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the property in the plaintiff's favour being carried out. The facts of this case are similar to those in the case of *Haji Pir Muhammad v. Thakur Das* decided by the Chief Court of the Panjab on the 2nd of February, 1881—*vide* number 40 of the Civil Judgments of 1881. The learned Judges there held that the continuance of the attachment under the order of the Court must be treated as an injunction under section 492 of the Code of Civil Procedure, and an injunction wrongfully obtained by the defendant. They accordingly applied article 42 to the case. It is quite true that the plaint in this case has not been artistically framed. Still it clearly sets forth the wrongful attachment of the soap, and alleges that "the defendant by means of continued litigation did not allow it to be released for sixteen months." As stated above, it was not until the date of the release that the plaintiff was in a position to estimate the damage which he had suffered. He instituted his suit within a little more than three months from the date of the release, and within six months of the date of the final dismissal of the defendant's suit under section 283. This being so, it appears to me impossible to hold that the plaintiff's suit was out of time. I allow the appeal, and, setting aside the decree of the Court below, remand the case to that Court under section 562 of the Code of Civil Procedure for disposal of the remaining grounds raised in the memorandum of appeal to it. The plaintiff will have the costs of this appeal in any event. The other costs will abide the result.

Appeal decreed and cause remanded.

REVISIONAL CRIMINAL.

1901,
October 1.

Before Mr. Justice Knox.

KING-EMPEROR v. FYAZ-UD-DIN.*

Criminal Procedure Code, sections 110 et seqq. and 437—Security for good behaviour—Power of District Magistrate to reopen proceedings on the same record after the discharge of the person called upon to show cause by a Magistrate of the first class.

Held that it is competent to the Magistrate of the District, in the case of a person who has been called upon, under section 110 of the Code of Criminal

*Criminal Revision No. 659 of 1901.

Procedure, by a Magistrate of the first class, to show cause why he should not furnish security for good behaviour, and has been discharged by such Magistrate under section 119 of the Code, to institute fresh proceedings against such person upon the basis of the record that was before the first class Magistrate. *Queen-Empress v. Mutasaddi Lal* (1), *Queen-Empress v. Ratti* (2), *Queen-Empress v. Ahmad Khan* (3), and *Queen-Empress v. Iman Mondal* (4) referred to.

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

Mr. A. H. S. Hamilton for the applicant.

KNOX, J.—This is an application by one Fyaz-ud-din, asking this Court to revise an order passed by the District Magistrate of Bijnor. That order is dated the 2nd of September, 1901. It appears that the District Magistrate of Bijnor had before him certain proceedings which had taken place in the Court of Pandit Bisheshwar Dayal, a Magistrate of the first class. Those proceedings were proceedings under section 110 of the Criminal Procedure Code. Pandit Bisheshwar Dayal, after hearing the evidence on both sides, came to the conclusion that there were not, in his opinion, sufficient grounds, for the present at least, to bind over Fyaz-ud-din to be of good behaviour; and he accordingly discharged him under section 119 of the Code of Criminal Procedure.

The District Magistrate of Bijnor, after looking through the record, instituted fresh proceedings after framing a fresh order under section 112. He did not profess to make the order under section 437 of the Criminal Procedure Code, but in the application before me it is contended that his order must have been made under that section. It is now contended that the District Magistrate cannot institute fresh proceedings in the absence of fresh information. The learned counsel for the applicant drew my attention to the case of *Queen-Empress v. Iman Mondal*, (4). In that case, according to the judgment, the order for inquiry purported to have been made under section 437 of the Code of Criminal Procedure; so that in this respect it differed from the case with which I have now to deal. The learned Judges who decided that case have laid down that proceedings under section 110 of the Code of Criminal Procedure cannot be

(1) (1898) I. L. R., 21 All., 107.

(2) Weekly Notes, 1899, p. 203.

(3) Weekly Notes, 1900, p. 206.

(4) (1900) I. L. R., 27 Calc., 662.

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regarded as on a complaint, nor can they be regarded as a case in which an accused person has been discharged. But the important part in that judgment, so far as this case is concerned, was the final paragraph, in which, after setting aside the order, they added—"if it be considered by the Magistrate that it is necessary to institute further proceedings, he is competent to do so under the law on fresh information received." So far the contention of the learned counsel, that further proceedings under section 110, when the first proceedings have come to an end, cannot be instituted except on fresh information received, is justified. In the present case the Magistrate of the District acted only upon the record of the previous proceedings, so that he cannot be said to have acted on fresh information so far as the present proceedings were concerned. The case above cited has been followed by this Court in the case of *Queen-Empress v. Ahmad Khan* (1). Here, too, the order reported to this Court was an order purporting to have been made under section 437 of the Code of Criminal Procedure, and it was held that that order was passed without jurisdiction.

On the other hand, this Court has held in *Queen-Empress v. Matasaddi Lal* (2), and again in *Queen-Empress v. Ratti* (3), that proceedings of this kind are proceedings which are covered by section 437 of the Criminal Procedure Code. So far as I am concerned, it appears to me that the words "into the case of any accused person who has been discharged," which are used in section 437, are, with all due respect to those who have held otherwise, wide enough to cover cases falling under Chapter VIII (B). If those words do not cover proceedings under Chapter VIII(B), then I know of no provision of the law, or any principle of law, which would stand between a Magistrate instituting fresh proceedings, even if he was acting upon precisely the same facts and precisely the same information. I wish to guard myself against being understood to hold that I consider that such proceedings should be instituted lightly, or that a Magistrate should not enter upon them without very great care and caution. In the present instance the District Magistrate of

(1) Weekly Notes, 1900, p. 203. (2) (1898) F. L. R., 21 All., 107.

(3) Weekly Notes, 1899, p. 203.

Bijnor certainly looked into the case, and apparently carefully. He came to the conclusion that more convincing proof of bad livelihood of the worst description could not be adduced. He accordingly, as Magistrate of the District, instituted fresh proceedings under section 110; and he did not purport to act under section 437 of the Criminal Procedure Code. He evidently looks upon the record as information sufficient to justify his taking action. He took fresh evidence. I have been asked to refer the case to two Judges in order that there may be an authoritative decision upon the point. I do not, however, think it necessary to delay passing orders. Even if the District Magistrate should require security, his proceedings can, if they are proceedings held without jurisdiction, be afterwards set aside. I do not for one moment go into the evidence one way or the other, but it is easy to conceive that a man who is a terror to the neighbourhood might work a good deal of mischief while or until this case could be decided; and up to the present, with the exception of one reported case of *Queen-Empress v. Ahmad Khan*, so far as I know, his power to do so has never been questioned in this Court. As I have shown in *Queen-Empress v. Ahmad Khan*, the Magistrate purported to act under section 437. In this case the Magistrate does not profess to have so acted.

I dismiss the application.

Before Mr. Justice Aikman.

KING-EMPEROR v. MUNNA.*

Criminal Procedure Code, sections 107(2), 192—Security for keeping the peace—Transfer—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.

Held that it was competent to a District Magistrate who had initiated proceedings under section 107(2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction to transfer such proceedings at a later stage to a Magistrate subordinate to himself, though such Magistrate was not competent to initiate such proceedings.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Gorakhpur, arising out of the following facts. One Munna Tiwari, a resident of the Gorakhpur district, had been called upon by the District

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* Criminal Reference No. 771 of 1901.