1883   on appeal, and that he thereby committed an offence under
SHEO SARAN s. 457 of the Indian Penal Code punishable under section
TATO $\frac{457}{75}$ of the same ; and under these sections the Court directs that
v.
THE   the said Sheo Saran Tato be punished with rigorous imprison-
EMPRESS.
ment, which shall extend to four years from this date."

No one appeared to argue the case.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was
delivered by

PRINSEP, J.—There is no reason for questioning the correctness
of the conviction of the appellant, and the sentence is not
excessive. The appeal is, therefore, rejected.

We think it necessary, however, to notice a misconception of the
object of s. 75, Penal Code, into which the Sessions Judge
has fallen. He seems to think that on a second conviction of any
of the offences specified in that section he is bound to pass sen-
tence thereunder, and he accordingly observes that, although for
the offence committed (s. 457), the prisoner would be liable to im-
prisonment for fourteen years, he would under s. 75 of the Penal
Code, by reason of a previous conviction, be liable to imprisonment
for only ten years. He then states that "it is for the prisoner's
advantage, provided he is prepared to take his chance of trans-
portation to admit a previous conviction." The object of
s. 75 is to provide for an additional sentence, not for a less severe
sentence on a second conviction. Recourse should not be had to
s. 75 if the punishment for the offence committed is itself suffi-
cient, and even then the Code of Procedure requires that the
prisoner should be first convicted of that offence.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

1888   CHAND KHAN v. THE EMPRESS.*
May 28.
*Appeal—Security for good behaviour—Code of Criminal Procedure
(Act X of 1882), ss. 110, 118, 123.*

No appeal lies to the High Court from an order passed by a District
Magistrate under the provisions of s. 123 of the Criminal Procedure Code
and on reference by the Magistrate confirmed by the Sessions Judge
under the same section, requiring a person to be detained in prison, until
he should provide security for his good behaviour.

*Criminal Appeal No. 253 of 1883, against the order of G. A. Grierson,
Esq., Officiating Magistrate of Patna, dated the 26th April 1883.

In this case a rule was issued under s. 110 of the Criminal Procedure Code by the Officiating Magistrate of Patna, calling upon the appellant to show cause why he should not be ordered to provide two good and sufficient securities in Rs. 50 each, and his own recognizance in Rs. 100 to be of good behaviour for three years. On cause shown the rule was made absolute under s. 118 of the Criminal Procedure Code, but the appellant was unable to provide the necessary security. The Magistrate detained him in prison pending the orders of the Sessions Judge. The latter passed the following order: "The respondent, Chand Khan, must give his own recognizance of Rs. 100, and find two securities in Rs. 50 each for three years, as required by the Magistrate whose order is confirmed under s. 123 of the Code of Criminal Procedure. Failure to comply will entail on the respondent rigorous imprisonment not exceeding three years until compliance." Chand Khan appealed to the High Court.

No one appeared to argue the case.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—We think that no appeal lies in this case. Section 406 provides expressly for an appeal on behalf of a person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour, and the law nowhere declares that any appeal shall lie in other cases of this class. The order moreover is not a conviction on a trial held by a Sessions Judge (s. 410), nor a sentence of the District Magistrate subject to the confirmation of the Sessions Judge (s. 408a), and, therefore, under s. 404 no appeal would lie.

Appeal dismissed.

1883

CHAND
KHAN
v.
THE
EMPRESS.