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The plaintiffs are therefore entitled to recover possession of the one-third share out of the half share which is in the possession of Anokhey Lal..

We accordingly allow the appeal as against Anokhey Lal and decree the plaintiffs' suit for possession of one-third share in the house as against Anokhey Lal only. The appeal as against the other defendants is dismissed with costs throughout. Anokhey Lal never contested the suit or appeals, so no costs are awarded against him.

REVISIONAL CRIMINAL.

Before Mr. Justice Boys and Mr. Justice Sen.

EMPEROR *v.* RAM LAL AND ANOTHER.*

1929 January, 28.

Criminal Procedure Code, section 110—Notice—Evidence of general repute—Admissibility of suspicions—Admissibility of previous convictions and the evidential value thereof—Reference—Procedure.

In proceedings under section 110 of the Criminal Procedure Code each man proceeded against is entitled to a separate notice and not to have the charges which are going to be made against him confused with the charges that are being made against somebody else.

The suspicion of a witness that the accused person committed a particular theft is wholly inadmissible. A witness can not say what he suspects. He can depose to facts within his knowledge, and it will be for the magistrate to determine whether those facts alone or with other evidence create such a conviction in his mind as to justify calling for security.

Evidence of general repute does not mean the placing of a heterogeneous mass of more or less general statements by any witness who can be produced to say something on hearsay or otherwise and label it "general repute". A man's general repute is just as much a fact as any other fact which can be

* Criminal Reference No. 837 of 1928.

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proved by a witness, and the witness should be asked questions to show that he is in a position to know what the general reputation of the accused is, and as to when and in what circumstances he has heard the character of the accused discussed.

The existence of previous convictions of offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the accused. At the same time weight must be given to a consideration of the period that has elapsed subsequent to the last conviction in order to see whether the accused has since shown a disposition to conduct himself properly.

Proper procedure for making a Reference to the High Court pointed out.

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

The opposite parties were not represented.

BOYS and SEN, JJ. :—This is described as a reference by the Sessions Judge of Shahjahanpur.

It appears that the police secured the institution of proceedings under section 110 of the Code of Criminal Procedure against two persons Roshan and Ramlal. The police desired that these two men should be bound down for a period of three years each. The case was heard at the usual great length which is one of the unfortunate characteristics of this type of case, and the Magistrate eventually discharged Ramlal and bound down Roshan for a period of only one year. This did not satisfy the police, and the Prosecuting Inspector approached the District Magistrate with a number of written criticisms of the order of the Trial Magistrate and concluded his notes as follows: "It is therefore requested that a High Court may kindly be moved to enhance the term of one year's notice of Roshan to three years and to order the re-trial of Ramlal under section 437 of the Code of

Criminal Procedure." The typewritten copy, which is all that can be traced in this Court, is undated and shows that the signature to the document is illegible.

Whether this document was ever perused by the District Magistrate or not, we are unable to say. The next proceeding that we have before us is a letter purporting to be from the District Magistrate to the Registrar of this Court, through the Sessions Judge of Shahjahanpur, which purports to be signed on behalf of the District Magistrate by a Deputy Magistrate, apparently Pandit Anirudh Kishan Sharma, and to it was attached the note of the Prosecuting Inspector.

This letter, together with the note, reached the Sessions Judge, Mr. Ardagh. Whether there was any hearing of the case before Mr. Ardagh we cannot say; but he passed an order on the 1st of November, 1928, which begins: "In this case the District Magistrate recommends that the period for which security is demanded from Roshan be increased to three years and that security be demanded from Ramlal for one year. I have been through the file." This suggests that the learned Judge examined the file for himself, but did not have it argued before him. His order, which is a very brief one, concludes: "As regards the case of Roshan from whom security was demanded for a year there appears to be no necessity to appoach the Honourable High Court through the Local Government. No appeal has been presented on behalf of Roshan, and the period of appeal has expired." In an earlier portion of the judgement he had said: "I consider that the prosecution evidence against both the accused is unrebutted, and that security should have been demanded from both", and as to Roshan "security should have been demanded for a longer period." In another place, on the back of the letter from the District Magistrate to the Registrar of

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this Court, which has been signed on behalf of the District Magistrate by Mr. Sharma, Deputy Magistrate, the learned Judge endorsed: "Forwarded to the Registrar, High Court of Judicature at Allahabad, for orders of the Honourable Court." In fact this last action is all that was called for on the part of the Sessions Judge in the case of a reference by the District Magistrate. In this manner the case has come before us. It would seem that neither the District Magistrate nor the Deputy Magistrate nor the Sessions Judge has appreciated the proper course to adopt. We will deal with these documents seriatim in order to facilitate an appreciation of what we have to say.

