

1917

EMPEROR
v.
LIAQAT
HUSAIN.

of showing cause against the making of the order, but this rule has been held to have certain limitations. Where the accused person was not called upon to appear in the court below in the first instance and where an order was only made under section 203, the issue of a notice was unnecessary. This was held by Mr. Justice TUDBALL in *Angan v. Ram Pirbhan* (1). The learned Judge observed:—"In my opinion a notice to a person against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order in a proceeding to which he was actually no party," and he held that the cases in which a notice was necessary before an order could be made to the prejudice of an accused person were cases in which after an accused person was tried and discharged a further inquiry was ordered behind his back and without notice to him. A similar view was held in the Calcutta High Court by certain of the Judges who decided the case of *Hari Dass Sanyal v. Scaritulla* (2). In the course of his judgement Mr. Justice PRINSEP observed:—"A notice certainly would not be necessary before an order to set aside an order of dismissal under section 203 could be passed, since that order was not passed with a notice to the accused person or in his presence and therefore is probably unknown to him." The learned CHIEF JUSTICE made remarks to the same effect at page 617. In view of these authorities, from which I see no reason to differ, I do not think that the application is sustainable and that notice was necessary. I accordingly reject the application and discharge the order staying proceedings.

Application rejected.

Before Justice Sir George Knox.

EMPEROR v. LALJI AND OTHERS.*

1917

December, 14.

Criminal Procedure Code, sections 107, 125, 439—Security to keep the peace—Revision—Jurisdiction of Sessions Judge and High Court.

A Magistrate of the first class ordered certain persons to give security for keeping the peace. The persons to be bound over applied to the Sessions Judge to revise the order. The Sessions Judge was of opinion that the applicants should not have been bound over and accordingly referred the case to the High

* Criminal Reference, No. 1014 of 1917.

(1) (1912) I. L. R., 35 All., 78. (2) (1887) I. L. R., 15 Calc., 608.

Court with a recommendation that the order should be set aside.—*Held* that the order having been passed by a Magistrate subordinate to the District Magistrate, the record should, under section 125 of the Code of Criminal Procedure, have been laid before the District Magistrate to deal with the matter.

Where a Code gives a particular court jurisdiction to act in certain matters, it is that court which should be applied to and not the High Court. *Banarsi Das v. Partab Singh* (1) referred to.

THIS was a reference made by the Sessions Judge of Bareilly in the following circumstances. Three persons were ordered by a magistrate of the first class under sections 107 *et seqq* of the Code of Criminal Procedure to give security for keeping the peace. Against this order the persons affected thereby applied in revision to the Sessions Judge. The Sessions Judge went into the reasons given by the magistrate for passing his order and came to the conclusion that the applicants should not have been bound over, and that the order of the magistrate ought to be set aside. He accordingly sent the record to the High Court with a recommendation that the order should be so dealt with.

The parties were not represented.

KNOX, J.—A magistrate of the first class in Bareilly ordered three persons to execute a bond for keeping the peace. The persons so bound applied to the Sessions Judge for a revision of this order. The learned Sessions Judge went into the reasons set out by the magistrate for passing his order and came to the conclusion that the applicants should not have been bound over, and that the order binding them over should be set aside. He considered that under the ruling *Banarsi Das v. Partab Singh* (1), this could only be done by reference to this Court. He has accordingly sent the case up with a recommendation that the order be set aside. The case before me, however, differs from the case of *Banarsi Das v. Partab Singh* (1). In this last case the District Magistrate had treated it as though it were an appeal and had cancelled the order of the lower court. It was held that the order of the District Magistrate was void as an order passed without jurisdiction. There is no sign, however, that the case before me is a case of an appeal from an order of the magistrate of the first class. It appears to me that the District Magistrate

(1) (1912) I. L. R., 35 All., 103.

1917
 EMPEROR
 v.
 LALJI.

has power at any time for sufficient reasons to be recorded in writing to cancel any bond for keeping the peace provided that the bond be one given in obedience to an order of a court in his district not superior to his court. In the present case the magistrate who passed the order was a magistrate subordinate to the District Magistrate, and I agree entirely with what was said in the concluding sentence of this Court's judgment in *Banarsi Das v. Partab Singh* (1), thus far, namely:—"The matter is one concerning the peace of the district, and I think it advisable in the circumstances of the case that the record should be placed before the present District Magistrate so that he may examine it himself and see whether or not it is any longer necessary to keep the opposite party under his bond." I see nothing in the words contained in section 125 of the Code of Criminal Procedure to prevent the District Magistrate from cancelling the bond for reasons other than that the persons bound over can be released without hazard to the community or any other person. Where a Code gives a particular court jurisdiction to act, it has been held by this Court on several occasions that it is that court which should be applied to and not this Court. I decline to interfere, but direct that the record be laid before the District Magistrate in order that he may, if he thinks fit, deal with it under section 125 of the Code of Criminal Procedure.

Order upheld.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Rafiq.

DRIGPAL SINGH (PLAINTIFF) v. KUNJAL (DEFENDANT). *

Act No IX of 1887 (Provincial Small Cause Courts Act), Schedule II, Article 31—Suit for mesne profits of a grove—Jurisdiction.

Held that a suit for recovery of mesne profits of a grove from which the plaintiff had been wrongfully dispossessed is a suit the cognizance of which by a Court of Small Causes is barred by article 31 of schedule II, to the Provincial Small Cause Courts Act, 1887. *Pravadi Lal v. Imdad Husen* (2) distinguished. *Sheo Bodh v. Surjan* (3) followed.

THE plaintiff instituted in the Court of Small Causes a suit for the recovery of Rs. 60 on account of the wrongful use of his

* Civil Revision No. 194 of 1917.

(1) (1912) I. L. R., 95 All., 103. (2) Weekly Notes, 1898, p. 10.

(3) (1913) 11 A. L. J., 293.

1917
 December, 15.