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which specially refers to suits for arrears of rent. Having regard to this state of the authorities, we are of opinion that the view taken by the learned Subordinate Judge that the claim was not barred by limitation but was governed by the six years' rule of limitation as laid down in article 116 was correct.

The result, therefore, is that this appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

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February, 9.

EMPEROR *v.* SHEO JANGAL PRASAD.*

Criminal Procedure Code, sections 118, 121 *and* 514—*Security for good behaviour—Bond executed with sureties—Circumstances in which the surety's bond can be declared forfeited—Act No. XLV of* 1860 (*Indian Penal Code*), *section* 172—*Absconding to avoid a warrant of arrest.*

Absconding to avoid arrest under a warrant is not an offence within the meaning of section 172 of the Indian Penal Code, nor is it one of the offences specified in section 121 of the Code of Criminal Procedure, for the commission of which alone can a surety's bond be forfeited. *Udham Singh* v. *King-Emperor* (1), dissented from. *Queen* v. *Womesh Chunder Ghose* (2), *Majhi Mamud* v. *Emperor* (3), *Queen* v. *Zahoor Ali* (4) and *Queen* v. *Amir Jan* (5), followed.

THIS was a reference by the Sessions Judge of Mirzapur in a case where a surety's bond had been declared forfeited under the provisions of section 514 of the Code of Criminal Procedure. The facts of the case are fully stated in the order of the Court.

Mr. *T. A. K. Sherwani*, for the applicant.

*Criminal Reference No. 832 of 1927.

(1) (1913) Vol. 48 P.R. (Cr. J.), No. 15.
(2) (1866) 5 W.R., (Cr. R.), 71.
(3) (1905) 2 C.L.J., 625.
(4) (1872) 4 N.-W.P., H.C.R., 97.
(5) (1875) 7 N.-W.P.H.C.R., 302.

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The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

DALAL, J.—The question of law raised in these proceedings is of much interest. One Dharamdhuja was directed by a Magistrate, under section 118 of the Code of Criminal Procedure, to execute a bond with two sureties to be of good behaviour for a period of three years. The applicant, Sheo Jangal Prasad, was one of the sureties. The surety in such a case binds himself to forfeit a certain sum of money (Rs. 1,500 in this case) in case of the person called upon to give the bond making default therein (see Form No. 11 of the Criminal Procedure Code). What constitutes breach of the bond is laid down in section 121 of the Criminal Procedure Code. The provisions are that the commission or attempt to commit or the abetment of any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond. The Magistrate took proceedings against Sheo Jangal under section 514 and ordered the forfeiture of his surety bond. The Magistrate was of opinion that Dharamdhuja had committed murder. Dharamdhuja was never put on his trial, after his appearance in court, for the commission of any offence and the finding of the Magistrate therefore cannot possibly be upheld that Dharamdhuja had committed murder. On appeal to the District Magistrate, he was of opinion that Dharamdhuja was guilty of defying lawful orders of arrest for months. He did not state in his order of the 23rd of August under what section of the Indian Penal Code that offence fell. On revision the Sessions Judge of Mirzapur was of opinion that Dharamdhuja should first be convicted of an offence before proceedings could be taken against Sheo Jangal under section 514 of the Code of Criminal Procedure. In reply the District Magistrate gives it as his opinion that the provisions of section 121 are not exhaustive. I cannot agree with that

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opinion. When the law definitely lays down what would constitute a breach of the bond given under an order passed under section 118 of the Code of Criminal Procedure, the breach must be confined to those acts and cannot be extended to the commission of any other acts. The bond can only be forfeited if the person bound over commits, attempts to commit or abets any offence punishable with imprisonment. At the same time I do not agree with the learned Judge that there should first of all be a conviction of the person bound over, before the surety can be proceeded against. If in the proceedings taken against a surety it is proved that the person bound over had committed an offence, that would be sufficient to lead to a forfeiture of the bond. The learned Judge referred to the provisions of section 514(7) and to the wording of the notice to the surety of forfeiture of bond for good behaviour (Form No. 46). These are, however, matters of procedure and evidence. If the person bound over happens to be convicted before proceedings are taken against the surety, reference should be made in the notice and a certified copy of the judgement may be used as evidence in proceedings under section 514 of the Code of Criminal Procedure against the surety. It is nowhere laid down in the Code that the person giving the bond should actually be convicted before proceedings are taken against his surety.

