

1895
 CORPORATION OF
 CALCUTTA
 v.
 STANDARD
 MARINE
 INSURANCE
 COMPANY.

the amount of the tax as many times as there are occupations in respect of which the tax is to be paid ; but there is nothing in the schedule to extend the operation of the section, which is limited in terms to the professions, trades or callings prescribed in the schedule, unless the fact that the business is carried on by a company, makes the business one of those prescribed in the schedule, whatever its nature may be. We do not think it is possible to put such a construction on a section, the words and meaning of which are, we think, clear ; the words limit its operation to "persons," which expression, of course, includes joint-stock companies, who exercise the particular occupations prescribed in the schedule, and we think we should be doing violence to the plain words and meaning of the Act if we were to extend it to a company, because companies are placed in separate classes in the schedule, though it did not, in fact, carry on one of the businesses prescribed in it. Such a construction would be to tax a company, because it is a company, and not because it carries on one of the taxable businesses. The only other question is whether this company is liable to be taxed under class VI as the keepers of a place of business. The short answer to this argument is that they do not keep any place of business in Calcutta, as the case shows that their business here is carried on by their Agents, Messrs. Gladstone, Wyllie & Company, at their own offices, and that the company have no place of business of their own here at all. Our answer to the reference is that the Standard Marine Insurance Company, Limited, are not liable to assessment under section 87 of Bengal Act II of 1888 and the second schedule to the same Act.

S. C. B.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley

1895
 April 1.

SHIB NATH CHONG (COMPLAINANT) v. SARAT CHUNDER SARKAR
 (ACCUSED).^{*}

Sanction for Prosecution—Criminal Procedure Code (Act X of 1882), sections 195 and 560—Sanction to prosecute and award of compensation—Imprisonment in default of payment of compensation.

The complainant was directed to pay Rs. 50 as compensation to the accused, or, in default, to suffer simple imprisonment for one month, under

^{*} Criminal Reference No. 69 of 1895, made by F. H. Harding, Esq., Sessions Judge of Mymensingh, dated the 11th and 12th of March 1895.

section 560 of the Code of Criminal Procedure, and sanction was also granted to prosecute him for offences under sections 211 and 193 of the Penal Code. *Held*, that if the Magistrate thought that this was a case in which a prosecution under sections 211 and 193 of the Penal Code should be sanctioned, he ought not to have taken action under the provisions of section 560 of the Code of Criminal Procedure.

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Held also, that the order for imprisonment in default of payment of the compensation awarded was illegal.

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

THIS was a reference under section 438 of the Code of Criminal Procedure by the Sessions Judge of Mymensingh.

The following facts appear from the letter of reference :—

On the 14th of November 1894 Shib Nath Chong, the complainant, filed a complaint in the Court of the Deputy Magistrate, charging Sarat Chunder Sarkar, a head-constable of police, and eighteen other persons named by him, with offences under sections 144, 148, 447, 443, and 426 of the Indian Penal Code. The District Magistrate made over the case to the Joint Magistrate for disposal. The only accused summoned was the head-constable, Sarat Chunder Sarkar. He admitted that the complainant's house had been entered, but alleged that this was done for the purpose of arresting one Kama Sheik. The Joint Magistrate found the complaint to be "wilfully and maliciously false," and acquitted the accused under section 245 of the Code of Criminal Procedure. He further sanctioned the prosecution of the complainant under section 211, and also under section 193, of the Indian Penal Code, and also directed the complainant to pay to the accused Rs. 50 as compensation under section 560 of the Code of Criminal Procedure. The complainant applied to the Sessions Judge against the order of the sanction for prosecution and against the order for the payment of compensation. The Sessions Judge revoked the sanction for prosecution, and, with regard to the order awarding compensation, reported to the High Court, submitting "that the order for the payment of compensation was also not justified, and should be set aside." No one appeared at the hearing of the reference.