First, as to the order of Mr. Abdul Jalil, the Sub-Divisional Magistrate of Pawaia, dated the 4th of September, 1928, the order which we are asked to consider and to hold to have been mistaken, we would commence by expressing our high appreciation of the obvious care and patience which he gave to a mass of confused evidence, and anything that we may say in reference to mistakes made by him must not be understood to detract from that appreciation.

The notice that was issued to the two men was a notice to them jointly, and this we consider was undesirable. Each man is entitled to a separate notice and not to have the charges which are going to be made against him confused with the charges that are being made against somebody else. There are no less than ten paragraphs in this notice, which is the order under section 112 of the Code of Criminal Procedure. We think that the Magistrate has correctly described it as in substance an order directed to Ramlal to show cause why he should not be called upon to give security in the sum of Rs. 100 with two sureties of Rs. 100 each, for a period of three years on the ground that he was "by habit a

house-breaker and thief", and this charge is one which comes under clause (*a*) of section 110.

Roshan was directed similarly to show cause why he should not furnish security on similar terms in respect of the charge that he was by habit a house-breaker and thief. But in his case there was also a further charge under clause (*f*) of section 110 that he was so desperate and dangerous as to render his being at large without security hazardous to the community.

These were the charges which the two men had to meet and nothing that was not relevant to those charges was relevant to the case at all. We have read and analysed with care the judgement of the Magistrate, the note of the Prosecuting Inspector, the forwarding note of the Deputy Magistrate on behalf of the District Magistrate, and the remarks of the Judge, and we do not propose to deal in detail with the various comments. A case of this description can, so far as it comes before us owing to the dissatisfaction of the District Magistrate only, come before us on the revisional side. It is not an appeal, and in accordance with the usual practice of this Court, which has been frequently stated, we decline to go into the merits of a case on the revisional side unless there is something to show us that there had been a material departure from the legal principles according to which the case ought to have been dealt with; or, if we are asked to go into the facts, we will only do so if something is shown to us which particularly indicates that it is desirable to enter into those facts. The principle on which the court acts has so often been enunciated that it is not necessary and should not be necessary to repeat them further than this. These remarks apply in their entirety to the case of Roshan, though possibly with a little less force to the case of Ramlal, where we have been asked to set aside the order

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of discharge and to direct a further inquiry. We have, then, examined the evidence so far as was necessary to enable us to see whether the Trial Magistrate had approached the case in the proper way and had exercised a judicial discretion in reference to the weight of the evidence. There are only two points in regard to which we think the Magistrate was in error. He had before him in the case of Roshan a number of previous convictions. His view of the value as evidence of those previous convictions is possibly sound, but it has not been expressed quite as clearly as it might have been, and has therefore given the prosecution an opportunity of taking exception. We have no hesitation in saying that the existence of a number of previous convictions of offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the accused. But the Magistrate is quite right in saying that the existence of such convictions is not by itself sufficient to justify ordering the accused to furnish security. Weight must be given to a consideration of the period that elapsed subsequent to the last of the convictions in order to see whether during that period the accused has apparently shown a disposition to conduct himself properly or whether there are indications that he has during that period continued in his previous course, though he may not have actually brought himself within the clutches of the law. It is from this aspect that we have ourselves considered the nature of the convictions and the evidence as to the conduct and reputation of the accused subsequent to the last conviction. The only other point which we find open to criticism is one in which the Magistrate, in our view, erred in favour of the prosecution. A mass of evidence was led to show that this person or the other had "suspected" the accused to be guilty of this or that theft. The Magistrate has weighed the value of this evidence. He need not have

done so, for it has no value whatever. Time after time this Court has pointed out that the suspicion of a witness that a particular man committed, either singly or with others, a theft in his house is wholly inadmissible. In this respect it should be clearly realized that a police officer stands in no stronger position than any other witness.

Having considered the whole case at considerable length we have no hesitation in declining to interfere with the order of the Magistrate.

But we cannot leave the case here. The amount of time of the court that is wasted in cases of this nature by the admission of a mass of inadmissible evidence, and the amount of time that is consequently also wasted in efforts by the superior courts to eliminate that evidence approaches to a scandal. In most cases if one were to go through the whole record scoring out the passages that should never have found a place there, it is probable that not ten per cent. of the evidence would remain. It does not, of course, follow that that remaining ten per cent. is not good and sufficient evidence. We do not suggest that it is wholly the fault of Magistrates. It is very difficult for them in the press of their work to check each statement as it is made by a witness. But it is part of the duty of the Magistrate to see that inadmissible evidence is not admitted on to the record. We think that the Magistrate, in cases of this description where inadmissible evidence may so easily find entry, might well ask the prosecution, as each witness is put into the witness-box, to what point the witness' evidence is to be directed. He will then know exactly what to expect and be in a position to refuse promptly to record statements that are not admissible.

