"Confession" Series.

BAD LIVELIHOOD.

S. ROY.

350
R81L

Price Rs. 4/-

505 / R.I
16087
3860

ISLAMIA
COLLEGE
LIBRARY.
LAHORE.

M.A. SECTION
CLASS No 350
BOOK No R 81L

...LAW,

...MARY
...DIA.

...dder Dewany
..., Burma Law

...s ; Caste Cus-
... Impartibility,
Religious Endowments, Inheritance, Marriage and Divorce ; Buddhist Customs ; Mahomedan Customs ; Malabar Customs ; Punjab Customs ; Tenancy Customs ; Trade Customs ; Agency Customs ; Illegal and Immoral Customs &c. &c.

PRESS OPINIONS :—

".....is one of great practical import nce and has never been systematically treated by any wor' er before..... is full and distinguished by accuracy."—The *Calcutta Law Journal*, June 1, 1911.

"Have no doubt that the work will take rank amongst the leading legal compilations of this country to which lawyers and jurists must always resort for purposes of reference."—The *Calcutta Weekly Notes*, March 20, 1911.

BAD LIVELIHOOD.

1913. Rs. 4.

Contains all the cases of High Courts and Chief Courts up to date.

The most comprehensive and exhaustive work on the subject. Useful to Practitioners as well as to Judges and Magistrates. No Police Officer should be without a Copy of this book.

Deals fully with secs. 106, 107, 108, 109 and 110 under following heads :—Procedure, Inquiry, General Repute, Security, Surety, Forfeiture of Bonds, Misjoinder, Further Inquiry, Jurisdiction, Appeal, Reference and Revision &c. &c.

Extracts from **Statement of Objects and Ressons, Bengal Police Manual**. All the sections bearing upon the subject of 1898 Code of Criminal Procedure together with their corresponding sections in the old Codes. Forms of Bonds, Summons, Warrants &c. &c. **Copious Index**.

PRESS OPINIONS :—

"His collection of cases is exhaustive and his discussion of the principles underlying them displays both capacity for research and insight.....We have no doubt the book will prove as useful as the Author's previous compilations in the same field."—The *Calcutta Weekly Notes*, Sep. 15, 1913.

THE LAW OF SANCTION TO PROSECUTE.

2nd Edn. 1909. Rs. 4.

Contains cases of all the High Courts including those of the Punjab and Burma Chief Courts.

The only book on the subject.

THE LAW OF CONFESSION.

3rd Edn. 1909. Rs. 2.

Contains all the Indian, English, Irish and American cases on the subject.

242

"Confession" Series.

ISLAMIA COLLEGE LIBRARY
Bk. No.
LAHORE.

THE LAW

RELATING TO

BAD LIVELIHOOD

AND

COGNATE PREVENTIVE MEASURES.

ALLAMA IQBAL'S
No. 241
PERSONAL COLLECTION

BY

SRIPATI ROY.

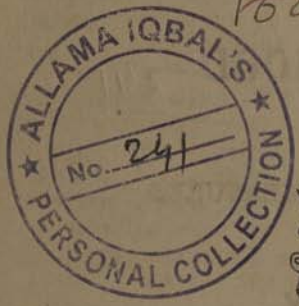
BARRISTER-AT-LAW ; ADVOCATE OF THE HIGH COURT AT CALCUTTA ; TAGORE LAW PROFESSOR FOR 1908 ; AUTHOR OF THE "LAW OF CONFESSION," THE "LAW OF SANCTION TO PROSECUTE" "CUSTOMS AND CUSTOMARY LAW IN BRITISH INDIA."

ALLAMA MOHAMMAD IQBAL'S
COLLECTION.
Date.....

WILKINS PRESS : CALCUTTA.

1913.

Dr Sh Mohammad Iqbal
Bar-at-Law
Lahore
C
16887/3860



350
R81L

PRINTED BY J. N. BOSE.

At the Wilkins Press, College Square, Calcutta.

AND

Published by the Author.

Calcutta.

ISLAMIA COLLEGE LIBRARY
Bk. No.....
LAHORE.

PREFACE.

The present work may be regarded, as the third of the Series to which the Author's "Law of Confession" was the first and the "Law of Sanction to Prosecute" the second. The Author, when he brought out his "Law of Confession" had in mind to treat the whole of the Code of Criminal Procedure in its distinctive parts and to bring out special works on them. He published his first edition of the "Law of Confession" in November, 1902, and that of the "Law of Sanction to Prosecute" in November, 1904. His labours in connection with the Tagore Lecture on "Customs and Customary Law in British India" prevented him from proceeding with the Series as originally intended. He is, however, glad that he is now able to bring out the present work. He hopes that this new work of the Series will receive the same amount of patronage from the Profession and the Public, which the two sister-works received.

The book has been brought up to date, and all the reported cases of High Courts have been embodied in it.

In the Appendix the reader will find all the sections, bearing upon the subject, of the 1898 Code as well as the corresponding sections of the old Codes. Besides extracts from the "Statement of Objects and Reasons" of the Amending Act of 1898, and from the Bengal Police Manual, relating to the subject, he will find the usual forms of bonds, warrants and summons. In fact, no pains have been spared to make the work absolutely self-contained and complete. The Author will feel highly recompensed if the Profession and the Public show their appreciative approval of the work now offered them.

BAR LIBRARY.
CALCUTTA.
September 15, 1913.

S. R.

ALLAMA IQBAL'S PERSONAL COLLECTION No.

JAMIA COLLEGE LIBRARY Dr. No.

CONTENTS.

Introduction 1

Section 106—

General Principle 3

Difference between sections 106 & 107 ... 4

Breach of the Peace 4

Ambiguities of the section 5

Cases relating to other offence involving a breach of the peace 12

Illegal order 18

Section 107—

Information 19

Onus 23

Object 23

General Principle 24

Legal Right 29

Religious Procession 32

Land Disputes and Proceedings under sec. 107 34

Joint Owner 43

Rival Hâts 44

Binding down both parties 44

Wrongful Act 46

Bad order 48

European British Subjects 49

Section 108 49

Section 109 51

Section 110—

Object 55

General Principle 56

Previous Conviction 60

Discharge or Acquittal 61

Discretion 62

Locus Penetentiæ 63

Period of Interval 64

Procedure— 65
Summons and Notice 66
Opportunity 70
"Showing Cause" 71
Inquiry— 72
Joint Inquiry 77
Admission 78
General Repute and Evidence— 79
"Otherwise" 82
Suspicion 83
General Evidence 85
Defence Evidence 88
Cases under cls. (a) to (f) of sec. 110— ... 88
Sec. 110 cl. (a) 88
Sec. 110 cl. (d) 88
Sec. 110 cl. (e) 89
Sec. 110 cl. (f) 90
Security— 92
Excessive security 94
Magistrates to act discreetly 95
Arbitrary conditions 95
Second security 96
Section 562 Cr. P. C. 97
Common Law 97
Surety— 98
Recording reasons 103
Mode of Inquiry 104
Delegation 104
Grounds not sufficient for rejecting sureties ... 106
Grounds sufficient 107
Enhancement of Security 108
Illegal Order of Security 109
Forfeiture of Bond— 110
Section 514 Cr. P. C. 111
Misjoinder— 116
„ of charges 119
Association 121

ALLAMA IQBAL'S PERSONAL COLLECTION No. 241

Further Inquiry— 126
Fresh Proceedings 131
Jurisdiction— ... 132
Sec. 106 Cr. P. C. ... 132
——107 „ 137
——110 „ 143
——562 „ 145
Powers of Sessions Judge and District Magistrate 146
——of Sessions Judge under Sec. 123 Cr. P. C. 146
——of District Mgtr. under Sec. 123 Cr. P. C. 149
„ „ 124 „ ... 146
„ „ 125 „ ... 150
Transfer— 152
Dist. Mgte's power to transfer 160
Application of other Sections— ... ... „
Sec. 55 Cr. P. C. 161
——87 „ 164
——116 „ 165
——167 „ 165
——190 }
——191 } „ 165
——192 „ 165
——250 „ 166
——256 „ 166
——257 „ 167
——350 „ 167
——362 „ 168
——443 „ 169
——496 „ 170
——513 „ 172
——514 }
——515 } „ 172
——529 „ 172
——540 „ 172
——556 „ 173

"Sentence"— 173
Bom. H. C.'s Decisions 174
Mad. H. C.'s „ 176
Punj. Ch. C.'s „ 177
All. H. C.'s „ 177
Appeal, Reference and Revision—
Appeal 180
——under Letters Patent Art. 15 ... 181
Reference 182
Revision 183
Miscellanea 185
Appendix—
Statement of Objects & Reasons 186
Criml. Proc. Code of 1898 188
do. 1882 202
do. 1872 210
do. 1861 221
Schedule V.—Forms. (Act No. V. of 1898) 230
Bengal Police Manual, 1911 238
Index 241

TABLE OF CASES CITED.

A

	PAGE.
Abasu Begum, 8 Cal. 724	... 67, 69.
Abbas, 16 C. W. N. 83 (F. B.) : 39 Cal. 150 : 14 C. L. J. 429	... 34, 36, 39.
Abdul Aziz, 14 All. 49	... 140, 141.
———Bari, 25 W. R. Cr. 50	... 2, 68, 108.
———Hai, A. W. N. (1906) 13	... 115.
———Huq, 20 W. R. Cr. 57	... 3, 25.
———Kadir, 9 All. 452	... 23, 24, 71, 75, 77, 116, 117, 118.
———Khan, 10 C. W. N. 1027	... 103, 104, 106.
———Wahid, 30 Cal. 101 : 6 C. W. N. 422	... 17, 137, 181.
Abdur Rahim, A. W. N. (1905) 143	... 183.
Abhaya Chowdry, 6 B. L. R. App. 148 : 15 W. R. Cr. 42	... 21, 25.
Abinash Malakar, 4 C. W. N. 797	... 99, 100, 101, 107, 128, 147, 183.
Adam Sheikh, 35 Cal. 400	... 100, 101.
Ahmad Khan, A. W. N. (1900) 206	... 131, 132
Ahmed Hossein, Cr. Revn. 33 of 1899	... 155.
Ajudhia, A. W. N. (1898) 60	... 183.
Ajudhya Prasad, 12 C. W. N. 992 : 35 Cal. 929	... 77, 78.
Akbar Ali, 4 C. W. N. 821	... 158, 159.
Akhoy, 5 C. W. N. 249	... 82, 84, 91, 92.
Alep, 11 C. W. N 413	... 58, 61, 64.
Alimuddin, 29 Cal. 392 : 6 C. W. N. 392	... 57, 173.
Alum, 5 W. R. Cr. 2	... 85
Amar Singh, 16 All. 9: A. W. N. (1893) 183	... 155, 156, 157, 158.
Amir Bala, 35 Bom. 271	... 148, 183.

PAGE

Ananthacharri, 2 Mad. 69 ... 116.
Anundee Koer, 10 W. R. Cr. 40 ... 150.
Appa, Bom. H. C. July 18, 1895 ... 176
Arjun, 34 Bom. 326 : 12 Bom. L. R. 129 ... 53, 175.
Arumuga, 26 Mad. 188 ... 154.
Arun Samanta, 30 Cal. 366 ... 6, 7, 90.
Aslu, 16 Cal. 779 ... 137.

B

Baba Yeshawant, 35 Bom. 401 ... 130.
Baboo Futteh Bahadoor, 22 W. R. Cr. 74 ... 86, 93, 94.
Babu, A. W. N. (1898) 199 ... 102, 199.
Babua, 6 All. 132 ... 20, 21, 58, 85, 164, 165, 173.
Bachu, 7 N. W. P. 328 ... 94.
Baidyanath, 30 Cal. 93 : 6 C.W. N. 471 ... 7. 12. 13, 15, 16.
Baisnab Babaji, 12 C. W. N. 606 ... 39, 45.
Baisnab Majhi, 39 Cal. 409 : 16 C. W. N. 384 ... 40.
Balai Mahto, 7 C, W. N. 29 ... 36.
Balajit, 12 C. W. N. 487 : 35 Cal. 117 ... 34, 35, 39, 41.
Banarsi Das, P. R. (1888) 30 ... 23.
Bangali Shaha, 17 C. W. N. 883 ... 54.
Bapoo, 9 Bom. L. R. 244 ... 145.
Barjore Singh, A. W. N. (1895) 241 ... 75, 109.
Barpa Dey, 9, C. W. N. 860 : 32 Cal. 948 ... 150, 151, 152.
Basdeo, 26 All. 190 : A. W. N. (1903) 219 ... 26.
Basiruddin, 7 C. W. N. 746 ... 37, 38, 48.
Basya, 5 Bom. L. R. 27 ... 165.
Batuk, A. W. N. (1884) 54 ... 117.
Bawan Sonar, Cal. H. C. Revn. ... 107.
Bechu Mullah, 14 Cal. 358 ... 117.
Beharee Lall, 12 W. R. Cr. 60 (F. B.) ... 20.
Belagal, 26 Mad. 471 ... 38, 43, 68, 109.
Beni Madhub Roy, 7 C. L. R. 352 ... 25.
Beni B. Roy, 34, Cal. 991 ... 50

PAGE

Bepin B. Guha, 11 C W. N. 176 ... 13, 44, 46.
Bhabataran, 9 C. W. N. 618 ... 30.
Bhadwa Singh, 22 P. R. (1887) 64 ... 47.
Bhagwan Dass, A. W. N. (1891) 40 ... 69.
Bhaskar, 3 Bom. H. C. R. 1 ... 137.
Bhausingh, 33 Bom. 33 ... 136.
Bhona, 38 Cal. 408 ... 126.
Bibee Kulsum, 11 C. W. N. 121 ... 28, 38, 39, 46, 159, 170.
Bijoy Singha, 3 C. W. N. 463 ... 29, 30, 31, 35.
Bidhu Bhusan, 6 C. W. N. 883 ... 35, 45.
Bidhyapati, 25 All. 273 ... 23, 81.
Birch, 24 All. 306 ... 145.
Birreshurree Pershad, 6 W. R. Cr. 93 ... 19.
Bisharat Ali, 9 C. W. N. 792 ... 47.
Boroda, 2 C. L. R. 348 ... 133.
Boroda Kant, 4 C. L. R. 452 ... 167.
Brindabun, 10 W. R. Cr. 41 ... 20.
Brojendra, 17 W. R. Cr. 35 ... 28.
Bulwant, 27 All. 293 : A. W. N. (1904) 231 : A. L. J. 501 ... 105.

C

Chajju Mal, A. W. N. (1895) 141 ... 137.
Chalun Tewari, 23 W. R. Cr. 9 ... 29, 71.
Chamaro Malo, 8. W. R. Cr. 85 ... 20.
Chanbaswa, 6 Bom. L. R. 862 ... 25, 30.
Chand Khan, 9 Cal. 878 ... 180.
Chandi Prosad, 17 C. W. N. 536 ... 156, 160.
Chandra B. Sen, 7 C. L. J. 172 ... 15.
Chandrashekhar, 14 Mad. L. J. 491 ... 29, 31.
Charu Mullik, 10 C. L. R. 430 ... 67, 140.
Chet Ram, A. W. N. (1905) 135 : 2 A. L. J. 716 : 27 All. 623 ... 181.
Cheyt Singh, 22 W. R. Cr. 70 ... 70, 71.
Chhotia, A. W. N. (1893) 183 ... 149, 180, 184.
Chidambaram, 31 Mad. 315 (F. B.) ... 143, 171.

PAGE

Chintamon Singh, 35 Cal. 243 : 12 C. W. N. 299 ; 7 C. L. J. 177 ... 57, 58, 67, 79, 87, 152, 159, 166, 172.

Chowdhury, 2 B. L. R. App. 28 ... 67.

D

Dalpatram, 5 Bom. H. C. R. 104 ... 25, 27, 67, 72.
Daulat, 14 All. 45 ; A. W. N. (1891) 179 ... 54, 62.
Daulat Singh, 14 All. 45 ... 162.
Daya Nath, 14 C. W. N. 306 ... 152.
Dayanidhi, 33 Cal. 8 ... 126.
Debiprasad, 30 All. 41 ... 42, 184.
Dedar, 2 Cal. 384 : 1 C. L. R. 95 ... 62, 93, 94, 184.
Dewat Singh, P. R. (1912) Cr. 10 ... 48.
Dharma Naik, 13 C. W. N. 261n ... 126.
Dhuniram, 5 C. L. R. 366 ... 185.
Dilloo Singh, 22 W. R. Cr. 9 ... 18.
Dinabundhoo, 24 W. R. Cr. 4 ... 86.
Din Dayal, 1 C. W. N. 1002 : 34 Cal. 935 ... 31, 45.
Dinendro, 8 Cal. 851 ... 155, 160.
Dinonath, 12 Cal. 133 ... 140, 141, 142, 165.
Diwan Chand, P. R. (1895) Cr. J. 45 : P. R. 14 of 1895 ... 177.
Dolegobind, 25 Cal. 559 ... 35, 36, 39, 43, 45.
Dongrya Ganaram, (unreported) Bom. Cr. Ref. 91 of 1911 ... 175.
Doorgadass, 15 W. R. Cr. 82 ... 113.
Dorasami Naidu, 30 Mad. 182 ... 134, 136.
Driver, 25 Cal. 798 ... 35, 36, 47, 68, 183.
Dunne, 12 W. R. Cr. 60 (F. B.) : 4 B. L. R. 46 ... 21, 23.
Durga, 6 Bom. L. R. 1098 ... 175.
Dwarka Bania, 4 C. W. N. 97 ... 125.

PAGE

E

Egambara Mudail, 2 Weir 51 ... 20, 67.
Ekram Singh, 3 C. W. N. 297 ... 30, 35, 36.
Ela Buksh, 14 C. W. N. 709 ... 103, 104.
Engadu, 11 Mad. 98 ... 165.

F

Fakhir-ud-din, 33 All. 624 ... 152.
Feroze Ali, 12 C. W. N. 703 ... 29, 32, 33, 48,
Fyazuddin, 24 All. 148 ... 130, 131.

G

Gaiba, Bom. H. C. Nov. 19 1891 ... 74.
Ganapathi Bhatta, 31 Mad. 276 ... 124.
Ganni, 7 N. W. P. 249 ... 110.
Gendoo Khan, 7 W. R. Cr. 14 ... 16.
Gholam Ali, 8 C. W. N. 543 ... 52, 84, 88.
Gholam Haidar, A. W. N. (1881) 155 ... 66, 70, 71, 72.
Ghulam Mustafa, 26 All. 371 : A. W. N. (1904) 52 ... 104.
Ghulam Nabi, P. R. (1889) 58 ... 48.
Giasuddin, Cal. H. C. Sessions, Dec. 1911 ... 146.
Girand, 25 All. 375 : A. W. N. (1903) 79 ... 147, 183.
Gobind, 15 W. R. Cr. 56 ... 3.
Golam Mehedi, 11 C. W. N. 204 ... 13.
Goshain Munraj Pooree, 24 W. R. Cr. 23 ... 27.
Gossain Luchmee Narain, 24 W. R. Cr. 23 ... 23, 25.
Gossain Luchmun Pershad Pooree, 24 W. R. Cr. 30 ... 27, 28.
Govind Hanmant, 25 Bom. 48 : 2 Bom. L. R. 339 ... 166.
Gudar Singh, 19 All. 291 ... 156, 157, 159.
Gulab Shah, P. R. (1894) 77 ... 116.
Gunga Singh, 20 W. R. Cr. 36 ... 66.
Gungaram, 24 W. R. Cr. 10 ... 147.
Gurudass, 2 C. L. J. 614 ... 153, 154, 159.

PAGE

H

Haidar Ali, 12 Cal. 520 ... 56, 60, 63.
Hamidulla Khan, A. W. N. (1889) 114 ... 73.
Hamidooddeen, 24 W. R. Cr. 37 ... 88.
Har Chandra, 25 Cal. 440 ... 112.
Haran, 18 W. R. Cr. 63 ... 111.
Hari Talang, 4 C. W. N. 531 : 27 Cal. 781 ... 55, 59, 88, 121, 122, 123.
Haridas, A. W. N. (1891) 219 ... 181.
Hariram, 11 Bom. H. C. R. 170 ... 111.
Hazari Mull, 3 P. R. (1902) : 3 P. L. R. 334 18.
Hem Chowdhury, 4 B. L. R. 46 (F. B.) : 12 W. R. Cr. 60 ... 20.
Hopcroft, 13 C. W. N. 151 ... 49, 128, 170.
Huree Mohun, 25 W R. Cr. 15 ... 28.
Hurkumari, 24 W. R. Cr. 10 ... 3.
Hurmat, A. W. N. (1905) 41 ... 84.
Husain Bakhsh, 29 All. 569 ... 14.
Hussain Ahmed, A. W. N. (1905) 34 ... 64, 83.

I

Iman Mandal, 6 C. W. N. 163 : 27 Cal. 662... 126, 127, 129, 130, 131, 132.
Irapa, 8 Bom. H. C. R. 162 ... 72.
Ishri, 17 All. 67 ... 137.
Islam Mollah, 12 C. W. N. 834. ... 17.
Isreepersad Singh, 20 W. R. Cr. 18 : 9 B. L. R. App. 44 ... 27, 70, 72, 109.
Iswar, 11 Cal. 13 ... 62, 66, 70.

J.

Jafar, A. W. N. (1899) 151 ... 149.
Jafar Ali, 14 C. W, N. 666 ... 99, 101, 106.
Jafar Mandal, 9 C. W. N. 551 ... 38.
Jagarnath, A. W. N. (1903) 181 ... 79.

PAGE

Jagdeo, 28 All. 629 : A. W. N. (1906) 142 ... 115.
Jaggu Ahir, 34 All. 533 ... 129, 154
Jahandi, 23 Cal. 249 ... 182.
Jahn Bux, 15 W. R. Cr. 14 ... 114.
Jai Prokash, 6 All. 26 (F. B.) ... 22, 29, 68, 141, 142.
Jalil, 13 C. W. N. 80 ... 100, 101, 106, 107.
Janab Ali, 31 Cal. 783 : 8 C. W. N. 909 ... 64.
Jangi Singh, A. W. N. (1906) 276 ... 108, 109.
Jawahir, A. W. N. (1903) 28 ... 149.
Jhapoo, 20 W. R. Cr. 37 ... 16.
Jhojha Singh, 24 Cal. 155 ... 96, 146.
Jhoja Singh, 23 Cal. 493 ... 128, 129, 146, 183
Jiblal Gir, 26 Cal. 576 ... 8, 11, 12, 13, 15.
Jivanji, 6 Bom. H. C. R. 1 ... 20, 21, 25, 72.
Joghi Kannigan, 31 Mad. 515 ... 175, 176.
Juggut, 2 Cal. 110 : 1 C. L. R. 48 ... 94.
Junwant, 6 W. R. Cr. 8 ... 60, 63, 96, 184

K

Kader Sundar, 16 C. W. N. 69 ... 62, 125.
Kadir Khan, 5 Mad. 380 : Weir 721 ... 18, 49.
Kadir Mirza, 17 C. W. N. 331 ... 76.
Kaka, 3 Bom. L. R. 260 ... 85.
Kalachand, 6 Cal. 14 : 6 C. L. R. 128 ... 62, 81, 172.
Kalai, 27 Cal. 279 ... 82, 91.
Kalikanta, 12 W. R. Cr. 54 ... 112.
Kalinath, 15 W. R. Cr. 18 ... 97.
Kaliprosunno Roy, 23 W. R. Cr. 58 ... 28, 45.
Kaliprosonno, 3 C. W. N. CCXCIX ... 29, 30, 31.
Kali Prosanno, 38 Cal. 156 : 15 C. W. N. 366 ... 56, 86, 89, 90.
Kallu, 27 All. 92 : A. W. N. (1904) 195 ... 27, 183.
Kallumal, A. W. N. (1904) 140 ... 82.
Kally Bhyrub, 11 W. R. Cr. 52 ... 115

PAGE

Kalu Mirza, 39 Cal. 91 : 14 C. W. N. 49 ... 78, 89, 103, 104, 105, 108, 118, 147.
Kamal Narain, 11 C. W. N. 472 : 5 C. L. J. 231 ... 117, 118, 119.
Kamta Prasad, 4 All. 212 (F.B.) ... 136.
Kandhaia, 7 All. 67 ... 164.
Kanji, 5 Bom. L. R. 26 ... 175.
Kanookaram, 26 Mad. 469 ... 13, 15, 16.
Karim-ud-din, 23 All. 422 ... 148.
Kashi, 19 W. R. Cr. 47 : 10 B. L. R. 441 ... 29, 46, 47.
Kasi Sundar, 31 Cal. 419 ... 89, 90, 144.
Kassim, 10 C. L. R. 335 ... 78
Kedar Nath, 7 N. W. P., H. C. R. 233 ... 25, 26, 79.
Keshub Sandyal, 6 W. R. Cr. 1 ... 20.
Khuda Baksh, 3 P. L. R. 409 : 15 P. R. 1902 ... 30, 48.
Khurrum Singh, A. W. N. (1896) 140 ... 74.
Kinoo Sheikh, 29 Cal. 393 : 6 C. W. N. 678 ... 3, 14, 137.
Kishore Sirkar, 8 C. W. N. 517 ... 3, 13, 15.
Kismat, 11 C. W. N. 129 ... 61, 84.
Kisan Revaji, 14 Bom. L. R. 713 ... 144.
Kitabdi, 27 Cal. 993 ; 5 C. W. N. 29 ... 79, 144.
Kookor, 1 C. L. R. 130 ... 66, 71, 83, 170.
Koonj, 15 W. R. Cr. 43 ... 2, 66.
Krishanji, 23 Bom. 32, ... 141, 165.
Krishna Swami, 30 Mad. 282 ... 67, 68, 69.
Kristendra Roy, 7 W. R. Cr. 30 ... 19, 172.
Kumodini Kant, 9 B. L. R. App. 30 : 11 W. R. Cr. 44 ... 96.
Kunee, 7 W. R. Cr. 57 ... 56.
Kunhipuro, Weir 719 ... 14.
Kunhiya, 4 N. W. P. 154 ... 3

L

Lachman, A. W. N. (1890) 201 ... 137.
" A. W. N. (1886) 180 ... 137.

PAGE

Lakhpat, 15 All. 365 ... 166.
Lall Beharee, 11 W. R. Cr. 50 ... 72, 78.
Lolit, 5 C. W. N. 749 : 28 Cal. 709 ... 153, 154, 155.
Lolit Tewari, 27 All. 177 ... 183.

M.

