disclose the contents of the returns, could by furnishing certified copies facilitate such disclosure.

We agree with the learned District Judge that the certified copies—they were actually marked as exhibits in the lower Court and numbered XXXV and XXXVA —are not admissible in evidence.

On the merits of the case we have been taken very carefully through the evidence by learned Counsel on both sides and we think the conclusions of the learned District Judge are correct. We would only add that it has not been shown that in February 1918 when Janaki bought this house, she had any reason to deceive her son or to act prejudicially to his interests. On the contrary the evidence is that at that time she was much attached to him. If she had intended to buy the house for him and not for herself there was no reason whatever why she should not have bought it in his name. We dismiss this appeal with costs.

N.S.

APPELLATE CRIMINAL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Patanjali Sastri.

IN RE MUTHUSWAMI CHETTIAR, (13TH COUNTER-PETITIONER), PETITIONER IN THE CRIMINAL REVISION CASE No. 245 OF 1939.*

1939, September 19.

Code of Criminal Procedure (Act V of 1898), ss. 107 and 112—Notice under—Nature of information to be stated.

A notice issued to the petitioner under section 112, Criminal Procedure Code, stated *inter alia* that the petitioner was a

* Criminal Revision Cases Nos. 245, 246, 298, and 340 of 1939 (Criminal Revision Petitions Nos. 226, 227, 276 and 316 of 1939).

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leader of one of the rival factions in the village, that the feelings between the factions had become strained, that there was a likelihood of a breach of the peace in the village and that the petitioner was giving active support to the members of his faction to further their nefarious activities in the village. It appeared that the nefarious activities referred to were known to the petitioner.

Held by the Full Bench that the notice complied with the requirements of the section.

All that section 112 requires is that the substance of the information shall be set forth and, if this is done and the other requirements of the section are complied with, the notice is a valid one.

Though there must be something more than the past misconduct of the person proceeded against to justify a notice being served upon him, it is not necessary that the information should show the particular act which is in contemplation at the time. The information must be of a nature which convinces the Magistrate that there is a likelihood of a breach of the peace. What will satisfy him must depend upon the particular facts of the case. Before a person on whom a notice has been served under section 112 can be required to enter into a security bond under section 107 the matter must be fully investigated by the Magistrate.

Case-law reviewed.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, and petition under sections 435 and 439 and 561-A of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Subdivisional Magistrate of Pollachi, dated 22nd February 1939, made in Miscellaneous Cases Nos. 63 of 1938 and 68 of 1938 respectively.

These petitions first came on for hearing before PATANJALI SASTRI J. who made the following

ORDER OF REFERENCE :—

These Criminal Revision Cases raise an important question as to the construction and scope of section 107 of the Code

of Criminal Procedure. On the one hand, it is argued for the petitioners that the information and the evidence on which a Magistrate can act under this section must relate to a breach of the peace or wrongful act *in contemplation* at the time when such information is given to the Magistrate, and that any wider construction of the provision might have the effect of turning the section into a weapon of oppression in the hands of the magistracy. On the other hand, it is contended by the learned Public Prosecutor that such a restriction of the scope of the section would impair its practical usefulness as a provision authorising preventive or precautionary proceedings being instituted against persons who, in the opinion of the local magistrates, are likely to disturb public tranquillity, and it is therefore urged that a wider construction should be placed upon it. The language of the provision is by no means free from ambiguity and there is considerable divergence of judicial opinion on the point—See for example *High Court Proceedings No.* 1952(1), *Marutiapali Goundar* v. *Emperor*(2) and *Run Bahadoor Singh* v. *Tilessuree Koer*(3), relied upon for the petitioners *Kumarappa Chettiar* v. *Emperor*(4) and the decision of LAKSHMANA RAO J. in Criminal Revision Case No. 105 of 1939 (not yet reported), relied upon by the Public Prosecutor.