There are only two kinds of evidence which are properly admissible. Ordinarily speaking the case will

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be governed by exactly the same rules of evidence as govern any other cases. A witness cannot say what he suspects. If the prosecution know that the witness does suspect the accused of having taken part in a theft, the prosecution can question that witness before he is put into the witness-box and ask him what are his reasons for suspecting the accused. They can themselves ascertain from the witness what *facts* are within his knowledge, and then put him into the witness-box to give evidence as to those facts, and it will be for the Magistrate to determine whether those facts alone or supported by other evidence create such a conviction in his mind as to justify calling for security. But a witness' "suspicions" and his "allegations" that the accused is a thief, etc., are worth nothing and should not be admitted. The Legislature has further provided that evidence may be given of the general repute of the accused. This does not mean that the prosecution may place before the Magistrate a heterogeneous mass of more or less vague and general statements by any witness who can be produced to say something on hearsay or otherwise, label it "general repute" and ask the Magistrate to call for security on the strength of it. Yet this is undoubtedly a very general practice. A man's general repute, whether deserved or not, is just as much a fact as any other fact which can be proved by a witness. If the witness is a witness to "general repute" he may say: "The accused has the general reputation of being a man who habitually commits such and such offences." In addition to this the witness may properly be put a few questions by the prosecution to show that he himself is in a position to know what the general reputation of the accused is. Further than this, on the mere question of "general repute," it is unnecessary and generally undesirable to go in examination-in-chief. If the accused is defended, his counsel, if he sees fit, can ask any questions

that may go to show whether the witness is really telling the truth when he says that the accused's "general repute" is so and so. He may question him if he thinks fit as to when and under what circumstances he has heard the character of the accused discussed. He may, in fact, test the credibility of the witness as to the real existence of the alleged general reputation in any such legitimate way. The Magistrate is, of course, at liberty to ask similar questions; and where the accused is not defended, or the Magistrate is not himself satisfied with the cross-examination, he should satisfy himself by asking such questions as may seem desirable. It is impossible and we do not desire to lay down the exact course which such examination may take, but we do desire to make it clear that the mere production of a string of witnesses who say that an accused person's general repute is so and so, can carry very little weight unless some attempt has been made to show that he is a person in a position to know the general repute, and there has been some reasonable attempt by the counsel for the accused or by the court to check the value of the evidence.

Before concluding we must draw attention to the impropriety of the District Magistrate, or the Deputy Magistrate, Mr. Anirudh Kishun Sharma, acting on his behalf, in forwarding to the Sessions Judge or to this Court the notes of the Prosecuting Inspector. Those notes may be of some value or of little value as the case may be for the purpose of instructing the Government Pleader who may have to support the views of the District Magistrate at a later stage, but they are not material which ought to be placed before the court. The District Magistrate should have examined those notes for himself, and if there was any portion of them that contained material which he thought to be of value he should have embodied that material in his own order. In the present case he appears to have accepted *en bloc*

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the Prosecuting Inspector's criticisms and has simply attached them to his letter. Apart from the general impropriety of this course, in this particular case it was still more gravely improper. The Prosecuting Inspector had used language about the Trial Magistrate which was most unbecoming and improper. If the District Magistrate did not consider it part of his duty to reprove the Prosecuting Inspector for that language and saw nothing unfitting in a Prosecuting Inspector using such language about a Magistrate, that is possibly his concern. But he was very seriously wanting in a sense of what is proper in permitting a document containing that language to be forwarded to the Sessions Court or to this Court. We have no hesitation in recording our opinion that the Prosecuting Inspector ought not to have been guilty of the use of such language in regard to any Magistrate.

The result of our examination of the record is that we see no reason to interfere and reject the reference.

REVISIONAL CIVIL.

Before Mr. Justice Dalal.

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January, 31.

HUKUM SINGH (PLAINTIFF) *v.* SURAJPAL SINGH AND ANOTHER (DEFENDANTS).*

Civil Procedure Code, section 152—*Amendment of judgement and decree on ground of accidental slip in judgement of predecessor in office.*

Under the provisions of section 152 of the Civil Procedure Code it is open to a court to correct the errors arising in the judgement and the decree from an accidental slip in the judgement; and this can be done by a successor in office of the judge who passed the judgement and decree in question. *Surta* v. *Ganga* (1), *Shahab Din* v. *Siraj-ud-din* (2), and *Lakshman Iyengar* v. *Narayana Iyengar* (3), distinguished.

*Civil Revision No. 10 of 1928.

(1) (1885) I. L. R., 7 All., 411; 875. (2) (1912) 17 *Indian Cases*, 418.
(3) [1924] A. I. R., (Mad.), 225