

1916
 GANGA
 PRASAD
 v.
 HAR NARAIN.

the question and a final decision as against him can be made in this case. The second defendant, who was not the tenant of the plaintiff, was competent in law to deny the plaintiff's title and the court was bound to adjudicate upon the question thus raised by him. The ruling of the Board of Revenue in the case of *Adya Saran Singh v. Thakur* (1), in our opinion correctly lays down the law upon this point. Our reply to the reference is that an appeal lies to the court of the District Judge, who is directed to entertain the appeal and proceed to hear and dispose of the same according to law. The costs of the reference will be costs in the cause.

WALSH, J.—I agree.

REVISIONAL CRIMINAL.

Before Mr. Justice Walsh.

EMPEROR v. SHAMBHU NATH AND OTHERS.*

1916
 May, 12.

Security for keeping the peace—Criminal Procedure Code, section 107—Nature and quantum of evidence necessary before passing order for security.

There must be definite evidence in the case of any and every person charged under section 107 of the Code of Criminal Procedure, that there is danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that they are indulging in feelings of hostility towards another body of persons. *Queen-Empress v. Abdul Kadir* (2) referred to.

Mr. *Nehal Chand* and Babu *Baleshri Prasad*, for the applicants.

Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

The facts of this case are fully set forth in the judgement of the Court.

WALSH, J.—In this case I am content to rest my judgement on the decision in *Queen-Empress v. Abdul Kadir* (2). There must be definite evidence in the case of any and every person charged under this section that there is a danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that

* Criminal Revision No. 217 of 1916, from an order of Austin Kendall, Sessions Judge of Cawnpore, dated the 18th of December, 1915.

(1) 81 I. C., 853.

(2) (1885) I. L. R., 9 All., 452.

they are indulging in feelings of hostility towards another body of persons. Man is a gregarious animal and apt to associate himself with friends, and, when he has got nothing else to do, to indulge his feelings of hostility towards his rival and his friends. These feelings are very much to be deplored; but they do not entitle a Magistrate to make orders wholesale under this section.

Order set aside.

1916

 EMPEROR
 v.
 SHAMBU
 NATH.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Lindsay.

GANGA DAHAL RAI AND ANOTHER (DEPENDANTS) v. MUSAMMAT GAURA
 (PLAINTIFF).*

Civil Procedure Code (1909), Order XXXIII, rules 10 and 11—Stamp duty on a pauper's plaint—Decree for less than the amount claimed.

In a suit brought *in forma pauperis*, the plaintiff succeeded only in part and failed as to the rest of the claim; the lower court ordered the defendant to pay the entire costs incurred by the plaintiff including the amount of court-fees which would have been payable on the plaint. *Held*, that the court-fees payable on the plaint should be apportioned under the provisions of rules 10 and 11 of Order XXXIII of the Code of Civil Procedure. *Chandraka v. Secretary of State for India*, (1) followed.

THE facts of this case were as follows:—

The plaintiff, a Hindu widow, brought a suit *in forma pauperis* for enforcement of her right of maintenance and for recovery of certain gold ornaments. She claimed maintenance at the rate of Rs. 40 per mensem and she valued the ornaments at Rs. 300. The court-fee which would be payable on the claim if it were not brought *in forma pauperis* was Rs. 264-8-0. The defendants totally denied the relationship upon which the plaintiff based her claim for maintenance. The court found this relationship proved, but held that the plaintiff had failed to establish her claim to the ornaments, and that having regard to the means of the defendants the rate at which the maintenance was claimed was excessive. The court gave the plaintiff a decree for maintenance at Rs. 5 per mensem only, but directed the defendants to bear the costs actually incurred by the plaintiff, and further

* First Appeal No. 88 of 1915, from a decree of Jotindra Mohan Basu, Subordinate Judge of Basti, dated the 16th of January, 1915.

(1) (1890) I. L. R., 14 Mad., 188.

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