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mining claims made to the property; of ordering the sale thereof and receiving the proceeds, and of providing for their distribution under s. 295." That being so, we think that after the Subordinate Judge had called for (as he had full authority to do) the record of the execution case from the file of the Munsiff on the 9th September 1899, for the purpose of distribution of the sale-proceeds, the Munsiff [778] had no power to distribute the money amongst the decree-holders in his own Court. He ought to have at once sent up the record to the Court of the Subordinate Judge, for the purpose of a distribution being made by that officer in accordance with s. 295 of the Code. The Subordinate Judge, as we have already stated, upon receipt of the record from the Munsiff's Court, dealt with the matter of distribution, and made his order of the 19th February 1900. That is an order which was in perfect accordance with the provisions, of ss. 295 and 285 of the Code of Civil Procedure, and no objection could be taken to it.

But then the question arises whether the Subordinate Judge had the authority to make the order that some of the decree-holders in the Munsiff's Court should refund the sums drawn by them in excess of what was legitimately due to them. It seems to us extremely doubtful whether he had such authority, because the Subordinate Judge was not then sitting in appeal against the order of the Munsiff, nor had he any revisional jurisdiction in respect of any order, which the Munsiff had made. However that may be, in order to remove any doubt or difficulty which may exist, we make the same order which the Munsiff, so soon as he discovered the mistake that he had made, ought to have made, and which the Subordinate Judge has made in this matter.

The rule will accordingly be discharged. We make no order as to costs.

Rule discharged.

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[779] CRIMINAL RULE.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

KALAI HALDAR *v.* EMPEROR.* [17th April, 1901.]

Security for good behaviour from habitual offenders—Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific acts—General repute—Criminal Procedure Code (Act V of 1898), ss. 110 and 117.

A charge under clause (*j*), s. 110 of the Criminal Procedure Code, cannot be proved by general reputation, but by definite evidence.

To prove a charge under s. 110 that a person is by habit a thief and a dacoit or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character.

It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice.

THE Subdivisional Magistrate of Bagirhat on the 5th June 1900 drew up proceedings under s. 110 of the Criminal Procedure Code against

* Criminal Rule No. 208 of 1901 made against the order passed by S. C. Mookerjee, Esq., District Magistrate of Khulna, dated the 25th of October 1900.

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the petitioners Kalai Haldar and another, charging them with being thieves and dacoits by habit, and with being so desperate and dangerous as to render their being at large without security hazardous to the community, and by an order dated the 18th September 1900, the Magistrate directed the petitioners to enter into securities for good behaviour for the term of one year or in default to undergo rigorous imprisonment for the same period.

The petitioners appealed to the District Magistrate of Khulna who on the 25th October 1900 affirmed the appeal.

[780] The petitioners then obtained a Rule from the High Court calling upon the District Magistrate to show cause why the order of the Subdivisional Magistrate of Bagirhat, dated the 18th September 1900, purporting to have been made under s. 110 of the Code of Criminal Procedure and requiring the petitioners to execute bonds for good behaviour for one year or, in default thereof to undergo rigorous imprisonment for the same period, should not be set aside—*first*, upon the ground that the Courts below have misdirected themselves in the consideration of the evidence adduced for the prosecution ; *secondly*, upon the ground that the evidence upon which the lower Courts have proceeded is not sufficient in law to warrant an order under s. 110 ; and, *thirdly*, upon the ground that, so far as one of the petitioners is concerned the first Court had no jurisdiction to entertain the matter ; or why such other order should not be made as to this Court may seem fit and proper.

Mr. *Donogh* and Babu *Harendra Narain Mitter* and Babu *Brojo Gopal Chakravarti* for the petitioners.

AMEER ALI AND PRATT, JJ. The two petitioners before us were required under s. 110 of the Code of Criminal Procedure to enter into securities for good behaviour for the term of one year or in default to undergo imprisonment for the same period. The charge which they were called upon to meet under that section is stated in the judgment of the Deputy Magistrate namely, that they are thieves and dacoits by habit, and that they are desperate and dangerous to the community.

