REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Wazir Hasan.

EMPEROR (APPLICANT) *v.* RAM GHULAM AND OTHERS (OPPOSITE-PARTY).* 1927 *February*, 21.

Criminal Procedure Code, sections 110 *and* 112, *requirements of—Notice to show cause under section* 112 *of the Code of Criminal Procedure, particulars of information, whether to be noted—Criminal Procedure Code, section* 537, *cure of defect under.*

Per STUART, C. J.—*Held*, that a prudent Magistrate might not consider information sufficient to cause him to take action under the preventive sections, unless it gave substantial details against the person in question, but there is nothing in section 110 of the Code of Criminal Procedure laying down any quantom of information as a necessary condition for the Magistrate to take action.

If a Magistrate empowered received information of the barest kind to the effect that a person is habitual thief and is within the local limits of his jurisdiction, it is within his powers to take action under the provisions of the eighth chapter of the Code of Criminal Procedure, and the legality of his action cannot be questioned.

Held further, that in order to show cause under section 112 of the Code of Criminal Procedure, it is not necessary to state more than will show the person against whom proceedings are taken, the particular sub-section on which it proposed to proceed against him. It is not obligatory for the Magistrate to set forth the particulars of the information.

In any circumstances the matter would be cured under the provisions of section 537 of the Code of Criminal Procedure. [*Emperor* v. *Raj Bansi* (1) and *Nihal* v. *Emperor* (2), dissented from.]

Per HASAN, J.—An action under section 112 of the Code of Criminal Procedure could be taken by the Magistrate if he received the information which he incorporated in the notice

* Criminal Revisions Nos. 9 and 10 of 1927, against the order of Jotendra Mohan Basu, Second Additional Sessions Judge of Lucknow at Unao, dated the 4th of December, 1926.

(1) (1920) I.L.R., 42 All., 646. (2) (1926) 24 A.L.J., 908.

1927

EMPEROR v. RAM GHULAM.

issued by him. The rules of the procedure on this subject do not lead to the conclusion that the information must be something in the nature of an indictment or charge, and the intention of the Legislature seems to be that the requirements of a charge are not needed in a trial under section 110. [*Emperor* v. *Raj Bansi* (1) and *Nihal* v. *Emperor* (2), dissented from.]

The Government Advocate (Mr. *G. H. Thomas*) and Mr. *H. K. Ghosh*, for the Crown.

Mr. *S. M. Ahmad*, for the accused.

1927 *February*, 18.

Stuart, C.J.

STUART, C. J. :—These are revision applications filed by the Local Government against two orders of the learned Additional Sessions Judge of Unao. These orders referred to two proceedings, which were submitted to him under section 123 of the Code of Criminal Procedure in respect of persons who had been ordered by a first class Magistrate to give security for their good behaviour for a period exceeding one year, as the persons had not given the security directed. The learned Sessions Judge was of opinion that, according to the views taken by a learned Judge of the Allahabad High Court in *Emperor* v. *Raj Bansi and others* (1) and another learned Judge of the Allahabad High Court in *Nihal and others* v. *Emperor* (2) the original order under section 112 was defective, and that in these circumstances the only course open to him was to return the proceedings to the court of the Magistrate, with directions that a fresh order should be prepared under section 112 and the proceedings commenced again from the beginning. The Local Government, questioning the correctness of this view, has applied in revision before us. The decisions in question are taken by the learned Sessions Judge to support two principles; the first is that an order under section 112 of the Code of Criminal Procedure must contain something which will show to the person, against whom pro-

(1) (1920) I.L.R., 42 All., 646. (2) (1926) 24 A.L.J., 908.

1927

EMPEROR v. RAM GHULAM.

ceedings are taken, the nature of the case against him, and the second is that a failure to give such a person information as to the nature of the case against him is a failure, which cannot be rectified under the provisions of section 537 of the Code of Criminal Procedure. In order to appreciate the arguments for and against these views it is necessary, in my opinion, to examine closely the provisions of section 110 and section 112 of the Code of Criminal Procedure. Section 110 states that, whenever a Magistrate possessing certain specified powers *receives information* that any person within the local limits of his jurisdiction—

Stuart, C.J.

