

of section 285 of the Code of Criminal Procedure the trial would be a valid one, one assessor having been present throughout and having understood the proceedings. I am unable to agree with the learned Sessions Judge. Section 285 contemplates the case of a trial which had commenced with the aid of two or more assessors, who at the commencement of the trial were capable of acting as assessors. Such was not the case here. The assessor who has been discovered to be deaf and incapable of understanding the proceedings was not a fit person to be selected as an assessor; therefore the trial was really held with the help of one assessor only. Section 263 requires that all trials before a Court of Session should be either by jury or with the aid of assessors, and under section 284 two or more assessors should be chosen to aid the Judge. Where, as in this case, the trial was held with the aid of only one assessor who was capable of acting as such, the Court holding the trial was not properly constituted, and all the proceedings were null and void. The same view appears to have been taken by the Madras High Court—see the case cited at p. 270 of Henderson's edition of the Code of Criminal Procedure, 1898. I set aside the proceedings held by the learned Sessions Judge of Azamgarh, and direct that the accused be tried again with the aid of assessors chosen according to law.

1898

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 QUEEN-  
EMRESS  
v.  
BABU LAL.

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## REVISIONAL CRIMINAL.

1898.

August 24.

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*Before Mr. Justice Banerji.*

QUEEN-EMRESS v. MUTASADDI LAL.\*

*Criminal Procedure Code, sections 110, 119—Security for good behaviour—Power to order further inquiry—Accused person—Criminal Procedure Code, section 437.*

*Held that a person against whom proceedings under Chapter VIII of the Code of Criminal Procedure are being taken is "an accused person" within the meaning of section 437 of the Code. Queen-Emress v. Mona Puna (1) and Thaja Singh v. Queen-Emress (2) followed.*

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 \* Criminal Revision No. 441 of 1898.

(1) (1892) I. L. R. 16 Bom., 661.

(2) (1896) I. L. R. 23 Calc., 498.

1898

QUEEN-  
EMRESS  
v.  
MUTASADDI  
LAL.

IN this case a Magistrate of the first class of the Muzaffarnagar district instituted proceedings, upon a report made by the Police, against Mutasaddi Lal under section 110 of the Code of Criminal Procedure. Mutasaddi Lal appeared to show cause before the Magistrate; evidence on both sides was heard, and ultimately the rule against Mutasaddi Lal was discharged. Subsequently the Magistrate of the district again took up the proceedings against Mutasaddi Lal, purporting to act in doing so under section 437 of the Code of Criminal Procedure. Mutasaddi Lal was called upon to show cause why the order of the first class Magistrate discharging him should not be set aside. On the date fixed no cause was shown, and the District Magistrate set aside the order of discharge, and called upon Mutasaddi Lal to show cause again why he should not furnish security to be of good behaviour.

Against this order Mutasaddi Lal applied in revision to the High Court, on the ground mainly that, as he was not an "accused person" within the meaning of section 437 of the Code, the District Magistrate had no jurisdiction to reopen the proceedings against him under section 110.

Mr. G. W. Dillon for the applicant.

The Government Pleader (Munshi Ram Prasad) for the Crown.

BANERJI, J.—The applicant was called upon by a Magistrate to furnish security for good behaviour. After holding proceedings under Chapter VIII of the Code of Criminal Procedure, the Magistrate being of opinion that sufficient reasons had not been made out for ordering the applicant to give security, discharged him under section 119 of the Code. The District Magistrate has ordered further inquiry into the matter, purporting to act under section 437. It is urged that under that section the Magistrate of the District was not competent to order further inquiry, as the applicant was not an "accused person" within the meaning of that section. The Code of Criminal Procedure contains no definition of an "accused person," but it was held by the Bombay High Court in

*Queen-Empress v. Mona Puna* (1), that the term "accused" means "a person over whom a Magistrate or other Court is exercising jurisdiction." The same view was held by the Calcutta High Court in *Jhoja Singh v. Queen-Empress* (2). I see no reason to put a different interpretation on the words "an accused person" in section 437. The District Magistrate was therefore competent to order further inquiry, and this application is not sustainable. I dismiss the application.

1898

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 QUEEN-  
EMPERESS  
v.  
MUTASADDI  
LAL.
 

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## REVISIONAL CRIMINAL.

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1898

*August 25,**Before Mr. Justice Banerji.*

QUEEN-EMPERESS v. ABDUL RAZZAK KHAN AND ANOTHER.\*

*Criminal Procedure Code, sections 190, 191—Cognizance taken by Magistrate under section 190, sub-section 1, clause (c)—Jurisdiction of the Magistrate to hold preliminary inquiry not thereby ousted.*

*Held* that the fact of a Magistrate having taken cognizance of a case under section 190, sub-section 1, clause (c) of the Code of Criminal Procedure, does not disqualify such Magistrate from holding a preliminary inquiry and committing the case to the Court of Session.

In this case a preliminary inquiry was pending before the District Magistrate of Mainpuri into a charge of offences under section 218 of the Indian Penal Code alleged to have been committed by one Abdul Razzak Khan, an Inspector of Police, and another. Previously to this inquiry the same Magistrate had made a departmental investigation into the charges against the accused, and had thus taken cognizance of the case under section 190 (1) clause (c) of the Code of Criminal Procedure. The accused accordingly under section 191 of the Code moved the District Magistrate to transfer the case to some other Magistrate. This the District Magistrate declined for various reasons to do, mainly, because the charge was exclusively triable by the Court of Session, and must necessarily

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\* Criminal Miscellaneous No. 87 of 1898.

(1) (1892) I. L. R., 16 Bom., 661.      (2) (1896) I. L. R., 23 Calc., 493.