Ma Hla Pon, 2 L. B. R. 125 ... 14
Madho Dhobi, 7 C. W. N. 661 ... 54
Maghan, 10 W. R. Cr. 46 : 2 B. L. R. A. Cr. 7 ... 72, 74
Mahadeo, 6 A. L. J. 253 ... 53
Mahadeo, 25 All. 537 ... 41, 42, 184
Mahmudi, 21 Cal. 622 ... 133, 134, 136
Mahomed Abdul Bari, 4 C. W. N. 121 ... 96
Maigh Lal, 5 C. L. J. 447 ... 43
Mailamdi, 8 Cal. 644 ... 148, 185
Makhan L. Roy, 11 C. W. N. 512 ... 38, 44
Malik Sultan, 4 P. L. R. 483 ... 19
Manik Rai, 35 All. 771 : 12 Cr. L. J. 405 ... 7, 16
Manmahon, 21 All. 86 ... 114
Mewa Lal, 11 C. W. N. 415 ... 160, 171
Misreelal, 4 N. W. P. 117 ... 60, 63
Mithu Khan, 27 All. 172 : A. W. N. (1904) 206 : A. L. J. 685 ... 23, 159, 165
Mohesh, 10 C. L. R, 571 ... 112
Mohesh Ch. Roy, 24 W. R. Cr. 67 ... 35
Mohendra, 30 All. 47 : A. W. N. (1907) 268 ... 157
Momim Malita, 12 C. W. N. 752 : 35 Cal. 434 ; 7 C. L. J 692 ... 134
Mona Puna, 16 Bom. 661 ... 128, 129, 130
Muhammad Ismail, A. W. N. (1881) 152 ... 49, 109
Muhammad Jafar, A. W. N. (1881) 33 ... 184
Muhammed Yakub, 32 All. 571 ... 25, 30
Mullick Fukuram, 11 W. R. Cr. 6 ... 20
Munna, 24 All. 151 ... 155, 157
Murli Singh, 33 All. 775 ... 47
Musa, 22 P. R. 1901 ... 3, 4

PAGE.

Musstt. Anundee Koer, 10 W. R. Cr. 40 ... 150
Mutasaddi Lal, 21 All. 107 ... 128, 130, 131, 183
Muthiah Chetti, 29 Mad. 190 ... 3, 6, 7, 12, 13 16
Muthia Chetti, 29 Mad. 199 ... 134, 136
Muthu Pillai, 34 Mad. 255 : 4 Mad. L. T. 347 ... 8, 182, 91
Muthukomaran, 27 Mad. 525 ... 175, 176, 177

N.

Nabu Khan, 24 All. 471 ; A. W. N. (1902) 122 ... 102
Nabu Sardar, 34 Cal. 1 (F.B,) ; 11 C. W. N. 25 : 4 C. L. J. 428 ... 151, 182
Nahar Khan, 11 C. W. N. 840 ... 17, 46
Nakhi Lal Jha, 27 Cal. 656 ... 147, 148, 183
Naki, 8 C, L. R. 72 ... 114
Napa, 2 Bom. H. C. ... 21
Narayan, 9 Bom. L. R. 1385 ... 71, 184, 185
Narain Sooboodhee, 22 W. R. Cr. 37 ... 95, 99, 102 103, 106
Narayanaswami Naidu, 29 Mad. 567 ... 145
Narayanaswami Naiker, 7 Mad. L. J. 357 ... 171
Narendra Bahadur, 1 A. L. J. 418 ... 26
Nasir, 2 P. L. R. 52 ... 81
Nathu, 6 All. 214 ... 22, 33, 66, 70, 77, 86, 117
Nawab, 2 All. 835 ... 22, 55, 60, 64, 85, 86.
Nellikel, 2 Mad. H. C. R. 240 ... 20, 67.
Nepal Shikary, 13 C. W. N. 318 ... 61, 81, 168. 174.
Nga Po, 7 Bur. L. R. 116 ... 19.
Nga Kaung, U. B. R. 31 ... 114.
Nga Shwe, 2 L. B. R. 13 ... 4.
Nga Tue, 1 Burma 422 ... 85.
Nga Wet Taung, 1 L. B. R. 262 ... 17.
Nilkamal Das, 6 C. L. J. 711 ... 60, 124.

PAGE.

Nilmadhub, 19 W. R. Cr. 1 ... 93, 94.
Nirbeekar, 13 C. W. N. 580 ... 143, 161.
Nirunjan, 2 N. W. P. 431 ... 23, 72.
Nobin, 4 Cal. 865 (F.B.) : 4 C. L. R. 243 ... 112.
Noor Mahomed, 11 W. R. Cr. 18 ... 72.
Nunda Kumar Sirkar, 11 C. W. N. 1128 ... 17.
Nurul, 3 Cal. 757 ... 114.
Nya Seik, 1 Burma 546 ... 59.

O.

Okhil, 1 C. L. R. 48 ... 72
Omerto Lall, 19 W. R. Cr. 32 ... 48

P.

Palaniappa, 34 Mad. 139 ... 75, 79
Panchu Gazi, 6 C. W. N. 291 : 29 Cal. 455 ... 107, 150
Pandu, Bom. H. C. Aug. 8, 1895 ... 176
Pandu Khandu, (Bom. unreported Cr. case 774 of 1885) ... 175
Pandurang Govind, 25 Bom. 179 ... 153, 154
Paramasiva, 30 Mad. 48 ... 134, 136
Parasulla, 13 C.W.N. 244 ... 82, 88, 92, 124
Parbutti, 3 C. L. R. 406 ... 113
Partab, 1 All. 666 ... 13, 58, 59, 110
Pedda, 3 Mad. 238 ... 55, 59, 81, 88
Phulla, A. W. N. (1898) 129 ... 180
Pooran Agarwalla, 5 C. W. N. 28 ... 52
Poshi Mahomed, 12 C. W. N. 99n ... 108, 110
Powell, 3 N. W. P. 96 ... 3
Prankrishna, 8 C. W. N. 180 ... 24, 77, 116, 117, 118, 119.
Prathipati, 30 Mad. 330 ... 79
Prathipati Venkatsami, 30 Mad. 330 : 17 Mad. L. J. 407 ... 176
Prince Zani Mirza, Cal. H. C. Rev. July 26, 1899 ... 146
Prithi Pal, A. W. N. (1898) 154 ... 104, 105
Prosono, 22 W. R. Cr. 36 ... 18, 86
Purshattom Kara, 26 Bom. 418 : 4 Bom. L. R. 38 ... 75, 167

R.

Raghu, 23 Cal. 442 ... 155
Raghubar, 2 All. 351 ... 6, 8, 10, 11
Raghunath Singh, 26 All. 189 : A. W. N. (1903) 220 ... 101, 106
Raghunandon Pershad, 8 C. W. N. 779 : 32 Cal. 80 ... 75, 170, 171
Rahim Baksh, 20 All. 206 ... 102, 103, 107, 115
Rahimuddi, 35 Cal. 1093 ... 133
Rahimuddi Howladar, 35 Cal. 1093 ... 70
Rai Isri Pershad, 23 Cal. 621 ... 56, 79 80, 86
Raja, 10 Bom. 174 ... 55, 56, 60, 64
Raja, Cal. H. C. Sessions, May, 1911 ... 146
Raja Ram, 26 All. 202 ... 114
Raja Run Bahadur, 22 W. R. Cr. 79 ... 4, 28, 87
Rajendro, 10 W. R. Cr. 55 ... 20
Rajendra, 1 A. L, J. 611 ... 80, 83, 88
Rajendra, 11 Cal. 737 ... 140, 141, 142
Rajendra Singh, 17 C. W. N 238 ... 55, 56, 59, 61, 63, 87
Rajkaran, 32 All. 55 ... 61
Raj Mohan, 5 C. W. N. 686 ... 158
Raj Narain Roy, 35 Cal. 315 ... 7, 13
Rajonikanta, 13 W. R. Cr. 24 ... 78, 86
Rama, 16 Bom. 372 ... 94, 95
Ramasamy Chetty, 27 Mad. 510 ... 182
Ram Baran, 28 All. 406 : A.W.N. (1905) 61 ... 41, 42
Ram Coomar Banerjee, 17 W. R. Cr. 54 ... 25, 29, 110
Ramcharan Maitie, 1 C. W. N. 186 ... 14, 15
Ramchunder, 12 C. W. N. 166n : 35 Cal. 674 : 8 C. L. J. 68 ... 24, 78
Ramchunder, 1 C. L. R. 134 ... 113
Ramjibhai, 14 Bom. L. R. 889 ... 165
Ramkisssore Acharya, 21 W. R. Cr. 6 ... 26, 67, 68.
Ramkrishna Mohapatra, 13 C. W. N. 83n ... 28, 118.
Ramlall, 1 C. W. N. 394 ... 107, 150.
Ram Pershad, 6 C. W. N. 593 ... 100, 101, 107.

PAGE.

Ramzan, 7 All. 461 (F.B.) ... 48.
Rangya, 4 Bom. L. R. 924 ... 148.
Ranjit, 28 All, 306 ; A. W. N. (1906) 36 : 3 A. L. J. 29 ... 64, 86
Raoji Fulchand, 6 Bom. L. R. 34 ... 55, 80, 82, 122, 180.
Ratti, A. W. N. (1899) 203 ... 131.
Ravalu Kesigadu, 26 Mad. 124 ... 54.
Ravji Nanji, 5 Bom. L. R. 542 ... 173.
Raza Ali, 23 All. 80 : A. W. N. (1900) 204 ... 94, 95.
Ritbaran ... 82, 91.
Roghoo Dome, 24 W. R. Cr. 12 ... 180.
Rup Singh, 1 A. L. J. 616 ... 79.

S

Sakor Dosadh, 30 Cal. 443 : 7 C. W. N. 174 68.
Saligram, 36 Cal. 562 : 13 C. W. N. 555 : 9 C. L. J. 296 ... 114, 172.
Sarada, 7 C. W. N. 142 ... 36, 38.
Sarat, 6 C. W. N. 552 : 29 Cal. 589 ... 143, 160.
Satish Pandey, 22 Cal. 898 ... 153, 155.
Satish Roy, 11 C. W. N. 79 ... 44.
Satish Sarkar, 16 C. W. N. 499 : 39 Cal. 456 ... 53.
Schein, 16 Cal. 799 ... 169.
Shahbaz Khan, 30 All. 181 ... 30.
Shahukha, 9 Bom. L. R. 164 ... 58, 59, 81.
Shaik Babu, 33 Cal. 1036 ... 168, 169.
Shama, 23 Cal. 300 ... 155.
Shama Charan, 24 Cal. 344 : 1 C. W. N. 129 ... 141.
Sham Lall, 6 A. L. J. 487 ... 62, 88,
Sham Sundar, 2 B. L. R, App, 11 ... 115,
Shasti Napit, 8 Cal. 331 ... 164, 185.
Sheikh Jinaut, 7 C. W. N. 32 ... 22, 27, 29, 47.
Sheo Bhanjan, 27 Cal. 983 : 4 C. W. N. 795 ... 12, 12, 15.
Sheobalak, A. W. N. (1881) 86 ... 18.

	PAGE
Sheoraj Roy, 10 C. W. N. 288 : 32 Cal. 966	38, 41.
Sheo Surn Lall, 3 C. L. R. 280	... 26, 29, 48.
Sher Singh. 4 P. L. R. 245	... 85, 88.
Shib Singh, 25 All. 131 : A. W. N. (1903) 197	... 106.
Shivaram Poroshram, 6 Bom. L. R. 668	... 26, 48.
Shona Dagee, 24 W. R. Cr. 13	... 174.
Shrihari Shome, 5 C. W. N. 250	... 9, 13.
Shriram, 6 Mad. H. C. R. 120	... 124.
Shunder Bhim, Bom. H. C.	... 51.
Shunkur, 2 N. W. P. 406	... 71.
Simbu, 23 P. R. (1888) 21	... 23.
Sindama Naik, 2 Weir 50	... 42.
Sonaram, 3 C. L. J. 195	... 145.
Srikanta, 9 C. W. N. 898 : 1 C. L. J. 616	... 24, 55, 77. 122, 123.
Subal, 25 Cal. 628 : 3 C. W. N. 18	... 4, 16
Subba Naicken, 17 M. L. J. 438	... 69, 70, 78, 164.
Subramania, 26 Mad. 61 : 5 C. W. N. 866	... 117, 118, 119, 120.
Suleman Adam. 11 Bom. L. R. 740	... 69, 182.
Sundram, 6 Mad. 203 (F. B.)	... 32, 33.
Sunt Bilas, Cal. H. C. Proc.	... 99.
Suresh, 9 C. W. N : 23n. 3 C. L. J 575	... 104, 105, 107.
Surjya Kanta, 30 Cal. 508	... 167.
Suryakanta, 31 Cal, 350	... 24, 55, 155.

T

Tamiz, 2 Cal. 215	... 58, 59, 110.
Tarak Nath, 13 C. W. N. 202	... 40.
Tarapati, 11 C. W. N. 231n	... 160.
Tarinee, 8 W. R. Cr. 79	... 19, 21.
Tarini Mundle, 7 C. W. N. 25	... 16.
Thakur Pande. 34 All. 449	... 40, 42.
Toni, A. W. N. (1895) 143	... 101, 107, 108, 161.
Tota, A. W. N. (1903) 36	... 104, 105.

PAGE.

Tukaram Malhari, 14 Bom. L. R. 373 ... 125
Tula Khan, 30 All, 334 ... 169, 177.

U

Udmi, 27 All. 262 : A. L. J. 593 (1904) : A. W. N. (1904) 230 ... 108
Umbica Prashad, 1 C. L. R. 268 ... 55, 58, 62, 94.
Umda, 3 C. L. R 72 ... 4, 18.

V

Vaman Sakharam Khare, 11. Bom. L. R. 743 51.
Velu Tayi Ammal, 33 Mad. 85 ... 130, 131.
Venkatagadu, Cr. Rev. 393 Dec. 1, 1903 : 2 Weir 452 ... 176.
Vishnu Balkrishna, 14 Bom. L. R. 965 ... 175.

W

Wahid, 11 C. W. N. 789 .... 81, 82, 84, 86, 89, 91, 92, 119, 120, 167,
Wahid Ali Khan, 32 All. 642 ... 158.

Y

Yaghi, 27 P. R. (1892) 5 ... 63, 85.
Yerukala M. Polugadu, 2 Weir 33 ... 52.
Yesu Khandu, 1 Bom. L. R. 520 ... 102

Z

Zearuddin, 19 W. R. Cr. 48 ... 111

ANONYMOUS CASES.

	PAGE
3 Bom. H. C. R. C. C. 1	... 4.
P. R. (1890) 6	... 13
18 Md. L. J. 57	... 16.
Mad. H. C. Proc. Aug. 29, 1876 : 2 Weir 49	... 22
4 Mad. H. C. R. App. 46	... 62, 93, 94, 95, 116.
4 Mad. H. C. R. App. 22	... 73, 176.
Mad. H. C. Proc. April 8, 1871 : Wier 725	... 95
16 P. R. 1905	... 107
Mad. Cr. Rev. No. 586 of 1902 Jany. 16, 1903	... 115.
P. R. (1901) 22	... 133.
44 L. B. R. 205 (F. B.) : 7 Cr. L. J. 472	... 133.
1 Mad. L. J. 252	... 137.
Revn. Case Nos. 54-56 Jan. 30, 1887	... 137.
Mad. H. C. Proc. May 9, 1863	... 176.
Cr. Revn. No. 511 Feby. 27, 1903 : 2 Weir 453	... 176
Mad. H. C. Crml. Revn. 47, March 24, 1903 : 2 Weir 57	... 185.

THE LAW

RELATING TO

BAD LIVELIHOOD

AND

COGNATE PREVENTIVE MEASURES.

—o—

INTRODUCTION.

The law relating to Bad Livelihood and cognate Preventive Measures is to be found in Chapter VIII of the Criminal Procedure Code from sections 106 to 126, both inclusive. Broadly speaking, these measures are resorted to in order to prevent a breach of the peace, either *future* or *probable*, and to ensure good behaviour from persons of bad character. In either of these cases, the offender or likely offender is required to enter into his recognizance with or without surety, or, with both.

Security to keep the peace is taken in either of the following two cases, *viz.* :—

(*i*) when an accused person is convicted of an offence involving a breach of the peace ; [Sec. 106.]

(*ii*) or, when any person is likely to commit a breach of the peace. [Sec. 107.]

Security for good behaviour is demanded in three instances, *viz.*, :—

(*i*) from persons disseminating seditious matter. [Sec. 108.]

(*ii*) from vagrants and suspected persons. [Sec. 109.]

(*iii*) from habitual offenders. [Sec. 110.]

The object of all these sections is prevention, and not punishment, of a crime. Therefore, all that is required of a person coming under the operation of either of these sections is to execute a bond for a certain period with or

without sureties. As long as a person, thus bound down, keeps the peace, or remains of good behaviour, during the period of his bond, he is never molested in any way. If any person ordered to give security fails to give such security on or before the date from which it commences, then he is liable to be sent to prison and detained there. But directly he furnishes such security, he is released from jail. Imprisonment for failure to give security for keeping the peace is simple, and for good behaviour, may be rigorous or simple as the court directs.

Section 112 lays down that when a Magistrate acts either under section 107, 108, 109 or 110, he shall have to make an order in writing, requiring the person to shew cause why he should not be bound down. Such order must contain the following particulars :—

(*a*) the substance of the information received ;
(*b*) the amount of the bond to be executed ;
(*c*) the term, it is to be in force ;
(*d*) the number, character, and class of sureties (if any) required.

The directions of the law in this respect should be carefully complied with, though an ommission, (unless it has prejudiced the party summoned,) would not vitiate an order requiring security. (*Koonj*, 15 W. R. Cr. 43 ; but see *Abdul Bari*, 25 W. R. Cr. 50.)

Sections 113-117 deal with the procedure in regard to a proceeding under section 107, 108, 109 or 110.

Section 118 deals with an order to give security either for keeping the peace or for maintaining good behaviour. Section 119 enables a Magistrate, after an inquiry, to discharge the person informed against. Sections 120-126 deal with proceedings subsequent to an order to furnish security either under section 106 or 118 Cr. P. C.

Section 111 is a proviso to sections 109 and 110, and lays down that sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act IX of 1874. It may be mentioned that this Act has been extended to the Presidencies of Madras and Bengal, as well as to the dominions of Provinces and states in alliance with His Imperial

Majesty within the limits of the Madras Presidency and Lower Bengal. The rules under that Act have been published in the Gazette of India.—*Vide* Gazette of India, Part 1, p. 723, 1870.

SECTION 106.

General Principle.

This section does not refer to offences affecting human body, but to cases of riot, simple assault or other breaches of the peace, being an offence against public tranquility. [*Kunhiya*, 4 N. W. P. 154 (1872)]. To bring a person under the provisions of section 106, he must be convicted of one of the offences specified therein. (*Hurkumari*, 24 W. R. Cr. 10). The section may also apply in cases of conviction of an offence of which breach of the peace is a necessary ingredient; but in that case, there must be a finding that a breach of the peace has actually occurred. [*Kinoo Sheikh*, 29 Cal. 393 : 6 C. W. N. 678 (1902)]; *Kishore Sirkar*, 8 C. W. N. 517 (1903); *Muthiah Chetti*, 29 Mad. 90 (1905) and other cases; see *Infra*.] To justify an order under this section there must be a reasonable probability of a breach of the peace being committed and not merely a bare possibility of a breach of the peace. [*Abdul Huq*, 20 W. R. Cr. 57 (1873).] The section does not apply to cases where there is only a possible apprehension of a further breach of the peace. [*Hurkumari*, 24 W. R. Cr. 10 (1875).]

The order requiring security should not form part of the sentence for the offence for which a person is convicted, [*Partab*, 1 All. 666 (1878)], nor should it be passed in lieu of any other punishment, but it must be passed in addition to the sentence. (*Musa* 22 P. R. 1901). It should be passed simultaneously with the conviction, and should not provide for an engagement to be executed at a future period. (*Kunhiya* 4 W. N. P. 154). If it is omitted at the time, the Magistrate is not competent to pass an order subsequently under this section on receiving some further information. (*Gobind*, 15 W. R. Cr. 56; *Powell*, 3 N. W. P. 96.) The order should not be passed in the absence of the accused

and upon the suggestion of his adversary. [3 Bom. H. C. R. C. C. 1 (1886)]. Before an order under this section can be made, it is necessary that the accused should have an opportunity of answering to an accusation for an offence of the kind, upon a conviction for which such an order can be made. [*Subal*, 25 Cal. 628 (1897) : 3 C. W. N. 18 ; *Umda*, 3 C. L. R. 72.]

Difference between Secs. 106 & 107.

The foundation of an order under section 106 is the *conviction*, and that of sec. 107, is the *information*. Both the sections provide preventive measures against persons causing or likely to cause a breach of the peace. Section 106 applies only *after* a conviction of an offence specified in the section, and the order of security passed is *in addition to* the substantive sentence for that offence. (*Nga Shwe*, 2 L. B. R. 13 ; *Musa* 22 P. R. 1901).

In a proceeding under sec. 107, a Magistrate proceeds upon information, the value of which must be tested by legal evidence, adduced in Court and in the presence of the parties concerned. For this purpose, a formal proceeding has to be drawn up—a summons to be issued, evidence to be taken. The person informed against should, of course, have an opportunity of showing that the information is not reliable. If the Magistrate is of opinion on the evidence so taken, that an order of binding down is necessary, he may direct the person informed against to execute a bond according to the provisions of the section. The Magistrate must adjudicate on evidence before him and not on his own opinion formed extra-judicially. (*Umda*, 3 C. L. R. 72 ; *Raja Ran Bahadur*, 23 W. R. Cr. 79.)

Breach of the Peace.

By a reference to sections 106 and 107 Cr. P. C., it will be noticed that in both of these sections the expression "breach of the peace" appears ; and in section 107 there also appears another expression, *viz.*, "disturb the public tranquility." Obviously two expressions are not synonymous, as otherwise they would not have appeared in section

107 in alternative forms, separated by the disjunctive article "or". Moreover, the expression "disturb the public tranquility" was not in the old Codes. The phrase "breach of the peace" does not appear in the Indian Penal Code. But the expressions "disturbance of the *public* peace" (*vide* secs. 151 and 159 I. P. C.), and "to break the *public* peace" (*vide* sec. 504 I. P. C.) do appear. The eighth chapter of the Indian Penal Code bears the heading of "Offences against the Public Tranquility," and deals with Unlawful Assembly and Rioting. Thus in the Penal Code the breach or disturbance of the peace has the particular significance of the breach or disturbance of the *public peace.* The word "public" indicates any class of the public or any community (*vide* sec. 11 I. P. C.)

In the Code of Criminal Procedure, we come across the phrase "breach of the peace" first in section 42, and "disturbance of the public peace" in section 127. It should be noted that the latter section deals with the dispersion of the unlawful assembly. It may, therefore, be presumed that the term "disturbance of the *public* tranquility" has more to do with unlawful assemblies and riots, which menace the peace of the community in general; and the term "breach of the peace" has reference to the peace among individuals of a limited character, as in common assaults or criminal intimidation. It is unfortunate, however, that the Legislature should use two such expressions deliberately without indicating clearly and definitely the meaning thereof.

Ambiguities of the Section.

Section 106 has many ambiguities. In analyzing it, offences on the conviction of which a person is liable to be called upon to furnish security appear as follow :—

(*i*) Rioting, assault or other offence involving a breach of the peace ;

(*ii*) Abetting the same ;

(*iii*) Assembling armed men or taking other unlawful measures with the evident intention of committing the same ;

(*iv*) Criminal intimidation.

"other offence involving a breach the peace."

In *(i)* the word "involving" in "involving a breach of the peace" is not quite clear. It may indicate an offence which does *necessarily* involve a breach of the peace, that is to say, in which the breach of the peace is an ingredient *e. g.*, rioting, assault, which have been specially mentioned. Sections 152 and 153 I. P. C. may be cited as other instances of the kind. But there may be offences which do *not necessarily* involve a breach of the peace, *e. g.*, unlawful assembly, criminal trespass, but which may lead to a breach of the peace. It is worth noticing that in the old Codes up to 1882, the wording was "other breach of the peace." By the Amending Act of 1898, the words "offence involving" were inserted between "other" and "breach of the peace," as we presume, a mere "breach of the peace" not being a substantive offence in the Penal Code, was thought to be anomalous. But unfortunately the amendment has not improved the situation.

So far back as in 1879 Straight J, observed: "I do not think that the operation of sec. 489 is limited to riot, assault, actual breach of the peace, or abetting the same, or unlawful assembly, but that it is intended to comprehend a wider range of offences, and it must be for the Magistrate or Court to decide in each case whether, from the nature of the charge upon which conviction takes place, there has been direct force or violence to the person, or conduct inducing an apprehension of force or violence, or a direct threat of force or violence, or a provocation to the commission of force or violence." [*Raghubar*, 2 All. 351 (1879)].

The above observations, certainly, indicate what "other offence" (than those specified in the section) may mean.

The expression "other offence involving a breach of the peace" occurs in sec. 106 as well as in sec. 110 cl. (e). The Madras High Court in *Muthiah Chetti*, 29 Mad. 190 (1905), held that the expression "other offences involving a breach of the peace" in sec. 106 requires that a breach of the peace should be an *ingredient* of the offences proved. The Calcutta High Court in *Arun Samanta*, 30 Cal. 366 (1902), held in reference to the same expression in sec. 110 cl. (e)

that " the offences involving a breach of the peace " mean offences in which a breach of the peace is an ingredient but not offences *provoking* or *likely to lead to* a breach of the peace." In this case the learned Judges observed : " We have been asked to understand the expression " offences involving a breach of the peace " as offences provoking or likely to lead to a breach of the peace. We are, however, met by section 106 Cr. P. C., which forms part of the same chapter as sec. 110 in which the same words are used, and certainly in sec. 106 those words would not bear the interpretation which we are now asked to put on them. We must therefore hold that offences involving a breach of the peace mean offences in which breach of the peace is an ingredient." In *Manik Rai* 35 All. 771 : 12 Cr. L. J. 405 (1911), the Allahabad High Court considered the above cases, and Knox J., said : " The word ' involving ' in my opinion, connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. I notice in the Calcutta cases that the word ' necessarily ' is inserted by the learned Judge between the word offence and the word involving.* This is not the view taken by this Court. The object of the section, as we understand it, is to prevent breaches of the peace taking place and not merely to follow up breaches of the peace which have taken place. The Madras Court considers that the words ' involving a breach of the peace ' in this section require that breach of peace should be an ingredient of the offence proved and that before that section is put into force there must be a finding that a breach of the peace has occurred. This, again, is not the view taken by this Court. With every respect for the learned Judges who decided the above cases,† I prefer to follow the rulings of this court."

---

* In *Raj Narain Roy*, 35 Cal. 6 15 (1908) the learned Judges in setting aside an order under sec. 106 Cr. P. C. on a conviction under sec. 143 I. P. C. said: It appears to us that the order under sec. 106 Cr. P. C. is not legal seeing that the petitioners have been convicted only under sec. 143 I. P. C., that is, of unlawful assembly which does not *necessarily* involve the use of force.

