viz., Rs. 120 a year, only the principal amount. As a matter of fact the yield of the occupancy tenancy must have been enough to cover a proper interest on the sum of Rs. 600 for the first year and proportionately smaller amounts in later years. Whatever, however, may be the precise nature of the transaction, I am satisfied, as is my learned brother, that it is not a case of sub-letting within the meaning of sections 24 and 25 of the Tenancy Act.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR *v.* PARBHU DAYAL.*

1927
April, 6.

Criminal Procedure Code, section 499—Surety—Illegal direction to produce accused at a place other than that mentioned in the bail bond—Accused in consequence absconding—Forfeiture of bail bond.

According to the terms of a bail bond the surety was responsible for the production of the accused in the City Magistrate's court at Agra. But as several cases were pending against the accused, the District Magistrate directed the surety to produce the accused in a court at Purnea. The surety endeavoured to carry out this order but the accused absconded on the way to Purnea. Subsequently the surety was ordered to produce the accused at Agra and, as he was unable to do so, his security money was forfeited. *Held*, that the order forfeiting the bond was correct, but having regard to all the circumstances of the case, the ends of justice would be served by reducing the sum forfeited from Rs. 1,000 to Rs. 250.

* Criminal Revision No. 43 of 1927, from an order of H. R. Nevill, District Magistrate of Agra, dated the 17th of December, 1926.

1927

EMPEROR v. PARBHU DAYAL.

Shamsuddin Sirkar v. *Emperor* (1) and *Behari Lal Chatterjee* v. *Emperor* (2), referred to.

It is the duty of a surety to see that an accused does not run away, but where a surety has failed to produce the accused by reason of an illegal order passed by a Magistrate which the surety was not bound to carry out, and where there is no connivance and negligence, it cannot be said that the surety has acted irresponsibly.

THE facts of this case are fully stated in the judgement of the Court.

Pandit *Uma Shankar Bajpai*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

BANERJI, J. :—Upon a report made by a post office Inspector the police at Agra arrested one Ram Prasad for sending bogus V. P. parcels. On the 5th of September a remand was obtained and it appears that on the 15th of September Ram Prasad was released upon a bail bond which is as follows :—

"I, Parbhu Dayal, son of Puran Chand, caste Hindu, Excise Sub-Inspector, Bareilly City, hereby declare myself surety for Ram Prasad that he shall attend at the court of the City Magistrate of Agra on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Sessions, that he shall be, and appear, before the said court to answer the charge against him, and in case of his making default therein, I bind myself to forfeit to His Majesty the King-Emperor of India, the sum of Rs. 1,000."

On the 3rd of October, 1925, the accused appeared before the City Magistrate who, considering the amount of security as insufficient and unsatisfactory, ordered further security to be given. The Magistrate recorded the following order :—

"The surety appeared today. He should give a further security of Rs. 500."

(1) (1902) I.L.R., 30 Calc., 107. (2) (1909) I.L.R., 36 Calc., 749.

And upon a further security bond having been executed for a sum of Rs. 500 the court ordered the release of Ram Prasad from custody.

case seems to have been pending before the City Magistrate of Agra at that time and nothing apparently seems to have been done at Agra. But a case under section 420 of the Indian Penal Code was pending in the court of the Sub-Divisional Officer of Purnea. It also appears that there were other cases pending under section 420 in Bihar against the same accused. About the middle of December, 1925, the District Magistrate of Agra ordered Parbhu Dayal the petitioner to produce his son in the court of the Sub-Divisional Officer of Purnea. A perusal of the bail bond will show that the order of the District Magistrate of Agra was wholly illegal, in that Parbhu Dayal had never undertaken to produce his son at Purnea. The result of this order was that Ram Prasad disappeared while on his way to Purnea and he has not yet been arrested. Under section 499, clause (2), of the Code of Criminal Procedure, if the Magistrate who granted bail wanted the production of the accused in the court at Purnea, he could have entered that condition in the bail bond. Nothing seems to have been done with regard to the failure of Parbhu Dayal to produce Ram Prasad until we find that a letter was sent by the District Magistrate of Agra to the Deputy Commissioner of Delhi, dated the 6th of August, 1926, by which Parbhu Dayal was instructed to present his son Ram Prasad in the court of the City Magistrate of Agra in connexion with a case under section 420 at Purnea. Be it noted that on that date the Magistrate at Agra knew perfectly well that it was a physical impossibility for

1927

EMPEROR v. PARBHU DAYAL.

