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opinion that there is no force in this contention. See the case of *Wasi-uz-zaman Khan v. Faiza Bibi* (1). It was also submitted by the learned vakil for the respondent that the provisions of sections 9 and 10 of the Indian Oaths Act, 1873, could only apply, by reason of section 8, to reference to a party to the case or a witness. We are unable to follow that argument, as in our opinion when Munshi Balgobind Prasad gave his statement before the court he was a witness who had been specially referred to by the parties.

We, therefore, set aside the order of the lower appellate court and restore that of the court of first instance with costs.

Order set aside

REVISIONAL CRIMINAL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

EMPEROR v. HIMAYATULLAH.*

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April, 14.

Criminal Procedure Code, section 109—Interpretation of—
“ Within the local limits of such Magistrate’s jurisdiction ”—“ Satisfactory account of himself.”

Held, on a construction of section 109 of the Code of Criminal Procedure, that (1) the words “within the local limits of such Magistrate’s jurisdiction ” as used in section 109 (a) are part of the predicate “to conceal his presence.” *Emperor v. Bhairon* (2), followed.

(2) A person living within the territorial jurisdiction of a Magistrate trying the case, who takes steps to conceal that he is there, by removing himself from one part to another, may be within the section.

* Criminal Revision No. 718 of 1926, from an order of A. G. P. Pullan, Sessions Judge of Moradabad, dated the 16th of September, 1926.

(1) (1915) I.L.R., 38 All., 181.

(2) (1926) I.L.R., 49 All., 240.

(3) A man who is deliberately preparing to commit a burglary and when caught by the police admits his intention, is not, for this reason only, a person who "cannot give a satisfactory account of himself" within the meaning of the section.

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The words "satisfactory account" as used in section 109 mean satisfactory in accordance with the known facts that are consistent with the surrounding circumstances.

THE facts of this case were as follows:—Himayatullah was seen at night in the town of Sambhal, of which he was a resident, scantily dressed and carrying a "burglar's tool," namely a piece of iron usually known as a *sabhar*. A number of policemen, who were in ambush, sprang up behind him shouting "thief," and he ran away. Proceedings were taken against him under section 109 of the Code of Criminal Procedure and he was ordered to execute bonds and to furnish security to be of good behaviour for one year. He appealed and the appellate court (Sessions Judge) found that there was no proof that the accused had no ostensible means of subsistence and that the question of whether he could or could not give a satisfactory account of himself had not been clearly decided. The Sessions Judge held that the section did not apply to the facts of the case and he set aside the order under section 109. The Local Government applied in revision to the High Court.

Pandit *Uma Shankar Bajpai* (Government Advocate), for the Crown.

The opposite party was not represented.

WALSH and BANERJI, JJ.:—This is an application on behalf of the Local Government against an order of the Sessions Judge of Moradabad setting

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aside an order of a Magistrate of the first class directing the opposite party to execute a personal bond with two sureties to be of good behaviour, under section 109 of the Code of Criminal Procedure.

Three points have been urged by the learned Government Advocate in support of this revision. The first point urged is that the words "to conceal his presence within the local limits of such Magistrate's jurisdiction" in section 109 of the Code of Criminal Procedure are words defining the tribunal which has jurisdiction to try the case. In the case of *Emperor v. Bhairon* (1) it is laid down that the words "within the local limits of such Magistrate's jurisdiction" are part of the predicate "to conceal his presence." We have no doubt whatever that the meaning of those words was rightly given in that case. It is clear from the provisions of section 5 in Chapters II and III and schedule 3, Part I (5), that these words cannot have any other meaning.

It may be that a person, living within the territorial jurisdiction of a Magistrate trying the case, who takes steps to conceal that he is there, namely, by removing himself from one part to another, such as from Allahabad to Naini, or from one village of a tahsil to another, and, when he gets to the new place, disguising his identity or hiding his person, is within the section, and we do not think that the case of *Emperor v. Bhairon* (1) can be read as having negatived that and as having laid down that a person must go into the district from a place quite outside.

The second point urged is that when a burglar starts out to commit a burglary and lurks behind, it amounts to "take precaution to conceal his presence." A man who is deliberately preparing to

(1) (1926) I.L.R., 49 All., 240.

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commit a burglary and when caught by the police admits his intention, cannot be dealt with under the provisions of section 109. If a man preparing to commit a crime announces his intention to the police at the time when he prepares to carry out his intention, the action of the police is all the preventive that is required in the public interest.

The third point urged was that the opposite party had upon the facts found in this case failed to give a satisfactory explanation of his presence. The opposite party according to the findings was a man known to the police. On him were found a jemmy, a bunch of keys, a box of matches and a stick of lac. He was also said to be scantily dressed. We do not think that it could be said that the opposite party failed to give a satisfactory account of his presence at a particular locality at a precise time. We think that the words "satisfactory account" as used in section 109 mean satisfactory in accordance with the known facts that are consistent with the surrounding circumstances.

We, therefore, dismiss this application.

Application dismissed.