

Before Mr. Justice Ainslie and Mr. Justice McDonell.

1877
June 19.

THE EMPRESS *v.* DEDAR SIRCAR.*

*Security for good behaviour—Criminal Procedure Code (Act X of 1872),
s. 505.*

On a requisition from the High Court a Magistrate is bound to state the grounds upon which he fixed the amount of security.

A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security.

UNDER s. 506 of the Criminal Procedure Code, the Magistrate of Dinagepore required nine persons to furnish "two respectable and sufficient sureties for their good behaviour, each in the sum of Rs. 1,000," and in the case of another person, Dedar, in the sum of Rs. 5,000. The aggrieved parties petitioned the High Court, whereupon Markby and Prinsep, JJ., called upon the Magistrate to state the grounds or information on which the amount of the respective securities had been fixed. The Magistrate furnished the information required, but took occasion to question the authority upon which he had been called upon to state the grounds upon which he has fixed the various amounts. The case ultimately came before Ainslie and McDonell, JJ.

Baboo Indro Nath Banerjee for the petitioner.

The Junior Government Pleader Baboo Jugadanund Mookerjee for the Crown.

The judgment of the Court was delivered by

AINSLIE, J.—We think that, under the circumstances stated by the Magistrate, it is not desirable that the Court should interfere in the present case. In the 4th paragraph of his letter the Magistrate expresses a doubt whether the High Court is competent to call upon him to state the grounds upon which

* Criminal Motion, No. 64 of 1877, in the matter of the decision of E. V. Westmacott, Esq., Magistrate of Dinagepore, dated the 20th January, 1877.

he fixed the amount of security. With reference to this, we desire to call his attention to a ruling of the Madras High Court, at page 450 of Mr. Prinsep's edition of the Code of Criminal Procedure (1), an expression of opinion in which we entirely concur. It is there said, "The imprisonment is provided 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 in default of finding security, it is only just and reasonable that the individual should be afforded a fair chance at least of complying with the required conditions of security." If the Magistrate declined to furnish a statement of the grounds upon which he fixed the amount of security, this Court would have been unable to say that he had fixed it on just and reasonable grounds, and probably the result would have been that we should have felt bound to modify the order as *prima facie* unreasonable and unsupported by anything before us.

1877

EMPERESS
v.
DEBAR
SUGAR.

ORIGINAL CIVIL.

Before Mr. Justice Macpherson.

ROYCHURN DUTT v. AMEENA BIBI.

1877

May 21 & 23.

Sheriff—Right to Poundage—Satisfaction of Decree after attachment, but before sale.

Certain immoveable property of the defendant was attached in execution of a decree which had been partly satisfied by the proceeds of a previous sale in execution. Before any proceedings for sale were taken under the attachment, the defendant paid the balance and satisfied the plaintiff's claim in full. *Held*, that the Sheriff was entitled to poundage upon the amount so paid in satisfaction of the debt, and satisfaction of the decree was ordered to be entered, and the attachment withdrawn, subject to the payment of such poundage.

THIS was an application on notice on behalf of the defendant in the above suit for an order that satisfaction of the decree

(1) 4 Mad. H. C. Rep., App., 44.