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have been better if the Judge had explained that section to the jury somewhat more fully. But what the learned Judge said in his charge in explaining section 149 of the Indian Penal Code, though concise, is in our opinion quite sufficient and clear. We do not think that there was any misdirection in the Judge's charge to the jury.

The two grounds urged before us, therefore, both fail. We see no reason for interfering with the convictions and sentences, and we accordingly dismiss the appeal.

H. T. H.

Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Beverley and Mr. Justice Banerjee.

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 January 18.

GIRIDHAR CHATTERJEE, AGENT OF NABIN CHANDRA GANGULY
 (FIRST PARTY, PETITIONER) v. EBADULLAH NASKAR AND
 OTHERS (SECOND PARTY, OPPOSITE PARTY).^a

Criminal Procedure Code (Act X of 1882), section 148, para. 3—Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs—Application within reasonable time.

Where a decision has been given in a case under section 145 of the Criminal Procedure Code, and an order for costs has been made at the same time and by the same Magistrate, there is no objection to the amount of such costs being afterwards assessed by a different Magistrate if an application for that purpose is made to him within a reasonable time.

Bhajal Sonar v. Nirban Singh (1), distinguished.

THE petitioner instituted criminal proceedings under section 145 of the Criminal Procedure Code, and on the 13th of December 1893 an order was made in his favour by the Deputy Magistrate of Diamond Harbour, and by the same order the petitioner was allowed the costs of the proceedings under section 148. The costs, however, were not assessed till the 14th day of March 1894, when the second party was directed to pay a certain sum. But

^a Criminal Revision No. 640 of 1894, against the order passed by Babu Khagendra Nath Mitter, Deputy Magistrate of Diamond Harbour, dated the 27th day of August 1894.

as this was done without notice to, and in the absence of, the second party, the order of the Deputy Magistrate assessing costs was set aside by the High Court, and the case was sent back in order that the Deputy Magistrate might deal with the case according to law upon notice to the second party. The Deputy Magistrate who made the order for costs had, however, in the meantime been transferred to another district, and his successor, on the 27th August, refused to assess the costs, the order for which was made by his predecessor. The petitioner applied to the High Court and on the 26th day of October obtained a rule calling on the opposite party to show cause why the order of the Deputy Magistrate should not be set aside.

Babu *Boido Nath Dutt*, for the petitioner, in support of the rule.—The Deputy Magistrate, when he passed his decision under section 145 of the Criminal Procedure Code, also made the order for costs under section 148. Assessing costs is a mere ministerial work, and can be done by the successor in office. In civil suits the Judge deciding the case awards costs and the taxing officer taxes the costs.

Babu *Sarat Chundra Rai*, in showing cause against the rule, relied on the case of *Bhojal Sonar v. Nirban Singh* (1), where it was held that a successor in office had no jurisdiction to make an order assessing costs.

The following judgments were delivered by the Court (BEVERLEY and BANERJEE, JJ.):—

BEVERLEY, J.—The facts in this case are these: On the 13th December 1893 an order was made in favour of the petitioner under section 145 of the Code of Civil Procedure, and by the same order he was allowed the costs of the proceeding under section 148. The costs, however, were not assessed till the 14th March 1894, when the second party was directed to pay a certain sum. That order was set aside by this Court on the 9th May, on the ground that it had been made in the absence of the second party, and the case was sent back “in order that the Deputy Magistrate might deal with the case according to law upon notice to the petitioner.” The Deputy Magistrate, who made the order for costs, had, however,

(1) I. L. R., 21 Cal., 603.

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in the meantime been transferred to another district, and his successor on the 27th August refused to assess the costs, the order for which was made by his predecessor.

On the 26th October the petitioner obtained this rule, calling on the other side to show cause why the Deputy Magistrate's order of the 27th August should not be set aside, and why he should not be directed to assess the costs.

The Deputy Magistrate's order, no doubt, followed the decision in *Bhojal Sonar v. Nirban Singh* (1), to which I was a party, and in which it was held that a Magistrate "had no jurisdiction to assess the costs more than two years after the order for costs had been made by his predecessor." In that decision reference was made to another case, in which it was held that it is only the Magistrate who passes the decision under section 145 who is authorised to make an order as to payment of costs under section 148.

In the case of *Issur Chowdhry v. Bibijan Khatun* decided by Macpherson and Banerjee, JJ., on 5th January 1891, these learned Judges expressed the opinion that an order for costs ought to be made at the time of the decision, but the matter was decided on another ground.

In the present case the order for costs was made at the time the decision was passed and by the same Magistrate who passed the decision. That being so, I think there is no objection to the costs being assessed by a different Magistrate, if application is made to him within a reasonable time. In the case of *Bhojal Sonar v. Nirban Singh* (1), what mainly influenced me in refusing to interfere was the great delay that had been allowed to occur between the order for, and the assessment of, the costs, though I am bound to add that Mr. Justice Hill is still of opinion that that decision was right as a matter of law.

The provision in question is of a *quasi* civil character, and indeed the language of the section appears to have been borrowed from section 219 of the Code of Civil Procedure, and it is not necessary in civil cases that the costs should be assessed or taxed at the time of the decision, or by the same officer who decided the case.

(1) I. L. R., 21 Calc., 609.

I am accordingly of opinion that the rule should be made absolute, to set aside the order of the Deputy Magistrate of 27th August 1894, and to direct him to assess the costs according to law.

BANERJEE, J.—I concur.

S. C. B.

Rule made absolute.

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Before Mr. Justice Beverley and Mr. Justice Banerjee.

BINODA SUNDARI CHOWDHURANI (PETITIONER) v. KALI KRISTO PAL CHOWDHURY AND OTHERS (OPPOSITE PARTY.) *

1895
January 18.

Criminal Procedure Code (Act X of 1892), section 148, para. 3—“Magistrate passing a decision,” Meaning of—Order for costs.

The award of costs under section 148 of the Code of Criminal Procedure is a quasi civil proceeding, and should be made by the Magistrate at the time of passing his decision under section 145, in the same manner as under section 218 of the Code of Civil Procedure the order for costs of any application should be made when the application is disposed of.

Where, however, the decision under section 145 was passed on 19th December 1893, and the application for costs was made on 21st December, but owing to delay arising from the action of the objectors the order for costs was not made until 16th June 1894, but then by the same Magistrate who passed the order under section 145: *Held*, that the order was not void for want of jurisdiction, and, there being no suggestion that it was unjust or improper on the merits, the Court declined to interfere with it in the exercise of their discretionary power of revision under section 439.

KALI KRISTO PAL CHOWDHURY and others instituted proceedings under section 145 of the Code of Criminal Procedure and were retained in possession by an order of the Deputy Magistrate of Dacca, dated the 19th of December 1893. Two days after, *i.e.*, on the 21st of December, they applied for costs under section 148, para. 3. This application was not taken up and disposed of at once, but was postponed at the request of some of the opposite party, pending the result of a motion to the High Court against the order of the 19th December in the original proceedings. Eventually on the 16th of June 1894 the costs were assessed, and adjudged to be payable to the party retained in possession: On the 14th of August 1894, two of the opposite party, Soshi Mohun and

* Criminal Revision No. 507 of 1894, against the order passed by Babu Jnan Sankar Sen, Deputy Magistrate of Dacca, dated the 16th of June 1894.