

cannot come to such a conclusion, he has no jurisdiction to refuse to summon the witnesses, even though the number may be inconveniently large.

I accordingly set aside the order limiting the number of witnesses, and send the case back to the court of the District Magistrate with directions to proceed in the light of the above observations. I may add that Dr. *Katju* on behalf of his client assures me that his client will submit a shorter revised list of witnesses to the District Magistrate.

1931

 EMPEROR
 v.
 BALKRISHNA
 SHARMA.

*Before Justice Sir Shah Muhammad Sulaiman and Mr.
 Justice Niamat-ullah.*

EMPEROR v. BAHADUR SINGH.*

Criminal Procedure Code, sections 109, 121—Security for good behaviour—Sureties—Forfeiture of bond—Whether subsequent vagrancy or suspicious behaviour of accused is sufficient to forfeit bond—Time within which forfeiture can be enforced against surety.

 1931
 September,
 3.

Two persons stood sureties for an accused person who was bound over under section 109 of the Criminal Procedure Code for a certain period. Before the expiry of the period the accused was again found concealing himself under suspicious circumstances and without any ostensible means of livelihood; he was sent up again under section 109. It was held that in view of the provisions of section 121 there was no forfeiture of the surety bonds inasmuch as the accused had neither committed nor attempted to commit nor abetted the commission of any offence punishable with imprisonment. The mere fact that the accused was again found in suspicious circumstances without any means of livelihood might justify a fresh proceeding against him under section 109, but, at most, it might amount to a preparation for an offence, short of an attempt.

When such surety bonds are forfeited on account of any act of the accused person within the period for which the sureties had bound themselves, they are liable whether the proceedings are started against them before or after the expiry of the period.

*Criminal Reference No. 184 of 1931.

1931

EMPEROR
v.
BAHADUR
SINGH.

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

No one appeared for the sureties.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is a reference by the District Magistrate of Dehra Dun recommending that proceedings may be ordered against the sureties for the accused. He was proceeded against under section 109 of the Code of Criminal Procedure. Two persons stood sureties for him for his good behaviour. Shortly before the expiry of the period, he was again found concealing himself under suspicious circumstances in a lonely and abandoned watermill, without any ostensible means of livelihood, and unable to give a satisfactory account of himself. He was accordingly sent up again under section 109 of the Code of Criminal Procedure. The Magistrate was not able to take any action against the sureties before the expiry of the period. He expressed the opinion that he was unable to take any action against the sureties. The District Magistrate considers that there was no objection to the proceedings being taken against the sureties even though there was some delay.

So far as this last matter is concerned, we agree with the District Magistrate that if the bond was forfeited on account of any act of the accused person within the period for which the sureties had bound themselves, they would be liable whether the proceedings were started against them before or after the expiry of the period.

We think, however, that in view of the provisions contained in section 121 of the Code of Criminal Procedure there has been no forfeiture. A breach of the bond is committed when the accused commits or attempts to commit or abets any offence punishable with imprisonment. The mere fact that he is again found in suspicious circumstances without any means of

livelihood or is unable to give a satisfactory explanation of himself, which may justify a fresh proceeding against him under section 109 of the Code of Criminal Procedure, would not result in the forfeiture of the first bond, because that does not amount to the commission of or attempt to commit or abetment of an offence punishable with imprisonment. At most it might be a preparation for the commission of an offence, but short of an attempt. We accordingly direct that the record may be returned.

1931

 EMPEROR
 v.
 BAHADUR
 SINGH.

Bejore Mr. Justice Niamat-ullah.

EMPEROR v. KASHI NATH AND ANOTHER.*

Criminal Procedure Code, sections 235, 236 and 239—Joinder of charges—Whether the sections are mutually exclusive—Several charges framed under section 235—One of such charges may be in the alternative under section 236.

 1931
 September,
 22.

Where several charges are rightly joined against the same accused person under section 235 of the Criminal Procedure Code, there can be no objection to one of such charges being in the alternative as provided by section 236, nor can there be any objection to another accused person being joined under section 239 as regards one of those charges.

Mr. Kumuda Prasad, for the applicants.

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

NIAMAT-ULLAH, J. :—The applicants Kashi Nath and Dhoomi Mal have applied in revision from the order of the learned Sessions Judge, Mainpuri, who dismissed their appeal from the order of conviction passed by a Magistrate, first class, of that district for an offence under section 419 of the Indian Penal Code. Kashi Nath was also convicted by the trying Magistrate of an offence under section 411 of the Indian Penal Code or section 403 in the alternative, but the learned

* Criminal Revision No. 432 of 1931, from an order of Govind Sarup Mathur, Sessions Judge of Mainpuri, dated the 21st of May, 1931.