† The cases were *Baidyanath*, 30 Cal. 93 ; *Arun Samanta*, 30 Cal. 366 ; *Raj Narain Roy*, 35 Cal. 315 ; 3 *Muthiah Chetti* 29 Mad. 190.

"same" in (ii) and (iii).

It should be noticed further that the word "same" appears in (ii) as well as in (iii), and it must have the same significance in both. Grammatically, it certainly stands for "rioting, assault or other offence involving a breach of the peace." In some of the rulings* it would appear that the Judges used the word "same" for "breach of the peace." But this view, we are afraid, would cause further difficulty in interpreting the section. If the word "same" in (ii) stands for (abetting) "rioting, assault or other offence involving a breach of the peace" as it is quite obvious from the context, then, some difficulty arises in comprehending the meaning of the offences enumerated in (iii). The section 106 cannot be put in operation unless there is first an *accusation* of, and then a *conviction* for, an "offence" enumerated in it. The word "offence," as defined in sec. 4 (o) Cr. P. C. means any act or omission made punishable by any law for the time being in force. The words "assembling armed men" do not indicate any substantive offence under any existing law. Sec. 144 I. P. C., which refers to a person "armed with any deadly weapon" makes it an offence when such person so armed is a member of an unlawful assembly. Sec. 157 I. P. C. refers to a person who "assembles in any house...in his occupation... any persons knowing that such persons have been hired...to join or become members of an unlawful assembly." One may say that if any section in the Penal Code has the nearest approach to the "offence of assembling armed men" mentioned in sec. 106, it is the sec. 157 of the Penal Code. But it does not mention the qualifying word "armed" to persons. Even conceding that "any persons" may mean "armed" or "unarmed", still the mere assembling of armed persons will not be an offence on the part of any

* See *Jib Lal Gir*, 26 Cal. 576 *per* Prinsep J., "taking unlawful measures with the evident intention of committing *a breach of the peace* (in place of the same.)

Raghubar, 2 All. 351 (1879), *per* Straight J., [in quoting the words from the Code of 1872 where also the word *same* occurs] —"Whether the words taking other unlawful measures with the intention of committing *a breach of the peace*."

body, unless he does so *knowing* that such armed persons "are about to join or become members of an unlawful assembly." And further, under sec. 157 I. P. C, the accused must assemble such persons in a *house in his occupation.* We are, therefore, of opinion that the words "assembling armed men" do not indicate any "offence" and to accuse one of merely "assembling armed men" and then to convict him would be grossly illogical; and therefore sec. 106 will be inoperative. It may be mentioned that the Punjab Chief Court held that sec. 106 did not apply to the offence merely of being an armed member of an unlawful assembly. [*Yar Mahomad*, P. R. (1890) p. 5.]

"assembling armed men."

In critically examining this phrase "assembling armed men" or taking other unlawful measures with the evident intention of committing the *same* in (iii), one would notice that there is no comma before "or." Therefore, the words assembling armed men should be read with the governing clause "with the evident intention of committing the same." If we substitute the words "rioting, assault or other offence involving a breach of the peace," which stands for the *same* in (i), as we have already said, then the clause would stand thus :

"Any person accused of assembling armed men or taking other unlawful measures with the evident intention of committing rioting, assault or other offence involving a breach of the peace &c. &c."

In this view we are fortified by the observations of the learned Judges of the Calcutta High Court in *Shrihari Shome*, 5 C. W. N. 250 (1900). In this case the accused were convicted under sec. 147 I. P. C. by the original Court, which also ordered them to execute bonds with sureties. The appellate Court was of opinion that the offence of rioting had not been proved, and accordingly altered the conviction to one under sec. 144 I. P. C. maintaining the order under sec. 106 Cr. P. C. On revision, it was contended on behalf of the accused that sec. 106 had no application to a conviction under sec. 144 I. P. C. as there might be cases of unlawful assembly in which no breach of the peace occurred

because the assembly did not go so far. With reference to this contention their Lordships observed :—"We are not prepared, however, to hold that that section (*i.e.*, sec. 106) has no application to a case like the present, in which *armed men were assembled*, as the occurrence showed, *with the intention of committing* a breach of the peace, for, the order was actually given to beat the persons who were at the time in occupation of the chur and an actual breach of the peace was in pursuance of that order was prevented only by the fact that those persons at once took to flight and abandoned the position." So, in this case, though there was no actual breach of the peace, yet undoubtedly there was an unlawful assembly of armed men whose evident intention was to commit a breach of the peace by beating the other party and breaking down their houses (for which an order was given) on the chur. If they had beaten the other party in carrying out their object, their offence would have been *rioting* (one of the offences enumerated in sec. 106). But it just fell short of it, as there was an abstention from the use of force or violence in this case on the part of the accused. Similarly, upon a conviction under sec. 157 I. P. C. if the facts found that the men assembled in a house were armed, and formed an unlawful assembly with the evident intention of committing some offence enumerated in the first clause of sec. 106, they would come within the operation of sec. 106 Cr. P. C.

"other unlawful measures."

The phrase "taking other unlawful measures" is very vague. But what these measures can be is not readily conceivable. Before the offence of criminal intimidation was added to the Code of 1898, the Allahabad High Court held that the words "taking other unlawful measures with the evident intention of committing a breach of the peace" do not include the offence of intimidation by threatening to bring false charges". [*Raghubar*, 2 All. 351 (1879).] A conviction of an offence under sec. 143, being a member of an unlawful assembly, does not necessarily amount to a conviction of "taking unlawful measures with the evident

intention of committing " a breach of the peace. (*Jib Lal Gir*, 26 Cal. 576 (1899) *per* Prinsep J.)

In this connection we may observe that though the abetment of certain offences has been included in the section, yet *attempt* to commit such offences is not within the scope of the section, The phrase "taking other unlawful measures with the evident intention of committing some offence" may indicate a *preparation* for committing some offence involving a breach of the peace. But since an attempt to commit an offence is not included in the section it is very difficult, if not impossible, to imagine any instance which may fall within that vague and obscure phrase.

ABETMENT.

Referring to (ii) which renders a person on being convicted of *abetment* of rioting, assault or other offence involving a breach of the peace, liable to be bound down, one cannot understand why the abetment of the offence specified in (iv) *viz.*, criminal intimidation, should not come within its operation, except on the assumption that it was an oversight on the part of the Legislature. But in this connection it is worth mentioning that the offence of criminal intimidation was added to the section by the Code of 1882, after a decision of the Allahabad High Court in the case of *Emp.* v. *Raghubar*, 2 All 351, which held that on conviction under sections 503 and 506 I. P. C. a Magistrate could not require an accused to give personal recognizance to keep the peace.

Sub-sec. (3).

Besides these difficulties, sub-section (3) of the section also is not happily worded. As will be seen later on, it has been differently interpreted by different High Courts. And the last, though not the least, defect of the section is that there is no express provision in the section by which an appellate Court can set aside an order under sec. 106 Cr. P. C. (See *Jurisdiction. Infra*).

We venture to submit that these anomalies as pointed out here, will attract the attention of the Legislature and the next amending Act will remove these defects.*

* See an Article on this subject in 17 C. W. N. 10 n. (1913).

Cases relating to other offence involving a breach of the peace.

Now we will note below cases relating to "other offence involving a breach of the peace" to which the provisions of sec. 106 have been applied. The words "other offence," we need hardly point out, must be taken to mean other offence of the nature, *ejusdem generis*, of riot and assault. But when a person is convicted of offences which do not of themselves come within sec. 106, it is the duty of a Magistrate, who proceeds to bind over such person to keep the peace, to record in the order a clear finding as to the facts, which make that section applicable in the case. (*Baidyanath Majumdar* 6 C. W. N. 471 (1902) : 30 Cal. 93); see also *Sheo Bhajan Singh*, 27 Cal. 983 (1900); *Jiblal Gir*, 26 Cal. 576 (1899) followed. An accused person cannot be bound over to keep the peace under sec. 106 unless he is convicted of an offence of which a breach of the peace is a necessary ingredient and unless it is found that a breach of the peace has actually occurred. [*Muthiah Chetty*, 29 Mad. 190 (1903)].

Sec. 143 I. P. C. :—

The leading case on the point is that of *Jiblal Gir*, 26 Cal. 576 (1899). In this case the learned Judges observed as follows :—"Being a member of an unlawful assembly does not necessarily involve a breach of the peace. The members may abstain from proceeding to such lengths. It does, however, involve an apprehension that a breach of the peace may result. Nor does a conviction of an offence under sec. 143 of being a member of an unlawful assembly necessarily amount to a conviction of "taking unlawful measures with the evident intention of committing" a breach of the peace. In order to bring the acts of the accused within either of these terms, it is necessary that the Magistrate should expressly find that the acts of the person convicted amount to this, or, at all events, that the evidence is so clear that without such an express finding a superior Court, such as a Court of Revision, should be

satisfied that the acts do involve a breach of the peace or an evident intention of committing the same." See also an unreported case known as *Fain's* case, decided on May 10, 1899, in which it was held that on a conviction for an offence under sec. 143 I. P. C., the accused should not be required to furnish security under sec. 106. [*Jiblal Gir* was followed in *Sheo Bhunjan*, 4 C. W. N. 795 (1900) : 27 Cal. 983 ; *Kishore Sirkar*, 8 C. W. N. 517 (1903) ; *Baidya Nath Majumdar*, 6 C. W. N. 471 (1902): 30 Cal. 93 ;] see *Golam Mehedi*, 11 C. W. N. 204, (1907), where an order under sec. 106 on conviction under sec. 143 I. P. C. was set aside ; also see *Raj Narain Roy*, 35 Cal. 315 (1908), where the order was held illegal as conviction of an offence under sec. 143 I. P. C. *i. e.*, unlawful assembly, does not necessarily involve the use of force. See also 26 Mad. 469 and 29 Mad. 190.

In *Sheo Bhunjan Singh*, 4 C. W. N. 795 (1900), it was held that an offence under sec. 143 I. P. C. is not one of the offences specified in sec. 106 which would justify an order requiring security to keep the peace upon conviction for such an offence. But an order under sec. 106 may be justified if there are findings which can be brought within the terms of that section.

But in a conviction under sec. 143 I. P. C., where the evidence was that a number of armed men were assembled with the intention of taking forcible possession of certain property and the accused succeeded in getting possession without having had to use any force, it was held that the order under sec. 106 was justifiable. [*Bepin Behari Guha*, 11 C. W. N. 176 (1906).]

Sec. 144 I. P. C. :—

Sec. 106 may apply to a case in which armed men are assembled with the intention of committing a breach of the peace, but no breach of the peace occurs because the assembly does not go so far. [*Srihari Shome*, 5 C. W. N. 250 (1900) ; but see P. R. (1890) 6, *contra*].

Sec. 153 I. P. C. :—

Certain persons taking part in a religious procession gratuitously disobeyed the orders of the police concerning the manner in which such procession was to be conducted with the result that a riot was only averted by bringing armed police upon the scene, and were convicted

under sec. 153 I. P. C. and were also bound down under sec. 106 Cr. P. C. With reference to the latter order the learned Judge said: "I do not think that the offence of which the petitioners have been convicted would bring them within the purview of the section" and the order was accordingly set aside. [*Husain Bakhsh*, 29 All. 569 (1907)].

Sec. 294 I. P. C.:—

An offence under sec. 294 I. P. C. does not come within sec. 106 Cr. P. C. (*Ma Hla Pon*, 2 L. B. R. 125).

Secs. 296, 298 I. P. C.:—

To bring a matter under sec. 106 there must have been a conviction of one of the offences enumerated therein. The mere causing of disturbance in religious worship to provoke an assault, and a conviction under secs 296, 298 I. P. C. are not sufficient. (*Kunhipuro parambil*, Weir, 719.).

Sec. 379 I. P. C.:—

Sec. 379 I. P. C. is not an offence specified in sec. 106 Cr. P. C. Therefore, where a Magistrate, in a summary trial, after convicting the accused of theft, bound them down to keep the peace under sec. 106, the High Court set aside the order under that section as there was no finding (though the Magistrate in his explanation said that the evidence disclosed an intention to commit a breach of the peace) that the accused intended to commit a breach of the peace. [*Ramcharan Maitie*, 1 C. W. N. 186 (1896.)] In this case, though the Crown was unrepresented, the learned Judges considered the cases of *Gendoo Khan* and *Jhapoo*, and observed that "the conviction in each of those cases was for an offence which came within the description of offences referred to in the section of the Code then in force, under which the recognizance was taken; the offence being criminal trespass under sec. 447 I. P. C. and it having been found that the accused entered upon the property of the complainant with the intention of committing a breach of the peace." Where an appellate Court in affirming a conviction of theft ordered the accused to be bound down to keep the peace under sec. 106 *without expressly finding* that the accused had committed an offence within the terms of the section, the High Court set aside the order. [*Kinoo Shiek*, 6 C. W. N. 678 (1902) : 29 Cal. 393.]

In *Kishore Sirkar*, 8 C. W. N. 517 (1903), where on a conviction under secs. 143 & 379 I. P. C., an order under sec. 106 was passed by a Deputy Magistrate, the High Court held :—the weight of authority in this Court is clearly in favour of the view that a conviction under sec. 143 or 379 I. P. C. is not of itself sufficient to sustain an order under sec. 106 although such conviction coupled with findings bringing the case within the scope of sec. 106 may sustain an order under that section ; but in such a case those findings must be clear and explicit ; and moreover, if the finding be that the accused was guilty of the offence of criminal intimidation, then, as the section expressly requires, the conviction must also be for the offence of criminal intimidation in order to sustain an order under sec. 106 Cr. P. C. [Their Lordships followed the view taken in *Ramcharan Maitie*, 1 C. W. N. 186 ; *Jiblal Gir*, 23 Cal 576 ; *Sheobhunjan Singh*, 27 Cal. 983 : 4 C. W. N. 795 (1900)].

A conviction under sec. 143 or under sec. 379 I. P. C. is not of itself sufficient to sustain an order under sec. 106, unless it is clearly found that there was force employed or that there were armed men present. [*Chandra Bhusan Sen*, 7 C. L. J. 172 (1907)] ; *Kishore Sirkar*, 8 C. W. N. 517 ; *Sheobhunjan*, 27 Cal. 983, *Baidyanath*, 30 Cal. 93, followed.

In *Kanookaran*, 26 Mad 469 (1902), where certain persons, convicted of theft, of mischief, and of being members of an unlawful assembly, were required to give security for peace, Sir Arnold White C. J., observed : "None of these offences necessarily involve a breach of the peace. I express no opinion as to whether in a case in which a person is not accused of an offence involving a breach of the peace, or of taking unlawful measures with the evident intention of committing the same, but in which nevertheless an express finding that a breach of the peace has been committed or unlawful measures taken with the evident intention of committing the same, the accused could be called upon to give security to keep the peace under sec. 106." But as there was no such finding in this case the order was set aside.

It would therefore seem that if there is an express finding that a breach of the peace has been committed in the commission of offences which do not necessarily involve a breach of the peace, that is to say, in which breach of the

peace is not an *ingredient*, the accused may be bound down under this section. [*Baidya Nath*, 33 Cal. 93 : 6 C. W. N. 471 (1902)] ; *Kanookaran*, 26 Mad 469 (1902) ; *Muthiah Chetti*, 29 Mad 190 (1905).

Sec. 434 I. P. C.:—

An offence under sec. 434 I. P. C. is one which comes within the terms used in sec. 106. [*Manik Rai*, 12 Cr. L. J. 405 (1911) ; 33 All. 771].

Sec. 447 I. P. C.:—

Upon a conviction for criminal trespass, (sec. 441 I. P. C.) it has been held that an accused person may be bound over, if his conduct and acts clearly point to an intention to commit a breach of the peace. [*Gendoo Khan*, 7 W. R. Cr. 14 (1867) ; *Jhapoo*, 20 W. R. Cr. 37 (1873)]. In a conviction of house-trespass (sec. 448 I. P. C.), where it is committed for the purpose of causing hurt, the accused has been bound down. [*Tarini Mundle*, 7 C. W. N. 25 (1902); see also 29 Mad. 190 and 18 M. L. J. 57 (1908)]. But where there is a mere conviction of trespass (sec. 447 I. P. C.) and there is no finding of facts indicating an intention to cause a breach of the peace the order under sec. 106 is bad. [*Baidya Nath Majumdar*, 6 C. W. N. 471 (1902) : 30 Cal. 93.] Similarly, where an accused was convicted of house-trespass and his intention for committing house-trespass was to have an illicit intercourse with the complainant's wife, it was held that an order under sec. 106 was bad as it could not be said that the accused was convicted of any of the offences contemplated by that section. [*Subal Chunder Dey*, 3 C. W. N. 18 (1897): 25 Cal 628.] In referring to the cases of *Gendoo Khan* and *Jhapoo* their Lordships observed : "In both these cases this Court found that the intention of the accused for committing the trespass was to commit a breach of the peace ; the trespass, as the facts of the case showed, having been committed openly by a number of men. Those cases, therefore, will come within the provisions of the law authorizing security being taken for keeping the peace." Their Lordships (with reference to the contention that the judgment went to show that it was proved that the defendant threatened to beat the complainant) observed :—"But there has been no conviction of any offence of assault, or criminal intimidation. In the absence of any such conviction, we do not

think that any order under section 106 can stand. It is necessary, before an order under section 106 can be made, that the party should have an opportunity of answering to an accusation for an offence of the kind upon a conviction for which such an order can be made."

Sec. 504 I. P. C.:—

An offence under section 504 I. P. C. does not come within section 106 Cr. P. C. (*Nga Wet Taung* 1 L. B. R. 262).

Rioting. Sec. 147 I. P. C. :—

Rioting is specifically mentioned in section 106 ; yet there may be circumstances where an order under the section will not be justifiable. In *Nahar Khan*, 11 C. W. N. 840 (1907), the accused, who were convicted under section 147 I. P. C., were in occupation of the disputed land and the complainant tried to take possession of it. They were said to have used more force than was necessary and that fact may justify their conviction for rioting. But that is no reason why they should be bound down to keep the peace, seeing that the complainant is the party who is likely to break the peace. And further, if the accused be bound down, that will have the effect of preventing their resisting any further attempt by the complainant to take possession of the land. Similarly, where the *ijardar* of a market with a view to prevent the sale of foreign articles used force and caused hurt to certain itinerant stall-keepers, it was held that the *ijardar* had exceeded his right under the law and was punishable under sections 143 and 323 I. P. C., but he could not be bound down to keep the peace as an order under section 106 Cr. P. C. would practically prevent him from exercising his legal rights. [*Nanda Kumar Sirkar*, 11 C. W. N. 1128 (1907)].

In *Abdul Wahid*, 30 Cal. 101 (1903), the Sessions Judge in upholding the conviction under sec. 142 I. P. C. doubted the advisibility of an order under section 106 passed by the lower Court. But as he himself could not interfere under the law, he referred the matter to the High Court : the latter set aside the order under section 423 (*d*) Cr. P. C.

In *Islam Mollah*, 12 C. W. N. 834 (1908), the accused were convicted of rioting and were ordered to be bound

down under section 106 Cr. P. C. The High Court in setting aside the order said : "the petitioners acted upon the impulse of the moment ; there is not the slightest likelihood of repeating the unlawful act."

Illegal Order.

A Magistrate cannot, under section 106, require a person to give security to keep the peace, because in a case of riot in which that person was a witness, it seemed to the Magistrate that he was one of the parties concerned. [*Umda*, 3 C. L. R. 72 ; *Kadir Khan* 5 Mad. 380 : Weir 721.]

A Court is not competent to call on a complainant to furnish security under section 106, but if it so desire, it must record a separate proceeding and give him an opportunity to be heard under sections 117 and 118 Cr. P. C. [*Hazari Mull*, 3 P. R. (1902) : 3 P. L. R. 334.]

If after acquittal of substantial charges the accused were ordered to execute bonds and to furnish security under this section without further evidence but merely on the evidence already recorded in the original case, such order would be illegal. [*Dilloo Singh*, 22 W. R. Cr. 9 (1874).] Section 33 of the Evidence Act does not justify a Magistrate, when proceeding under this section of the Procedure Code, in using evidence taken in a previous trial in supersession of evidence given in the presence of the accused. [*Prosono*, 22 W. R. Cr. 36 (1874)].

Where a Magistrate, after convicting the defendants of assault and sentencing for the offence, directed that they should give a bond to keep the peace for 12 months without specifying the sum for which such bonds should be executed or what imprisonment should be inflicted if the same were not given, it was held that the order was defective and could not be sustained. [*Sheobalak*, A. W. N. (1881) 86].

SECTION 107.

Information.

We have stated that the foundation of an order under sec. 107 is the *information*. A Magistrate of the description mentioned in the section can take proceedings on being informed that any person is—(*a*) likely to commit a breach of the peace or disturb the public tranquility, or, (*b*) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility.*

The words "is informed" indicate that the information of the kind mentioned in (*a*) or (*b*) must come *aliunde*, *i.e.*, from other sources than Magistrate's personal knowledge. Strictly speaking, a Magistrate cannot act under this section from his own personal knowledge, apart from the serious objection that in such a case he would combine in himself the functions of a prosecutor as well as of a Judge. But if he acts on his personal knowledge, he should transfer the proceedings (as can be done now under the rulings of the High Court) to a subordinate officer having power to hold an enquiry under sec. 107 within the district.

The information may be by a statement, either oral or written, by a private person or by a report of any subordinate Magistrate or any Police Officer. When the information is given by a private person, it need not necessarily be on oath. If the Magistrate is satisfied as to the truth of such allegation and believes in it, he can proceed under the section, assuming that he has jurisdiction to do so. [*Kristendra Roy*, 7 W. R. Cr. 30 (1867); *Tarinee*, 8 W. R. Cr. 79 (1867); *Nga Po*, 7 Bur. L. R. 116]. The information must be a credible one, and as such it should appear on the face of the Magistrate's order. [*Birreshuree Pershad*, 6 W. R. Cr. 93 (1866); *Malik Sultan*, 4 P. L. R. 483.]

In the Code of 1861, the words used in the section (*vide* sec. 282) were "credible information." In Act X of 1872, the word 'credible' was omitted from the section itself, but

---

* As to the distinction between a *breach of the peace*, and *distrubance of public tranquility* see *Supra* p. 4.

in the Explanation, one finds that a summons may be issued "on any report or other information which appears credible and which the Magistrate believes." (*vide* Expln. I of sec. 491). In the amending Act X of 1882 and Act V of 1898, the Explanation was omitted, and the word information was left unqualified as in the Act X of 1872. But it may be safely concluded that by such omission the Legislature did not mean that a Magistrate can initiate a proceeding under this section on an information which he did not believe; for that would be an absurdity. Therefore, the information or the *report* (a new word introduced into the Code of 1872) must be one "which" (in the words of the Expln. I of sec. 491) "appears credible and which the Magistrate believes."

As to what is or is not a "credible information" the following rulings are important for our guidance. In *Chamaro Malo*, 8 W. R. Cr 85 (1867), it was held that a petition unsupported by any complaint, or deposition on solemn affirmation cannot be considered "credible information." A statement by a private person not upon oath or solemn affirmation is not a credible information upon which alone a Magistrate should issue a summons. [*Jivanji*, 6 Bom. H. C. R. 1 (1869)]. An unproved charge of false imprisonment is not the credible information contemplated in the law, on which a Magistrate may take cognizance to keep the peace. [*Keshub Sandyal*, 6 W. R. Cr. 1 (1866)]. Coversations out of Court with persons, however respectable, are not legal or proper material upon which to adopt proceedings under sec. 107. [*Babua*, 6 All. 132 (1883).]

The report of a police officer, [*Brindabun*, 10 W. R. Cr. 41 (1868); *Rajendro*, Ibid, 55 (1868); *Hem Chowdhury*, 4 B. L. R. 46 (F. B.): 12 W. R. Cr. 60]; of a subordinate Magistrate of facts within his knowledge [*Jivanji*, 6 Bom. H. C. R. 1; *Nellikel*, 2 Mad. H. C. R. 240; *Egambara Mudail*, 2 Weir 51 (1891)] is a credible information.

It is not necessary to call witness in support of an information laid before a Magistrate previous to requiring security for keeping the peace. [*Mullick Fukurun*, 11 W. R. Cr. 6 (1869); *Beharee Lall*, 12 W. R. Cr. (F. B.) 60 (1869)]. Nor is it imperative on the Magistrate to allow

the opposite party an opportunity of cross-examining the informant, before initiating a proceeding under this section. [*Tarinee*, 8 W. R. Cr. 79 (1867)].

The report of a subordinate Magistrate, though it is credible information on which a Magistrate can issue a summons under sec. 107, is not evidence on which he can arrive at a conclusion that the parties are likely to commit a breach of the peace. [*Napa*, 2 Bom. H. C. *Novem.* 23, (1871)]. Nor is a police report legal evidence in such matter. [*Abhaya Chowdhry*, 6 B. L. R. App. 148 ; *Dunne*, 12 W. R. Cr. 60 p. 63 ; *Jivanji Limji*, 6 Bom. H. C. R. 1 (1869)].

In *Babua*, 6 All 132. Straight J., (at p 136) said :—

"I regret to have to say that the procedure of the Magistrate in this case has been both unusual and irregular. Conversations out of Court with persons, however respectable, are not legal or proper material upon which to adopt proceedings under sec. 107 or 110 of the Criminal Procedure Code ; and while in every way anxious to support the Magistrates in preserving peace and good behaviour in the cities under their charge, it is impossible that this Court can for a moment allow the idea to get current that this is the kind of information required by law to justify issue of the process mentioned in Chapter VIII of the Code. Nor can it permit the Judge's extraordinary remark to the effect that he had 'taken the opportunity of consulting a few of the residents of Mirzapur about this Babua, and the account they give of him is very black indeed' to pass without pointing out in very distinct terms that his action in talking out of Court about a case that was before him judicially was most improper, and must not be repeated. It seems to be thought that the procedure to be followed for taking sureties of the peace or for good behaviour may be of the loosest kind, and it is time this idea was corrected. No doubt the information to be required by a Magistrate before issuing an order under sec. 112 may to some extent be of a hearsay and general description ; but when the party to whom the order is directed appears in Court in obedience to such order the enquiry must be conducted on the line laid down in sec. 117. It is not because a man has a bad character that he is therefore necessarily

liable to be called upon for sureties of the peace or for good behaviour. There must be satisfactory evidence in the one case that he has done something, or taken some step, that indicates an intention to break the peace, or that is likely to occasion a breach of the peace ; and, in the other, that he is within the category of persons mentioned in sec. 110, the determination of which question must always be guided by the considerations pointed out in *Emperor* v. *Nawab*, 2 All. 835."

