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the suit must necessarily fail. It was proved on behalf of the plaintiffs that the old notes were from time to time handed over to the defendants and were in their possession. We can see no reason why the plaintiffs could not fall back upon the *hundis* that were given prior to the last renewals. There was a change in the Stamp Act just about this time, which probably explains the deficiency in the stamp on the last renewals. We do not think that any good purpose would be served by sending back the case to the court below for more formal proof of the *hundis* before the last. We believe that they were in the possession of the defendants. They could not, having regard to the nature of the defence, have produced them, and the plaintiffs would be entitled to give secondary evidence of them. We think that secondary evidence was in fact given in the court below by the witnesses for the plaintiffs and by the proof and production of their books. Under all the circumstances of the case we think that the decree of the court below was correct and ought to be confirmed. We accordingly dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Justice Sir George Knox.

EMPEROR v. RAMESHWAR AND OTHERS *

Criminal Procedure Code, sections 112 and 167—Security—Remand—Jurisdiction of Magistrate.

Where a magistrate, in a case sent up by the police for action to be taken by the magistrate under chapter VIII of the Code of Criminal Procedure, passed an order remanding the persons concerned to police custody under section 167, it was held that his action was *ultra vires*. Even if section 167 applied at all to proceedings under chapter VIII of the Code, no order could be passed under that section until the magistrate had recorded an order under section 112.

Empress v. Babua (1), *In the matter of Daulat Singh* (2) and *King-Emperor v. Paimal Nai* (3) referred to.

THIS was a case called for on perusal of the quarterly statement by Knox, J.

The facts thereof sufficiently appear from the order of the Court:—

* Criminal Revision No. 1215 of 1913.

(1) (1881) I. L. R., 6 All., 132.

(2) (1889) I. L. R., 14 All., 45.

(3) (1912) 10 A. L. J., 351.

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KNOX, J.—Rameshwar and two others were arrested by the police, presumably in exercise of powers under either section 54 or 55 of the Code of Criminal Procedure, on the 23rd of June, 1913. They were not produced before the court until the 25th of June, 1913. The police upon producing them before the magistrate asked for an order of remand, and that order of remand was granted. So far as the record shows, the order of remand was the usual order passed under section 167 of the Code. Section 167 does not appear to have been framed for cases in which action is taken under section 112 of the Code. In any case a magistrate acting under chapter VIII of the Code has no power to act until after he has recorded an order in writing under section 112. If this case had been properly dealt with, the magistrate should, under section 112, have made an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it was to be in force, and the number, character and class of sureties required. That order should then and there have been read over to Rameshwar and others, under section 113. The case was not one which fell under section 114, for Rameshwar and others were present in court. After the order had been read over, the magistrate should have proceeded to inquire into the truth of the information upon which action had been taken and to take such further evidence as might appear necessary. In brief, no person is to be called upon to show cause why an order should not be made against him until there is before the magistrate some information which such magistrate has reason to believe. The magistrate has only to read section 114 carefully and he will see that, even when immediate arrest of the person is considered expedient, there must be before the magistrate a report or information, and the substance of that report or information must be recorded by the magistrate. The Code gives the magistrate no power to issue a summons, warrant or order of detention until he has first upon his table something recorded by him in writing showing the grounds upon which he is taking action. No possibility is given or intended to be given for persons to be detained by orders of a magistrate until the magistrate has first by a separate order in writing shown that he has considered over the order which he is about to make and has reason to believe that such an order is

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required in the interests of the public. The detention between the 25th of June, and the 2nd of July, 1913, was action not warranted by law. The error pointed out by this Court in *Empress v. Babua* (1), *In the matter of the petition of Daulat Singh* (2) and *King-Emperor v. Paimal Nai* (3) has been repeated in the present case, and as long as it continues to be repeated so long will persons whose cases should be promptly considered and decided be kept in custody while the police lay themselves open to the suspicion of ransacking the country round in order to justify the action they have taken. In the present case these persons were detained in custody for all but two months. Now if the police had got together the information before they proceeded to arrest Rameshwar and others, this case should easily have been decided well before the 24th of June, 1913. Let the record be returned.

Record returned.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

INDARPAL SINGH AND OTHERS (DEFENDANTS,) v. MEWA LAL AND OTHERS (PLAINTIFFS) AND PODAI TEWARI AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), order II, rule 2; order XXXIV, rule 14—Procedure—Suit by mortgagee for simple money decree against mortgagor—Subsequent suit for sale on mortgage not barred—Res judicata—Limitation—Acknowledgment.

Certain mortgagees sued for a simple money decree in respect of their mortgage debt, stating that they had relinquished their claim under their mortgage, and obtained a decree as prayed. The decree in this suit stated that "the plaintiff would not be entitled to bring to sale the property mortgaged in the bond sued on." As, however, this decree was not satisfied, the plaintiffs, mortgagees, proceeded to put their mortgage into court and prayed for a decree for sale on it. *Held* that the former proceedings were no bar to the present suit.

THE plaintiffs in this case brought a suit for sale upon a mortgage executed on the 6th of September, 1895, by one Amir Singh, his four sons and his wife in favour of Mewa Lal and Lachmi Narain plaintiffs. Prior to the execution of

*First Appeal No. 204 of 1912 from a decree of Guru Prasad Dube, Subordinate Judge of Allahabad, dated the 13th of February, 1912.

(1) (1881) I. L. R., 6 All., 132.

(2) (1889) I. L. R., 14 All., 45.

(3) (1912) 10 A. L.J., 357.

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