(*a*) is by habit a robber, house-breaker, thief or forger, or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(*d*) habitually commits or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion or cheating or mischief, or any offence punishable under chapter XII of the Indian Penal Code, or under section 480A, section 489B, section 489C or section 489D of that Code, or

(*e*) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

1927

EMPEROR v. RAM GHULAM.

the Magistrate may require him to show cause why he should not be ordered to execute a bond, with sureties for his good behaviour for a period not exceeding three years. There is nothing in this section which specifies what the nature of the information should be. The learned Judge who decided the case of *Emperor* v. *Raj Bansi* (1) appeared to be of opinion that the information given must be detailed information containing the nature of evidence which it was proposed to bring against such a person. With all respect to the learned Judge I am unable to agree. Undoubtedly a prudent Magistrate might not consider information sufficient to cause him to take action under the preventive sections, unless it gave substantial details against the person in question; but there is nothing in the section laying down any quantum of information as a necessary condition for the Magistrate to take action. We are concerned with the legality of a Magistrate's action here, not with its prudence. So far as I read it, if a Magistrate empowered receives information of the barest kind to the effect that a certain person is a habitual thief and is within the local limits of his jurisdiction, it is within his powers to take action under the provisions of the eighth chapter of the Code of Criminal Procedure, and the legality of his action cannot be questioned.

Stuart, C.J.

I now come to section 112. This says :—

> " When a Magistrate acting under section 107, section 108, section 109 and section 110 deems it necessary to require any person to show cause under such section he shall make an order in writing, *setting forth the substance of the information received* . . . "

This is the point on which the learned Judges of the Allahabad High Court have decided the previous

(1) (1920) I.L.R., 42 All., 646.

1927

EMPEROR v. RAM GHULAM.

matters. Their view is that the substance of the information received must be more than a bare statement that a man is a habitual thief, or a habitual committer of mischief, or is so desperate and dangerous as to render his being at large without security hazardous to the community or whatever may be brought against him and that it is obligatory for the Magistrate to set forth the particulars. With due respect I am again unable to agree.

Stuart, C.J.

I do not interpret the words to mean anything more than the gist of the information. It is not necessary, in my opinion, to state more than will show the person against whom proceedings are taken the particular sub-section on which it proposed to proceed against him. I cannot read the words as requiring in law the particulars which the learned Judges of the Allahabad High Court consider necessary. As I have already pointed out, the information which justifies a Magistrate in taking action under section 110 may be the barest information. It may be lacking in details and in particulars. If, for example, a Magistrate receives information from a police officer that a certain person is a habitual thief, the Magistrate has a right to proceed to the next stage and issue a notice to him. He may be unwise in taking such action without carefully checking that information; but he has a legal right to take such an action; and if his information is meagre, the substance of his information would be meagre. Nevertheless it is sufficient for him to state it to make an order under section 112 legal. If he has taken action on insufficient information, the proceedings may on the evidence be found to have been without justification. I do not consider that any ill-results will follow from the adoption of this view. If the subsequent procedure under the chapter is examined, it will be seen that under section

1927

EMPEROR v. RAM GHULAM.

117, clause (2), the inquiry proceeds in the manner prescribed for conducting a trial in a warrant case, except that no charge need be framed. Now it is to be noted that in a warrant case when a man is put upon his trial he receives no information as to the nature of the charge against him until a considerable amount of prosecution evidence has been recorded. It is true that then a charge is framed against him. But in many instances the actual wording of a charge gives a man very little information of the nature of the case against him. I take as an instance a charge of theft. If the forms in Schedule V of the Code of Criminal Procedure are examined it will be seen that under heading XXVIII (II) 3 the Code itself lays down as a proper form of a charge of theft under section 379 the following :—

Stuart, C.J.

"That you, on or about the————day of ————————-at———committed theft."

