

1880
 IN THE
 MATTER OF
 THE
 PETITION OF
 MOHUN DASS
 v.
 LUTCHMUN
 DASS.

acting under a probate and whose lunacy subsequently of course disables him from acting under the will, that lunacy being established by a regular enquiry under the direction of the Court under the Act relating to that subject. The respondent now before us is not an executor. He obtained probate of the will of the late mohunt, and under the operation of that will is now at the head of the institution, and until any just cause for revocation of the grant of probate is made out under the law, he cannot be removed. The proper course, as it seems to me, for depriving the respondent of the office, would be to bring a suit under the Religious Endowment Act, or any other suit for a declaration that he has disqualified himself, and if in that suit a decree is obtained and duly certified to the Court which granted probate, that Court, no doubt, would direct the revocation of the probate. The present appeal will be dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Pontifex and Mr. Justice McDonell.

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 April 22.

THE EMPRESS v. KALA CHAND DASS AND OTHERS. *

Criminal Procedure Code (Act X of 1872), ss. 505, 506—Deposit of Cash in lieu of Security Bond for Good Behaviour.

The powers given by ss. 505 and 506 of Act X of 1872 should be exercised with extreme discretion; the former of these sections is not intended to apply to persons of "by no means a reputable character."

An order requiring persons to deposit cash in lieu of entering into a bond as security for their future good behaviour is bad in law.

THIS was a reference under s. 296 of Act X of 1872 made to the High Court by J. Smith, Esq., the Sessions Judge of Burrisal.

The accused persons were charged under s. 505 of the Criminal Procedure Code with being persons of notoriously bad liveli-

* Criminal References, Nos. 44, 45, and 47 of 1879, by J. Smith, Esq., Sessions Judge of Burrisal, dated 15th March 1880, on an order passed by the District Magistrate of that district.

hood, and the Magistrate of the District, after holding a local enquiry, at which he examined witnesses for the prosecution and defence, found the charge established, and passed the following order:—“That the prisoners Kala Chand, Ram Sagar, Nobin Holdar, Ram Kumar Doss, Poddo Lochun, Raj Coomar Deb find two sureties in Rs. 500 each for their good behaviour for one year, under s. 505 of the Criminal Procedure Code. They are also required to furnish their own recognizances,—the amount to be deposited in cash; Kala Chand, Ram Sagar, and Ram Kumar Deb for Rs. 1,000 each; Raj Coomar Deb and Ram Kumar Doss for Rs. 500 each; and Nobin Holdar and Poddo Lochun for Rs. 250 each. In default of compliance with this order, they will, under s. 510, undergo rigorous imprisonment for the period mentioned.”

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The Sessions Judge being of opinion that the portion of the order requiring the accused to deposit cash in lieu of a bond for good behaviour was bad in law, referred the matter to the High Court.

No one appeared for either side at the hearing.

The judgment of the Court (PONTIFEX and McDONELL, JJ.) was delivered by

PONTIFEX, J.—We agree with the Sessions Judge in this case that the order passed by the Magistrate, requiring the accused persons to deposit cash in lieu of taking a bond for good behaviour, ought to be set aside as bad.

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No doubt, defendant No. 5 is, on his admission, as stated by the Magistrate, but which really is not borne out by the record, a by no means reputable character. But in my opinion s. 505 is not intended to apply to a person of such character and reputation, and the Magistrate had no jurisdiction to deal with him under that section. And, speaking generally, the order passed by the Magistrate seems to me preposterous. The seven defendants are each required to find two sureties to the amount of Rs. 500 each; three of the defendants are required to deposit in cash Rs. 1,000 each; two of them Rs. 500 each; and the remaining two Rs. 250 each, and in default to have rigorous imprisonment for one year.

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With respect to the deposit, we agree with the Judge that the order is illegal.

With respect to the sureties it is prohibitive, for it is scarcely likely that fourteen sureties in Rs. 500 each would be forthcoming in a place like Bhaokalty. My own experience in Calcutta has shown me that respectable people in Calcutta, who have to provide sureties upon grant of letters of administration, have to pay heavy sums to the sureties; and I can only suppose that it would be greatly more expensive for reputed *budmashes* to provide sureties for their good behaviour. So that it comes to this, that the requirement of two sureties to the amount of Rs. 500 each for each of the defendants will in effect be inflicting a heavy pecuniary fine upon them in a case only of suspicion and reputation.

Moreover, if these cases are to be approached in the spirit with which the present has been decided, to become surety for a *budmash* will of itself be sufficient evidence to convict the surety of being himself a *budmash*.

Surely the putting in force of these very stringent sections should be exercised only with extreme discretion. In the present case the Magistrate points out incidentally the far more proper means of prevention. In the village in question he says: "So bad indeed, a few months back, had things become, that it was considered necessary to station two constables, who still remain there. . . . The accused are well known to have been in the habit of moving about the khals at night in long canoes driven by paddles, whilst thefts were of frequent occurrence. *This of course was before the arrival of the Police, whose removal would simply be the signal for a return to the old state of things.*"

We quash the order of the Magistrate directing the defendants to deposit cash and to provide sureties, and in lieu thereof we direct the defendants Nos. 1, 2, 3, 4, 6, and 7, but not defendant No. 5, to enter into bonds for their good behaviour in the amounts which they were directed to deposit in cash. All the defendants will be immediately released from the rigorous imprisonment which, it appears, they are now undergoing for default in providing sureties and depositing cash.

Order set aside.