The information of the kind mentioned in sec. 107 must be of a clear and definite kind, directly affecting the person against whom process is issued and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet. [*Jai Prakash*, 6 All. 26 (F. B.) (1883)]. The order showing cause must adequately or properly disclose the substance of the report or information upon which summons is issued ; and the parties are entitled to something "more than a mere assertion in writing by the Magistrate, that he has been informed that a breach of the peace is likely to occur, in order to enable them, if they are in a position to do so, to bring evidence to rebut the truth of such information." [*Nathu*, 6 All. 214 (1884)]. Every person, to whom a summons is issued calling on him to show cause why he should not find security, is entitled to proper information as to the materials upon which process has been granted against him, and to a reasonable interval within which to prepare himself to meet such information by evidence or otherwise as the matter may require. (*Idem*). A mere allegation of a " diverse acts of oppression " is too vague to sustain an order under this section. [*Sheikh Jinaut*, 7 C. W. N. 32 (1902)].

The act of which information is given and in respect of which security is required must be an act shown to have been in contemplation at the time the information was given and not merely one a repetition of which may be apprehended from past misconduct of the kind without anything further. (Mad. H. C. Pro. Aug. 29 1876 : 2 Weir 49). There should be evidence of some specific conduct from which a reasonable and immediate inference can be drawn

that a breach of the peace is likely to occur. [*Simbu*, 23 P. R. (1888) 21]. Evidence of "general repute" as provided for by sec. 117 Cr. P. C. is not admissible under this section. [*Bidhyapati*, 25 All. 273 ; *Banarsi Das*, P. R. (1888) 30].

Magistrates are left a very wide discretion as to the kind of information upon which they may act in instituting proceedings under Chap. VIII of the Code of Criminal Procedure and they are not bonnd to disclose its source. The provisions of sec. 190 (c) and sec. 191 Cr. P. C. do not apply to such proceedings. [*Mithu Khan* 27 All. 172 (1904) : A. W. N. (1904) 206 : A. L. J. 685].

Onus.

In *Dunne*, 4 B. L. R. 46 (F. B.) : 12 W. R. Cr. 60 (1869), it was laid down by a Full Bench that in a proceeding under sec. 107 the "*onus* lies on the person who calls upon the party to show cause to prove the affirmative. [*Gossain Luchman Narain*, 24 W. R. Cr. 23 (1875), which followed the Full Bench.] In *Abdul Kadir*, 9 All 452 (1886), it was held that an order passed by a Magistrate under secs. 107 and 112 requiring any person to show cause why he should not be ordered to furnish security for keeping the peace, is not in the nature of a rule *nisi* implying that the burden of proving innocence is upon such person. The *onus* of proof lies upon the prosecution to establish circumstances justifying the action of the Magistrate in calling upon a person to furnish security. In this case, Mahmood J., observed : "It is not for him who is free, and who has not transgressed the law, to show why he should not remain free and why his freedom should not be qualified : it is for him, who wishes to take away that freedom or wishes to qualify it, to establish circumstances which, by the force of law, would operate either in defeasance of, or in derogation of, that freedom." See also *Nirunjan*, 2 N. W. P. 431 (1870).

Object.

The object of sec. 107 is to prevent and not to punish offences against the public tranquility and it is not necessary, therefore, to prove that the persons sought to be bound down to keep the peace have really been guilty of offences

against the public tranquility, and it will be enough if facts are proved from which it may be reasonably inferred that the persons in question would be likely to disturb the public peace. But to warrant such an inference, the facts proved must be facts of definite nature and must show that the persons sought to be bound down are *individually* and *not collectively* connected with them. (*Prankrishna*, 8 C.W.N. 180 p. 183 (1903). See also *Abdul Kadir*, 9 All. 452 where similar view was taken of the scope of this section.

In *Srikanta*, 9 C. W. N. 898, p. 906 (1906), Geidt J., said : " The object of the proceedings under section 107 is not to punish persons for any thing that they have done in the past, but to prevent them from doing in future something that may probably occasion a breach of the peace."

The proceedings under sec. 107 are intended to be precautionary and not punitive. [*Suryakanta*, 31 Cal. 350 (1904) ; *Ramchunder*, 12 C. W. N. 166 (1908): 35 Cal. 674.]

General Principle.

Couch C. J., observed :—"It is true that sec. 282 (Act XXV of 1861) [corresponding to sec 107 of 1898 Code] invests Magisterial officers with large powers of interference in any matter where a breach of the peace is considered by them likely to occur, but great discretion is required in the exercise of those powers." [*Kashi*, 19 W. R. Cr. 47 (1873).]

The proceedings under sec. 107 is a precautionary measure, and not a trial for offence, and in such proceeding no one should be bound down unless it is shown that he is about to commit a breach of the peace. [*Ram Chunder Haldar*, 12 C. W. N. 166n (1908) : 35 Cal. 674 : 8 C. L. J. 68.] Therefore, where in a proceeding under sec. 107 the defendant said : " he was a poor man and he had very little expectation of getting any benefit by fighting the case and therefore agreed to be bound down, and the Magistrate bound him down without recording any evidence, the High Court held that the order was illegal because no evidence was taken. There was no evidence to show that the defendant was *about to break the peace*. It was true he agreed to be bound down, but that does not make him guilty. A Magistrate cannot bind over a person to keep

the peace where there is no evidence to show that such person was likely to commit a breach of the peace or to do any act that might probably occasion a breach of the peace. [*Kedar Nath*, 7 N.W.P. H. C. R. 233 (1875)]. In the absence of any evidence rendering a breach of the peace probable a Magistrate is not justified in calling upon parties to show cause why they should not enter into recognizances and on their failure to make an order under sec. 490 (Act X of 1872). [*Gossain Luchman Narain*, 24 W. R. Cr. 23 (1875)]. The Magistrate must believe that the person against whom he makes the order is about to commit a breach of the peace or to disturb the public tranquility or to do some wrongful act that may occasion a breach of the peace. [*Muhammed Yakub*, 32 All. 571 (1910)]. He must act upon legal evidence in investigating into a matter under sec. 107. [*Dalpatram*, 5 Bom. H. C. R. 104 (1868); *Jivanji*, 6 Bom. H. C. R. 1 (1869)]. A police-report is *per se* no legal evidence. [*Abhoy Chowdhury*, 15 W. R. Cr. 42 (1871); 6 B. L. R. App. 148]. It is illegal and contrary to the provisions of the section to take recognizance from one person in order to prevent another from committing a breach of the peace. [*Ram Coomar Banerjee*, 17 W. R. Cr. 54 (1872)]. There being no present danger of a breach of the peace the fact that such a breach is likely to take place at a future time will not justify a Magistrate in making an order under this section. [*Beni Madhub Roy*, 7 C. L. R. 352 (1880)]. To justify an order under this section there must be a reasonable probability and not merely a bare possibility of a breach of the peace. [*Abdool Huq*, 20 W. R. Cr. 57 (1873).] To bring a case within the provisions of sec. 107 it is not enough to show that there is a great probability of a breach of peace ensuing: it must further be shown that the party is likely to do illegal acts of violence. [*Chanbaswa*, 6 Bom. L. R. 862 (1904).] Spankie J., observed :—"In dealing with persons under the provisions of sec. 491 (Act. X of 1872) of the Criminal Procedure Code the Magistrate has lost sight of the fact that the likelihood of a breach of the peace must be imminent, and that the object of the bond is to prevent an imminent breach of the peace between the parties who have quarrelled and to

secure peace until a reasonable time has passed allowing them to cool down ; that section is not intended to protect a town from any possible misconduct at some future time on the part of the notoriously turbulent and dangerous bad characters 'who may have kept a town in ferment for past years.' " [See *Kedar Nath*, 7 N. W. P. 233 (1875)].

A person should not be bound down under this section in anticipation for the result of resistance to his acts which are not illegal. [*Sheo Surn Lall*, 3 C. L. R. 280 (1878)].

Sec. 107 presupposes that the person sought to be put under a rule of bail is likely (not *was* likely) to commit a breach of the peace or disturb the public tranquility. [*Basdeo*, 26 All. 190 (1903) : A. W. N. (1903) 219]. It cannot be presumed from the fact that a person has done a wrongful act in the past that he is likely to do the same again. [*Shivaram Poroshram*, 6 Bom. L. R. 668 (1904) ; 26 All. 190 was followed].

The facts which might be taken to establish probability of certain persons disrutbing the public tranquility at a particular annually recurring festival would afford no ground after such festival had passed without the public tranquility having been disturbed, for binding over such persons to keep the peace with a view to the possibility of their creating a disturbance at the next recurrence of festival. [*Basdeo*, 26 All. 190 (1903).] The acts in respect of which security is required must not be acts the repetition of which may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused are likely (not *were* likely) to commit a breach of the peace. (*per* Stanley, C. J., *Ibid* 190 p. 193 (1903).]

To constitute a proper foundation for an order under this section it is necessary that the Magistrate should adjudicate upon legal evidence before him that the person against whom the order is made is likely to commit a breach of the peace. [*Ramkissore Acharya*, 21 W. R. C. 6.]

An order under this section could only be passed if there was evidence that the person sought to be bound over was about to commit a breach of the peace and not otherwise. [*Narendra Bahadur*, 1 A. L. J. 418 (1904).] In this

case the Magistrate pointed out a series of disputes and litigation, Civil and Criminal, between persons some of whom stand in the relation of servants or dependants to the Raja, and he came to the conclusion that the best way of preventing violence was binding over the Raja himself. With reference to this finding of facts Blair J., said : "If the Magistrate had been in the position of a dictator, his conclusion might have been a right one. But he is a Magistrate administering the law as it stands, and under that law he is only entitled to bind over a person who, he is informed, is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquility."

An order requiring security for keeping the peace should show that the person called upon to show cause is likely to commit a breach of the peace or disturb the public tranquility. [*Sheikh Jinaut Chowdhury*, 7 C. W. N. 32 (1902).]

Although a Magistrate may summon a person on information received to show cause why he should not be bound over to keep the peace he cannot bind over such person, until he has adjudicated on evidence produced before him by that person. [*Isreepersad Singh*, 20 W. R. Cr. 18 ; *Goshain Luchmun Pershad Pooree*, 24 W. R. Cr. 30 (1875).] If the order of binding down is based on no legal evidence, it will be reversed. (*Dalpatram*, 8 Bom. H. C. R. C. C. 105).

Where it appears from the evidence that there is an apprehension of any one using violence towards a particular person or particular persons, he ought to be bound over to keep the peace as provided by sec. 107, and not to be proceeded against under sec. 110 Cr. P. C. [*Kallu*, 27 All. 92 (1904) : A. W. N. (1904) 195.] In the absence of any evidence rendering a breach of the peace probable, a Magistrate is not justified in calling upon parties to show cause why they should not enter into recognizances, and, on their failure, to make an order under sec. 490 (Act X of 1872). [*Goshain Munraj Pooree*, 24 W. R. Cr. 23 (1875)].

A Magistrate acts without jurisdiction in making an order binding a person to keep the peace, when there is no complaint before him of a breach of the peace being likely

to be committed by such person and without taking any evidence in the matter. [*Brojendra*, 17 W. R. Cr. 35 (1872).]

"Getting instituted a complaint declared to be false and frivolous" was no legal ground for binding down the person who caused the institution of the complaint. (*Ramkrishna Mohapatra*, 13 C. W. N. 83 n (1909).

The question whether one party or the other was in peaceful possession would have to be decided in the proceeding, but no objection on that account could be taken to the initiation of proceedings under sec. 107 Cr. P. C., against one or other party, if on the facts presented before Magistrate at the time of its initiation it appeared that such party were out of possession and were seeking to obtain possession by unlawful means which were likely to cause a breach of the peace. [*Bibee Kulsum*, 11 C. W. N. 121 (1906).]

The taking of security for keeping the peace is a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed. [*Kali Prosunno Roy*, 23 W. R. Cr. 58 (1875)]. Before a prohibitive order can be made there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray and that the stoppage of that act would prevent such riot or affray. [*Goshain Luchman Pershad*, 24 W. R. Cr. 30 (1875)]. It is only the evidence of specific conduct or act on the part of the accused from which the reasonable and immediate inference is that they are likely to commit a breach of the peace which will justify the Magistrate in adjudicating under this section. A Magistrate must not act upon his extra-judicial knowledge. [*Rajah Run Bahadur*, 22 W. R. Cr. 79 (1879); *Huree Mohun*, 25 W. R. Cr. 15 (1876).]

Ainslie J., said: "The Magistrate is to satisfy himself whether there is occasion to bind such persons to keep the peace; that is, he is to satisfy himself on the evidence which he takes in the presence of the parties. And having considered that evidence, he is ordinarily then and there to make an order either discharging the person informed against or directing him to enter into a bond with or with-

out security as the case may be". [*Chalun Tewari*, 23 W. R. Cr. 9 (1874).]

An order under sec. 118 Cr. P. C. requiring security for keeping the peace, should show that the person so called upon is likely to commit a breach of the peace or disturb the public tranquility or to do some wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. Where an order passed under sec. 118 Cr. P. C., stated that the persons bound over had used their influence for the purpose of stopping the services of the village barber, washerman and others from being rendered to complainant, and also, generally, that they committed "diverse other acts of oppression": Held that the former statement was not enough to justify an order under sec. 118 Cr. P. C., and the latter was by itself too vague to sustain the order. [*Sheikh Jenaut*, 7 C. W. N. 32 (1902).

Legal Right.

A Magistrate can prevent a person from doing a wrongful act but not one which the person may lawfully do. It is not intended by this section that a person should be prevented from exercising his right of property because another person would be likely to commit a breach of the peace if he did so. [*Kashi*, 19 W.R. Cr. 47 (1873): 10 B.L.R. 441; *Ram Coomar* 17 W. R. 54 (1872). See also *Sheo Surn*, 3 C. L. R. 280; *Bejoy Singha*, 3 C.W.N. 463 (1889); *Kali Prosonno* (Ibid) ccxcix (1899); *Chandrashekhara*, 14 Mad. L.J. 491 (1904).] The proper course in such a case is to bind down the other party. [*Feroze Ali*, 12 C.W.N. 703 (1908).] The Court must come to a finding which will be fair to the parties and maintain rights which they really possess.

Straight, Offg. C.J., said: "The Magistrate should understand that the provisions of Part B. of Chap. VIII of the Cr. P. C. are not to be arbitrarily used to prevent persons from legally exercising their rights of property. [*Jai Prokash*, 6 All. 26 (F. B.) (1883).] Therefore, where a person exercises his legal right, and the exercise of such right is likely to cause a breach of the peace, that will not be a ground for setting the provisions of the section in motion. For instance, a Mahomedan has a legal right to kill cows. He

should not be brought under the operation of this section because the exercise of such legal right would induce his Hindu neighbours to commit a breach of the peace. [*Shahbaz Khan*, 30 All. 181 (1908); *Muhammad Yakub* 32 All. 571 (1910); Reading "Amen" in a loud voice during service in the Mosque may be cited as another instance. [*Khuda Baksh*, 3 P. L. R. 409 : 15 P. R. 1902.] Similarly, where certain persons attempted to do *bastu pujah* by erecting a hut on a piece of waste land, which they were not entitled to perform, and if the opposing party acted properly and within their rights, the latter should not be bound down as "there is nothing to show that there is any probability of a breach of the peace, if the aggression of which they complain and which has been found to be in excess of the rights of the aggressing party is not continued." [*Bejoy Singha*, 3 C. W. N. 463 (1889).] Where one of several co-sharer landlord sought to make a measurement of lands contrary to the provisions of secs. 90 and 180 of the Bengal Tenancy Act, the other co-sharer landlords were justified in objecting, and where, no force has been used by them, they ought not to have been bound over to keep the peace under sec. 107, inasmuch as any likelihood of a breach of the peace was really due to the action of their co-sharer. [*Bhabataran*, 9 C. W. N. 618 (1905).] In *Kali Prasanna*, 3 C. W. N. ccxcix, (1899), it was held that "the petitioners having shown that they were entitled to the possession of the subject matter of dispute which was held likely to cause a breach of the peace, they ought not to have been bound down to keep the peace, inasmuch as they were not the aggressors and wrong-doers in defending rights which had been found in their favour." In *Chanbasawa*, 6 Bom. L.R. 862, a widow acted within her rights in holding the house against the illegal acts of the other side, yet she was bound down. Thereupon the High Court said : "The action of the Magistrate in this case amounts to a positive miscarriage of justice. Unwilling as the Court is ordinarily to interfere with cases falling under the preventive provisions of the Code, still the Court must, having regard to *Ekram Singh*, 3 C. W N. 297, hold the order of the Magistrate in that case to be improper and unsustainable."

In *Chandrashekhara*, 14 Mad. L. J. 491 (1904), a zemindar sent people to a Mokhasa village to oust the Mokhasadar from possession and to induce the tenants to break their engagements with the Mokhasadar. Protests on the part of the latter or his agent will not justify a Magistrate in binding him down as he is entitled to object to the trespass and to protest against improper proceedings of the zemindar. [See *Bejoy*, 3 C. W. N. 463, and *Kali Prasanna* (Ibid) ccxcix.]

The observations of the learned Judges who decided the case of *Din Dayal Mozumdar*, 11 C. W. N. 1002 (190) : 34 Cal. 935, are very important and should be carefully noted. Their Lordships said : "The preventive jurisdiction of a Magistrate must be exercised with caution. Where its exercise may lead to the infringement of an undoubted civil right, where an obligation which the law of the country imposes becomes incapable of being enforced owing to the exercise of such a jurisdiction and where the breach of the peace apprehended by the Magistrate is a likely result of the enforcement of his legal right by a party in a legal way and the illegal denial of the corresponding obligation of the other party, the Magistrate should not bind down the party who has the legal right in hand." Their Lordships further observed : "If the existence of the right in a party in a proceeding under sec. 107 of the Code, be denied by the opposite party and is not quite patent, an endeavour should be made to ascertain, for the purposes of the proceeding, the respective rights and liabilities of the parties. To leave all questions of civil rights, however easy of summary ascertainment, to the determination by the Civil Courts and to bind down one party to a proceeding and not the other, may lead to very undesirable consequences in the shape of infringement of rights and resultant damage without the means of obtaining redress in future. An attempt to ascertain legal rights should always be made by the Magistrate before he directs one party to be bound down. *No order of the Magistracy should encourage, in any way, the infringement of a legal right in a person by another or prevent the exercise of a legal right in a legal way or do away with even temporarily the performance of an obligation.*

The duty of every Judge administering either civil or criminal justice is to respect and allow the exercise of legal rights and to prohibit the performance of acts detracting from such rights." (*Ibid*).

Religious Procession.

When a party have a right to take procession along a particular road they cannot be bound down because some one else proposes to interfere with that right. [*Feroze Ali*, 12 C. W. N. 703 (1908).] The duties of a Magistrate in cases where the public peace is likely to be disturbed by one religious sect attempting to prevent another from using the public street for processions have been discussed in *Sundram*, 6 Mad. 203 (F. B.) (1883.) There, Turner, C. J., (p. 220) said : " The first duty of the Government is the preservation of life and property, and, to secure this end, power is conferred on its officers to interfere with even the ordinary rights of the members of the community." Therefore, in case of emergency, a Magistrate will be "justified in suspending the exercise of rights however well-ascertained". Then further on : "I must observe that this power (*viz.*, the power of a Magistrate suspending the exercise of well-ascertained rights) is extraordinary, and that the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where the rights are threatened the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension ; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace."

"In affording," continued his Lordship, "special protection to persons assembled for religious worship or religious ceremonies the law points to congregational rather than private worship, and it may fairly be required of

16087 | 3860

congregations that they should inform the authorities of the hours at which they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed."

No sect is entitled to deprive others for ever of the right to use the public streets for processions, on the plea of the sanctity of their place of worship, or, on the plea that worship is carried therein day and night. [*Sundram Chetti*, 6 Mad. 203 (F. B.) (1883).]

See also observations of Straight J., in *Nathu*, 6 All. 214 (1884), in which the Magistrate ordered sixty-nine persons of the Banias of Kosi to be bound down under sec. 107 because they considered the holding of the procession of the idol Parasnath by the Saraogis of Kosi to be an outrage on their religious feelings and were likely to molest their procession. His Lordship said: "As the *mela*, at which a disturbance was anticipated, would have been over in less than a fortnight, it was a most excessive exercise of power to require all the parties of find securities for one year. I am certain the Magistrate had the most laudable object in view; but the provisions of the Code of Criminal Procedure as to finding security for the peace may easily be converted into an engine of injustice and oppression, and this Court is bound to watch proceedings adopted thereunder with the closest scrutiny..... If the Magistrate's notions of his power under Chap. VIII. of the Code are correct, there would be nothing to prevent his ordering the whole of the Hindu or Mahomedan inhabitants of a place over which he has charge, upon information of the vaguest character, to enter into large recognizances with heavy sureties.....The Criminal Procedure Code must not be made use of for the purpose of supplying administrative deficiencies in the shape of an inadequate Police force to keep a place in order."

In *Feroze Ali*, 12 C. W. N. 703 (1908), Geidt J., said: "The act which the Magistrate's proceedings were designed to prevent was the taking of the procession (*Tajias*) by a particular path. This is not an act which comes within the terms of sec. 107, as giving the Magistrate jurisdiction to call on the petitioners to show cause why they

should not be bound down to keep the peace. The taking of a procession along a path is not by itself a breach of the peace, nor is it likely to disturb the peace, nor has it been shown in this case that the taking of the procession along the particular path was a wrongful act."

Land Disputes and Proceedings under Sec. 107.

So far as the Calcutta High Court is concerned, the procedure as to the initiation of a proceeding for the prevention of a likelihood of a breach of the peace arising out of a dispute concerning land was unsettled up to the middle of the year 1911. A Full Bench of this Court in that year laid down that —(i) there is no conflict between sections 107 and 145 Cr. P. C. ; (ii) the fact that there is a dispute concerning land likely to cause a breach of the peace does not deprive a Magistrate of his jurisdiction under sec. 107 ; (iii) after proceeding under section 107, whether it will be proper for a Magistrate to act under sec. 145 must depend upon circumstance of each case as it arises ; for it may be that, after an order under sec. 107, no likelihood of a breach of the peace would continue ; (iv) the competence of the Magistrate to proceed under sec. 107 against persons not in possession must depend upon whether as against those persons the conditions specified in the section have been established. [*Abbas*, 16 C. W. N. 83 (F.B.) (1911) : 39 Cal. 150 : 14 C. L. J. 429.]

It should be noticed that section 107 and section 145 appear in Part IV. of the Code which is headed " Prevention of Offences." Both the sections aim at preventing a probable breach of the peace. But section 107 is wider and more general than sec. 145, which is restricted to a probable breach of the peace arising out of a dispute regarding possession of some lands. It has been held that the terms of section 107 are discretionary, whereas those of sec. 145 are mandatory. [See *Balajit*, 12 C. W. N. 487 (1907) : 35 Cal. 117 ; *Abbas*, 16 C. W. N. 83 p. 84 (1911).] Under the provisions of sec. 145 a Magistrate without going into " the merits of the claims of the disputing parties to a right to possess the subject of dispute," has to decide which (if any) of such parties was in possession

at the date of the initiation of the proceeding. The party in whose favour he finds is put in possession of the disputed land and remains so until he is evicted therefrom in due course of law. The Magistrate meanwhile forbids all disturbance of such possession until such eviction. This section further empowers a Magistrate, in case of emergency, to attach the subject of dispute pending his decision. If after enquiry he finds none of the disputing parties was in possession, he may attach it under sec. 146 until a Civil Court determines the rights of the parties entitled thereto. During such attachment he may appoint a receiver thereof. Section 147 deals with the prevention of a probable breach of the peace arising out of a dispute concerning easements &c. In urgent cases of apprehended danger of a disturbance of the public tranquility in connection with land disputes a Magistrate can also pass a temporary order under sec. 144 Cr. P. C.

So far back as in 1875, and under the old Codes, it was held that where dispute existed about land which was likely to induce a breach of the peace, without such being imminent, the Magistrate should proceed under sec. 530 (*i.e.*, sec. 145) and not under sec. 491 (*i.e.*, sec. 107) of Act X of 1872. [*Mohesh Chandra Roy*, 24 W. R. Cr. 67 (1875).] This principle was reiterated in *Dolegobind Chowdhry*, 25 Cal. 559 (1897). There it was held that where a dispute likely to cause a breach of the peace exists concerning possession of land, a proceeding under sec. 145, and not under sec. 107, Cr. P. C., should be instituted. The same principle was laid down in *Driver*, 25 Cal. 798 (1898), with a further observation that "proceedings under sec. 107 are only intended for the security of public peace and not for the purpose of enabling one of two contending parties to help themselves in recovering or retaining possession of immoveable property, after having their adversary's hands tied down by an order under that section." [*Dolegobind* was followed in *Bejoy Singha*, 3 C. W. N. 463 (1899); *Ekram Singh*, (Ibid,) 297 (1899); *Bidhu Bhusan*, 6 C. W. N. 883 (1902), *Balajit*, 12 C. W. N. 487 (1907).]

In order to follow the course of the decision arrived at

by the Full Bench in *Abbas*, it is worth noting, that both in *Dolegobind* and in *Driver* one of the parties to the dispute was bound down. The evident effect of such order, as the Courts pointed out, is to bind down one of the two contending parties, leaving the other party free, without any adjudication upon the question as to which of the two parties was in possession. In *Ekram Singh*, the learned Judges remarked that "where both parties contemplate a breach of the peace, it may be desirable to bind them both over under sec. 107.....At the same time we think that we may well point out to the District Magistrate that mere binding over both the parties to keep the peace in a dispute concerning land does by no means put an end to the contention. Whereas by taking proceedings under sec. 145 he is able to pass an order by virtue of which possession of one of the contending parties is maintained until the right has been determined by a competent authority."

So in this case their Lordships did not say that in every dispute concerning land where a breach of the peace is apprehended, a proceeding under sec. 145 should be instituted. But they left the matter to the discretion of the Magistrate to proceed either under sec. 107, or sec. 145. In *Balai Mahto*, 7 C. W. N. 29 (1902), it was said that "the nature of an inquiry under sec. 145 differs materially from the nature of an inquiry under sec. 107," and the Court held that when the apprehension of a breach of the peace is found to be contingent upon an attempt by either of the parties in dispute to exercise acts of possession upon a disputed piece of land, the Magistrate should proceed under secs. 145 and 146 Cr. P. C., and not under s. 107 Cr. P. C. It may be mentioned that in this case, the Deputy Magistrate, by one and the same proceeding, instituted proceedings under secs. 107 and 145 Cr. P. C. In his final order he made no order under sec. 145, but he bound down both parties under sec. 118 Cr. P. C. on the ground that there was an apprehension of a breach of the peace if either side went to exercise the right of possession on the disputed land. In *Saroda Prasad Singh*, 7 C. W. N. 142 (1902), the Magistrate at first hesitated whether he should deal

with the matter in dispute under sec. 145 or by proceedings under sec. 107, but eventually he took proceedings under the latter section, because he found that the defendants were not in possession of the subject-matter of the dispute likely to cause a breach of the peace. The High Court observed : "The Magistrate was not competent in a matter of this description to find this except in a judicial inquiry under sec. 145 and in the presence only of the petitioners. If he had found in favour of the petitioners his finding would have been *obiter* as against another person who might be contesting the fact of the petitioners' possession. A proper order in this respect, as the Magistrate was satisfied that this dispute was likely to cause a breach of the peace, could only be arrived at in a proceeding under sec 145 Cr. P. C., to which all the disputing persons would be parties. ... On this view we think that the proceedings which the Magistrate proposes to take under sec 107 on the facts stated by him in his explanation are not just and proper, and that as they are likely to have an injurious effect by restraining the petitioners in the exercise of what may be their lawful rights of property, they should not go on. Other remedies are provided by law by which the Magistrate can prevent a possible breach of the peace." In this case the Magistrate without instituting a proceeding under sec. 145, found that the defendants were not in possession, and on that ground issued an order under sec. 144 restraining them in the excercise of certain rights claimed by them as in possession of the lands in dispute and also proceeded to bind them over to keep the peace under sec. 107 Cr. P. C.