The judgment of the High Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows :—

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

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This is a reference from the Sessions Judge of Mymensingh, recommending that an order of the Joint Magistrate in the case of *Shib Nath Chong v. Sarat Chunder Sarkar*, head-constable, by which the complainant is directed to pay Rs. 50 as compensation to the accused under section 560, Code of Criminal Procedure or, in default, to suffer simple imprisonment for one month, be set aside. It appears that the Joint Magistrate also sanctioned the prosecution of the complainant for instituting a false charge under section 211, Indian Penal Code, but that sanction has been revoked by the Sessions Judge.

We are of opinion that it was never intended that recourse should be had to the provisions of section 560, Code of Criminal Procedure, in a case in which the trying Magistrate is of opinion that the complaint was wilfully and maliciously false, and that the complainant should be prosecuted for an offence under section 211, Indian Penal Code. If, therefore, the Joint Magistrate thought that this was a case in which a prosecution for an offence under section 211, Indian Penal Code, should be sanctioned, he ought not to have taken action under the provisions of section 560, Code of Criminal Procedure. To sanction or direct a prosecution, and also to proceed to award compensation under section 560, Code of Criminal Procedure, was, we think, an improper exercise of his discretion. *Queen v. Rupan Rai* (1). By such action the Joint Magistrate was, in point of fact, prejudging the issue of the charge which he was submitting for trial.

In the present case the Sessions Judge has set aside the sanction to prosecute, and we agree in the reasons which he has given in his judgment for so doing; and we think that, for the same reasons, we must set aside the order made under section 560, Code of Criminal Procedure.

It is admitted that the head-constable, with a *posse* of people, did enter the complainant's homestead, and do considerable mischief to his property, and it is not shown that the head-constable was justified in so doing, even though his object may have been the arrest of one Kama Sheik. It is, therefore, by no means clear that the complainant had not good cause to be aggrieved by the conduct of the police.

(1) C B. L. R., 296.

The order for imprisonment in default of payment of the compensation awarded is, we think, illegal. See the case of *Ramjeevan Koormi v. Durga Charan Sadhu Khan* (1). 1895
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We set aside the Joint Magistrate's order under section 560, Code of Criminal Procedure, and direct that the sum of Rs. 50, if realized from the complainant, be refunded to him.

S. C. B.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

RASUL JEHAN BEGUM (DEFENDANT) v. RAM SURUN SINGH
AND OTHERS (PLAINTIFFS). *

1895
February 19.

Hindu Law, Widow—Hindu Widow, Custom of remarriage of—Forfeiture—Decree granted on a different cause of action.

A Hindu widow, on remarriage, forfeits the estate inherited from her former husband, although, according to custom prevailing in her caste, a remarriage is permissible. *Murugayi v. Viramakali* (2) followed; *Matungini Gupta v. Ram Rutton Roy* (3) referred to; *Har Suran Das v. Nandi* (4) dissented from.

Plaintiffs' suit was that they were co-owners with *B* of a certain property as members of a joint family under the Mitakshara law; that after *B*'s death, a $3\frac{1}{2}$ annas' share of the property was registered under the Land Registration Act in the name of *A*, the mother of *B*, although the plaintiffs were the owners in possession, and *A* was entitled only to maintenance; that a gift was made of $1\frac{1}{2}$ annas' share by *A* to her daughter and daughter's son, without right, and the donees having granted a *suripeshgi* lease in respect of that share, the *suripeshgidars* took possession thereof. The plaintiffs, accordingly, prayed for recovery of possession by establishment of their alleged right of ownership, or, in the alternative, for a declaration that they were reversionary heirs to the estate of *B*, and, as such, not bound by the gift and the *suripeshgi* lease aforesaid. *A* died during the pendency of

* Appeal from Appellate Decree No. 1169 of 1893, against the decree of G. G. Dey, Esq., District Judge, Shahabad, dated the 21st of April 1893, affirming the decree of Babu Abinash Chunder Mitter, Subordinate Judge of that District, dated the 25th of August 1892.

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

(2) I. L. R., 1 Mad., 226.

(3) I. L. R., 19 Calc., 289.

(4) I. L. R., 11 All., 330.