

on appeal by the District Magistrate. Tota applied in revision to the Sessions Judge, who dismissed the application so far as the merits were concerned. But it appeared that when Tota offered the security demanded the Magistrate concerned had called for a report as to its sufficiency from the Tahsildar, and on the Tahsildar's reporting that the sureties proposed were unable to exercise any effective control over the accused, had rejected them. The Sessions Judge accordingly, in view of the ruling of the High Court in *Queen-Empress v. Pirthi Pal Singh* (1), reported the case to the High Court for orders under section 438 of the Code of Criminal Procedure.

The following order was passed :—

BLAIR, J. — This case has been referred by the Sessions Judge of Saharanpur with the recommendation that an order made by a Magistrate be set aside as being founded upon no evidence. I find that this case does fall within the ruling reported in the Weekly Notes for 1898, at p. 154. I accordingly set aside the order of the Magistrate, and direct him to dispose of the matter before him according to law.

*Before Mr. Justice Banerji.*

EMPEROR v. BIDHYAPATI. \*

*Criminal Procedure Code, sections 107, 117—Security for keeping the peace—  
Evidence—Evidence of general repute not available in such cases.*

It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. Where a person is called upon to furnish security to keep the peace evidence of general repute cannot be made use of to show that such person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity.

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

Mr. S. B. Sarbadhicary, for the applicant.

The Assistant Government Advocate (Mr. W. K. Porter),  
for the Crown.

1903

EMPEROR  
v  
TOTA.

1903  
February 9.

\* Criminal Revision No. 849 of 1902.

(1) Weekly Notes, 1898, p. 154.

1903

EMPEROR  
v.  
BIDHYAPATI.

BANERJI, J.—This is an application praying that the order of the District Magistrate, confirming an order of a Magistrate of the 1st class passed under section 107 of the Code of Criminal Procedure by which he directed the applicant to furnish security to keep the peace, be set aside. In my judgment the application must prevail. It appears that Lachman Prasad, a forest guard, was beaten in the village, but no one could be punished, as the evidence which was forthcoming was insufficient for the identification of his assailants. The applicant, who is the headman of the village, was then called upon to furnish security to keep the peace. No order under section 107 could be made against him unless it was established that he was likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that might probably occasion a breach of the peace or disturb the public tranquillity. The evidence against him consists of the statements of three witnesses. The first witness, Lachman Prasad, is the forest guard who appears to have been assaulted. He says, no doubt, that the applicant instigated the assault on him; but the reason he assigns for making that statement is, that the applicant had not helped him in arresting offenders in a case of the theft of timber. He says:—"From this fact I conclude that the accused was at the bottom of this case." His evidence is therefore of no value. The next witness Mahbub Khan makes only hearsay statements. The third witness is Mr. Phelps, the Joint Magistrate, who tried the assault case of Lachman Prasad. He says that he made certain inquiries from villagers, with the result that he came to the conclusion that the applicant, Bidhyapati, was at the bottom of the assault on the forest guard. Mr. Phelps had no personal knowledge of the matter, and the persons upon whose statements he came to the conclusion mentioned by him were not examined in the case. An inquiry in a case of this kind must be made in the same way as in a trial in a summons case. The findings in such a case must be based on what is legal evidence. It is only in the case of a person who is an habitual offender and is called upon to furnish security for good behaviour that the fact of his being an habitual offender may be proved by evidence of general repute. This cannot be done

in a case where a person is called upon to furnish security to keep the peace. As shown above, there is absolutely no legal evidence to justify the conclusion that the applicant Bidhyapati, who appears to be an old man of 80, is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The order directing him to furnish security was not therefore justified. I accordingly allow the application, and set aside the order complained of.

1903

EMPEROR  
v.  
BIDHYAPATI.

## APPELLATE CIVIL.

1903  
February 12.

*Before Mr. Justice Blair and Mr. Justice Banerji.*

NARPAT SINGH AND OTHERS (DECREE-HOLDERS) v. HAR GAYAN (JUDGMENT-DEBTOR).\*

*Execution of decree—Mesne profits—Interest on mesne profits—Date from which such interest accrues.*

*Held* that the term mesne profits includes interest on such mesne profits, and that the interest accrues from the date upon which each instalment of the mesne profits may become due, *Grish Chander Lahiri v. Shoshi Shikharanwar Roy* (1) followed.

THIS was an appeal arising out of the execution of a decree for possession and mesne profits. The decree was against numerous defendants, and it was provided that each defendant was to be liable only for the amount proved to be due from him for the time he held possession, the actual amount being determinable in execution of the decree. Interest upon the mesne profits was provided for by the decree. In execution of this decree accounts were made up, and the liability of each defendant for mesne profits ascertained. On an application for execution of this decree for mesne profits and interest thereon, the District Judge of Saharanpur had found that interest on the mesne profits would run only from the time when the account as to the mesne profits was made up. Against this order the decree-holders appealed to the High Court, urging, amongst

\* Second Appeal No. 63 of 1901, from an order of E. J. Kitts, Esq., District Judge of Saharanpur, dated the 20th of September, 1900, confirming an order of Rai Shankar Lal, Subordinate Judge of Saharanpur, dated the 13th of December, 1897.