

1903

DALEL  
KUNWAR  
v.  
AMBIKA  
PARTAP  
SINGH.

the date of death to the eleventh day of funeral ceremony, we think that a sum of Rs. 1,000 is ample. In respect of the thirteenth day funeral ceremony, a ceremony at which the expenses are larger than on the funeral ceremony of the eleventh day, a sum of Rs. 1,500 will, we think, be sufficient. We do not disturb the sum of Rs. 500 which was expended by the appellant at the time of putting off bangles. The claim of Rs. 2,800 in respect of the *barsi* we think should be reduced to Rs. 1,000, and the claim in respect of the *charbarsi* to Rs. 1,600. These bring the entire sums allowed up to Rs. 8,200; to that extent, and to that extent alone, we think that the appellant is entitled to be recouped by the respondent. The result then is that we allow the appeal, set aside the order of the Subordinate Judge, and direct that the appellant shall only be charged for mesne profits to the extent of the sums actually collected by her; that she shall be entitled to credit against the sums found to be due on this head for the amount of maintenance estimated at Rs. 150 per mensem, and that she shall also be entitled to a set-off, in respect of the funeral ceremonies, of a sum Rs. 8,200. The parties will pay and receive the costs of this appeal proportionate to failure and success.

*Decree modified.*

## REVISIONAL CRIMINAL.

1903  
February 6.

*Before Mr. Justice Blair.*

EMPEROR v. TOTA.\*

*Criminal Procedure Code, sections 110, 118—Security for good behaviour—Inquiry into sufficiency of security delegated to Tahsildar—Practice.*

Held that it is not competent to a Magistrate who has passed an order under section 118 of the Code of Criminal Procedure to delegate to another officer the inquiry into the sufficiency of the security tendered, but such inquiry must be made by the Court by which the original order was passed. *Queen-Empress v. Pirthi Pal Singh*, (1) followed.

In this case one Tota was called upon by a Magistrate of the 1st class to furnish security, namely, two sureties in Rs. 300 each and his personal bond for Rs. 300, to be of good behaviour for a period of one year. The order was confirmed

\* Criminal Reference No. 4 of 1903.

° (1) Weekly Notes, 1898, p. 154.

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.