In *Basiruddin*, 7 C. W. N. 746 (1903), Banerjee J., held that the mere fact of a dispute likely to lead to a breach of the peace being a dispute relating to the possession of land may not be sufficient to preclude the Magistrate from taking proceedings under section 107. And Brett J., said : "In my opinion it cannot be held either as a general rule, or in the present case, that by the provisions of sec. 145 Cr. P. C. the Magistrate is deprived of jurisdiction under sec. 107. The two sections give the Magistrate power to take proceedings to prevent a breach of the peace. It is

easy to conceive of a case in which an order under sec. 145 would not obviate the necessity to take proceedings under sec. 107, to prevent a breach of the peace even though the cause of quarrel between the parties was a dispute as to the right to a piece of land. Nor can I think the fact that the Magistrate may take proceeding under sec. 145 to prevent him, if in his discretion he should think it right so to do, from taking proceedings under sec. 107."

In *Jafar Mandal*, 9 C. W. N. 551 (1905), the High Court said : "Ordinarily, where two or more persons are disputing with regard to the possession of land and there is a likelihood of a breach of the peace, the more appropriate procedure is that provided by Chapter XII. of the Code of Criminal Procedure which deals with disputes as to immoveable property. ... But it has never, so far as we know, been held that in a case of this kind the jurisdiction of the Magistrate to proceed under sec. 107 is ousted by the fact that it appeared in the course of the inquiry that the dispute was not relating to the possession of land, and that the apprehended breach of the peace was in consequence of that dispute."

In *Sheoraj Roy*, 10 C. W. N. 288 (1905) : 32 Cal. 966, the High Court followed *Basiruddin* 7 C. W. N. 746 (1903), and *Belagal*, 26 Mad. 471 (1902), and held that the mere fact of a dispute likely to lead to a breach of the peace, being a dispute relating to the possession of land, may not be sufficient to preclude the Magistrate from taking proceedings under sec. 107. The learned Judges observed : that the authority of the ruling in *Saroda*, 7 C. W. N. 142 (1902), has been much lessened by the ruling in the case of *Basiruddin*, 7 C. W. N. 746 (1903).

In *Makhan Lal Roy*, 11 C. W. N. 512 (1906), where the dispute was between two parties having joint rights to the land in dispute, each of which is claiming exclusive possession, the High Court set aside an order under sec 145, and directed that if the Magistrate should think that any steps are necessary in order to prevent a breach of the peace, he should proceed against both parties under sec 107.

In *Bibee Kulsum*, 11 C.W.N. 121 (1906), it was held that a *bona fide* dispute regarding property does not oust the juris-

diction of the Magistrate in requiring security from one party.

In *Balajit Sing*, 12 C. W. N. 487 (1907) : 35 Cal. 117, it was held that in the case of a *bona fide* dispute likely to cause a breach of the peace existing between two parties relating to a fishery right, the proper section to proceed under for preventing a breach of the peace is sec. 145 and not sec. 107. In this case their Lordships followed *Dolegobind*, 25 Cal. 559 (1897), and drew a distinction between secs. 107 and 145 by remarking that the words of sec. 145 are "mandatory" while those of sec. 107 are "discretionary."

In *Baisnab Das Babaji*, 12 C. W. N. 606 (1908), it was held that when there is a *bona fide* dispute as to the right to the possession of land between two rival parties giving rise to a likelihood of a breach of the peace, it is unfair to bind down only the party who happen to be in possesssion under sec. 107 to keep the peace. The proper order in such a case would be to bind down both the parties under sec. 107, or to institute a proceeding under sec. 145 Cr. P. C. [See *Bibee Kulsum*, 11 C. W. N. 121 (1906).]

In *Abbas*, 16 C. W. N. (F. B.) 83 (1911), the Division Bench, after considering all the foregoing cases except the last one, invited the opinion of the Full Bench on the following three points :—

Firstly, if there is a dispute likely to cause a breach of the peace concerning land, is the Magistrate bound to take action under sec. 145 Cr. P. C., or is he at liberty to proceed under sec. 107, either exclusively, or in addition to proceedings under sec. 145 ?

Secondly, in the circumstances mentioned, is it competent to the Magistrate, in taking action under sec. 107 Cr. P. C. only, to bind down the members of that party which, upon a summary adjudication as to possession, he finds, are *not* in possession of the subject of dispute ?

Thirdly, was the case of *Balajit Singh*, 35 Cal. 117 (1907), correctly decided ?

As to what the decision of the Full Bench was we have already indicated. From that it is quite clear that

their Lordships did not consider the ruling in *Balajit* wrong or erroneous.

In *Baisnab Charan Majhi*, 39 Cal. 469 (1912): 16 C. W. N. 384, which was decided after the Full Bench case *re Abbas*, 39 Cal. 150, it was held that a Magistrate has jurisdiction to take proceedings under sec. 145 Cr. P. C. after an order under sec. 107 binding down one of the parties to keep the peace, when the circumstances so require.

Where there was a reasonable apprehension that several persons, who were interested in the subject of dispute and had absconded at the time of sec. 107 proceeding, might cause a breach of the peace with the first party, who were fishermen, or that the latter might seek to enforce their rights against the second party who had been bound down, in which case the order binding them down would have the effect of ousting them from any possession they might have, it was held that the Magistrate acted properly in instituting proceedings under sec. 145 Cr. P. C., in order to determine which party was in actual possession of the disputed properties and was justified in attaching the same, under sec. 146, if he found himself unable to determine the question of possession. (*Ibid*).

In *Tarak Nath*, 13 C. W. N. 202 (1909), the Court considered whether a proceeding under sec. 107 should be continued after the proceeding under sec. 145 relating to the same matter has been disposed of. Their Lordships did not quash the proceeding under sec. 107 Cr. P. C., but expressed an opinion that the Magistrate should reconsider the position and decide as to whether after a lapse of all this time, the same circumstances will necessitate additional action under sec. 107 Cr. P. C.

The following cases decided by the Allahabad High Court will show that the mere fact that the dispute relates to the possession of land and is likely to lead to a breach of the peace, does not oust the jurisdiction of the Magistrate to take proceedings under sec. 107 Cr. P. C.

In *Thakur Pande*, 34 All. 449 (1912), it was held that where there exists a dispute relating to immoveable pro-

perty which is likely to lead to a breach of the peace, the Magistrate concerned is not necessarily bound to proceed under sec. 145, but can take action—and this may sometime be the better course—equally under section 107 Cr. P. C. [This case followed *Ram Baran*, 28 All. 406 (1905), and *Sheo Raj*, 32 Cal. 960 (1905) ; distinguished *Mahadeo*, 25 All. 537 (1903) and did not follow *Balajit Singh*, 35 Cal. 117 (1907) Knox J., in rejecting the application observed : "It is a matter of experience that cases coming under sec. 145 are, as a rule, cases long-drawn out, and in the interval it is more than probable that owing to the hot blood excited over the matter a breach of the peace might occur. The Magistrate often does well to take action under sec. 107. It is open to the petitioners in the present case to move the Magistrate having jurisdiction to take action under sec. 145 if they make out a proper case. I have no doubt that the Magistrate will take the necessary steps."

With reference to *Mahadeo*, which was distinguished, his Lordship said : "The learned counsel relies upon certain dicta contained in the judgment, in which it was laid down that where a report was made by the police that a dispute likely to cause a breach of the peace existed between the parties concerned regarding certain land, the Magistrate should have proceeded in the manner prescribed in sec. 145 and not under sec. 107 ; but the learned Judge has been careful to add, 'it was not necessary to decide, for the purposes of this case, whether the fact of the Magistrate having been informed that a dispute existed in regard to land, ousted his jurisdiction to take proceedings under sec. 107'". With reference to *Balajit*, 35 Cal. 117, which was not followed, his Lordship said : "The learned Judges in that case held that, as the language of the sec. 145 was mandatory and that of section 107 contained words which were discretionary, the order passed under sec. 107 when there was a dispute relating to land was an order which should be set aside. I find, however, in the case of *Sheoraj Roy*, 32 Cal. 966 (1905), the learned Judges of the same High Court held that where a dispute relating to the possession of land is likely to cause a breach of the peace, a Magistrate

has a discretion to proceed either under sec. 107 or under secs. 144 and 145 Cr. P.C."

In *Ram Baran Singh*, 28 All. 406 (1906): A.W.N. (1905) 61, laid down that where certain persons wrongfully and without any *bona fide* claim to possession sought to eject another by force from the possession of certain land, and a breach of the peace was imminent, a Magistrate might legally take action against the aggressors under sec. 107, and it was not necessary, on the finding that their claim was not *bona fide*, to take proceedings under sec. 145 Cr. P. C. This case was followed in *Thakur Pande*, 34 All. 449 (1912).

In *Mahadeo Kunwar*, 25 All. 537 (1903), where a Magistrate under circumstances which would apparently have justified his taking action under sec. 145 took action in fact under sec. 107, and having passed an order seemingly under sec. 118, added, as it were as an appendix to this order: "Bisu Ahir put in possession under sec. 145," it was held that the order, passed without any of the procedure prescribed by sec. 145 being adopted, was more than an irregularity and was an order passed without jurisdiction, and liable to revision by the High Court.

The same Court declined to interfere with an order of the Magistrate who, in the course of a proceeding under section 107, came to know that the dispute was relating to land and likely to cause a breach of the peace, gave both sides an opportunity of being heard and then passed an order under sec. 145 maintaining one party in possession. The High Court held that inasmuch as the parties had been given an opportunity of representing their respective cases, there is nothing to show that irregularities in procedure had caused any prejudice to either. [*Debiprasad*, 30 All. 41 (1907).]

The Madras High Court in *Sindama Naik*, 2 Weir 50 (1884), held that jurisdiction vested in the Magistrate under Chap. XII. does not necessarily oust the jurisdiction vesting in him under Chap. VIII. of the Code of Criminal Procedure. In this Case the defendants were *raiyats* and asserted a right to graze their cattle on a hill which belongs to a temple. On some of their cattle grazing on the hill being impounded, the defendants and other

villagers collected in a crowd and expressed their determination to insist upon their right and a breach of the peace seemed imminent. Upon that the defendants were bound down to keep the peace under sec. 107. The District Magistrate declined to interfere with the order of the Assistant Magistrate who was entitled to proceed under sec. 107 Cr. P. C. The High Court also did not interfere with the said order.

In *Belagal Ramacharlu*, 26 Mad. 471 (1902), it was held that where a defendant is found by the Magistrate to be in possession of land about which a dispute occurs, the Magistrate is not bound to act under secs. 144 and 145 Cr. P. C. but has a discretion to procceed either under sec. 107 or under secs. 144 and 145 Cr. P. C. (*Dolegobind*, 25 Cal. 559 ditinguished).

There being a dispute between the Zemindars on the one hand and the tenants on the other with regard to possession of certain land, the Deputy Magistrate instituted proceedings under sec. 145 Cr. P. C. between the parties, and attached the land and made a temporary settlement thereof with a third party. One of the parties to the proceedings having moved the High Court, the proceedings were held to be defective and the Deputy Magistrate allowed them to be dropped holding that there was no further appprehension of a breach of the peace. The third party, however, remained in possession of the land and there being in the meantime a survey and settlement of rights in the village, the Settlement Officer recorded them as being persons in possession, and the Zemindars apparently acquiesced in the arrangement. The tenants, however, attempted to interfere and were eventually bound down under sec. 107. It was held that proceedings under sec. 107 taken under such circumstances were based on a misunderstanding of the real position of the parties and, therfore, could not be maintained. [*Maigh Lal Singh*, 5 C. L. J. 447 (1906).]

Joint Owner.

Where one joint owner was bound down under sec. 106 Cr. P. C., after conviction under sec. 143 I. P. C., the

Court observed that "as that order would amount practically to an order preventing the defendants or their masters from taking possession of property, it is desirable that the other side should be bound down in a proceeding under sec. 107 Cr. P. C. [*Bepin Behari Guha*, 11 C. W. N. 176 (1906.)] See also *Makhan Lal Roy*, 11 C. W. N. 512, *Supra p.* 38.

Rival *Hats*.

In *Satish Roy*, 11 C. W. N. 79 (1908), it was held that the most appropriate section in cases of dispute relating to rival *hâts*, is sec. 107, by which the Magistrate may bind down parties for a length of time. The Court observed (at page 82) : "The powers given by the Code to Magistrate to take measures for the prevention of offences like those apprehended in the present case (dispute *re* rival *hats*) are specified in Part IV. of the Code. Sec. 144 is intended to have operation to meet emergencies in urgent cases only. Unless specially directed by a Notification in the Official Gazette by the Local Government an order under sec. 144 has an operation limited in time. The Magistrate cannot by passing successive orders extend the operation of an order indirectly beyond the term limited by sub-sec. (5). Chap. XII. of the Code is limited to cases of disputes as to possession of land or water, or use of land or water. It does not cover a case of rival *hâts* which may cause a breach of the peace. The most appropriate section in cases like this is sec. 107 by which a Magistrate may bind down parties for a length of time."

Binding down both parties.

Under certain circumstances it may be necessary to bind down both the parties to a proceeding under section 107. Jackson J., observed :—"It appears to us that the Magistrate has scarcely adverted sufficienly to the position of advantage in which the opposite party is placed under such circumstances by calling upon the petitioners only to give security. We think it were well, if adverting to the whole circumstances, the Magistrate had either taken action under sec. 530 (Act X of 1872) or called upon the other

side also to give securities of the peace, so that the position of the parties might be kept *in equilibrio*." [*Kali Prosunno*, 23 W. R. Cr. 58 (1875).] The following observations of the learned Judges in *Din Dayal*, 11 C. W. N. 1002 (1907): 34 Cal. 935, are very pertinent.

"In a case involving the question of possession of land, a finding as to present possession may be sufficient. But in most other cases, if there are doubts as to the respective rights and obligations both *parties may be bound down* until the rights and obligations are determined by a proper tribunal. But to bind down one, and not the other party in such a case encourages the infraction of legal rights under cover of legal authority—a state of things which ought to be avoided. In case of doubt as to the existence of a right and the corresponding obligation in the other party, the Magistrate should bind down both parties so that his order may not be detrimental to either. Where, however, no dobut exists, the party in the wrong should be bound down and prevented from illegally exercising an alleged claim or the party who has clearly the legal right should be allowed to exercise such right without opposition, the other party being bound down."

Where there is a *bona fide* dispute as to the right to the possession of land between two rival parties, giving rise to a likelihood of a breach of the peace, it is unfair to bind down only the party, who happen to be in possession, under sec. 107 to keep the peace. The proper order in such a case would be to bind down both the parties under sec 107 Cr. P. C., or, to institute a proceeding under sec. 145 Cr. P. C. [*Baisnab Das Babaji*, 12 C. W. N. 606 (1908).] In *Bidhu Bhusan*, 6 C. W. N. 883 (1902), where in a dispute relating to possession of land the Magistrate drew up a proceeding under sec. 107 and only one of the parties was bound down to keep the peace, the order was set aside as bad.

In *Dolegobind*, 25 Cal. 559 (1897), where one party only was bound down under sec. 107, the Court said: "The order complained of is one that has the evident effect of binding down only one of the parties to the dispute, leaving the other party free, without any adjudi-

cation upon the question as to which of the two parties is in possession.

In *Bepin Behari Guha*, 11 C. W. N. 176 (1906), certain persons were bound down under sec, 106 after their conviction under sec. 143 I. P. C. But as "that order would amount practically to an order preventing them or their masters from taking possession of the property" the High Court said that it was desirable that the other side should be bound down under sec. 107 Cr. P. C. [See. *Nahar Khan*, 11 C W. N. 840 (1907).]

But see *Bibee Kulsum*, 11 C. W. N. 121 (1906). In this case two parties had both applied to the Land Registration Court for registration of their names as proprietors of an estate, andwhile these proceedings were pending the Magistrate instituted proceedings under sec. 107 against one of the disputing parties. It was contended on their behalf that there being a *bona fide* dispute between the parties as to title and possession, the proceeding under sec. 107 taken against one party alone to the exclusion of the other would prejudice the former in the land registration proceedings. The High Court held that such a consideration was foreign to the matter under enquiry in the proceeding under sec. 107.

Wrongful Act.

Before the Code of 1882, the third branch of sub-sec. (1) of sec. 107 contained the words " or to do any act that may probably occasion a breach of the peace. " Couch C. J., construed them as meaning " *a wrongful act*, and not one which the person may lawfully do. Because, as his Lordship said, "it was not intended that a person should be prevented by a Magistrate from exercising his rights of oroperty, because another person would be likely to commit a breach of the peace if he did so." [*Kashi*, 19 W. R. C. 47 (1873)]. After this decision, " wrongful " was inserted in the Code of 1882. The expression " wrongful " is not defined either by the Code of Criminal Procedure or by the Penal Code. The words " wrongful " and " unlawful " may be interchangeable, though the former does not necessarily mean 'contrary to law.' Therefore, an act may be wrongful, yet

it may not infringe the law. Thus, where a *dur-putnidar* under the defaulting *putnidar* resists the purchaser at a public sale held under Regulation VIII. of 1819, and himself continues to collect rents from the *raiyats*, notwithstanding the fact that the auction-purchaser was duly put in possession thereof, and that he himself had brought a suit to set aside the sale, his act was considered to be "wrongful" within the meaning of sec. 107 (1). He had undoubted right as a *dur-putnidar* to collect rents. But since his putnidar's *taluq* was sold for default of payment of rents, his right as a *putnidar* also ceased, until the sale shall have been set aside. Therefore, to continue to collect rents is on his part "wrongful" though not actually illegal or contrary to law. [*Bisharat Ali*, 9 C. W. N. 792 (1905).] Performing religious ceremonies in a place not set apart for the purpose, and where no ceremonies had been performed before, with deliberate intention of triumphing over, insulting and wounding the religious feeling of the neighbour is held to be a "wrongful" act. [*Murli Singh*, 33 All. 775 (1911).]

The following are the instances which are not "wrongful" acts within the meaning of sec. 107.—

Where a person builds a side-wall of a building upon his own ground and his neighbour objects to his so doing, because he anticipates that the dripping from the roof of the building when completed will fall on the thatch of his house; this was held not to be a wrongful act on the part of the person building the side-wall, though that may induce his neighbour to commit a breach of the peace. [*Kashi*, 19 W. R. Cr. 47 (1873)]. The granting of lease to tenants of land not in one's possession does not constitute a wrongful act such as sec. 107 contemplates. (*Driver*, 25 Cal. 798 (1898). Using influence for the purpose of stopping the services of the village barber, washerman and other persons from being rendered to the complainant is not a wrongful act. [*Sheikh Jinaut*, 7 C. W. N. 32 (1902).] Attempting to get up false cases and the probability that the accused would continue to do so are facts which will not come within the scope of the section. [*Bhadwa Singh*, 22 P. R. (1887) 64]. Singing in the street is not in itself a wrongul act, nor would a possible obstruction

of the street by a crowd gathering round the singer would be so on the part of the latter. [*Ghulam Nabi*, P. R. (1889) 58.] Reading "amin" in a loud voice during service in the Mosque is not a wrongful act, unless it is shown that the object was to disturb others worshipping, or that it was done not in *bona fide* performance of devotions. [*Khuda Baksh*, 3 P. L. R. 409 15 P. R. (1902).] See also *Ramzan*, 7 All. 461 (F. B.) (1815). The taking of the procession by a particular path is not of itself a breach of the peace or necessarily a wrongful act. [*Feroze Ali*, 12 C. W. N. 703 (1908).] A *Tahsildar* applying to the Police for assistance to protect him while distraining the crops of certain *raiyats* for arrears of rent is not a wrongful act. [*Sheo Surn*, 3 C. L. R. 280 (1878).] The mere finding that M. "was the aggressor and was trying his best to disturb the peaceful possession of S. and B. in certain lands in dispute" does not amount to wrongful act to justify an order under sec. 107. [*Basiruddin*, 7 C. W. N. 746 (1903).] Not interfering with the parties actually quarrelling in order to prevent a likelihood of any further rioting may be laches, but certainly not a wrongful act within the meaning of this section. [*Omerto Lall*, 19 W. R. Cr. 32 (1873).]

Persons combining together to prevent the Desai from recovering his rents and retaining possession of lands which his tenants have given up are not wrongful acts. Nor the raising of subscriptions to petition the Government, and the advising and standing security for the *raiyats* are wrongful acts. [*Shivaram Parashram*, 6 Bom. L. R., 663 (1904).]

Bad Order.

A finding in regard to certain persons that they are not likely themselves to commit a breach of the peace, but may very likely incite their partisans so to do, does not warrant taking security under sec. 107 from such persons. [*Dewat Singh*, P. R. (1912) Cr. 10.]

A witness for defence in a case of rioting having admitted being present at or near the scene of riot and denied that the accused took any part in it, the Magistrate after finding the accused guilty and without further proceedings

called upon both the accused and his witness to enter into bonds to keep the peace for one year. It was held that the procedure was illegal. [*Kadar Khan*, 5 Mad. 380.]

Where the conditions inserted in the bonds made the defendant respensible for any breach of the peace "by his servants and dependents," the Court held that such order "could not be sustained. The Magistrate had no power to put him under any such obligations; for the defendant could only be responsible for his own acts, and not for the acts of others unless he instigated them and could be satisfactorily shown to have done so." [*Muhammad Ismail*, A. W. N. (1881) 152.]

European British Subjects.

When a proceeding under sec. 107 is instituted against an European British subject, his case falls within the purview of section 443, Cr. P. C., and he is entitled to claim that he should be tried by a Justice of the Peace or a District Magistrate or Presidency Magistrate, provided the Justice of the Peace is a Magistrate of the first class and a European British subject. [*Hopcroft*, 13 C. W. N. 151 (1908).] Where a proceeding under sec. 107 was instituted against a European British subject by a Magistrate not competent to try a European British subject, on the application to the High Court, the proceeding was directed to be transferred to the file of a Magistrate competent to try him under sec. 443 Cr. P. C. (*Ibid.*)

SECTION 108.

This is altogether a new section added to the Code by the Amending Act of 1898. It empowers a Chief Presidency or District Magistrate, or a Presidency Magistrate, or Magistrate of the first class *specially empowered by the Local Government in this behalf*, to take action, on information, against a person who must be within the local limits of such Magistrate's jurisdiction, though he may disseminate seditious matter, orally or in writing, within or without such limits.

No proceedings under this section shall be taken against the "editor, proprietor, printer or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books' Act, 1867, except by the order or under the authority of the Governor General in Council, or the Local Government or some officer empowered by the Governor General in Council in this behalf." An order or sanction from either of these authorities is a *sine qua non* and a condition precedent before a proceeding can be taken against the editor, proprietor, printer, &c., mentioned above.

The procedure to be observed is the same as laid down in sec. 112 and the following sections of the Chapter VIII.

The term 'swaraj' does not necessarily mean government of the country to the exclusion of the present Government. Its literal meaning is self-government and its ordinary acceptance is "home rule" under the Government. The incitement of members of a public meeting to exert themselves to secure 'swaraj' does not amount to an offence of sedition under sec. 124A I. P. C., and is consequently not within the purview of sec. 108 Cr. P. C. [*Beni Bhushan Roy*, 34 Cal. 991 (1907): 11 C. W. N. 1050: 4 C. L. J. 699.] The Court further said: "Looking to the substance only and not the exact words, there is nothing which would bring the case within sec. 124A I. P. C. and therefore sec. 108, Cr. P. C." (*Ibid*) The petitioner in this case read out a written speech at the District Conference. On the report of a Police Sub-Inspector, who was present at the meeting, the District Magistrate called upon the petitioner to show cause under sec. 108 Cr. P. C. in having disseminated seditious matter in his speech. The petitioner showed cause but the District Magistrate, relying on the police evidence, bound the petitioner down under sec. 118 Cr. P. C.

The test under sec. 108 Cr. P. C. is whether the person proceeded against has been disseminating seditious matter and whether there is a fear of repetition of the offence. In each case, that is a question of fact, which must be determined with reference to the antecedents of the person and other

surrounding circumstances. [*Vaman Sakharam Khare*, 11 Bom. L. R. 743 (1909).]

The provisions of Chap. VIII. of the Code of Criminal Procedure are preventive in their scope and object, and are aimed at persons who are a danger to the public by reason of the Commission by them of certain offences. (*Ibid*).

SECTION 109.

This section authorises a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to take proceedings, on information, against vagrants and suspected persons. Such persons must be within the local limits of such Magistrate's jurisdiction. The section has two branches : the first, refers to a person taking precautions to conceal his presence with a view to committing any cognizable offence, and the second, to a person who has no ostensible means of subsistence or who cannot give satisfactory account of himself.

The procedure is the same as in sec. 110. Therefore, a proceeding under sec. 109 must be commenced by an order in writing in the terms of sec. 112, and a copy of that order must be served on the defendant with the process issued under sec. 114. (See sec. 115 Cr. P. C.) If the defendant is present in Court the order shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Proceedings under sec. 109 should be irrespective of any proceedings on account of any offence committed. [*Shunder Bhim*, Bom. H. C., Sept. 17, (1869.)]