We have read through the judgments of the two Courts and examined the principal evidence upon which the District Magistrate as well as the Deputy Magistrate relied. The fact, which, according to the Deputy Magistrate, shows the dangerous character of these men is that which he mentions in his judgment, namely, that a search was made in Kalai's and Chater's house in connection with a burglary in the house of a pleader of Khulna. No specific act is mentioned in either of the judgments to show that these men, to the knowledge of any particular individual, were, **[781]** dangerous and desperate characters. The charge under cl. (*f*), s. 110 of the Code of Criminal Procedure, cannot be proved by general reputation, but by definite evidence.

Cl. (*f*) provides :—

" Wherever a Magistrate specially empowered in this behalf receives information that any person within the local limits of his jurisdiction ' is so desperate and dangerous as to render his being at large without security hazardous to the community,' such Magistrate may call upon him to execute a bond."

We have not been able to discover in these proceedings any evidence of that fact. And as regards the other allegation, *viz.*, that these men were thieves and dacoits by habit, referring to the evidence of those who are stated to be respectable pleaders and Honorary Magistrates, we find

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that none of them know personally the individuals charged. They say that they have heard that these men are thieves and dangerous characters, but when they are asked, if they know them personally, they answer in the negative, nor can they mention the people from whom they derived their information. In our opinion the evidence is not only such as cannot be safely acted upon, but it is also likely to work serious prejudice. If the men from whom these witnesses purported to derive their information were examined, it would be possible for the accused to test their means of knowledge that they were men of bad character. General suspicion of this nature, however, is not safe to act upon.

Having regard to the nature of the evidence in this case, we are of opinion that the order against the two petitioners cannot be sustained. We accordingly set it aside, and direct that the petitioners be discharged.

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29 C. 782.

[782] APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

JAMIRUDDI MASALLI *v.* EMPEROR.* [4th March, 1902.]

Misdirection—Charge to Jury—Duty of Judge—Evidence of approver—Corroboration—Retrial—Criminal Procedure Code (Act V of 1898), ss. 297, 298 and 337.

A Sessions Judge in laying the evidence of an approver before the jury stated in his charge : "If you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points," and then, after describing what in his opinion were "the points of corroboration," told the jury that "the above are the points on which the evidence has been corroborated, and that corroboration is full and complete, if you believe it. You have to consider these points and decide, whether the approver has been corroborated in material points, and, if you find that to be so, then you have in his story sufficient evidence to connect all three accused with the crime."

Held, that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that, although the law permitted them to convict on the uncorroborated evidence of an accomplice it was not the practice of our Courts, which have consistently held that it was not safe or proper to convict on such evidence without some corroboration sufficient to connect each of the accused with the offence committed. With this caution the Sessions Judge should have laid before the jury the evidence corroborating the statement of the accomplice.

The nature of the corroborative evidence must be confirmatory of some of the leading circumstances of the story of the approver as against the particular prisoner.

Circumstances, under which a new trial should or should not be ordered on account of a defective summing up with reference to the weight of evidence, pointed out.

Elahee Buksh (1), *Queen* v. *Nawab Jan* (2), *The Queen* v. *Kalla Chand Dass* (3) and *Palavasam* (4), referred to.

IN this case on the 20th August 1900 a dacoity was committed in the house of Mangan Dass at Gopalpur. The dacoits broke [783] into his house, beat him, and threatened to burn him, and after having elicited from him where his money was buried, they dug up a sum of Rs. 150

* Criminal Appeal No. 907 of 1901, against the order of D. H. Kingsford, Esq., Sessions Judge of Jessore, dated the 4th of October 1901.

(1) (1866) 5 W. R. Cr. 80.
(2) (1867) 8 W. R. Cr. 19.
(3) (1869) 11 W. R. Cr. 21.
(4) (1868) Weir 535.