1898
August, 11.

REVISIONAL CRIMINAL.

Before Sir Louis Kershaw, Kt., Chief Justice, and Mr. Justice Burkitt.

QUEEN-EMPRESS *v.* MAN MOHAN LAL AND ANOTHER.*

Criminal Procedure Code, sections 110, 121, 514, *Sch. V., Form No. XLVI—Security for good behaviour—Conviction of principal—Forfeiture of bond—Mode of proving conviction.*

Where a person has given a security bond under section 118 of the Code of Criminal Procedure for the good behaviour of another, and the principal during the term for which the bond is in force is convicted of an offence punishable with imprisonment, the production of the conviction and, if necessary, of proof of identity of the principal, is sufficient evidence upon which the Magistrate is authorized to issue notice to the surety under section 514 of the Code to show cause why the penalty of the bond should not be paid. In such case it is for the surety to show what cause he can. It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal.

THE facts of this case sufficiently appear from the order of the Court.

The Officiating Government Advocate, Mr. A. E. (*Ryves*), for the Crown.

KERSHAW, C. J., and BURKITT, J.—This is a reference made under the following circumstances by the learned Sessions Judge of Allahabad. In July 1897, one Ballam Das was bound over by the Joint Magistrate to be of good behaviour for two years, and two persons became sureties for his good behaviour during that period. In January 1898, the said Ballam Das was convicted by a bench of Honorary Magistrates at Allahabad of the offence punishable under section 323 of the Indian Penal Code. Subsequently the District Magistrate, in the exercise of his powers as such, recorded a proceeding setting forth the above facts, and stating that it had been proved to him that a breach of the bond had been committed. Thereupon the District Magistrate issued to Ballam and his surviving surety a notice in the Form No. XLVI in Schedule V to the Code of Criminal Procedure. After hearing the cause shown the Magistrate ordered the penalty of the bonds to be paid by Ballam and by his surety.

* Criminal Revision No. 451 of 1898.

On an application in revision by the surety, the Sessions Judge referred the case to this Court, recommending that the Magistrate's order should be set aside. The wording of the notice prescribed by Form XLVI is important, and the difference between it and Form No. XLIX is noticeable. It recites the execution of the security bond by the sureties, and then proceeds to say that as the principal had been convicted of an offence—in this case the offence punishable under section 323 of the Indian Penal Code—the security bond had become forfeited. Now this Schedule No. V is as much a portion of the Code of Criminal Procedure as any other portion of it, and is most useful in throwing light on the meaning of those sections of the Code in connection with which the forms prescribed by it are to be used. Now the wording of the notice to which we have just referred distinctly lays down that a conviction for an offence, such as here, works a forfeiture of the bond, and this notice moreover is one which is to be issued after the Magistrate has satisfied himself that the bond has been forfeited.

Reading this notice with the provisions of section 121 and section 514 of the Code of Criminal Procedure, we are satisfied that the production of the conviction, and, if necessary, of proof of the identity of the principal, is sufficient evidence upon which the Magistrate is authorised to issue the notice No. XLVI. The purport of that notice is that the surety should show cause why his security bond should not be forfeited.

It was contended before the Magistrate and before the Sessions Judge, who apparently approves of the contention, that before the penalty of the bond can be forfeited it is necessary for the Magistrate practically to re-try the case in which the principal had been convicted, that is to say, in the words of the reference by the Sessions Judge, that the surety is entitled to have the witnesses to the offence again examined in his presence, and to be given an opportunity of cross-examining them and proving that the conviction was wrong. To this contention we cannot accede. The notice served on the surety is one calling upon him to show

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cause. If he has any cause to show, the burden lies upon him. It is for him to produce his own witnesses, and from their mouths to establish that the conviction of his principal was wrong. We do not think that at the hearing of a notice of this kind it is incumbent on the prosecution to prove that the principal was properly convicted. On the form of the notice the burden of proof rests on the surety; and as to the suggestion that the surety would be allowed to cross-examine the witnesses, we do not see how that is possible. Just as much as the surety was not a party to the case in which his principal was convicted, so he would practically, though present, be no party to the renewed trial of the charge against his principal on the hearing of the notice to show cause. In the former case he would have had no *locus standi* to cross-examine the prosecution witnesses, and similarly at the re-trial on the hearing of the notice he would not be in a better position. When the surety appears before the District Magistrate under the notice to show cause he should then be prepared with any evidence he can produce to show the impropriety of the conviction of his principal, or with a list of witnesses whom he desires to have summoned to give evidence in his behalf; but we are quite satisfied for reasons given above, that it is no part of the duty of the prosecution to have re-tried, on the hearing of the notice to show cause, the case in which the principal was convicted and to prove again the guilt of the principal. In this case the surety did not produce any witnesses or ask for any to be summoned. We therefore see no reason for interfering in this case.

As to the further portion of his reference in which the Sessions Judge suggests that the District Magistrate did wrong in forfeiting the full amount of the bond, we need only say that we decline to interfere with the discretion of the Magistrate, who is responsible for the peace of the district. Let the record be returned.