Proceedings cannot properly be taken under both sec. 109 (*b*) and sec. 110, so as to enable a Magistrate to require security under each section for terms which in the aggregate exceed his powers under either. So when a Magistrate under sec. 109 (*b*) required one security for six months, and under sec. 110 another security for twelve months, and, in default of obtaining such securities, sentences of rigorous imprisonment respectively for six and twelve months were

passed, the first order was set aside on the ground that the Magistrate could not amalgamate secs. 109 and 110, and require the execution of two bonds for an aggregate period of eighteen months, in default committing to imprisonment for that period. [*Gholam Ali*, 8 C. W. N. 543 (1904)]

Secs. 109 and 110 Cr. P. C. have the same object and an order under sec. 110 is not valid during the continuance of an order under see. 109. (*Ibid.*)

In *Yerukala Manipate Polugadu*, 2 Weir 53 (1883), the defendant was called upon under secs. 109 and 110 to give security, and as he failed to do so, he was committed to prison for six months, or until he furnished security as directed. From the evidence it appeared that the defendant was of the Yerukala caste and that he joined a gang of Yerukalas the night before he was arrested, and that he fled on the approach of a police constable. The Magistrate considered that "the defendant's looks pointed to his having no settled abode of livelihood." The High Court thereupon observed : "It seems to us that there is some evidence to justify the action taken by the Magistrate, but we think the sum for which the security was demanded was excessive in the peculiar circumstances of the case, and that the Magistrate of the District should consider whether it is.....necessary to retain the man in jail. As much as has been proved against him might be proved against almost any member of some wondering tribes, and the law was hardly intended to meet such cases."

The fact that a man does no work or that he was once before convicted for bad livelihood does not justify a Magistrate without being satisfied from evidence that since his release the accused had no ostensible means of livelihood, to order him to furnish security for good behaviour. [*Pooran Agarwalla*, 5 C. W. N. 28 (1900)].

A party who exhibited a ring-game after obtaining license from the Magistrate having jurisdiction at the place where such game was exhibited did not come within the purview of clause (*a*) of sec. 109 Cr. P. C. But if they gave false names and incorrect account of their occupation they might come within the purview of clause (*b*) of the said section, which clause was very elastic. An order

directing the applicant to be of good behaviour for four months was thought to be sufficient. [*Mahadeo*, 6 A. L. J. 253 (1908).]

The whole of clause (*a*) of sec. 109 Cr. P. C., must be read together, and the object of the concealment must be with a view to committing some offence ; mere concealment with a view to avoid observation is no offence at all. A person cannot be called upon to furnish security for an alleged temporary concealment in his father's house unconnected with any intention to commit an offence, nor for any previous concealment outside the jurisdiction of the Magistrate who takes the proceedings. The fact that a person had been previously connected with any criminal conspiracy or might still be in correspondence with any criminals outside the jurisdiction of the Magistrate would not be relevant in a case under sec. 109 Cr. P. C. [*Satish Sarkar*, 16 C. W. N. 499 (1912) ; 39 Cal. 456.]

Where a young man, out of employment, is staying in his father's house and the father is a man of substance, able, if necessary, to support him, he cannot be said to be without ostensible means of subsistence under the first part of clause (*b*) of sec. 109 Cr. P. C. (*Ibid*).

The whole object of the second part of clause (*b*) of sec. 109 Cr. P. C. is to enable Magistrates to take action against suspicious strangers larking within their jurisdiction. A person cannot be called upon to give any account of his presence outside the jurisdiction of the Magistrate taking proceedings under sec. 109 Cr. P. C. (*Ibid*).

The accused was proceeded against under sec. 109 Cr. P. C., and sentenced on the 6th July 1909, under sec. 123 Cr. P. C. to rigorous imprisonment for nine months, in default of security for good behaviour. He was then tried for an offence of theft committed by him in November, 1908, and was, on the 17th August, 1909, sentenced to suffer rigorous imprisonment for three years ; the second sentence was directed to take effect on the expiry of the first sentence. It was held that the two sentences ought not to run consecutively ; but must run concurrently. [*Arjun*, 34 Bom. 326 (1909).]

Playing ring-game could not be regarded as having

" no ostensible means of subsistence" within the meaning of sec. 109 Cr. P. C., and, therefore, an order directing the accused to execute bonds under this section is illegal. [*Bangali Shaha*, 17 C. W. N. 883 (1913).]

Under sec. 55 Cr. P. C., an officer in charge of a police-station can, without warrant, arrest any person conducting himself in the manner described by sec. 109. In *Daulot Singh*, 14 All. 45, it was held that a person so arrested should always be given the option of release on suitable bail. Under sec. 60 Cr. P. C., a police-officer making an arrest without warrant has, without unnecessary delay, and subject to the provision of bail, to take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer-in-charge of a police-station. Sec. 55, it will be noted, has expressly been made applicable to the police in the towns of Calcutta and Bombay. It also applies to the police of the town of Madras like other parts of the Code.

In the matter of *Madho Dhobi*, 7 C. W. N. 661 (1903) : 31 Cal. 557, the Inspector of the Colootolah Thana, in Calcutta, arrested the accused under sec. 55 (*b*) Cr. P. C., and placed him on his trial on a charge under sec. 109 (*b*) before a Bench of Honorary Magistrates. The Bench discharged the accused on the ground that the Inspector not being an officer in charge of a police-station within the meaning of cls. (*p*) and (*s*) of sec. 4 Cr. P. C , had no authority to arrest him. The High Court held that whether arrest was illegal or not, the Bench ought not to have discharged the accused but should have gone on with the case. The Magistrates were empowered to put in force the provisions of sec. 109 of the Code, whenever they had credible information that the accused had no ostensible means of livelihood or was unable to give a satisfactory account of himself and was within the limits of their jurisdiction, how he came before them being immaterial. [*Ravalu Kesigadu*, 26 Mad. 124 (1902), approved.]

It was further held that sec. 55 having been expressly made applicable to the Police in Calcutta, the arrest of the accused by the Inspector was legal. The Criminal

Procedure Code does not apply to the Police in Calcutta unless expressly made applicable to them. [sec. 1, sub-sec. (2)]. Cls. (*p*) and (*s*] of sec. 4 Cr. P. C. do not apply to the Police in Calcutta. (*Ibid.*)

SECTION 110.

Object.

The object of the provisions of sec. 110, like that of secs. 106 and 107, is the prevention and *not* the punishment of crime, and with that object the section authorises certain Magistrates to require from certain persons good and sufficient security for their good behaviour. But it is only for the purpose of securing *future* good behaviour that this power should be used. Any attempt to use it for the purpose of punishing for past offences is wrong, and is not sanctioned by law. [*Umbica Prashad*, 1 C. L. R. 268.] In *Hari Telang*, 4 C. W. N. 531 (1900): 27 Cal. 781, the learned Judges said : " The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences" [See also *Srikanta*, 9 C. W. N. 898 p. 903 (1905) *per* Henderson J. ; *Raoji*, 6 Bom. L. R. 34 (1903) ; *Surja Kanta*, 31 Cal. 350 (1904); *Rajendra Singh*, 17 C. W. N. 238 (1912) *per* Mukerjee J , *Pedda*, 3 Mad. 238(1881)]. Straight J., said :" That section (110) relates to the calling upon a person of habitually dishonest lives, and in that sense 'desperate and dangerous' to find security for good behaviour, *as a protection to the public against a repetetion of crimes by them in which the safety of property is menaced and not the security of the person alone is jeopardized.*" [*Nawab*, 2 All. 835 (1888); *Rajendra*, 17 C W. N. 238 *per* Mukerjee J.] The Bombay High Court held that the object of taking security for good behaviour is solely to secure good behaviour *in future*, and it is wrong to use these provisions so as to add to the punishment for past offences. [*Raja*, 10 Bom. 174 (1885).] The power given by sec. 110 is a "preventive and not a punitive power." [*Pedda*, 3 Mad. 238 (1881)].

General Principle.

The proceedings under sec. 110 should be conducted in the interest of the public affair, or in the interest of the public generally, but not in the interest of private individuals. [*per* Petheram C. J., in *Rai Isri Pershad*, 23 Cal. 621 (1895)]. The section should be used for the benefit of the public, and not to harass individuals. [P. R. Cr. J. No. 4 (1892)]. "It is notorious," said a learned Judge, "that accusations under this section are constantly made with the object of blackening an enemy's character and satisfying feelings of spite and hatred and the Magistrate cannot be too cautious in making sure that provisions intended for securing the peace of the community are not utilized for wreaking private vengeance under the æges of a Crown prosecution." [*per* Chatterjee J., in *Kaliprosonna*, 38 Cal. 156 (1911) : 15 C. W. N. 366].

Section 110 contemplates some information showing the habitual bad character of persons proceeded against. [*Raja*, 10 Bom. 174 (1885)]- The information must be to the effect that the person *by habit* commits the offence or offences enumerated in clauses (*a*) to (*f*) of the section. Therefore, the mere commission of such an offence on one occasion only or a mere conviction thereof for the first time will not justify the operation of the provisions of the section. Habit denotes more than one act or instance at least. It is the repetition of the crime which brings the offender within the scope of the section. It has no application, therefore, to a case where the persons have been convicted and punished for theft for the first time and no repetetion of the offence is proved against them. [*Kunee*, 7 W. R. Cr. 57 (1867) ; *Haidar Ali*, 12 Cal. 520 (1886)].

In a very recent case [*Rajendra Singh*, 17 C. W. N. 238 at p. 261. (1912)] Mukerjee J., observed : "Section 110 provides that a Magistrate of the description mentioned therein may, on receipt of information, institute proceedings with a view to take security for good behaviour from what may be briefly described as habitual offenders..... .....The Magistrate may initiate proceedings on information

from any source; the statute does not impose any restriction as to the quarter from which the information may be derived. The Magistrate is further not bound to reveal the source of information; it is sufficient if he states the substance thereof; and the Crown is not bound at the initial stage even to name the witnesses who will support the case by their evidence. [*Alimuddin*, 20 Cal. 392 (1902); *Chintamon, Singh* 35 Cal. 243 (1907.)] *Prima facie*, therefore, the police report on which the Magistrate has taken action in the present case furnishes an adequate foundation for the institution of the proceedings."

Where, however, the proceedings are not *bonâ fide* and it is contended by the defendant that they have been instituted for the attainment of an ulterior object, and consequently they ought to be quashed, his Lordship proceeds to observe further (at p. 262): "The question therefore arises whether it is competent to this Court to interfere with the proceedings at the initial stage when the Magistrate has before him a police-report *prima facie* sufficient to justify the commencement of the proceedings. In my opinion, there can be only one answer to this question. If it is established to the satisfaction of this Court that the proceedings are not *bonâ fide* and that in substance their continuance would mean an abuse of statutory provisions on the subject, it is not only competent to this Court but it is its obvious duty to interfere. I desire to repudiate most emphatically the theory that the production of the police-report is in every case a complete answer to the allegation that the proceedings are not *bonâ fide*. An allegation of that character has, no doubt, to be established conclusively *on* either by direct evidence or by evidence of surrounding circumstances which leave no room for reasonable doubt as to the true nature of the proceedings. But once the allegation has been made good, no controversy is possible as to the course to be adopted by this Court."

Carnduff J., who was of contrary opinion, held that a police-report setting out informations fulfilling the requirements of sec. 110 Cr. P. C., is a sufficient ground for

proceeding under sec. 110 Cr. P. C., and a Magistrate cannot properly refrain from acting on it merely because the police may have over-stated their case. And as proceedings of the Magistrate ought to be presumed to be *bonâ fide* until the contrary is proved, a proceeding under sec. 110 initiated by the Magistrate upon a police-report ought not to be quashed until the statements in the police-report have been tested and put to the proof.

In *Chintamon Singh*, 35 Cal. 243 (1907): 7 C. L. J. 177, it was held that the setting forth of the information received from a Police-officer in the order under section 112 Cr. P. C. in terms of clauses (*a*) to (*f*) of sec. 110 is a sufficient statement of the substance of the information as required by the former section. It is not necessary to give a list of the prosecution witnesses in such order.

A Magistrate is not competent upon information that suggests the likelihood of a breach of the peace to resort to section 110 Cr. P. C., and it is altogether *ultra vires* for him to demand security for three years in such a case. [*Babua*, 6 All. 132 (1883)].

It is not necessary for the purposes of sec. 110 that specific instances of crime should be given. For, if specific instances are established the accused should be charged with the offences under the Indian Penal Code. [*Shahukha*, 9 Bom. L. R. 164 (1907)]. When a charge of specific offence is under trial, proceedings under this section should not be instituted, as the object of the section is the prevention and not the punishment of crime. (*Umbica*, 1 C. L. R. 268.)

Proceedings under this section ought not to be instituted with a view to bind down persons on an indefinite charge, after prosecutions against them on definite charges under the Penal Code have failed. [*Alep*, 11 C. W. N. 413 (1906)].

A Magistrate is not competent to pass an order under this section, as a part of the sentence, in the same judgment by which the accused is convicted and sentenced for one of the offences enumerated in the section. [*Partap*, 1 All. 666 (1878); *Tamiz*, 9 Cal. 215 (1882)]. He should draw up a proceeding representing that he is satisfied

from the evidence as to the general character adduced before him in the case, that the accused, by repute, is an offender within the terms of the section, and, therefore, security would be required from him. An order to this effect should be recorded in the judgment that on the expiry of the imprisonment to which the accused is sentenced for the substantive and specific offence, he should be brought up for the purpose of being bound. (*Partap*, 1 All, 666 ; see also *Tamiz*, 9 Cal. 215).

If there is evidence of *general repute* that a person is a habitual offender, that will be quite sufficient to require him to be bound down under the section for good behaviour for a certain period with sureties. [*Pedda*, 3 Mad. 238 (1881)] ; *Nya Seik*, 1 Burma. 546 ; *Shahuka*, 9 Bom. L. R. 164 (1902]).

The exercise of powers under sec. 110, is not to be confined to cases in which positive evidence is forthcoming of the commission of crime by the persons against whom it is sought to enforce the law. [*Pedda*, 3 Mad. 238 (1881).]

Persons may be bound down as being hazardous to the community to give security for being of good behaviour when it is proved that they commit extortion as individual members of the community, and not when they have done such acts in respect of tenants as servants of a zemindar acting under his order or that of his agents and within the scope of their employment. [*Hari Telang*, 4 C. W. N. 531 (1900)]. The proper way of dealing with such case is to prosecute these servants of the zemindar or possibly those under whose orders they act for specific acts of oppression. (*Ibid.*)

"The statutory provisions of sec. 110 Cr. P. C. were enacted by the Legislature with the purpose of protecting society from habitual offenders. They were unquestionably never intended to be applied to coerce landlords, however, recalcitrant they might be, to adopt method of management of their estate, the efficiency of which, very foolishly perhaps, they might not appreciate.]" *per* Mukerjee J., in *Rajeudra Narain Singh*, 17 C. W. N. 238 (1912)].

The facts that a landholder has tenants of bad character, that he lends money or paddy when the latter are in

difficulty, and because they are his tenants and that he settles disputes between two men, one of whom is a thief and the other is not, do not subject him to a proceeding under sec. 110 Cr. P. C. [*Nilkamal Das*, 6 C. L. J. 711 (1907)].

Previous Convictions.

The mere fact of a previous conviction or of previous convictions of offences involving dishonesty is not sufficient to justify the putting in force the power of the section 506 (Act X of 1872), unless there is some additional evidence to show that the person complained against has done some acts or resumed avocation that indicate upon his part an intention to return to his former course of life and to pursue a career of preying on the community. [*per* Straight J., in *Nawab*, 2 all. 835 (1880)]. In *Haidar Ali*, 12 Cal. 520 (1886) [see. also *Juswant*, 6 W. R. Cr. 18 (1868)] similar view was expressed. The learned judges said : " The mere fact that the person from whom the security was demanded, had been previously convicted of offences against property is not, in itself, sufficient to justify proceedings under section 110 of the Code, unless there is additional evidence that the person complained against has done some act, or re sumed avocations that indicate on his part an intention to return to his former course of life, and to pursue a career of preying on the community." It would seem, from the similarity of the expressions that the learned Judges quoted the passing remarks of straight J. in *Nawab's* case, though no reference was made to it in the judgment. The Bombay High Court held the same view in *Raja*, 10 Bom. 174 (1885) *viz.*, the mere record of certain previous convictions on account of which the person has undergone punishment does not staisfy the requirements of the provisions of sec. 110 of the Code.

Previous convictions for a simple breach of the peace are not sufficient to justify a Magistrate in demanding security for good behaviour. [*Misreelal*, 4 N. W. P. 117 (1872).] Nor is repute, that a person is one of the leaders of a gang of petty bullies and extortioners, sufficient to

justify a conviction under section 297 (Act XXV of 1861), unless in addition it be shown that he is of a character so desperate and dangerous as to render his release, without security, hazardous to the community. (*Ibid*).

Previous convictions are not substantive evidence in a case under sec. 110, though they may have an effect in deciding for what length of time the accused is to be bound down. [*Nepal*, 13 C. W N. 318 (1908)]. Where no previous conviction is proved, the Magistrate should take great care to test the evidence for the prosecution. [*Chintamon Singh*, 12 C. W. N. 299 (1907)].

Dischage or Acquittal.

When persons are discharged or acquitted after some definite charges made against them, proceedings on indefinite charges under section 110 should not be instituted against them. [*Alep*, 11 C. W. N. 413 (1906)]. This case was distinguished by the Allahabad High Court in *Rajkaran*, 32 All. 55 (1909). There, certain persons were sent up for trial on a charge of dacoity and were acquitted and an attempt to prove a case against them under section 400 I. P. C. was also unsuccessful. The Court held that these circumstances were not in themselves a bar to proceedings being shortly afterwards initiated against the persons acquitted under section 110 Cr. P. C.

Where a person has been tried for dacoity and acquitted, he ought not to be proceeded against under sec. 110 Cr. P. C., on matters deposed to, and disbelieved at the trial for dacoity. A person acquitted of dacoity cannot be bound over under sec. 110 on the evidence of persons stating that they began to suspect him since the dacoity case. [*Kismat*, 11 C. W. N. 129 (1906)].

A judgment of acquittal fully establishes the innocence of the accused and a criminal proceeding which ended in the acquittal of the accused cannot be relied upon by the Crown as evidence of bad character in subsequent proceeding under section 110 Cr. P. C. against him. [*Rajendra Singh*, 17 C. W. N. 238 (1912].

In a case under sec. 400 I. P. C., (which is an offence in persons associated for the purpose of *habitually* committing

dacoity as in clause (*a*) of sec. 110 Cr. P. C.), it was held that the fact that some of the persons undergoing trial for offence under sec. 400 I. P. C. had once been sent up on a charge of dacoity of which they were acquitted could not be relied on to prove that they were habitual dacoits. No adverse inference can be drawn against the accused persons after their acquittal. [*Kader Sundar*, 16 C. W. N. 69 (1911)].

Before an order under this section is passed, it is necessary that the accused should be given an opportunity of entering into his defence and that he should be clearly informed of the accusation he has to meet. [*Iswar*, 11 Cal 13; *Dedar*, 2 Cal. 384.] It should be made clear that the proceedings under this section were not taken as a means of punishing, in an indirect way, a man who though discharged or acquitted by a Court, yet, in the opinion of the Police, was guilty [*Sham Lall*, 6 A. L. J. 487 (1909).]

Discretion.

A large discretion is vested in Magistrates by Chapter VIII. of the Criminal Procedure Code. Consequently, an order made under this Chapter should be made in reasonable exercise of that discretion. [*Umbica*, 1 C. L. R. 268; 4 Mad. H. C. R. App. 46 (1860); [*Kalachand*, 6 Cal. 14 6 C. L. R. 128 (1880)]. Pontifex, J., said: "Surely the putting in force of these very stringent sections should be exercised only with *extreme discretion*." [*Kalachand*, 6 C. L. R. 128 p. 131 (1880): 6 Cal. 14]. Knox, J., said: "In cases of this kind the powers with which officers in charge of police-stations and District Magistrates have been armed under the Code for the purpose of restraining bad characters are exceptional powers. They provide very strong remedies and should never be put in force by either the officer in charge of a police-station or the Magistrate of a district, without the greatest deliberation, and except upon evidence which convinces the Magistrate that in the interest of public welfare it is absolutely necessary to demand from person before him security to be of good behaviour." [*Daulat Singh*, 14 All. 45 (1891): A. W. N. (1891) 179.] Mr. Justice Spankie gave a word of caution

to the Magistrates thus : "Chap. XIX (of 1861 Code, corresponding with Chap. VIII of 1898 Code) arms the Magistrates with very powerful means of securing the interests of the community from injury at the hands of hardened offenders of the most dangerous classes. But the good effect of secs. 296 and 297 is lost if they are applied too freely and to persons whose cases are not within their provisions." [*Misreelal*, 4 N. W. P. 117 (1872). *Rajendra*, 17 C. W. N. 238 (1912) *per* Mukerjee J.] It is, therefore, extremely necessary that these powers should always be exercised with great caution and nice discretion. [*Pedda*, 3 Mad. 238 (1881); *Rajendra*, 17 C. W. N. 238 (1912).] The Magistrates are expected to exercise their judicial discretion in a reasonable and judicial manner. [*Yaghi*, 27 P. R. 506 (1892)].

Locus Penitentiæ.

Where a person was repeatedly convicted and imprisoned on various criminal charges and when he was about to be released at the expiration of one of these periods of imprisonment, the Magistrate instituted a proceeding under sec. 110 and bound him down : Jackson J., observed : "If, upon being set at liberty, he should return to his former course of life, and show, that he continues to be, after being set at liberty, a person of dangerous and desperate character whom it is hazardons for the community to leave at large, no doubt he may again be brought before the Magistrate, and after evidence of his proceedings has been laid before the Magistrate, a further order may be passed requiring him to furnish security. It does not appear to me that, without having been set at liberty and allowed a fair chance of leading a new life, orders of this sort should be passed one after the other." [*Juswant*, 6 W. R. Cr. 18 (1866).] In another case, the High Court in setting aside the order observed : "In this case the person from whom security was required had only recently been released from jail, and we think it is rather the duty of the police to assist him in finding honest employment than to apply to have him incarcerated for a further period merely on the ground of his previous conviction." [*Haidar Ali*, 12 Cal. 520 (1886).]

Straight J., said : "The greatest thief is entitled to a *locus penitentiæ* when he has served out his punishment ; it is only when he outrages that grace which is extended to him, and therefore shows he is unreformed, and that the machinery of the Act should be brought into operation, in order to obtain a substantial guarantee for society that he will not commit any further depredations upon it." [*Nawab*, 2 All. 835 (1880.)] In a Bombay case, the accused had been four times punished under sections 411, 457, and 380 and 352 I.P.C. On the report of the police to that effect, he was directed to give security under sec. 118 Cr. P. C. He was then in custody, undergoing his last sentence which expired on the day the order was passed. The sureties named by the accused refusing, he was ordered to be kept in custody with rigorous imprisonment for six months. It would seem that the accused in this case had not only been given any *locus penetentiæ*, but was ordered to give security for good behaviour, because the police reported that the accused had been several times previously convicted. The High Court set aside the order. [*Raja*, 10 Bom. 174 (1885).]

Period of Interval.

Regarding the period of interval necessary for *locus penetentiæ* there are several rulings on the point. Where just after a week after his release from imprisonment in default of furnishing security for good behaviour fresh proceedings were started against the defendant under the same section, it was held that the interval was not long enough to give him an opportunity of showing that he was willing to adopt an honest livelihood. [*Ranjit*, 28 All. 306 (1905) : A. W. N. (1906) 36 : 3 A. L. J. 29 ; followed *Hussain Ahmed*, A. W. N. (1905) 34]. In another case it was held that a period under two months from his release from jail after three years imprisonment in default, was not sufficient time. [*Husain*, A. W. N. (1905) 34.]

In *Janab Ali*, 31 Cal. 783 : 8 C. W. N. 909 (1904), the accused, who had undergone one years imprisonment in failure to furnish security for good behaviour, was, about fifteen months after his release, again ordered to furnish

security under sec. 110 Cr. P. C. for one year. The High Court in setting aside the order said : "The petitioner has not had a sufficient *locus penetentiae*, and that the evil reputation which he had before his imprisonment has still followed him, and permeated the evidence of many of the witnesses."

PROCEDURE.

The procedure to be followed in making an enquiry into a case for keeping the peace, or for good behaviour is to be found in secs. 113-117, both inclusive. When a Magistrate upon information received draws up a proceeding under either of the sec. 107, 108, 109 or 110 Cr. P. C., he has to comply with the provisions as liad down in sec. 112 Cr. P. C. That is to say, when he deems it necessary to require any person to show cause under any of the above sections he shall make an order in writing setting forth—

(*a*) the substance of the information received,
(*b*) the amount of the bond to be executed,
(*c*) the term for which it is to be in force,
(*a*) the number, character, and class of sureties (if any) required.

This order has to be served on the person so required to show cause. If he is present in Court, it shall be read over to him, or if he so desires, the substance thereof shall be explained to him (See. sec. 113 Cr. P. C.) If the person is not present in Court, the Magistrate shall issue a *summons* requiring him to appear, or when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court. (*Vide* sec. 114 Cr. P. C.) But the Magistrate may at any time issue a *warrant* for the arrest of the person informed against, if it appears to him upon the report of a police-officer or other information (the substance of which report or information shall be recorded by the Magistrate) that there is reason to fear the commission of a breach of the peace and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person. [*Vide* proviso to sec. 114.]

A person against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him. It is not sufficient to say generally that there is suspicion. He should be asked to produce his witnesses or offered assistance to procure their attendance. He should be admitted to bail. A Magistrate is not competent to refuse bail unless the law sanctions such refusal. [*Kookor Singh*, 1. C. L. R. 130 (1877).]

Summons and Notice –

Every summons or warrant issued under sec. 114 shall be accompanied by a copy of the order made under sec. 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same. (*Vide* sec. 115 Cr. P. C.) The provisions for service of summons are to be found in secs. 69, 70, and 71 Cr.P.C., and for warrant of arrest, in secs. 75—86 Cr. P. C. The serving officer in certifying service should also certify delivery of the copy of the order.

The proceedings should be conducted with due regard to the provisions of the sections. [*Gunga Singh*, 20 W. R. Cr. 36 (1873)]

Every person summoned is entitled to "something more than a mere assertion in writing by the Magistrate that he is informed that a breach of the peace is likely to occur" in order to enable him to bring evidence to rebut the truth of such information. [*Nathu*, 6 All. 214 (1884) ; *Iswar*, 11 Cal. 13 (1884)].

The summons must set forth the substance of the report or information on which the Magistrate has acted. [*Gholam Haidar*, A. W. N. (1881) 155 ; *Koonj Behary*, 20 W. R. Cr. 43.] But an omission, unless it seriously prejudices the party concerned, will not vitiate an order requiring security. [*Koonj Behary*, 15 W. R. Cr. 43 (1871).] The summons should distinctly specify the amount and nature of the security required, and the time for which the security to run. (*Gunga Singh*, 20 W. R. Cr. 36.) But as the words of sec. 492 (Act X of 1872) are directory and not imperative an omission to insert in a summons the amount of the re-

cognizance and security required will not invalidate any subsequent proceedings binding over the parties to keep the peace [*Abasu Begum*, 8 Cal. 724 (1882)].

The setting forth of the information received from a police-officer in the order under section 112 in terms of clauses (*a*) to (*f*) of sec. 110 is a sufficient statement of the substance of the information as required by the former section. It is not necessary to give a list of the prosecution witnesses in such order. [*Chintamon Singh*, 35 Cal. 243 (1907): 12 C. W. N. 299.]