That is all. The charge need not state the owner of the property in respect of which theft is alleged to have been committed. The charge need not state what was the subject of the theft. The information is bare to a degree. Yet it is all the information which the Legislature considers necessary to give to the accused person on that charge. I do not consider that the accused person once he has heard the evidence against him is put to any real hardship by reason of the brevity of the charge, and I further cannot see that a man against whom proceedings are being taken for being a habitual thief has any grievance because the notice read out to him states simply :—"It is alleged that you are a habitual thief." When a man is charged with committing theft, he only receives the information in the charge that he committed theft at a particular place on a certain date.

I therefore do not find that there is any hardship to an accused person by the lack of particulars

1927

EMPEROR v. RAM GHULAM.

in such an order. A typical order of this kind has been passed in Criminal Revision No. 10. It is as follows :—

> "Whereas I have received information from Pandit Ram Sarup, Station Officer of Maurawan, that Poorbia Pasi, son of Bhau Pasi, resident of Khanpur, is a habitual thief and house-breaker."

Stuart, C.J

I fail to see what more information Poorbia Pasi required as to the nature of the proceedings against him. He knew as soon as that order was read out to him that the Crown would call evidence to show that he was a habitual thief and house-breaker. This evidence could be of varying character. It might include evidence that he actually committed thefts in the past. It might include evidence of repute to the effect that those who knew him considered him to be a habitual thief. It might include evidence that he was in possession of sums of money which he could not have acquired honestly. But whatever that evidence might be, he would know its nature as soon as he heard it. He had an opportunity of cross-examining on it; he had an opportunity of rebutting it. I do not understand how he could, in any way, be prejudiced by the wording in question. The real hardship is where the information is subsequently found to be unreliable. But that hardship will not be removed by insisting on the addition of details, for the unreliability would there be in the details. But in any circumstances the matter would be cured under the provisions of section 537 of the Code of Criminal Procedure. At the worst it would be an error, omission or irregularity. The persons proceeded against in these two proceedings were, in no way, prejudiced by the brevity of the order. I do not, however, consider

1927

EMPEROR v. RAM GHULAM.

that the latter question arises, for I look upon the order as a perfectly good order.

I now come to the question of the merits in these two applications. I have considered the evidence and am satisfied that the persons proceeded against in both cases were rightly ordered to find security to be of good behaviour. I do not consider the security in any way excessive. I would accordingly order these persons to undergo rigorous imprisonment until they find security to the satisfaction of the Magistrate who tried the cases or his successor.

Stuart, C. J.

HASAN, J. :—This is an application by the Government Advocate of this Court on behalf of the King-Emperor under sections 435 and 439 of the Code of Criminal Procedure, 1898.

The opposite parties are 8 in number. A Magistrate of the first class exercising jurisdiction in the district of Unao made an order that each of these 8 persons shall execute a bond for Rs. 100 and shall also furnish two sureties in like amount to be of good behaviour for a term of three years. In the event of default in complying with the terms of the order they were directed to be detained in prison pending the orders of the Sessions Judge of Lucknow at Unao under section 123(2) of the same Code. Accordingly the proceedings were laid before the learned Judge, who, having regard to a certain decision of the High Court at Allahabad, to which reference will be made hereafter, refused to confirm the order passed by the Magistrate, set it aside and returned the proceedings with the direction that the Magistrate would draw up a proper notice and take action afresh according to law.

The substance of the decision of the learned Sessions Judge is that the initial notice issued by the Magistrate in compliance with the provisions of

1927

EMPEROR v. RAM GHULAM.

section 112 of the Code of Criminal Procedure was not only irregular but illegal. In support of the application on behalf of the Crown before us it is urged that the learned Judge has taken a wrong view of the law of procedure bearing on the subject under consideration.

Hasan, J.

