

But in my opinion the remuneration provided by the will for the trustees, was intended to be wholly apart from the salary which the defendant Alexander Baness Lumley Webb would be entitled to so long as he continued to be the manager of the Bank. The remuneration provided by the will is intended for the discharge by the trustees of the duty of general management of the estate and not for performing the special duties of a manager of the Bank. The remuneration for the latter duties must be specially provided for in due course of the administration of the estate.

1896  
LLOYD  
v.  
WEBB.

There must be a decree for administration of the estate with a declaration of the right of the plaintiff to immediate possession of the estate, subject to the payment of the debts and legacies, or provision being made therefor, in due course of administration.

Costs of all parties to be taxed on scale 2 as between attorney and client and to come out of the estate.

Attorneys for the plaintiff: Messrs. *Morgan & Co.*

Attorneys for the defendants: Messrs. *Dignam & Co.*

C. B. G.

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## CRIMINAL REFERENCE.

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*Before Mr. Justice Macpherson and Mr. Justice Banerjee.*

MUKTI BEWA (COMPLAINANT) v. JHOTU SANTRA (ACCUSED).\*

1896  
Aug. 24.

*Compensation—Compensation to accused in Criminal Case—Criminal Procedure Code (Act X of 1892), section 560—Separate charges—Complete discharge or acquittal.*

The accused was charged under section 352 and section 379 of the Penal Code but convicted under section 352, being discharged under section 379. The Magistrate ordered the complainant to pay compensation for bringing a frivolous and vexatious charge under section 560 of the Criminal Procedure Code. The order for paying compensation was set aside on the ground that section 560 could only operate when there was a complete discharge or acquittal.

THIS was a reference to the High Court by the District Judge of Midnapur. The facts of the case and the grounds of reference appear from the following letter of reference:—

\* Criminal Reference No. 202 of 1896, made by W. R. Bright, Esq., District Magistrate of Midnapur, dated the 28th of July 1896.

1896

MUKTI BEWA  
v.  
JHOTU  
SANTRA.

"In this case Mukti Bewa complained against Jhotu Santra and others charging them with beating her and taking away her *husuli*. The case was referred to the police for enquiry, as I thought the charge of theft might be an\* exaggeration. The police sent the case up for trial under sections 379 and

"The accused was convicted under section 352 and fined Rs. 2, but discharged, under section 253, of the accusation under section 379 complainant was fined Rs. 25 for bringing a false and vexatious charge. As the order appears to me to be of very doubtful legality, I think it necessary to refer the case to the Hon'ble Court. Section 560 of the Criminal Procedure Code, which takes the place of section 250 of the former Code, is intended as a means for summarily punishing persons who have brought false complaints without the necessity of recourse being had to section 211. If parity of reasoning it would seem that if a prosecution could not be instituted for bringing a false complaint under section 211, no order for compensation could be given under section 560.

"In cases similar to the one now under reference, a prosecution under section 211 would not be undertaken, as the case, at any rate, was partly true. Section 560 lays down that, if the Magistrate is satisfied that the accusation was frivolous and vexatious, he can grant compensation. Now, in this case the accusation was at any rate partly true. The complainant was at any rate beaten; it cannot be said that the complaint was frivolous or vexatious unless the offences with which the accused was charged can be treated as different accusations and judged separately. In that case I should think that the Legislature would have certainly provided some clause like this: Where the accused is charged with one or more separate offences and the Court considers that any one of these is frivolous and vexatious he can grant compensation. It appears to me that the present procedure is a dangerous one. In the present case the complainant had suffered a wrong, at the utmost she had exaggerated the wrong really suffered, and the result is that she has had to pay Rs. 25 and has suffered her wrong too. Although such an order as the one under reference may have the effect of checking the common habit of embellishing assaults with charges of theft, at the same time it will undoubtedly act as a deterrent to the filing of complaints at all. A further point is this: section 560 was enacted in order to cover warrant cases and cases of accusations instituted otherwise than upon complaint, but so far as I know no other change was intended. Under section 250 the compensation now given could, I think, certainly not have been given, as the complaint was certainly not frivolous or vexatious, for at bottom, it was true.

"I would urge that as far as cases instituted upon complaint are concerned, section 560 has made no change except that in warrant as well as summons cases compensation can be given. The Deputy Magistrate has furnished an explanation. He has quoted three cases from the notes to his Criminal Procedure Code. The third case, *Lala Baneshwar Sahai*, Calcutta High Court, August 20, 1877, is unreported.

“ The first, case *Modhoosoodan Ghose v. Joyram Hazrah* (1), would distinctly favour the Deputy Magistrate's contention, as it would appear to follow that the separate charges could be treated separately.

1896

MUKTI BEWA

v.

JHOTU  
SANTRA.

“ The second case, *Gunamanee v. Haree Dattu* (2), seems to be in opposition to the previous ruling. But it is a case which is entirely on all fours with the present case. As regards the facts, though owing to the change in the law, compensation could, of course, now be given for a charge of theft, and the words in which the District Magistrate summed up the case then are equally applicable to the present case.

“ The accusation of assault was not frivolous. The general accusation was not frivolous or vexatious though the specific charge of theft may have been

The judgment of the High Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

We agree with the view expressed by the District Magistrate, and consider that in a case like this section 560 can only operate when there is a complete discharge or acquittal. The order directing the complainant to pay compensation must, therefore, be set aside, and the amount, if realized, refunded.

S. C. B.

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### FULL BENCH.

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*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice O'Kinealy, Mr. Justice Macpherson, Mr. Justice Trevelyan and Mr. Justice Banerjee.*

PROTAP NARAIN SINGH AND OTHERS (FIRST PARTY, PETITIONERS) v.  
RAJENDRA NARAIN SINGH AND ANOTHER  
(SECOND PARTY, OBJECTORS).

1896

September 4.

*Possession, Order of Criminal Court as to—Criminal Procedure Code (Act X of 1882), section 145—Initial proceedings—Parties concerned—Adding parties during the course of the proceedings.*

Before initiating proceedings under section 145 of the Criminal Procedure Code, it is the duty of the Magistrate not only to be satisfied that a dispute likely to cause a breach of the peace exists, but also to ascertain, as far as possible, who are concerned in the dispute. The Magistrate has no power to add parties during the course of the proceedings unless in the initial proceeding he is satisfied that they are concerned in the dispute. If in the course of the proceedings it appears to the Magistrate that it is absolutely necessary that

(1) 13 W. R., Cr., 39.

(2) 18 W. R., Cr., 6.