

there was a very great difference between the two cases. The charge against the first three accused persons was made immediately after the occurrence. The charge against the other four was made for the first time eighteen days afterwards. We think that the omission to call the attention of the jury to this vital matter was a defect so serious as to amount to misdirection within the meaning of that word as construed in the cases cited by the Judicial Commissioner and the Additional Recorder. We further think that, under the circumstances of the case, these four persons were prejudiced by the mode in which the matter was left to the jury. Indeed it could not be otherwise. We are of opinion, therefore, that the point referred to this Court must be answered in this way: that the learned Additional Recorder did misdirect the jury in the manner indicated in the reference, and that this misdirection did so prejudice the appellants 4, 5, 6, and 7 as to justify the special Court in setting aside the verdict of the jury so far as regards these four prisoners.

1884
 LING TU
 *
 QUEEN
 EMPRESS.

Before Mr. Justice Wilson and Mr. Justice Macpherson.

QUEEN EMPRESS v. ISHWAR CHANDRA SUR (ACCUSED).*

Criminal Procedure Code—Act X of 1882, s. 109, 110, 112—Security for good behaviour.

1884
 October 24.

Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence; and that he should be clearly informed of the accusation which he has to meet.

ONE Ishwar Chandra Sur was reported to the Magistrate of Dacca as being "a notorious bad character"; the Magistrate ordered the arrest of Ishwar, and on his appearance took the evidence against him, informing the accused that the order would if passed, "be under s. 110 of the Code, for one year," and called upon him to show cause why he should not give security and bail for his good behaviour. After recording the answer of the accused the Magistrate passed the following order: "He will furnish Rs. 50

Criminal Reference No. 160 of 1884 made under s. 438, by W. H. Page, Esq., Offg. Sessions Judge of Dacca, dated 10th October 1884, against the order of F. Wyer, Esq., District Magistrate of Dacca, dated the 27th August 1884.

1884
 QUEEN
 EMPRESS
 v.
 ISHWAR
 CHANDRA
 SUR.

muchalka, and Rs. 50 surety for six months under s. 109 of the Criminal Procedure Code, and in default to be rigorously imprisoned for that period, or until he furnish security." There was however a note written on the order in the Magistrate's own handwriting to this effect, "under s. 110 for a year."

The Officiating Sessions Judge considered that the order was bad in law, for the following reasons, *viz.*, (1) because no order was recorded in writing by the Magistrate, as directed by s. 112 of the Code; (2) because it was not clear under what section or for what term bail and security were demanded from him; and (3) because the accused had not been given an opportunity of entering upon his defence, or of stating whether he would call witnesses. On those grounds, the Sessions Judge, after forwarding to the High Court the Magistrate's explanation, recommended that the order should be set aside.

The opinion of the Court was delivered by

MACPHERSON, J.—We think the Sessions Judge is right and that the order must be set aside. The record does not show, and the Magistrate in his explanation does not say, that the accused had an opportunity of entering upon his defence or of citing witnesses.

It is, moreover, by no means clear that the accused knew whether the accusation which he had to meet was one under s. 109 or s. 110 of the Criminal Procedure Code.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice Macpherson and Mr. Justice Beverley.

KOONARI BIBI (DEFENDANT) v. DALIM BIBI (PLAINTIFF).*

1884
 August 19. *Mahomedan law—Distant kindred share in the "return" in preference to a widow of the deceased—Distant kindred are heirs.*

Under the Mahomedan law a widow has no claim to share in the "return" or residue of her deceased husband's estate as against other heirs.

*Appeal from Appellate Decree No. 322 of 1883, against the decree of Baboo Bulloram Mullick, Second Subordinate Judge of 24th Pergunnahs, dated 23rd August 1883, modifying the decree of Baboo Brojo Behari Shom, Third Munsiff of Diamond Harbour, dated 20th September 1881.