Parbhu Dayal to produce his son because the Magistrate knew quite well, nine months before that, that the son had absconded when trying to comply with the order of the District Magistrate which, to my mind, was wholly illegal. Proceedings were taken under section 514 of the Code of Criminal Procedure by Mr. Griffin, the City Magistrate of Agra. The learned Magistrate has accepted the statement on oath of Parbhu Dayal. He says in his order:—

"I see no reason to believe that Parbhu Dayal connived at Ram Prasad's escape, but the escape was certainly due to his carelessness in leaving him alone on the way to Purnea. He is, therefore, to blame on this ground. Very generous provision is made for bail in the Code of Criminal Procedure. It is essential that this generosity should not be abused. A surety must be a person who will take infinite care not to let his man get away. If he is unable to look after his man then he must not stand surety for him, even though he be his son."

I entirely agree with the learned Magistrate that it is the duty of the surety to see that the accused does not run away, but I do not agree with the view that where a surety has failed to produce the accused by reason of an illegal order passed by a Magistrate which the surety was not bound to carry out, and where there is no connivance and no negligence, it can be said that the petitioner had stood surety irresponsibly, and I do not think that this would be a case which would give an impression that anyone can stand as a surety and not be penalized in the event of failing in his trust.

The petitioner went up before the learned District Magistrate of Agra and his petition was dismissed by him. In his order the learned District Magistrate has said as follows:—

"Technically he was liable to have his surety forfeited. The question is whether forfeiture to the extent ordered is

equitable. It is urged on behalf of the appellant that morally the bond for the production of the accused in Agra was discharged when the surety was directed to take him elsewhere. Of course it was not formally or specifically discharged, but there was certainly a fresh direction and this direction, being unsupported by any formal order or bond, involved some amount of risk.

The matter, therefore, resolves itself into the extent of carelessness or worse on the part of the appellant in letting the accused get beyond his control, that is to say, as stated by the City Magistrate, the extent of the punishment for negligence, since no imputation of connivance is put forward. I certainly agree with the City Magistrate as to the serious nature of any such undertaking."

Having regard to the fact that it was the illegal direction of the Magistrate to Parbhu Dayal to produce the accused at Purnea that resulted in his failure to produce Ram Prasad, and having regard to the fact that when the order for the production of Ram Prasad was passed months after it was known that Ram Prasad had absconded by reason of an honest attempt of Parbhu Dayal to carry out the order of the Magistrate of Agra, I am of opinion that the forfeiture of the bond was a technical forfeiture and that the conduct of Parbhu Dayal shows that he was in no way to blame. I am, however, unable to accept the contention of Mr. *Bajpai* that there has been no non-compliance with the conditions of the bail bond and that the order of the District Magistrate of Agra directing the production of Ram Prasad at Purnea had discharged the bail bond. He has referred me to the cases of *Shamsuddin Sirkar* v. *Emperor* (1), and *Behari Lal Chatterjee* v. *Emperor* (2). In my opinion the facts in those cases were quite different from the facts of this case. It has been further argued that the notice of the District Magistrate of Agra, dated the 6th of August, 1926, mentions the words "In

(1) (1902) I.L.R., 30 Calc., 107. (2) (1909) I.L.R., 36 Calc., 749.

1927

EMPEROR v. PARBHU DAYAL.

connexion with a case at Purnea," and this entry, as it does not refer to any case pending at Agra, makes the order illegal. That there was a case pending at Agra there can be no doubt, although no active steps were taken in that case by reason of a number of cases being pending against Ram Prasad. The mere entry of the words " in connexion with the case at Purnea " does not in any way vitiate the bail bond. Parbhu Dayal was asked to produce his son at Agra before the City Magistrate. He was bound to do so under the terms of this bond. I have, therefore, come to the conclusion that the order forfeiting the bond is correct, but in view of all the circumstances of this case, I am of opinion that the ends of justice will be served by directing that the order forfeiting the sum of Rs. 1,000 be reduced to a sum of Rs. 250.

APPELLATE CIVIL.

Before Mr. Justice Boys and Mr. Justice Kendall.

1927
April, 13.

CHANDI PRASAD (DEFENDANT) *v.* JAMNA (PLAINTIFF).*

Civil Procedure Code, order XXI, rules 22 and 66—Execution of decree—Death of judgement-debtor before issue of sale proclamation—Proclamation issued without bringing on record the judgement-debtor's legal representatives.

Order XXI, rule 66, of the Code of Civil Procedure, expressly requires that the proclamation shall be drawn up after notice to the decree-holder and the judgement-debtor. It is imperative on the court to issue a notice to the judgement-debtor.

* Second Appeal No. 220 of 1925, from a decree of Raj Rajeshwar Sahai, Third Additional Subordinate Judge of Aligarh, dated the 14th of October, 1924, confirming a decree of Aqib Nomani, Munsif of Koil, dated the 22nd of March, 1923.