Having regard to the general importance of the question raised and the conflict of decisions referred to above, I think it is desirable that there should be an authoritative ruling on the point by a Division Bench or Full Bench and I therefore direct this case to be placed before my Lord the CHIEF JUSTICE for necessary orders as to posting.

These petitions then came on for hearing before the Full Bench constituted as above.

ON THE REFERENCE:—

G. Gopalaswami for petitioner (in Criminal Revision Case No. 24(of 1939).—The notice given under section 107, Criminal Procedure Code, does not contain all the necessary details. There is no allegation that the petitioner was committing acts of breach of the peace. [Sections 107, 112 to 117,

(1) (1876) 2 Weir 49.
(2) 1937 M.W.N. (Cr.) 9.
(3) (1874) 22 W.R. (Cr.) 79.
(4) 1937 M.W.N. (Cr.) 224.

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Criminal Procedure Code, were referred to.] The words used in the section are " when a person is likely to commit a breach of the peace ", etc. It would not apply to a person who instigates or abets a breach of the peace. The person himself must commit the act.

[LEACH C.J.—The petitioner is a leader of one faction. The information is that he is giving active support to the nefarious activities of his faction. He is instigating his faction to attack the rival faction. That is surely a wrongful act.]

The notice given under section 107 must conform to the provisions of section 112, Criminal Procedure Code. It must give all the necessary details, the time, the place and the particulars of the act. Otherwise the notice is illegal and void. The order under section 112 corresponds to a charge framed against an accused person. The petitioner must know beforehand the case he has got to meet. For that the necessary details must be furnished. If a wider interpretation is given to section 107 great injustice and hardship would be caused to the accused.

[PATANJALI SASTRI J.—What section 112 requires is only to state the substance of the information and not the details as you say.]

[LEACH C.J.—The Magistrate may not know the particulars himself. But still he may be convinced that there is a likelihood of a breach of the peace. In such a case he can issue notice under section 107.]

When the information is lodged with the Magistrate the acts alleged to be in contemplation should be specified. [The following decisions were cited :—*High Court Proceedings No.* 1952 (1), *Konda Reddy* v. *King Emperor*(2), *Maruthapali Goundar* v. *Emperor*(3), *Santhanaramaswami* v. *Emperor*(4), *Kalia Goundan In re*(5) and *Ram Bahadoor Singh* v. *Tilessuree Koer*(6)].

The other High Courts take a restricted view of section 107 and hold that the notice given thereunder must give the necessary details. The procedure to be followed under this section is the same as in summons cases.

(1) (1876) 2 Weir 49.
(2) (1917) I.L.R. 41 Mad. 246
(3) 1937 M.W.N. (Cr.) 9.
(4) 1937 M.W.N. (Cr.) 189.
(5) (1930) 59 M.L.J. 887.
(6) (1874) 22 W.R. (Cr.) 79.

[*Shadi Lal* v. *The Crown*(1), *Ranga Reddi* v. *King Emperor*(2), *Kripasindhu Naiko* v. *Emperor*(3), *In re Kutti Goundan*(4), *Bahadur Patnaik* v. *Emperor*(5), *In re Karuthaswami Servai*(6), *Bhutnath Ghosh* v. *The Emperor*(7), *Emperor* v. *Nihal*(8), *Emperor* v. *Rajbansi*(9), *Behari Lal* v. *Khub Chand*(10), *Maharaj Kumar Nand Deo* v. *The King-Emperor*(11) and *Ainuddin* v. *Emperor*(12) were referred to].

It must be shown under section 107 that a person is contemplating to do certain acts which will result in a breach of the peace in the near future. Beyond the fact that the petitioner is a leader of one faction there is nothing that is alleged against him.

