act XX of 1863, it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue. The Act applies to property in Calcutta.

This was a suit under Act XX of 1863 for the declaration and enforcement of the trusts of a certain temple in Bara Bazar, Calcutta, and the religious establishments and endowments thereof.

The plaintiffs were professors of a certain religion which, they alleged, was founded many years ago by one Sri Sri Gurunanack Gurugabind Jio, and the temple had been built and established by Raja Hajurij Sing Mahushay, and dedicated by him to Sri Sri Gurunanack Gurugabind Jio for the worship of the followers of the said religion.

The defendant had been acting as manager of the said temple; but the plaintiffs alleged that he had neglected the duties imposed on him as manager, refused to render accounts, and denied access to the plaintiffs to the said temple when they resorted there for the purpose of worship.

Leave of the Court to institute the suit had been obtained in accordance with Section 18 of the Act on the trial.

Mr. Branson (Mr. Woodroffe with him) for the defendant raised the issue whether the plaint disclosed any cause of action. On this issue, he contended that suits

under Act XX of 1863 could only be brought in respect of temples formerly under the control of the Board of Revenue. The Act itself is entitled, "An Act to enable the Government to divest itself of the management of religious endowment," and the preamble states that "the Act is enacted, because it is expedient to relieve the Boards of Revenue, &c., of the duties imposed on them by Regulation XIX of 1810 (1), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples, and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments, &c." The Act does not apply to the present case, inasmuch as there is nothing to show that the temple has been under the control of the Board of Revenue. Suits are brought under the Act by Section 14, and leave to institute the suit (Section 18) applies only to suits in respect of temples to which the Act was intended to apply, of which the present temple is not one; and the person to be sued is the trustee or manager appointed under Section 5. [NORMAN, J.—The words "appointed under this Act" in Section 14 refer only to a committee appointed under the Act—see Section 11; there is nothing to show that they refer to the words "trustee or manager."] By Section 5, provision is made for the appointment of a trustee or manager, and suits under the Act can only be brought against trustees or managers so appointed.

Mr. Kennedy (with him Mr. Macgregor and Mr. Apear) for the plaintiffs was not called on on this point.

Norman, J., was of opinion that the plaintiffs had clearly a right to bring the suit, under the provision of the Act; and that they properly instituted it.

(1) For the due appropriation of the rents and produce of lands granted for the support of mosques, Hindu temples, colleges, and other purposes; for the maintenance and repair of bridges, serais, katras, and other public buildings; and for the custody and disposal of uazzul property or escheats,