The question to decide, therefore, is whether Dharamdhuja has committed any offence. I hold that it is not proved so far that he has committed the offence of murder. During the course of argument I expressed the opinion to his counsel that he had committed an offence under section 172 of the Indian Penal Code. Dr. *Waliullah*, the Assistant Government Advocate, has studied the record and has pointed out to me the evidence in proof of Dharamdhuja absconding in order to avoid being served with a warrant of arrest. That evidence

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is satisfactory and there can be no doubt that he was absconding to avoid arrest. The learned counsel for the applicant referred to a criminal judgement of the Punjab Court, *Udham Singh* v. *King-Emperor* (1). The learned Judge in that case was of opinion that a person who stands surety for another undertakes liability for such good conduct only, on the part of the person for whom he stood surety, as is indicated by the circumstances under which the security was demanded, that is, the subsequent conviction should be of an offence *ejusdem generis*. In the present case Dharamdhuja being bound over as he was considered to be a habitual thief and robber, the offence committed by him should be of theft or robbery before proceedings could be taken against his surety. I do not accept this view. Section 121 makes no such reservation and lays down that breach of the bond is committed as soon as a person bound over commits any offence punishable with imprisonment. The other argument, however, which is raised by the learned counsel cannot be met. The provisions of section 172 do not cover the absconding from a warrant of arrest. As far back as 1866 it was laid down by a majority of a Full Bench of the Calcutta High Court that a warrant addressed to a police officer to apprehend an offender and to bring him before the Magistrate is not a summons, notice or order within the meaning of section 172 of the Indian Penal Code, and that the offence of absconding by an offender against whom a warrant has been issued is not punishable under that section : *Queen* v. *Womesh Chunder Ghose* (2). This was followed by a Bench of two Judges in 1905 in the Calcutta High Court, in *Majhi Mamud* v. *Emperor* (3). There are two rulings of this High Court, also, of 1872 and 1875 to the same effect : *Queen* v. *Zahoor Ali* (4) and *Queen* v. *Amir Jan* (5). This view is reasonable, because different provi-

(1) (1913) Vol. 48 P.R., (Cr. J.), No. 15.
(2) (1866) 5 W.R., (Cr. R.), 71.
(3) (1905) 2 C.L.J., 625.
(4) (1872) 4 N.-W.P., H.C.R., 97
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sions are enacted under the Code of Criminal Procedure and of a very stringent character, to meet the case of an absconder from a warrant of arrest. When an accused person absconds from a warrant, a proclamation is issued under section 87 and, subsequently, attachment of property under section 88 and the placing of the property at the disposal of Government under clause (7) of section 88. For these reasons I hold that Dharamdhuja did not commit an offence under section 172. As Dharamdhuja is not proved to have committed any offence, there was no breach of his bond, and consequently no breach of the bond given by his surety. I set aside the order of forfeiture passed by the Magistrate on the 4th of July, 1927, and direct that if any sum has been recovered from Sheo Jangal Prasad it shall be refunded to him.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice Boys and Mr. Justice Iqbal Ahmad.

1928 *February* 10.

MOHSIN RAZA KHAN AND OTHERS (JUDGEMENT-DEBTORS) *v.* HAIDAR BAKHSH (DECREE-HOLDER).*

Act No. IX of 1908 (*Indian Limitation Act*), *schedule I, article* 182—*Execution of decree—Purchase by decree-holder—Application by decree-holder* quâ *auction-purchaser for possession—Step in aid of execution—Limitation—Civil Procedure Code, order XXI, rule* 95.

Held that an application under order XXI, rule 95, of the Code of Civil Procedure by an auction-purchaser to recover possession of the property purchased cannot be counted as a proceeding in execution and a step in aid of execution by reason of the fact that the auction-purchaser happens to be also the decree-holder. *Bhagwati* v. *Banwari Lal* (1),

*Second Appeal No. 668 of 1927, from a decree of J. Allsop, District Judge of Aligarh, dated the 22nd of February, 1927, reversing a decree of Phul Chand Mogha, Subordinate Judge of Aligarh, dated the 27th of November, 1926.

(1) (1908) I.L.R., 31 All., 82.