K. S. Jayarama Iyer, *N. Shankar Bhat*, *S. R. Subramaniam* and *N. Somasundaram* for other petitioners.

Public Prosecutor (*V. L. Ethiraj*) for the Crown.—If a narrow interpretation is given to section 107, the purpose for which the security sections were enacted is not served. The decision of KING J. in *Kumarappa Chettiar* v. *Emperor*(13) and the decision of LAKSHMANA RAO J. in the unreported case (Criminal Revision Case No. 105 of 1939) are correct. Section 107, Criminal Procedure Code, is plain and KNOX J. in *Jaguji Rai* v. *Emperor*(14) has interpreted it in its plain terms. I respectfully adopt it. It is not possible to find out the intention of the person accused and know what acts he is contemplating to do. If the Magistrate is satisfied that a breach of the peace is likely to happen and the substance of the information is set out in the notice that is sufficient for the purpose of the section. In this case the petitioner is the leader of one faction. There is bitter enmity between the two factions in the village. He is giving active support to his faction. The facts mentioned in the notice are sufficient. The cases cited on the other side are all cases which were decided when they came up for final disposal except the

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(1) (1930) I.L.R. 12 Lah. 457, 463. (2) (1919) I.L.R. 43 Mad. 450.
(3) 1918 M.W.N. 751. (4) (1924) 47 M.L.J. 689.
(5) 1933 M.W.N. (Cr.) 137.
(6) (1929) I.L.R. 53 Mad. 173, 185 (F.B.).
(7) (1929) I.L.R. 57 Cal. 503, 510.
(8) (1926) I.L.R. 49 All. 5. (9) (1920) I.L.R. 42 All. 646.
(10) (1883) I.L.R. 6 All. 48. (11) A.I.R. 1922 Pat. 209.
(12) A.I.R. 1922 Cal. 97. (13) 1937 M.W.N. (Cr.) 224.
(14) (1918) 16 A.L.J. 567.

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decision of KING J. in *Santhanaramaswami* v. *Emperor*(1). The present case is in the preliminary stage where notice has been served on the petitioner to show cause why he should not be ordered to give security for keeping the peace. He can show to the Magistrate at the time of enquiry that he was not a leader and that he was not giving active support to his party. The issue of notice is only a preliminary step. It is only after enquiry as mentioned in section 117 that a final order under section 107 will be made. So there is no hardship or injustice caused to the petitioner.

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—In the village of Negamam, in the Coimbatore district, there are two factions and there is strong enmity between them. Their enmity dates back to the Legislative Assembly elections held in 1934, if not earlier. At the present time the factions are opposing one another with regard to the management of an institution known as the Lakshmi Vilas and Dravyasagaya Nidhi, Limited, and the management of a temple known as the Kannikaparameswari temple. On 23rd September 1938 the Subdivisional Magistrate of Pollachi served notice on twelve persons under section 112 of the Code of Criminal Procedure, calling upon them to show cause why they should not be ordered to execute security bonds under section 107. According to an affidavit of the petitioner in Criminal Revision Case No. 245 of 1939 filed in the present proceedings rioting had taken place on *that day*. The accusations against these twelve persons, who have been referred to as the counter-petitioners, are set out in paragraph 3 of the petitioner's affidavit which reads as follows :—

"The counter-petitioners 1 to 12 noted in column 4 who are residents within the jurisdiction of the Subdivisional Magistrate, Pollachi, and who are members, partisans and hirelings of a faction of which Pillaya Chetty of Negamam

(1) 1937 M.W.N. (Cr.) 189.

is the leader, have been systematically committing acts of rowdyism, assault, trespass and intimidation on members of the opposite party and on 23rd September 1938 all of them were found armed with weapons for a similar purpose endangering public peace. The feelings between the parties are very much strained and they are likely to come to a clash at any moment resulting in a breach of peace disturbing the public tranquillity seriously. Hence it is requested that the counter-petitioners may be ordered to execute a bond with sureties for keeping peace for a period of one year. Pending termination of the proceedings all the counter-petitioners may be ordered to execute interim bonds as breach of peace is likely to occur at any time."

