

JANSE v. COSTA.

P. C., Chilaw, 11,146.

1897.
February 18
and 23.

Nuisance—Abatement—Crown costs.

It is not competent for a Magistrate in a proceeding under chapter X. of the Criminal Procedure Code for the abatement of a nuisance to order the complainant to pay Crown costs.

An appeal lies from an order to pay Crown costs where such order has been made without jurisdiction.

THE facts are set forth in the judgment.

Chitty, for appellant.

Sampayo, for respondent.

Cur. adv. vult.

23rd February, 1897. LAWRIE, J.—

A rule *nisi* was served on the respondents to show cause why they should not remove an obstruction complained of as a public nuisance.

The respondents showed cause and made a *prima facie* case that the land on which they had commenced operation was the private property of the first respondent.

The Police Magistrate then discharged the rule and ordered the petitioner to pay Rs. 5 as Crown costs. Against this order the complainant appealed.

The 119th section of the Criminal Procedure Code provides that if the Police Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case. The Code does not seem to contemplate and to allow a Magistrate in these circumstances to make an order against which an appeal shall lie, but as here the Police Magistrate did pronounce an order, I will not say that no appeal is competent, but I deal with it on its merits, and I say that I agree with the Magistrate that the order to abate the so-called nuisance was not reasonable or proper.

As for the order to pay Crown costs when a Magistrate has power to make that order, no appeal lies; but here I hold he had no power to make it. Payment of Crown costs can be ordered only in a summary case tried under chapter XIX.; the present was not such a case, and I hold that as the order was *ultra vires* an appeal lies, and I must set aside so much of the order as subjects the appellant to payment of Crown costs.