The learned Judge of the Court below has followed the decision of the High Court at Allahabad in the case of *Emperor* v. *Raj Bansi* (1). This case was followed by another learned Judge of the same Court in *Nihal* v. *Emperor* (2). The respect with which the opinions of the learned Judges of the High Court at Allahabad should be received by us has induced me to give my most anxious and careful consideration to the matter under discussion. To begin with, as Judges of this Court, it is our duty to administer the law as we find it. We have no power to make law as we think it ought to be. However desirable on moral principles it may be that a person accused under the provisions of section 110 of the Code of Criminal Procedure should receive much more information than what the law prescribes for we cannot give effect to the needs of such principles.

Now the main decision in the case of *Emperor* v. *Raj Bansi* (1) rests on the opinion that "the procedure clearly requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate."

With great respect my reading of the rules of the procedure bearing on this subject does not lead me to the conclusion that the information must be something in the nature of an indictment or charge. We have no case of indictment in the procedure of our

(1) (1920) I.L.R., 42 All., 646. (2) (1926) 24 A.L.J., 908.

1927

EMPEROR v. RAM GHULAM.

courts. As for the charge, sub-section (2) of section 117 is clear on the point. It says that no charge need be framed in cases under section 110 of the Code. This, to my mind, is a clear indication of the intention of the Legislature that the requirements of a charge are not needed in a trial under section 110. What the requirements of a charge are, are specified in sections 221, 222 and 223 of the Code of Criminal Procedure. It seems to me that if the notice to be served under section 110 were to be treated in the matter of particulars that it should contain on the footing of a charge we should be making a new law of procedure and not interpreting it as it stands.

Hasan, J.

The notice issued in this particular case runs as follows :—

> "Whereas I have received information that Ram Ghulam, Chandua, Mangli, Manni, Sipahia, Daswa and Shankaria, Pasis of Lala Khera, a hamlet of Gularia, are habitual thieves and house-breakers and habitually protect and harbour thieves and are associated in the commission of crime. They are hereby required to show cause why they should not be ordered to execute bonds for Rs. 100 each in two sureties each for Rs. 100 to be of good behaviour for three years."

It seems to me that an action under section 112 could be taken by the Magistrate if he received the information which he incorporated in the notice issued by him.

A Magistrate acquires jurisdiction to take action when he "receives information of the description stated in sub-sections (*a*), (*b*), (*c*), (*d*), (*e*) and (*f*) of section 110. Having acquired jurisdiction it is then

1927

EMPEROR v. RAM GHULAM.

Hasan, J.

for him to judicially decide whether it is necessary to require the person against whom such information as is described in the several sub-sections of section 110 has been received to show cause. If he decides in the affirmative, under section 112 " he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required." These are all the essentials which the law requires to be incorporated in the order and we have no power to add to them.

To my mind the notice which was issued in the present case did contain every one of these essentials. Of course opinion may differ as to what the " substance of the information received " means, but I take it that there can be no two opinions that it cannot mean more than the whole " information " received under section 110 of the Code of Criminal Procedure. Therefore for the purpose of determining what that information is on receipt of which the law may be set in motion we must refer to the terms of section 110 itself. That section says that " whenever . . . a Magistrate . . . receives information that any person within the local limits of his jurisdiction—

(*a*) is by habit a . . . house-breaker, thief, or

(*b*) . . .

(*c*) habitually protects or harbours thieves . . . such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour,

1927

EMPEROR v. RAM GHULAM.

such period not exceeding three years, as the Magistrate thinks fit to fix."

Hasan, J.

The notice under section 112 is issued in view of the preliminary provisions of the last clause of section 110. It follows, to my mind, that the information on receipt of which the exercise of jurisdiction under these sections depends is defined by the terms of section 110 itself. We cannot add to that definition. The notice issued in this particular case strictly complies with that definition.

I, therefore, respectfully regret that I am unable to follow the two decisions of the High Court at Allahabad already referred to. I agree with the order which the Hon'ble the CHIEF JUDGE has passed in Criminal Revisions Nos. 9 and 10.

BY THE COURT.—We order these persons to undergo rigorous imprisonment until they find security to the satisfaction of the Magistrate who tried the cases or his successor.