

1892.  
 QUEEN-  
 EMPRESS  
 v.  
 RAJA B.

work to be performed, and the Magistrate did not question him as to the plea of the accused that the bond was for an old debt. The written contract sued upon, which is dated the 24th December, 1885, does not allude to any advance. On the contrary, it stipulates very plainly that the accused workman is to receive wages for his work as they accrue due : and it provides that he is to take a receipt for any money he may repay. The weaver contracts to work for the complainant for two and a half years, and promises to repay the Rs. 75 if during that interval he transfers his services to anybody else. The case appears to be on all fours with *In re Ramprasad*<sup>(1)</sup> and to fall within the principle of *Reg. v. Jethya*<sup>(2)</sup> and the case in 3 Mad. H. C. Rep. Appdx. 31. The evidence is that the default occurred five years ago. We are of opinion that the conditions required to give jurisdiction to the Magistrate under section 2 of the Act did not exist, and that he ought not to have passed the order which required the accused to work for the complainant for two years and five months as a weaver artisan from the date of the order. We now set the order aside, and direct that the Magistrate inform the accused of this decision. The remedy of the complainant is by a civil suit.

(1) I. L. R., 3 All., 744.

(2) 9 Bom. H. C. Rep., 171.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Jardine and Mr. Justice Telang.*

QUEEN-EMPRESS v. RA'MA.\*

1892.

January 14.

*Criminal Procedure Code (Act X of 1882), Section 118—Security for good behaviour—High Court's power of interference when the amount of security is excessive—Magistrate's discretion to be properly exercised.*

A Magistrate ordered the accused to execute a bond for Rs. 500 for his good behaviour for one year, and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison.

The High Court, being of opinion that the amount of the required security was excessive, and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction and reduced the amount.

THE accused was ordered by the First Class Magistrate of Poona, under section 118 of the Criminal Procedure Code (Act

\* Criminal Revision, No. 468 of 1891.

XIV of 1882) to execute a bond for Rs. 500 for his good behaviour for a period of one year, and to find two sureties for the same amount. The Magistrate fixed this amount after taking into consideration five previous convictions recorded against the accused, and the fact of his being a habitual thief.

The accused failed to furnish the required security, and was sent to prison.

On examining the monthly return of criminal cases, the High Court sent for the record of this case, being of opinion that the amount of security required of the accused was excessive.

The following order was passed by the Court (Jardine and Telang, JJ.) :—

*PER CURIAM*:—The Magistrate on the 17th August, 1891, ordered the accused to enter into a bond for Rs. 500 for his good behaviour for one year and to find two several sureties for the same amount. In reply to this Court, the Magistrate reports that he fixed the amount on consideration of the five previous convictions recorded against the accused and of his being an habitual thief. The five convictions extend over eleven years, the last imprisonment expired on the 5th June, 1891. We do not think the Magistrate exercised a proper discretion in requiring security in so large a sum. We concur in the following remarks of the High Court of Madras<sup>(1)</sup>—“The power given by the section is one that should be exercised discreetly, and in fixing the amount of security the Magistrate should consider the station in life of the person concerned and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment, it must be remembered, is intended as a protection to society against the perpetration of crime by the individual, and not as punishment for a crime committed, and being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security.” These views are approved in *Empress v. Dedar*<sup>(2)</sup>. We may also point out that, as remarked in *Empress*

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(1) 4 Mad. H. C. Rep., App. 47

(2) I. L. R., 2 Cal., 384.

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v. *Kalachand*<sup>(1)</sup>, the requirements of such heavy security may result in a heavy pecuniary fine in a case only of suspicion and reputation, as the accused might have to pay heavy sums to obtain the security.

In the case before us he failed to give the security and was sent to prison. As the Magistrate has not acted on the proper principle, we modify his order and reduce the amount of the bond to Rs. (100) one hundred, with one surety for the same amount. The accused to be informed hereof by the Magistrate in order that he may avail himself of it.

(1) I. L. R., 6 Calc., 13.

### PRIVY COUNCIL.

RA'MCHANDRA NA'RSINGRA'V, PLAINTIFF, AND TRIMBAK  
NA'RA'YAN EKBOTE, DEFENDANT.

P. C.\*  
1891.

November 26 ;  
December 17 .

(On appeal from the High Court of Bombay.)

*Hereditary gumāsta appointed to collect deshmukhi allowances—Derivation of his title such that the deshmukh could not dismiss him—Construction of documents.*

As to whether a *deshmukh* could dismiss the holder of the paid office of hereditary *gumāsta*, appointed to collect, in the *watan* of the former, the *deshmukhi* allowances from the villages, it was shown by documentary evidence that the *gumāsta's* ancestor had been appointed by the ruling power of the day, from which authority also the *deshmukhi* had been derived. It was also shown that the hereditary *gumāsta's* title was independent of the *deshmukh*, and that the latter could not displace him. No change had been made under British rule from what had prevailed as to this under the *Peishwā*; but such evidence as there was, accorded with the above.

*Held*, that the right of the *gumāsta* to act as such, and to receive the payments had either been granted, or else had been so recognized and confirmed by an authority binding on the *deshmukh* that he could not deprive the *gumāsta* of his office which the Government had conferred upon him; and that the *deshmukh* had not the right, as against him, to collect the allowance himself, directly, either from the village officers, or from the treasury.

APPEAL from a decree (8th February, 1888) of the High Court reversing a decree (14th November, 1884) of the Subordinate Judge of Poona.

\* Present :—LORDS HOBHOUSE, HERSCHELL and MORRIS, SIR R. COUCH, and LORD SHAND.