The Magistrate considered that the information was of such a nature that he was justified in ordering the counter-petitioners to execute interim security bonds. These bonds were executed on 14th October 1938. On 5th February 1939 the police laid information against the petitioner, and it is obvious from the notice which was subsequently served upon him under section 112 that the information was to the effect that he was also a leader of the faction of which the counter-petitioners were said to be members and was giving them active support. At the same time information was laid against Pillaya Chetti, the person previously referred to as the leader of the faction and one Mylasami Kavandan. The Magistrate was satisfied that there was a likelihood of a breach of the peace occurring and issued notice under section 112 against the petitioner and the two other persons. In this notice they were referred to as counter-petitioners 13, 14 and 15 respectively. The petitioner says that the notice served upon him does not comply with the requirements of the section and that the proceedings which have been instituted against him have been unlawfully instituted. The notice reads as follows :—

" Whereas it has been made to appear to me by credible information that there are two factions in the village of

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Negamam led by Annal Chetti on the one side and Muthusami Chetti (petitioner) and Pillaya Chetti on the other side ;

That there is misunderstanding between Annal Chetti and counter-petitioners 13 and 14 (Muthusami Chetti and Pillaya Chetti) regarding the management of Lakshmi Vilas and Dravyasagaya Nidhi, Limited, and owing to the Delhi Assembly elections in 1934 and also in respect of the management of the Kannikaparameswari temple ;

That there is dispute and civil litigation between the two factions regarding possession of the temple lands, that consequently the feelings between the two parties have become strained and that there is likelihood of a breach of the peace in the village, that counter-petitioners 13 to 15 (petitioners herein and the counter-petitioners 14 and 15) are giving active support to counter-petitioners 1 to 12 to further their nefarious activities in the village ;

That counter-petitioner 15 trespassed into the house of Kamatchi Chetti on 23rd September 1938 and created trouble ;

That counter-petitioners 1 to 12 who were responsible for the disturbance in the village on 23rd September 1938 had come there at the instance of counter-petitioner 15 to help counter-petitioner 14 and his son and to retaliate the attempted attack on them on 21st September 1938 ;

That you are likely to commit a serious breach of the peace and disturb the public tranquillity at the village of Negamam ;

You are hereby required under section 107 (i), Criminal Procedure Code, to appear before this Court at 11 a.m. on 8th March 1939 at Pollachi and to show cause why you should not be ordered to execute bonds for Rs. 1,000 each with two sureties each in a like sum to keep the peace for one year."

As pointed out by our learned brother PATANJALI SASTRI J. in the referring order, the petitioner's case is that a notice under section 107 of the Code of Criminal Procedure must relate to a breach of the peace or a wrongful act in contemplation at the time when the information is given to the Magistrate, and that a notice which does not go to this length is necessarily void. The Public Prosecutor challenges this contention and says that if the section were so interpreted it would impair its practical usefulness.

Section 107 (1) states :

" Whenever a Presidency Magistrate, District Magistrate, Subdivisional Magistrate, or Magistrate of the First class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity the Magistrate if, in his opinion, there is sufficient ground for proceeding, may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without surety, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix."

The requirements of this sub-section are therefore: (i) There must be information that a person is likely to commit a breach of the peace or disturb the public tranquillity or do a wrongful act which may probably cause a breach of the peace or disturb the public tranquillity ; (ii) the Magistrate, if he is of the opinion that there is sufficient ground for requiring the person against whom the information is laid to show cause why he should not be ordered to execute a security bond for keeping the peace, should issue notice to him ; and (iii) in calling upon the person to show cause the Magistrate must proceed " in manner hereinafter provided " which means that he must issue a notice in accordance with the requirements of section 112. That section says that when a Magistrate deems it necessary to require a person to show cause he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. As will be shown presently section 112 has on occasions been misread and further particulars than those required by the section have been insisted upon. All that the section requires is that the substance of the information shall be set forth

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and if this is done and the other requirements of the section are complied with, the notice is a valid one.

Section 117 provides the procedure to be followed when a notice has been issued under section 112. When an order under section 112 has been read or explained under section 113 to a person present in Court, or when a person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary. The enquiry shall be made as nearly as may be practicable, where the order requires security for keeping the peace, in the manner prescribed for conducting trials and recording evidence in summons cases. Therefore before a person on whom a notice has been served under section 112 can be required to enter into a security bond under section 107 the matter must be fully investigated by the Magistrate.

