

will then be distributed amongst the several partners as already directed. The appellants will have their costs in this appeal as against respondents Nos. 18, 20, 23, 26, 28, 30, 38 and 39. The objection by the respondents is not pressed. It is therefore dismissed, but we make no order as to costs.

*Appeal allowed and cause remanded.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Tudball.*

EMPEROR *v.* RAJ KARAN AND OTHERS.\*

*Criminal Procedure Code, section 110—Security for good behaviour— Order for security passed upon failure of charge of a substantive offence against the persons bound over.*

Eight persons were sent up for trial on a charge of dacoity and were acquitted, and an attempt to prove a case against them under section 400 of the Indian Penal Code was also unsuccessful. *Held* that these circumstances were not in themselves a bar to proceedings being shortly afterwards initiated against the person acquitted under section 110 of the Code of Criminal Procedure. *Alep Pramanik v. King-Emperor* (1) distinguished.

In this case eight persons were sent up for trial on a charge of dacoity, but, the evidence against them being insufficient, were discharged. An attempt was made to obtain evidence against them sufficient for a conviction under section 400 of the Indian Penal Code, but that evidence was not forthcoming. Thereupon, as the police information in the case gave the District Magistrate reason to believe that it was necessary to bind over some of these persons to be of good behaviour, he took proceedings against five out of the eight, and after the usual procedure made an order binding them over. The Sessions Judge referred the case to the High Court, being of opinion that the action of the Magistrate of the District was illegal in view of the ruling of the High Court at Calcutta in the case of *Alep Pramanik v. King-Emperor* (1).

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

No one appeared in support of the reference.

\* Criminal Reference No. 584 of 1909.

(1) (1906) 11 C. W. N., 413.

1909

LALTA  
PRASAD  
*v.*  
BABU  
PRASAD.

1909

October 28.

1909

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EMPEROR  
v.  
RAJ KARAN.

TUDBALL, J.—Five persons—Raj Karan, Baldeo, Golai, Ram Nandan and Bansdeo—have been bound over by the District Magistrate of Mirzapur to be of good behaviour. The record of the case has been submitted to this Court by the Sessions Judge with a recommendation that the Magistrate's order be set aside. It appears that these five persons, together with three others, were sent up for trial on a charge of dacoity. The District Magistrate found that the evidence was insufficient. An attempt was made to obtain evidence sufficient for a conviction under section 400, Indian Penal Code, but that evidence was not forthcoming. Thereupon, as the police information gave the District Magistrate reason to believe that it was necessary to bind over some of the persons to be of good behaviour, he took proceedings against these five persons out of the eight. An order under section 112 was duly passed and duly communicated to them. The evidence for the prosecution was taken in their presence and they were allowed an opportunity of producing evidence in their defence, which they did. The Sessions Judge has remarked:—"It has been held by the Calcutta High Court in *Alep Pramanik v. King-Emperor* (1) that proceedings under section 110 of the Code of Criminal Procedure should not be instituted with a view to bind down persons on an indefinite charge after prosecutions against them on definite charges under the Indian Penal Code, have failed." This quotation apparently has been taken from the head note of the report. A perusal of the judgment, however, will show that the Calcutta High Court laid down no such rule at all. The facts of that case are entirely different, and the High Court found that the proceedings taken against the accused were malicious proceedings taken by a Magistrate who had certainly laid himself open to very severe criticism. They further found that the evidence in that case was perfectly worthless. The facts in the present case are very different indeed. The evidence for the prosecution, if true, discloses a state of affairs which makes it absolutely necessary that the five men in question be bound over to be of good behaviour. The order of the District Magistrate appears to be a perfectly good and valid one, and I see no cause for interference. Let the record be returned.

(1) (1903) 11 C. W. N., 413.