In *Krishna Swami*, 30 Mad. 282 (1906), it was held that a Magistrate before taking action under sec. 107 is bound to issue the notice required by sec. 112, and his omission to do so is an illegality which will render the subsequent proceedings invalid. See also *Ram Kissore*, 21 W. R. Cr. 6 (1873).

Where a Magistrate after dismissing a charge of criminal trespass and mischief passed an order in open Court in the presence of the parties that they should appear on a certain day and show cause why they should not give security to keep the peace, and they showed cause, and they were fully informed of the grounds of the order by the proceedings which had previously taken place, it was held that there was no necessity to issue a summons under the circumstances. (*Chowdhury*, 2. B. L. R. App. 28.)

A summons setting out that the person to whom it is directed is charged with an offence under sec. 491 (Act X of 1872) Cr. P. C. and requiring his personal attendance in Court is not such a summons as is required by the section. [*Charoo Mullick*, 10 C. L. R. 430 (1882)]. An order directing persons to enter into recognizance without first summoning them to shew cause is irregular and will be quashed. [*Dalpatram*, 5 Bom. H. C. R. C. C. 105 (1868)]. In *Egambara Mudail*, 2 Weir 51, it was held that the power of taking action under sec. 107 being a discretionary power, there was nothing irregular in the District Magistrate calling for a report from the Taluq Magistrate before issuing notice under sec. 112, and specially, if he doubts whether the information before him is reliable. Their Lordships observed: "It has been held (see *Nellikel*, 2 Mad. H. C. R.

240) that the report of a subordinate Magistrate is 'credible information' which will justify the issue of a notice; and we can see no reason why such a report should not be also regarded as credible information which may decide a Magistrate in refusing to issue a notice." See *Jai Prokash Lal*, 6 All 26 (F. B.).

Where the notice directs a person to show cause why he should not be bound down to keep the peace, it is improper to make an order directing him to execute bonds for his good behaviour. [*Driver*, 25 Cal. 798 (1898); see also *Abdul Bari*, 25 W. R. Cr. 50].

A Magistrate before taking action under sec. 107 is bound to issue the notice required by sec. 112, and his omission to do so is an illegality which will render the subsequent proceedings invalid. [*Krishnaswami Thathachari*, 30 Mad. 282 (1906)].

Where a notice was issued on the parties under sec. 107, and the Magistrate at the hearing recorded an order that on the facts, the case was one for application of sec. 145 Cr. P. C., and not of sec. 107, and he then proceeded to "bind down" the first party under sec. 145 (*b*), the High Court set aside the order as it was "entirely bad." [*Sakor Dosadh*, 30 Cal. 443 (1902) : 7 C. W. N. 174.]

A Magistrate should give notice to the party who is to be affected by the order of the particular conduct on his part which is complained of. (*Ram Kissore Acharya*, 21 W. R. Cr. 6.)

Notice to show cause under sec. 112 Cr. P. C. must be served before a Magistrate can pass order requiring security. [*Kalipershad*, 9 W. R. Cr. 16 (1868)]. Where such notice was given, and the ground of complaint to which such notice has reference was found by the Magistrate to be unfounded, it was held that the Magistrate could not proceed to adjudicate that an entirely different ground existed, upon which it was likely that the party charged would commit a breach of the peace. (*Ram Kissore Acharya* 21 W. R. Cr. 6.)

A Magistrate has no power to order security to be given for a longer term than what is stated in the notice issued under sec. 112 Cr. P. C. [*Belagal Ramacharlu*, 26 Mad. 471

(1902)]. A notice issued with reference to section 110 (*e*) is not sufficient as a preliminary to the Magistrate making an order under sec. 107 Cr. P. C. [*Krishnaswami*, 30 Mad, 282 (1906)]. When a Magistrate ordered any person to furnish security for good behaviour his final order under sec. 118 must correspond with the notice issued under section 112 Cr. P. C. [*Jangi Sigh*, A. W. N. (1906) 276.] Where a notice issued under sec. 112 Cr. P. C. is not accompanied by the order mentioned, the proceedings are liable to be set aside. Aiyar J., said: "this (*viz.*, the copy of the order not accompanying the notice) in itself in my opinion invalidates the whole proceeding." [*Subba Naicken*, 17 M. L. J. 438 (1907)]. But see *Suleman Adam*; 11 Bom. L. R. 740 (1909). In this case the Court held that the omission of a Magistrate to send a copy of the order under sec 112 Cr. P. C. with the summons issued under sec. 114 Cr. P. C. does not invalidate the trial. It is an irregularity cured by sec. 537 Cr. P. C. The learned Judges remarked: "It must be observed that sections 111 and 115 of the present Code correpond more or less to sections 491 and 492 of Act X of 1872, and it was held by the Calcutta High Court in *Abasu Begum*, 8 Cal. 724, that the provisions of section 492 were not imperative but merely directory. And so it was held even though in Act X of 1872 there was no section corresponding to sec. 537. Under sec. 537 an omission in any proceeding before a Magistrate does not render that proceeding illegal unless the omission complained of has led to some prejudice to the accused person." As the objection was not raised in the first Court (*vide* Explan. sec. 537) the Court did not interfere. But Chandravakar Actg. C. J., said: "Where the Legislature has directed certain procedure to be followed and certain forms to be adopted in a criminal case, the Magistrate ought to adhere to the law and see that no prejudice be created so far as the accused is concerned."

In *Bhagwan Das*, A. W. N. (1891) 40, it was held that the omission on the part of a Magistrate to make "an order in writing setting forth the substance of the information received etc." as required by sec. 112, is not in itself an irregularity, which will vitiate the proceedings but will become so only if a failure of justice has been thereby occasioned.

Opportunity.—

Before a Magistrate can pass an order directing an accused person to furnish bail and security for his good behaviour, it is necessary that he should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet. [*Ishar Sur*, 11 Cal 13 (1884) ; *Gholam Haidar*, A. W. N. (1881) 155.] The record of the Magistrate should show that the parties were given an opportunity to show cause. If there is nothing on the record showing that such opportunity was given or that the Magistrate has declined such opportunity, the High Court would presume that on appearing in Court the parties were not heard but simply directed to execute recognizances. [*Gholam Haidar*, A. W. N. (1881) 155.] The accused is entitled to a reasonable interval within which to prepare himself to meet such accusation or information by evidence or otherwise as the matter may require. [*Nathu*, 6 All. 214 (1884)]. The notice under sec. 112 should give him sufficient time to produce his evidence. (*Isreeprasad Singh*, 20 W. R. Cr. 18). Where parties, required, on the 1st of July, to show cause on the 9th, were served with the notice on the 5th and 7th idem, the Court held that they had not sufficient time for the purpose. (*Cheyt Singh*, 22 W. R. Cr. 70.) Where notice requiring defendants to be present before the Magistrate was served only on the 19th October and the day fixed to show cause was the 20th idem, the Court said that if the defendants did not appear it was for the obvious reason that they had no sufficient time. [*Subba Naiken*, 17 M. L. J. 438 (1907)].

The defendant should have an opportunity of cross-examining the witnesses produced against him, of making his own statement, and of calling witnesses in his own behalf. [Mad. H. C. R. App. 22 (1868)]. Where a Magistrate has once issued summons for the attendance of witnesses, he is bound to have the processes enforced before disposing of the case. [*Rahimuddi Howladar*, 35 Cal. 1093 (1908)]. In proceedings taken against a person to obtain security for good behaviour, the examination of the witnesses must be taken in the presence of the accused

person who should be permitted to cross-examine them. [*Shunkur*, 2 N. W. P. 406 (1870)]. The omission to hear the parties and to take any evidence that was forthcoming was an irregularity and fatal to the validity of the Magistrate's order. [*Gholam Haidar*, A.W.N. (1881) 155.]

"Showing Cause"—

Ainslie J., remarked: "It is quite clear that the Code requires that all the steps necessary to bring witnesses before the Court should be taken in such time as to admit of the evidence being recorded on the day on which the party comes into Court; and, in fact, the showing cause is not the mere putting in a written, or making a verbal, statement, but the supporting of that statement by such evidence as the party may be able to produce. He may bring his witnesses with him if he likes. If he has doubts as to his ability to produce them, he may apply for summons. If it is necessary to take out summons, he is bound to apply for summons in such time as to enable him to bring his witnesses into Court on the day fixed." [*Chalun Tewari*, 23 W. R. Cr. 9 (1874).] In *Narayan*, 9 Bom. L.R. 1385 (1907), it was held that the person who is called upon to show cause for good behaviour must be ready with his evidence when he appears in obedience to the notice, that is the meaning of the expression "to show cause" in law. If he has been unable to bring the evidence with him on account of the shortness of the notice or other reasonable cause, it is his duty when he appears to apply at once for summons to the witnesses he proposes to call.

A person against whom a proceeding for good behaviour has been taken, should be asked to produce his witnesses, or offered assistance to procure their attendance. [*Kookor Singh*, 1 C. L. R. 130 (1877).] A Magistrate is bound to assist both parties in bringing in their witnesses by issuing summons to attend. [*Cheyt Singh*, 22 W. R. Cr. 70.]

In *Abdul Kader*, 9 All. 452 (1886), the Public Prosecutor contended that, inasmuch as, in proceedings initiated by the Magistrate under sec. 107 of the Code, consistently with the following two or three cognate sections, the Magistrate is authorized to require any person

to "show cause" against the order made under sec. 112, such an order must be regarded as in the nature of a rule *nisi*, and as such, implying that the burden of proving innocence in such cases would be upon the person against whom such an order has been issued. In answer to this, Mahmood J., said : "I am wholly unable to accept this contention, nor am I able to understand the Engish phrase "*to show cause*" as implying that the Legislature intended that all the fundamental principles of jurisprudence in connection with criminal cases should, by dint of such an ambiguous phrase is reversed. It is not for him who is free, and who has not transgressed the law, to show why he should remain free, and why his freedom should not be qualified : it is for him who wishes to take away that freedom, or wishes to qualify it, to establish circumstances which, by the force of law, would operate either in defeasance of, or in derogation of, that freedom."

INQUIRY.

The inquiry under section 117 Cr. P. C. should be made, as nearly as may be practicable, in the manner prescribed by the Code for conducting trials and recording evidence. Where, the order requires security for keeping the peace, the procedure should be as in summons cases, and where the order requires security for good behaviour, as in warrant cases, except that no "charge need be framed. [*Vide* sec. 117 (2)]. The inquiry must be a judicial inquiry and the order should be passed upon legal evidence duly taken. [*Jivanji*, 6 Bom. H. C. R. C. C. 1 (1869) ; *Dalpatram*, 5 Bom. H. C. R. C. C. 105 1868); *Irapa*, 8 Bom. H. C. R. C. C. 162 (1871) ; *Maghan*, 10 W. R. Cr. 46; *Noor Mahomed*, 18 W.R.Cr. 18 (1873) ; *Nirunjun*, 2 N. W. P. 431 (1870); *Okhil*, 1 C. L. R. 48 (1877) ; *Lall Beharee*, 11 W. R. Cr. 50 (1869) ; *Gholam Haidar*, A. W. N. (1881) 155.]

In *Noor Mahomed*, 18 W. R. Cr. 2, the kind of inquiry is explained. It must be a full judicial inquiry, evidence being taken in the presence of the accused charged, and opportunity given for the purpose of examination of witnesses. (See also *Isreepershad Singh*, 20 W. R. Cr. 18, and *Maghan*,

10 W. R. Cr. 46 ; and also 4 Mad. H. C. R. App. XXII, in which it was laid down that an inquiry should be conducted with due attention to ordinary forms. In *Raja*, 10 Bom. 174, the following was laid down : " Under sec. 117, inquiry, as in warrant cases, should be made, and evidence taken as to the truth of this information ; and under sec. 118 the Magistrate should give his reasons for finding it proved that security is necessary. The accused should also be questioned as to his means and intention of earning an honest livelihood, and he should not be subjected to penalties unless it is shown that there is no reasonable prospect of his future good behaviour."

Observations of Straight J., on the mode in which the provisions of these sections should be applied are very important. His Lordship said : "I am constrained...to point out that it is desirable that very clear and full evidence, with as much detail, as is possible, should be required by the Magistrate before he is justified in making an order under sec. 118 read in conjunction with sec. 110, and that the object of Chapter VIII. is not to punish persons for an evil reputation, but to protect society from them by putting them under such substantial, but not excessive, security as will prevent them from resorting to evil courses. The Magistrates who have to discharge the important powers conferred by Chapter VIII. sec. 110 as to habitual offenders, etc., cannot be too careful, before passing orders thereunder, to require and to place upon record, evidence of a cogent, convincing and reliable kind, and they are not to make up for carelessness, supineness or incompetence on the part of the Police to bring home a specific crime to a particular person for which he can be convicted and punished, by calling on him to find an amount of security, which he necessarily cannot provide, and then by reason of his default thus effecting his committal to jail. As the powers of Magistrates under Chapter VIII. are very great, so do they require to be exercised with sound discrimination and discretion, and in cases under sec. 110 particularly after very full and searching inquiry." [*Hamidulla Khan*, A. W. N. (1889) 114.]

Where the persons summoned and called upon to show

cause under sec. 112 do not do so, they cannot be forthwith called upon to execute the necessary bonds. The Magistrate is bound to proceed under sec. 117 to enquire into the truth of the information upon which he has acted and to take such evidence as may appear necessary. (*Gaiba*, Bom. H. C. Nov 19, 1891). Before making an absolute order directing a person to enter into a bond to keep the peace, the Magistrate must take evidence on which he bases the order in the presence of the accused or his agent. [*Maghan*, 2 B. L. R. A. Cr. 7 (1868): 10 W. R. Cr. 46.]

A Magistrate, before whom an enquiry is pending under sec. 117 Cr. P. C. is not competent to take action under sec. 202 Cr. P. C., after the person who was the subject of the enquiry has been called upon to show cause. The procedure prescribed by section 202 can only be adopted before a process is issued compelling the attendance of a person complained against. [*Khurrum Singh*, A. W. N. (1896) 140] In this case the Magistrate, after recording all the evidence on behalf of the person at whose instigation sec. 107 proceeding was ordered, and after keeping the proceeding pending before him for more than two months and a half called for a report from a Tahsildar and on his report, after three months, cancelled his order: Knox J., observed: "a case of this kind should be determined within ten days or a fortnight at the utmost; and if the procedure prescribed for summons cases had been adopted, it would doubtless have been determined within that time." Further: "A Magistrate, who after issue of process and taking evidence, calls upon another person to make an enquiry and a report, acts distinctly in contravention of the procedure prescribed by law. When he acts upon that report, which is not evidence, he in fact abdicates his judicial functions and instead of deciding the case himself upon evidence as the law requires him to do, leaves it to another person not authorized by law to decide it."

A Magistrate proceeding under sec. 117 Cr. P. C., as nearly as practicable, in the same way as under sec. 242 Cr. P. C., must state to the accused the particulars of the matter against them, and ask them if they can show cause why they should not be required to execute bonds. The

question "are you willing to execute the bonds required or do you wish for further enquiry ?" answered by a statement that the accused would execute bonds, is not sufficient compliance with sec. 117 Cr. P. C. [*Palaniappa Asary*, 34 Mad. 139 (1911).]

The law does not empower a Magistrate to detain in custody, until the completion of inquiry, a person against whom proceedings under sec. 107 or 110 are pending. [*Raghunandon Pershad*, 8 C. W. N. 779 (1904) : 32 Cal. 80].

Although in an inquiry under sec. 117 the nature or quantum of evidence need not be so conclusive as is necessary in trial for offences, the Magistrate should not proceed purely upon an apprehension of a breach of the peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against each person implicated, which would lead to the conclusion that an order for furnishing security is necessary. What the nature of facts should be depends upon the circumstances of each case, but where the nature of the Magistrate's information requires it, overt acts must be proved before an order under sec. 118 can be made, and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace. [*Abdul Kadir*, 9 All. 452 (1886).]

The evidence necessary to support an order under sec. 118 Cr. P. C. for security to keep the peace need not invariably be as to overt acts on the part of the persons against whom such order is made. [*Barjore Singh*, A. W. N. (1895) 241].

In *Purshattom Kara*, 26 Bom. 418 (1902) : 4 Bom. L. R. 38, the Court observed : (at p. 421) : " We think that proceedings of this kind [sec. 110 cls. (*d*) and (*e*)] against such a large body of men should not have been undertaken unless the police had evidence ready to prove all the persons named were members of a gang in the habit of acting together for one of the purposes mentioned in sec. 110. Gangs, no doubt, do exist sometimes, and proceedings for their suppression may be desirable. But where a large number of persons are to be proceeded against, great care must be

taken not to mingle together persons against whom there is evidence with persons against whom there is hardly any. .....Moreover, it is obvious that in a case of this kind, involving a large number of accused persons, besides pleaders and witnesses, the trial should have been conducted at some central place as near as possible to the place where the accused and the witnesses lived." With regard to the Magistrate's holding camp offices at different places where the accused and their witnesses had to attend to their much inconvenience, the Court observed : " It is always much to be regretted when necessity compels the parties and witnesses in a criminal case to follow Magistrates from camp to camp ; but in a case like the present case, which was somewhat novel in the attempt to apply sec. 110 towards the prevention of malpractices, such as were alleged it was especially desirable that the proceedings should be conducted by a stationary Magistrate."

The inquiry provided by secs. 117 and 118 Cr. P. C. is not strictly limited by the terms of the order drawn up under sec. 112 calling upon the accused to show cause why he should not execute a security bond to keep the peace or for his good behaviour, though if the person eventually bound down can show that he was misled or prejudiced by the terms of the order he would be entitled to relief. [*Kadir Mirza*, 17 C. W. N. 331 (1912).] In this case the defendant was ordered by the Sub-divisional Magistrate to give security for good behaviour for two years. The Sessions Judge, under sec. 123, while holding that there was good evidence for binding the man down, set aside the order on the ground that " unfortunately, the proceedings were very defective." The defect in them seems to consist of this, that it is stated in the order drawn up under sec. 112 that, as it appeared to the Magistrate that the defendant was by " general repute " a thief and burglar, he was called upon as such to show cause why he should not give security. The point is that he ought to have been called upon to show cause as being " by habit " a thief and burglar, and that as he was not so addressed, he could not be bound down under that description. As the evidence was mainly directed to show that the defendant was a habitual thief

and burglar and that his cross-examination was directed to refute the evidence to that effect, the High Court directed the order of the Magistrate to be restored.

Joint Inquiry.

Where in a proceeding under sec. 107 against a party consisting of 17 persons, the Magistrate bound down all of them without coming to a separate finding as regards each of them individually, it was held that the order is bad in law and ought to be set aside. [*Ajudhya Prasad*, 12 C. W. N. 992 (1908) : 35 Cal. 929] In an inquiry against more persons than one it is essential for the prosecution to establish what each individual implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace. In holding such an inquiry it is improper to treat what is evidence against one of such persons as evidence against all, without discriminating between the cases of the various persons implicated. [*Abdul Kadir*, 9 All. 452 (1886).] The same view was expressed in *Prankrishna*, 8 C. W. N. 189 (1903). There the Court said that the facts must show that such persons are *individually* and not collectively connected with them. Where a Magistrate ordered sixty-nine persons to give security to keep the peace as they were likely to commit a breach of the peace at a religious procession, the High Court observed that the Magistrate should have dealt with the cases of the ten alleged "ring leaders" first and should have required the Tahsildar and Sub-Inspector to give much fuller statements *seriatim*, and particularly as to each individual man ; and as to the remaining fifty-nine there should have been some clear and distinct proof, affecting each of them, and warranting the inference that such person was likely to commit a breach of the peace, or to do wrongful act likely to commit a breach of the peace. [*Nathu*, 6 All. 214 (1884)]. In *Srikanta*, 9 C. W. N. 895, (1905), where all the acts alleged against certain persons against whom a joint inquiry under sec. 107 was instituted were found to have been done by them for the benefit of their master, it was held that, although each of the acts alleged was not done by all of them together, yet they were associated together within the meaning of sec. 117 (d) so

as to justify a joint inquiry, and that they could be proceeded against under sec. 107, notwithstanding that the acts imputed to them were committed by them not as individual members of a society, but as servants of another person.

In a joint inquiry against several persons under sec. 107 there must be specific finding against each person of acts rendering him individually liable under the section before an order can be passed binding him down. [*Ajudhya Persad Singh*, 35 Cal. 929 (1908)]. But see *Kalu Mirza*, 37 Cal. 91 (1909), where the accused were the members of a gang formed for the purpose of habitually cheating in concert, and though they were not all concerned together in each of the various acts alleged against them, the joint inquiry was held to be not illegal.

Where a Magistrate bound down 26 persons to keep the peace after recording evidence as to 11 of them only, the order was set aside as to the persons not affected by the evidence. [*Kassim*, 10 C. L. R. 335 (1882).]

ADMISSION.

In *Lall Beharee*, 11 W. R. Cr. 50 (1869), it was held that a Magistrate can order a person to be bound down on his own admission.

A statement made by person against whom proceedings are taken under Chap. VIII, expressing willingness to give security should be recorded as as nearly as possible in the words used by him, and where a Magistrate fails to do so, the proceedings are liable to be quashed. [*Subba Naiken*, 17 Mad. L. J. 438 (1907)]

There is no rule of law which prevents the admission, without corroboration, of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to same charge as the accused. [*Rajani Kanta*, 13 W. R. Cr. 24 (1870).]

In *Ram Chunder Haldar*, 12 C. W. N. 160 n. (1908): 35 Cal. 674 : 8 C. L. J. 68, a Magistrate on the admission of the defendant in a proceeding under sec. 107 bound him down. The High Court held that such order was illegal,

because no evidence was taken. See also *Kidar Nath*, 7 N. W. P. H. C. R 233 (1875).

In *Prathipati Venkatasami*, 30 Mad. 330 (1907): 17 Mad. L. J. 407, the Magistrate did not record any evidence but treated the statement of the Vakil as an admission of an intention to commit a breach of the peace and passed the order of binding over the defendant. The High Court held the procedure to be wrong. See *Palaniappa Asary*, 34 Mad. 439 (1911).

GENERAL REPUTE AND EVIDENCE.

Sec. 117 cl. (3) provides that the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise. The expression "general repute" has not unfrequently caused a great difficulty as the legal practitioners are aware. In well known case of *Rai Isri Pershad*, 23 Cal. 621 (1896), it was held that the general reputation of a man is that which he bears in the place in which he lives "amongst all the townsmen." This definition was adopted by Stanley C. J., in *Jagarnath*, A. W. N. (1903) 181. In *Kitabdi*, 27 Cal. 993 (1900): 5 C. W. N. 29, the Court said that under the terms of sec. 110 Cr. P. C. the reputation which the person is found to have, means the reputation which comes from places other than his own village or place of residence. [*Chintamon Singh*, 35 Cal. 243 (1907): 12 C. W. N. 299: 7 C. L. J. 177.]

In *Rup Singh*, 1 A. L. J. 616 (1904) it was held that words "evidence of general repute" have received a very wide interpretation in these provinces; that vague and general statements that a man is habitual offender is not sufficient evidence on which an accused person is liable to be bound down under sec. 110; that the evidence of the repute of an accused person must be the evidence of persons who are speaking to the matters within their personal knowledge and not from mere hearsay.

General reputation may be good, may be bad. But it is the general opinion of the people who have known him or have heard of him. General reputation is certainly not rumours. It has stronger basis than rumours. Rumours

are generally hearsay, but general reputation is not. Hearsay evidence is inadmissible, (See sec. 60 Evi. Act), and rumours as such should carry little or no weight at all. Both Calcutta and Allahabad High Courts have distinctly held that rumours that a man is a bad character is not evidence of general repute. [*Rai Isri Pershad*, 23 Cal. 621 (1895); *Rajendra*, 1 A. L. J. 611 (1904).] The Bombay High Court, however, has held that hearsay evidence amounting to evidence of general repute is admissible for the purpose of proceedings under Chapter VIII. of the Code of 1898. [*Raoji Fulchand*, 6 Bom. L. R. 34 (1903)].

To understand the difference between general reputation and rumours, the observations of Petheram, C. J., in *Rai Isri Pershad's* case, were very important. His Lordship observed :—"It is hardly necessary to say that evidence of rumour is mere hearsay evidence, and hearsay evidence of a particular fact. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character ; but to say that, because there are rumours in a particular place among a certain class of people that a man has done particular acts, or has characteristics of a certain kind, those rumours are in themselves evidence under this section, is to say what the law does not justify us in saying, and consequently we think that the evidence of general repute is this case is evidence of little or no value." [*Rai Isri Pershad*, 23 Cal. 621 p. 628 (1895).]

Although, when witnesses are examined as to general character, their testimony is not of much value as to the habits of a suspected person, unless they can, in support of their opinion, adduce instances of the misconduct imputed ;

when the question is only as to his *repute*, the evidence of witnesses, if reliable, is not without value, though they may not be able to connect the suspected person with the actual commission of crime. [*Pedda*, 3 Mad. 238 (1881)]. When the person, against whom proceedings under sec. 110 is instituted for being a habitual offender, is a well-known resident of a city, his fellow-citizens, though not living in his immediate neighbourhood, are competent witnesses to his general repute. [*Wahed*, 11 C. W. N. 799 (1907)].

It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. But where a person is called upon to furnish security to keep the peace, evidence of general repute cannot be made use of to show that such person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. [*Bidhyapati*, 25 All. 273 (1903)]. Evidence of association with bad characters is evidence of reputation, but such reputation can only be based upon association with *proved* bad characters and not with *reputed* bad characters. [*Nepal*, 13 C. W. N. 318 (1908)]. When security is demanded on evidence of general repute, there ought to be no doubt, as to what a man's general repute is. [*Nasir*, 2 P. L. R. 52].

Where a person is on his admission, as stated by the Magistrate but not borne out by the record, a by no means reputable character, the Court held that sec. 505 Cr. P. C., (Act X. of 1872), was 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. [*Kalachand*, 6 Cal. 14 (1880)].

The finding that an accused person is by general repute a habitual offender committing mischief and that he protects thieves is sufficient to warrant action under sec. 110. [*Shahukha*, 9 Bom. L. R. 164 (1907)]. In this case the inquiry was under sec. 110 (*a*), (*b*), (*c*), (*d*) and (*f*).

In *Muthu Pillai*, 34 Mad. 255 (1911) : 18 M. L. T. 347, it was laid down that a provision of law which is an exception

to the general rules of evidence must be only applied to the cases to which it is confined by the Legislature. No argument can therefore be deduced from the admissibility of evidence of general repute under sec. 117 Cr. P. C.