The cases on which the petitioner relies in support of his contention that the notice must set forth the particular breach of the peace or wrongful act in contemplation are: *High Court Proceedings No.* 1952(1), *Konda Reddy* v. *King-Emperor*(2), *Maruthapali Goundar* v. *Emperor*(3), *Santhanaramaswami* v. *Emperor*(4) and *In re Kalia Goundan*(5). In *High Court Proceedings No.* 1952(1) complaints were made against twenty-one persons that they were constantly creating disturbances in bazaars and they were called upon to show cause why they should not be bound over to keep the peace. The Court expressed the opinion

(1) (1876) 2 Weir 49.
(2) (1917) I.L.R. 41 Mad. 246.
(3) 1937 M.W.N. (Cr.) 9.
(4) 1937 M.W.N. (Cr.) 189.
(5) (1930) 59 M.L.J. 887.

that the act of which information is given and in respect of which security is required must be an act which is shown to be in contemplation at the time the information is given and not merely one a repetition of which may be apprehended from past misconduct of the kind without anything further. This case was under the old Code, but the language of sections 107 and 112 was materially the same. While we agree that there must be something more than the past misconduct of the person proceeded against to justify a notice being served upon him, we are unable to agree that the Code requires the information to show the particular act which is in contemplation at the time. The Magistrate must be satisfied that there is a likelihood of a breach of the peace. What will satisfy him must depend on the particular facts of the case.

In *Konda Reddi* v. *King-Emperor*(1), ABDUR RAHIM and NAPIER JJ. considered that proceedings under section 107 of the Code of Criminal Procedure should be quashed if the notice issued did not give particulars of the persons threatened and when the apprehension of a breach of the peace arose. There the notice stated that

> " seven persons headed by Nagireddy Konda Reddy, the first accused, a rich and influential resident of Kaluvoy, and others are addicted to crimes of violence involving a breach of the peace and threatened injury to the lives and property of several persons and there is an imminent danger of a breach of the peace."

The decision in a particular case must depend on the facts of the case and we are unable to agree that the absence of such particulars as these would necessarily vitiate the notice. In the first instance the particulars may not have been given to the Magistrate, but nevertheless he may have been

(1) (1917) I.L.R. 41 Mad. 246.

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convinced that there was a likelihood of a breach of the peace, in which case it was his duty to issue the notice. The passing of an order requiring security will, of course, depend on the nature of the evidence given at the subsequent inquiry.

In *Maruthapali Goundar* v. *Emperor*(1) PANDRANG ROW J. accepted the proposition that it was necessary to state in the notice the likelihood of the commission in the near future of a particular breach of the peace or a wrongful act likely to lead to a breach of the peace. In *Santhanaramaswami* v. *Emperor*(2) KING J. considered that the notice in that case was wrong because neither time, nor place, nor any indication of the identity of the persons alleged to have been threatened had been given, but here the learned Judge was insisting upon something which the section does not insist upon. In *Kumarappa Chettiar* v. *Emperor*(3) KING J. rightly observed that in order to justify an order under section 107 it must be proved that the persons concerned are likely to break the peace. In *In re Kalia Goundan*(4) KRISHNAN PANDALAI J. considered that section 112 requires the Magistrate to give an "abstract of the facts" upon which he charges the persons proceeded against with being likely to commit a breach of the peace. If by an abstract is meant something more than the substance of the information we do not agree. The learned Judge did not regard the notice in that case as being sufficient but this opinion is certainly to be doubted. It is, however, not necessary for the purposes of this case to discuss the facts of that case as the judgment does not appear to go beyond the other judgments to which reference has been made.

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(1) 1937 M.W.N. (Cr.) 9.
(2) 1937 M.W.N. (Cr.) 189
(3) 1937 M.W.N. (Cr.) 224.
(4) (1930) 59 M.L.J. 887.

