

doubt he was authorized by the local Government to perform certain functions under the Act; but the functions prescribed by section 74 were entirely in the Registrar himself; and if he could not delegate his functions to any body, it could not be said that the Sub-Registrar was acting within the meaning of section 82 of the Act.

In this view of the matter we think that the sanction to prosecute the petitioner, granted by the District Registrar, was wrong in law, and, therefore, should be set aside.

S. C. B.

Rule made absolute.

CRIMINAL REFERENCE.

Before Mr. Justice Ghose and Mr. Justice Wilkins.

QUEEN-EMPRESS v. TOMIJUDDI AND OTHERS (1ST PARTY) AND
OTHERS (2ND PARTY).³

1897
June 26.

Criminal Procedure Code (Act X of 1892), section 148—Order for and assessment of costs—Delay—Notice to parties.

An order for, and the assessment of, costs under section 148 of the Criminal Procedure Code should be made at the time of passing the decision under section 145 of the Code in the presence of the parties. Such costs should not be ordered and assessed by the Magistrate after a long interval, and without allowing all the parties affected an opportunity to appear and show cause.

THESE two cases were referred to the High Court by the Sessions Judge of Backergunge under section 438 of the Criminal Procedure Code. The facts sufficiently appear from the letter of reference, the material portion of which is as follows:—

“1. The petitioners in both cases are the same, and the two cases being exactly on all fours with each other must necessarily be governed by the same decision.

“2. The petitioners formed the 2nd party in two cases under section 145 of the Criminal Procedure Code before the Deputy Magistrate of Ferozepore, the 1st parties and the lands in dispute being different. Both cases were decided (by separate judgments) on the 10th of October 1896, and in each the 1st party was declared to be in possession. No order for costs under the last paragraph of section 148 of the Criminal Procedure Code was passed at the time, the

³ Criminal Reference Nos. 141 and 142 of 1897, made by B. L. Gupta, Esq., Sessions Judge of Backergunge, dated the 14th June 1897.

1897
 QUEEN-
 EMPRESS
 v.
 TOMJUDDI.

judgment being altogether silent as regards costs. On the 20th of January 1897, the 1st party filed a petition (on unstamped paper) praying for an order for costs against the 2nd party; and on that petition the Deputy Magistrate recorded the following order—'The 2nd party is to pay Rs. 60 as costs to the 1st party.' The order is dated 20th January 1897.

"3. This is the order complained of, and its legality is impugned on the ground that it was passed 3 months and 10 days after the decision of the case, and then also in the absence of the 2nd party and without any notice to them. In *Binoda Sundari Chowdhurani v. Kali Kristo Paul Chowdhury* (1) the High Court expressed the opinion 'that the words *the Magistrate passing a decision*' (in section 148 of the Criminal Procedure Code) 'should be construed to mean, not merely the Magistrate who passes the decision, but at the time of passing the decision.' (*Vide* last but one paragraph of judgment, page 391 of the report.) In that case, however, the application for costs was made only 2 days after the decision, and the learned Judges, for reasons stated in the judgment, declined to interfere. In expressing the opinion quoted above the learned Judges followed the decision in an unreported case referred to in page 390. In another case, *Giridhar Chatterji v. Ebadulla Naskar* (2) the High Court appears to have taken the same view; and it would seem that an order for costs was set aside because 'it had been made in the absence of the 2nd party.'

"4. I think the effect of the decisions cited above must be taken to be that an order for costs under Chapter XII of the Code of Criminal Procedure should be passed at the time of passing the decision, or at least within a reasonable time thereafter, and in presence of or after notice to the opposite party. In the present cases the orders for costs were made *ex parte* and more than 3 months after the decision of the cases. I consider the delay on the part of the 1st party in making the application to be unreasonable, and therefore think it right to refer these cases for the consideration and orders of the High Court."

No one appeared in support of the reference.

The judgment of the High Court (GHOSE and WILKINS, JJ.) is as follows:—

We think that in these two cases the Magistrate should not have passed his *ex parte* orders for costs under section 148 of the Criminal Procedure Code, when his original orders under section 145 contained no directions at all as to costs, and no application for costs was made to him until after the expiration of over 3 months from the date of such orders. Proceedings under these sections of the Procedure Code are *quasi-civil* in their nature. The intention

(1) I. L. R., 22 Calc., 387,

(2) I. L. R., 22 Calc., 384.

of section 148 would seem to be that an order for, and the assessment of, costs should be made at the time in the presence of the parties. This being so, such costs should not be ordered and assessed by the Magistrate after a long interval and without allowing all the parties affected an opportunity to appear and show cause.

We set aside the orders of the Magistrate in both cases dated 20th January 1897.

S. C. B.

1897
 QUEEN-
 EMPRESS
 v.
 TOMJUDDI.

APPELLATE CIVIL.

Before Mr. Justice Macpherson and Mr. Justice Ameer Ali.

UMA SUNDARI DEVI (PLAINTIFF) PETITIONER v. BINDU BASHINI
 CHOWDERANI AND ANOTHER (DEFENDANTS), OPPOSITE PARTY.^a

1897
 May 7.

Decree—Amendment or alteration of Decree—Power of the High Court to amend decree of lower Court improperly drawn—Civil Procedure Code (Act XIV of 1882), sections 206, 551—Effect of dismissal of appeal—Practice.

The order of dismissal of an appeal under section 551 of the Civil Procedure Code being a final determination of, and an adjudication on the questions raised in the appeal, is a "decree;" and in this respect there is no distinction between an appeal which is dismissed under section 551 of the Civil Procedure Code and an appeal which is dismissed under any other section of the Code after full hearing. *Royal Reddi v. Linga Reddi* (1) referred to.

When an appeal is dismissed under section 551 of the Civil Procedure Code, or in the case of a second appeal when the decree is one of dismissal, the effect practically is to make the decree which is confirmed the final decree to be executed in the suit; and the High Court making such order has power to amend the decree of the lower Court which has been in effect confirmed by it, so as to bring it in conformity with the judgment which is also confirmed.

THE petitioner brought a suit against the defendants in the

^a Civil Rule No. 7 of 1897 in Appeal from Appellate Decree No. 703 of 1895, against the decree of W. H. Lee, Esq., Officiating District Judge of Mymensingh, dated the 31st of December 1894, modifying the decree of Babu K. K. Chowdhury, Munsif of that district, dated the 19th of February 1894.