There is no doubt that action taken under section 112 constitutes a judicial act and therefore the Magistrate should not act arbitrarily. There must be information of a nature which convinces him that there is a likelihood of a breach of the peace. It is impossible to formulate a hard and fast rule with regard to the nature of the information on which a Magistrate should act. What is reasonably sufficient to satisfy a Magistrate must depend on the particular situation. The person who gives the information may not be in a position to give details, but the source of the information may be sufficient to convince the Magistrate that a breach of the peace is likely, and if he is convinced the law requires him to take action. We consider that KNOX J. aptly stated the position in *Jaguji Rai* v. *Emperor*(1) when he said :

" As I read this section there may be cases in which a Magistrate of the First Class is merely informed that a person is likely to disturb the public tranquillity without any information being given as to his intent to do wrongful acts. The Magistrate is responsible for the peace of the district. He acts upon this information and he is required to set forth in writing the substance of the information received. In this case we are not told that the Magistrate has received any information of definite acts intended. Apparently from the information he received he was satisfied that the persons concerning whom the information had been given were likely to commit some act which might occasion a breach of the peace. The reason given for this probability was that they were on terms of enmity with each other. Where the Magistrate can go into further particulars, he should certainly go into them. But it may well be that all the information he receives is that there will be a breach of the public peace, and if he considers that information to come from a reliable source, he has jurisdiction to make the order required by section 112."

The High Court has undoubtedly power to quash proceedings where the notice issued does not comply

(1) (1918) 16 A.L.J. 567.

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with the requirements of section 112, but before doing so it must be satisfied that there has been a failure to comply. It must be remembered that the issue of the notice is merely a preliminary step and no order can be passed under section 107 unless the inquiry which follows the issue of the notice shows that the laying of the information was justified. The High Court can always interfere when the inquiry has not been held in accordance with the law or a wrong conclusion has been arrived at. Far too much stress has been laid in the past on the wording of the notice and too little regard paid to the safeguards provided by the subsequent procedure.

In the course of the arguments advanced on behalf of the petitioner several cases have been quoted which relate to action taken under section 110. There are conflicting decisions on the question of what the notice in such a case should contain. It is, however, not necessary for us to discuss the cases relating to section 110. Section 107 is a self-contained section and the Court is not required for the purposes of this petition to travel beyond the cases which have reference to that section.

Now, applying the provisions of section 112 to the notice issued in this case what is the position ? The notice states that the petitioner is a leader of one of the rival factions in the village, that the feelings between the factions have become strained, that there is a likelihood of a breach of the peace in the village and that the petitioner is giving active support to the members of his faction to further their nefarious activities in the village. The nefarious activities referred to are known to the petitioner who has set them out in the affidavit which he has sworn and filed in support of his petition asking for the quashing of the

proceedings. It is impossible in these circumstances to say with reason that the substance of the information received by the Magistrate has not been set out and it is also impossible to say with reason that there is no case shown for inquiry under section 107. We regard this notice as complying with the requirements of the section, and therefore there is no foundation for the application to this Court to exercise its revisional powers. It follows that the petition must be dismissed and the Magistrate will proceed with the inquiry in accordance with law.

V.V.C.

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Somayya.

1939, November 3.

PALADUGU VEERA RAMACHANDRA RAO (THIRD DEFENDANT), APPELLANT,

v.

PALADUGU PARASURAMAYYA AND ANOTHER (PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 48—Amendment of decree under sec. 152—Application for execution after twelve years from date of decree but within twelve years of amendment—If barred under sec. 48—Art. 182, Limitation Act (IX of 1908)—Effect of.

On 9th March 1922 the first respondent obtained in the Court of the Subordinate Judge of Bezwada a money decree against the appellant, the appellant's uncle and a cousin, who were members of an undivided family. The amount for which judgment was obtained was Rs. 3,735 but a mistake was made in drawing up the decree and the figure inserted

*Appeal Against Appellate Order No. 135 of 1935.