Evidence of general repute is not admissible in cases coming under cl. (f) of sec. 110 Cr. P. C. [*Akhoy*, 5 C. W. N. 249 (1900); *Kalai*, 29 Cal. 279 (1901); (*Wahid Ali*, 11 C. W. N. 789 (1907). See also *Parasulla*, 13 C. W. N. 244 (1908), and *Raoji*, 6 Bom. L. R. 34 (1903); *Ritbaran*, Revn. No. (Cal.) 438 of 1900; *Muthu Pillai*, 34 Mad. 255 (1911): 8 M. L. T. 347].

"Otherwise"—

The word "otherwise" in cl. (3) of sec. 117 Cr. P. C. has been explained in *Kallumal*, A.W.N. (1904) 140. Blair J., said: "According to the general rule of interpretation the word "otherwise" must be read as meaning something *ejusdem generis* with a particular or particulars alleged above it. It seems difficult to interpret the word "otherwise" in the sense in which the law would ordinarily read it. Applying the *ejusdem generis* principle of interpretation the nearest approach to the particular general repute would be hearsay not amounting to general repute." With all deference to his Lordship it may be said that the interpretation is rather laboured than natural. The evidence of general repute has been introduced into this Chapter for some special purpose, by the Legislature in direct violation of the ordinary rules of evidence as laid down in the Evidence Act. By this special provision the evidence of general repute is admissible. But it certainly does not exclude other evidence which is sanctioned by the general law as enunciated in the Evidence Act. Therefore, it may be suggested that "otherwise" means by other evidence which is admissible by the ordinary rules of the Evidence Act. Such evidence may be the evidence of specific acts or previous conviction, or association with *badmashes*, &c. In this case, the Court held that though it is not very clear what the precise meaning of the words by evidence of general repute or otherwise as used in sec. 117 may be, it was the intention of the Legislature that the Magistrate should use a very

large discretion as to the evidence which he may admit in proceedings under sec. 110 and the following sections of the Code.

In dealing with evidence under sec. 110 Cr. P. C., sec. 54 of the Evidence Act is worth remembering. That section runs thus :—

In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation. 1. This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Suspicion—

In a proceeding under sec. 110 Cr. P. C. it is not sufficient to say generally that there is suspicion. (*Kookor*, 1 C. L. R. 130). Where there was no evidence of any complaint having been made to the Police or to a Magistrate against a person called upon to find security to be of good behaviour, or that he had been arrested on a charge of having committed any offence, the facts that certain witnesses stated that he bore a bad character and that he was said by the Police to have been suspected in several cases were not sufficient to warrant an order under sec. 110. [*Husain*, A. W. N. (1905) 34]. Where there was no evidence of conviction of any offence against the accused, nor were there any instances referred to in which he committed an act of extortion or mischief or that he did any other act by reason of which he may be regarded as a dangerous person but the only thing against him is that a police witness said that he suspected him in a dacoity case, though there was nothing to connect the accused with it : no order under sec. 110 will be justifiable in snch a case. (*Rajendra*, 1 A. L. J. 611 (1904) *per* Banerji J.).

Where the evidence consisted mainly of the fact that the accused were Mewatis of a particular place, and that the Mewatis of that place were looked upon generally

and collectively by the other inhabitants of the neighbourhood as bad characters and dangerous persons, it was held that such evidence was not enough to support an order under sec. 118 Cr. P. C. in the absence of specific evidence against each of the accused individually. [*Hurmat*, A. W. N. 41 (1905)].

A person acquitted of dacoity cannot be bound over under sec. 110 Cr. P. C. on the evidence merely of person stating that they began to suspect him since the dacoity case. [*Kismat*, 11 C. W. N. 129 (1906)]. Nor upon the mere statements of witnesses that they suspect, or are under the impression, that the persons proceeded against are thieves or dacoits, when no fact is mentioned to indicate that there was sufficient reason for their suspicion or impression. [*Alep*, 11 C. W. N. 413 (1906)].

Where the evidence consists almost entirely of evidence of repute and of one or two acts which are so vague and said to have been committed long ago, it is impossible to consider such evidence sufficient to justify an order to give security for good behaviour. [*Akhoy*, 5 C. W. N. 249 (1900)]. On an inquiry whether a person is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of habit, but such evidence unless supplemented by evidence of misconduct committed within a year or so before the institution of proceedings under sec. 110 cannot justify the making of the order under sec. 118 Cr. P. C. [*Wahid Ali*, 11 C. W. N. 789 (1907)]. For a conviction under sec. 110 Cr. P. C. that a person is by habit a thief, the evidence must be of such a nature as would lead to a reasonable and definite ground for coming to the conclusion that the accused is an habitual thief. [*Gholam*, 8 C. W. N. 543 (1904)]. In this case the Court after going through the evidence said: "The men seem to have been convicted of certain offences before the present proceedings. That has led to their being suspected, and the witnesses for the prosecution who stated that they had the reputation of being thieves practically based their opinion upon those convictions. There is no specific ground for the reputation which these people are said to have acquired, and no instance of actual theft

in which the petitioners are said to have been concerned or any direct evidence to establish the association for the commission of theft. The evidence upon which the District Magistrate relies, that they were seen one night on a boat and that they tried to run away, may give rise to a suspicion. But under sec. 110, the evidence must be of such a nature as would lead to a reasonable and definite ground for coming to the conclusion that they are habitual thieves."

General Evidence—

It is not because a man has a bad character, that he is, therefore, necessarily liable to be called upon for sureties of the peace or for good behaviour. There must be satisfactory evidence in the one case that he has done something, or taken some step, that indicates an intention to break the the peace, or that is likely to occasion a breach of the peace; and in the other, that he is within the category of persons mentioned in sec. 110, the determination of which question must always be guided by the considerations pointed out in *Nawab*, 2 All. 835. [*Babua*, 6 All. 132 (1883)].

Where the only evidence on record consisted of accused's confession that he was of bad character and had been in jail, the Court held that that did not prove that the accused was an habitual thief. [*Kaka*, 3 Bom. L. R. 260]. The fact that a person was arrested on a suspicion of the commission of a dacoity is not sufficient to require him to furnish security for good behaviour. (*Nga Tue*, 1 Burma 422.) When a man is proceeded against under sec. 110, the Magistrate must not rely on police-report but should take evidence as to the general character of the person so charged. [*Alum*, 5 W. R. Cr. 2 (1866)]. The fact that a man is a bad character, earning his livelihood by prostituting his wife is not sufficient to institute a proceeding under sec. 110. [*Yaghi*, P. R. (1892) 5]. Before a person can be ordered to give security for good behaviour on evidence of general bad repute, the bad repute must be universal, and there should be no doubt as to this. (*Sher Singh*, 4 P. L. R. 241).

The evidence that there are rumours in a particular

place that a man has committed acts of extortion on various occasions, that he has *badmashes* in his employ to assist him and generally that he is a man of bad character is not evidence of general repute under section 117 Cr. P. C. [*Rai Isri Pershad*, 23 Cal. 621 (1895)].

Loose statements of the Tahsildar and the Sub-Inspector as to the large majority of the persons summoned are quite insufficient to justify the wholesale order of security. [*Nathu*, 6 All. 214 (1894)].

The evidence taken in another case is not admissible under sec. 33 of the Evidence Act. The witnesses must be examined in the particular case. [*Prosunno*, 22 W. R. Cr. 36 (1874) ; *Baboo Futteh Bahadoor*, Ibid, 74 (1874)]. The depositions of witnesses in certain cases in which the accused was acquitted of unlawful assembly and rioting are not admissible in a proceeding under sec. 107. Because when those witnesses failed to prove the commission of distinct criminal acts, they cannot certainly be understood to prove by implication that the defendant will commit a breach of the peace. [*Dinabundhoo*, 24 W. R. Cr. 4 (1875)]. The evidence taken in the trial for dacoity should not be used against the accused with reference to the accusation under sec. 110, which evidence should be taken independently. [*Rojonikanto*, 13 W. R. Cr. 24 (1870)]. But the admission of such evidence does not necessarily prejudice the accused. (*Ibid*).

Evidence of acts falling within the scope of sec. 110 Cr. P. C., but committed several years before the date of the institution of the proceedings thereunder is admissible. [*Kali Prasanna*, 38 Cal. 156 (1911) ; followed *Wahid Ali Khan*, 11 C. W. N. 789 (1907)].

In *Ranjit*, 28 All. 306 (1905), evidence relating to events before the period of first binding down order for good behaviour was held inadmissible in support of a fresh order under sec. 110 Cr. P. C. Where evidence did not show that a person was "by habit a robber, house-breaker or thief or a receiver of stolen property knowing the same to have been stolen," but showed that the defendant had been guilty of acts of violence, a Magistrate could not require him to furnish security. [*Nawab*, 2 All. 835 (1880)].

In dealing with cases under Chap. VIII. of the Code, the Magistrate ought, especially where no previous conviction is proved, to test the prosecution evidence with great care. Evidence of association with bad characters, who were always suspected of being concerned in dacoities, and many of whom were during the period of association bound down under sec. 110 Cr. P. C., or convicted of dacoity and theft at various times, and especially in most cases shortly before, and near the place of, a dacoity, is a sufficient basis for an order under sec. 110 Cr. P. C. [*Chintamon Singh*, 35 Cal. 243 (1907) ; 12 C. W. N. 299 : 7 C. L J. 177].

Evidence of witnesses from villages where dacoities had occurred, but which were at some distance from the village where a person resided, as to his character in connection with the dacoities, is admissible as evidence of general repute under sec. 117 Cr P. C. [*Chintamon Singh*, 35 Cal. 243 (1907) : 7 C. L. J. 177 : 12 C. W. N. 299].

It is only evidence of specific conduct on the part of the accused, from which the reasonable and immediate inference is that they are likely to commit a breach of the peace, which will justify a Magistrate into adjudicating under sec. 491 Cr. P. C. [*Rajah Run Bahadur*, 22 W. R. Cr. 79 (1874)].

The extracts from the Magistrate's Administration Report appearing in the District Gazetteer and which contained reflections on the petitioners's conduct as landlord and upon which he relied to show that his treatment by the Magistrate leading up to the institution against him of proceedings under sec. 110, was in harmony with views expressed in the Administration Report were relevant and admissible in evidence. [*Rajendra N. Singh*, 17 C. W. N 238 (1912)].

Sec. 505 (Act X of 1872) Cr. P. C. enables a Magistrate to require security for good behaviour, whenever it appears to him, from the evidence as to general character adduced before him. that any perso n is by repute a robber, house-breaker or thief, or a receiver of stolen property knowing the same to have been stolen, or of notoriously bad livelihood, or is a dangerous character. But, when the evidence is entirely in a person's favour, and shows him to

be of excellent character, and in every respect contrary to the sort of person against whom the section is directed, to apply its provisions to him on a weak and unsupported charge of mischief by fire, is foreign to the intentions of the Legislature, and not only illegal, but oppressive. [*Hamidooddeen*, 24 W. R. Cr. 37 (1875)].

Defence Evidence.—

Evidence produced on both sides should be properly weighed. (*Sher Singh*, P. L. R. 241). Where the evidence for the defence to the effect that the accused is a man of good character is as weighty as, or, weightier than, the evidence for the prosecution, it cannot be held as proved that the accused is by general repute a bad character. [*Rajendra*, 1 A. L. J. 611 (1904)]. Where an accused was continuously for a period of 10 or 11 years employed as a servant of Tahsildar who, suspecting him of burglary, prosecuted him but he was discharged, and then when proceedings under sec. 110 were taken against him, he produced evidence to show that his character in the service of his former masters was satisfactory, it was held that such evidence was material to the case. [*Sham Lal*, 6 A. L. J. 487 (1909)]. If the Magistrate does not specifically consider the evidence for the defence, the High Court would remand the case to him for further consideration. [*Parasulla*, 13 C. W. N. 244 p. 248 (1908)].

CASES UNDER Cls. (*a*) to (*f*). of Sec. 110.

S. 110 Cl. (*a*).—

[*Pedda*, 3 Mad. 238 (1881) ; *Gholam*, 8 C. W. N. 543 (1904).

S. 110, Cl. (*d*).—

Habitual Extortion.

In *Hari Talang*, 4 C. W. N. 531 (1900), with reference to the charge of habitual extortion [cl. (*d*)] the Court said: "The evidence shows that certain acts amounting to extortion were committed by these persons in the per-

formance of their duties as *burkandazes* in a certain Zemindari. No doubt, they are liable to punishment on conviction in a regular trial for any of these acts, and we think that that was the proper mode of dealing with the case, but t cannot be said that they habitually commited extortion, by which, we understand, is meant that they are in the habit of committing extortion as individual members of the community, because if it should happen that they were discharged by the zemindar or cease to be in his employ, no doubt the acts of the description stated by the witnesses for the prosecution would no longer be committed by them, for, it would no longer be their interest to do such acts in the interest of their employers and they certainly would not be likely to commit them in their own private capacities. We think, therefore, though with some reluctance, that this is not a case in which security for good behaviour can properly be required." See *Wahid Ali*, 11 C. W. N. 789 (1907) under Cl. (f).

Habitual Cheat.

When the question is wether a man is a habitual cheat, the fact that he belongs to an orgnisation formed for the purpose of habitually cheating in concert is relevant under sec. 11 Evi. Act, and it is open to the prosecution to prove against each accused that the gang is a gang of cheats, or, in other words, that the members of the gang do cheat. [*Kalu Mirza*, 14 C. W. N. 49 (1909)].

S. 110 Cl. (*e*).—

Offences involving a breach of the peace mean offences of which breach of the peace is an ingredient, and persons cannot be bound down under sec. 110 cl. (*e*) unless they are found to have habitually committed, attempted to commit, or abetted commitment of, such offences. [*Kali Prosanna Basu*, 38 Cal. 156 (1911): 15 C. W. N. 366]. Where under the orders and with the connivance of the zemindar various acts of oppression are committed, such conduct of the zemindar would bring him within the clause (*e*) of sec. 110 Cr. P. C. [*Kasi Sundar Roy*, 31 Cal. 419 (1904)].

Where a person, who was found by the Magistrate to be addicted to acts of immorality in attempting to seduce women and behaving indecently and immodestly towards them, was bound over to give security for good behaviour under sec. 110 cl. (*e*), it was held that the order should be set aside as the offences were not such as involving a breach of the peace within the meaning of that clause. [*Arun Samanta*, 30 Cal. 366 (1902)]. Where the only conviction against a zemindar was one under sec. 150 I. P. C., and there was evidence that with his *lathials* (or his servants acting under his own orders) took articles of food from Bazar vendors, that he assembled *lathials* to enforce the performance of *puja* by his own *purohit*, threatened a witness with violence for deposing against him, and, with his *lathials*, uprooted some trees, cut the crops of his opponents, molested rival fishermen in boats and attempted to stop a marriage procession, but no breach of the peace was committed or complaint made by the opposite party: it was held that such acts did not involve a breach of the peace so as to support a charge of habitually committing offences within clause (*e*) of sec 110. [*Kali Prasanna Basu*, 38 Cal 156 (1911)]. But where it was found that the *naib* of two co-sharer zemindars who were brothers has led several riots in their interest and had been convicted in several cases and that certain *lathials* were always employed to help their cause, it was held that one of them who was a mukhtear practising and residing elsewhere and who was not shewn to have been implicated in the acts, should not have been bound down, but the other, who resided at the place, and whose complicity was established by the evidence, was rightly bound down. (*Ibid*). *Sunder Roy*, 31 Cal. 419 (1904) followed.

S. 110 Cl. *(f)*—

Cl. (*f*) of sec. 110 Cr. P. C. reproduces a portion of sec. 506 of the Code of 1872 (Act X. of 1872). It was as follows :—"Is so desperate and dangerous as to render his being at large without security hazardous to the community." A man of "desperate and dangerous" character

in cl. (*f*) of sec. 110 means "a man who shows reckless disregard of the safety of the persons or the properties of his neighbours. [*Wahid Ali*, 11 C. W. N. 779 (1907)].

To prove a charge under cl. (*f*) of sec. 110, there should be proof of specific acts showing that the accused, 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. [*Kalai*, 29 Cal. 779 (1901)]. See also Revn. case (Cal.) No. 438 of 1900, re *Ritharan Singh*, which held that the evidence of general repute is not admissible with respect to charge under sec. 110 cl. (*f*).

Where the imputations were that the accused had for some time past made themselves very objectionable in the neighbourhood and that they had been annoying the villagers in various ways by kicking at their doors at night or throwing brick-bats on the roof and annoying respectable women, it was held that these imputations, even if proved, do not constitute conduct so as to render the accused liable to give security for good behaviour by reason of their being so desperate and dangerous as to render their being at large without security hazardous to the community. [*Akhoy*, 5 C. W. N. 249 (1900)].

Evidence of acts of extortion committed by a person, unless those acts were accompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring his case within cl. (*f*) of sec. 110 Cr. P. C. [*Wahid Ali*, 11 C. W. N. 789 (1907)].

Where a person is solely charged under sec. 110 (*f*), Cr. P. C., evidence of general repute is inadmissible to prove that he is a desperate and dangerous character. [*Muthu Pillai*, 34 Mad 255 (1911): 8 M. L. T. 347].

Both in *Akhoy and Kalai*, it was held that a charge under clause (*f*) of sec. 110 cannot be proved by general reputation. In *Akhoy*, it was held that evidence of general repute is not admissible in proceedings taken under

clause (*f*), *general repute* being admissible only in proceedings in which the facts to be proved is that a person is a habitual offender. (*Vide* clause (3), sec. 117 Cr. P. C.) In *Wahid Ali*, 11 C. W. N. 789 (1907), their Lordships agreed with the ruling in *Akhoy* and held that evidence of general repute is not admissible to prove that a person was of the character described in cl. (*f*).

In *Parasulla*, 13 C. W. N. 244 (1908),the learned Judges in considering how far the evidence of general repute may be taken into consideration in establishing the charge under cl. (*f*) observed as follows : "It is not necessary for us to say anything about the legal points raised in regard to cl. (*f*). The ruling in *Akhoy*, 5 C. W. N. 249, has been modified by the ruling laid down in *Wahid Ali*, 11 C. W. N. 789, and it is clear that where evidence is admissible and has been admitted to show that a man is a habitual offender under other clauses of sec. 110 and is also being tried under cl. (*f*), that it is a mere inference of fact from the nature of the offences whether he is a dangerous and desperate character or not. This is thrown out in the ruling, which we have just referred to, in the case of *Wahid Ali*, where it was held that under cl. (*f*) evidence of general repute is not admissible, but the Court further held that evidence of acts of extortion committed by a person, unless those acts were accompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring the case within cl. (*f*) of sec. 110 ; that is to say, if the habitual crime of extortion or whatever else causes danger to the persons and properties of other persons, though there may be evidence of general repute, it would be sufficient to bring it within cl. (*f*) by mere inference of fact."

SECURITY.

The security demanded under the provisions of Chapter VIII. is a personal bond, with or without sureties. Under sections 106, 107 and 108, the personal recognizance may be with or without sureties, but under sections 109

and 110, it is with sureties. It will be further noticed that under the provisions of sections 106 and 110, the period of security is not to exceed three years, whereas under sections 107, 108, and 109, the maximum period is one year.

Under section 106 the bond required to be executed is to be for a sum *proportionate to the means* of the offender. The words "for a sum proportionate to his means" do not appear in section 107, 108, 109 or 110. But in section 118, which governs these sections, it is provided that "the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive." Though the words "circumstances of the case" do not imply the same meaning as the words "proportionate to the means of the offender", yet it may be safely said that the latter ought to be the basis in fixing the amount of a bond. For what may not be excessive according to the circumstances of the case, may be excessive according to the means or condition of the offender.

In fixing the amount of security the Magistrate should consider the station of 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 provided as a protection to society against the perpetration of crime by the individual, and not as a punishment for a crime committed, and being made conditional on default of 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. [4 Mad H. C. R. App. 46 (1869); followed in *Dedar*, 2 Cal. 384 (1877): 1 C. L. R. 95]. In *Nilmadhub*, 19 W. R. Cr. 1, it was held that a Magistrate should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound. See also *Baboo Futteh Bahadur*, 22 W. R. Cr. 74. In *Dedar*, 2 Cal. 384 (1877): 1 C. L. R. 95, it was laid down that the amount of security should be such as to afford the person a fair chance of complying with the order, so as not to make the alternative imprisonment unavoidable. Such imprisonment is not as a

punishment for crime committed, but as a protection to society against the perpetration of crime by the individual on his failing to furnish other security. Where the amount of the recognizances is wholly out of proportion to the nature of the dispute, and to the means of the parties, the High Court will interfere. [*Juggut*, 2 Cal. 110 (1876); *Dedar*, Ibid 384 (1877). *Rama*, 16 Bom. 372 (1892); 4 Mad. H. C. App. 46 (1860); *Baboo Futteh Bhadur*, 22 W. R. Cr. 74 (1874); *Raza Ali*, 23 All. 80 (1900): A.W.N. (1900) 204. *Nilmadhub*, 12 W. R. Cr. 1, which held that the High Court could not interfere, but the Government might be moved is not law now.].

An order requiring security under sec. 106 should not direct that the person convicted should execute the engagement to keep the peace at the end of the time of imprisonment to which he may have been sentenced. The person convicted is at liberty to execute the engagement at once or at any time during the term. [*Bachu*, 7 N. W. P. 328 (1875)].

Excessive Security.—

The following amounts were considered as excessive :— *viz.*, one in the sum of Rs. 50,000, and two, Rs. 10,000 each, and three, Rs. 4,000 each. [*Nilmadhub*, 19 W. R. Cr. 1 (1872)]. One in the sum of Rs. 10,000 with two sureties for Rs. 5,000 each. [*Baboo Futteh Bahadur*, 22 W. R. Cr. 74 (1874)]. In this case the accused swore an affidavit, (which was uncontradicted) that his whole property in the world is worth less than Rs. 1,000. The Court observed : " Although it appears that his master, in order to procure his liberation, furnished the necessary security pending this inquiry, yet it does not follow, nor have we any reason to suppose, that he would be willing to enter into that security for any longer period ". The security was reduced to Rs. 1,000 personal recognizance with one surety for Rs. 1,000 or with two sureties for Rs. 500 each.

Security of Rs. 20,000 in four sureties of Rs. 5,000 each. (*Umbica*, 1. C. L. R. 268). Bonds amounting altogether to upwards of Rs. 60,000. [*Juggut*, 2 Cal. 110 (1876): I. C. L. R. 48]. The High Court quashed the order holding

that it was altogether unreasonable. A bond for Rs. 500 for good behaviour for one year with sureties for the like amount. [*Rama*, 16 Bom. 372 (1892)]. In this case the High Court reduced the amount, of the bond to Rs. 100 with one surety for the same amount, observing that "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 a heavy sum to obtain the security." Security from three persons in two sureties of Rs. 500 each for good behaviour. [4 Mad. H. C. R. App. 46 (1860)].

Magistrates to act discreetly.—

The Madras High Court observed that they were not satisfied that the Magistrate exercised a proper discretion in requiring security in so large a sum from persons who admittedly had no means of livelihood. The power given by the section is one that should be exercised discreetly. [4 Mad.H.C.R App. 46 (1860)]. Where a Magistrate, acting under these sections, required securities to an amount which the person concerned was totally unable to furnish, and, in consequence, had to remain in jail for some time, the High Court in reducing the amount of security held that the Magistrate had not exercised a proper discretion in the matter. [*Raza Ali*, 23 All. 8 : A. W. N. (1900) 204. Followed *Rama*, 16 Bom. 372. (1892)].

An order to give security for good behaviour must specify a definite period for which the security is required. [Mad. H. C. Proc. April 8, 1876 ; Weir 725].

Arbitrary Conditions.—

In making an order for security under this Chapter a Magistrate has no right to impose an arbitrary condition not essential to restrain a party from the infringement of law, e. g., a condition requiring the accused to furnish two sureties being persons of respectability and substance, not related to him, and residing within one mile of his his house. [*Narain Sooboodhee*, 22 W.R.Cr. 37 (1874)]. Jackson J., observed : "The law does not enable the Magistrate to impose arbitrary conditions not essential for the object in

view, *viz.*, to restrain a party from infringement of the law ; still less, impossible conditions....To make such an order as that is tantamount to saying that the prisoner shall not furnish any security, but must go to jail. It seems to me, it is not in the power of the Magistrate to make such an order. The object of the law is that the person charged shall furnish, if he can, good and sufficient security."

A Deputy Magistrate by his order required the sureties to be persons of adequate means, position and respectability, residing in the neighbourhood of the defendant, and able to exercise a control over his behaviour. It was held that such conditions and limitations imposed upon persons who may have to give security are not recognized by law. Under section 118, no conditions and limitations can be imposed upon persons ordered to give security. [*Jhojha Singh*, 24 Cal. 155, (1896)].

Second Security.—

After the expiration of the term of confinement in default of security, a second security cannot be demanded except upon some new proof of bad livelihood, or that a person is not capable of following an honest calling. [*Juswant*, 6 W.R.Cr. 18 (1886)]. An order to execute a second recognizance during the time the first recognizance in force is illegal. [*Kumodini Kant*, 9 B. L. R. App. 30 (1872) : 11 W. R. Cr. 44]. A security to keep the peace once given is sufficient for that purpose so long as it is in force in respect of every act of the person bound over breaking any of its conditions. A second order to give further security during the continuance of the first one is not contemplated by law ; but if upon expiry of the first order the dispute still exists, a further security may be demanded on fresh proceedings properly taken. [*Mahomed Abdul Bari*, 4 C. W. N. 121 (1899)]. Where A. has been bound over to keep the peace at the instance of B., a Deputy Magistrate is not competent to order him, shortly before the expiration of the recognizance, to enter into fresh recognizances to keep the peace on account of fresh dis-

putes with C, but should refer the case to the Sessions Judge. [*Kalinath*, 15 W. R. Cr. 18 (1871)].

Sec. 562 Cr. P. C.—

We may here note that besides sections 106, 107, 108, 109 and 110, there is another section in the Code of Criminal Procedure, *viz.*, section 562, which enables a a Magistrate, under certain circumstances, to direct a youthful offender to enter into his personal recognizance with or without sureties to keep the peace *and* be of good behaviour for a certain period. Of course sec. 562 is not a preventive measure. The order under it is passed in lieu of a substantive sentence. But its object, it may be said, is the same as that of the preventive measures, *viz.*, to prevent the accused from committing any further offences. The nature of bond and sureties is the same as that under Chapter VIII.

Common Law.—

Under the English Common Law, a convicted person, instead of being sentenced, may be released on probation of good conduct, and the judgment or sentence of the Court is *deferred* until a future date. The guilty person is required to enter into his recognizance, with or without sureties, to come up for judgment when called upon, and to be of good behaviour during the period of probation. The Supreme Court of Calcutta inherited all the English Common Law Jurisdiction which has been transmitted through it to the present High Court. The Charter Act has also confirmed all the inherent jurisdiction of the High Court at Fort William. In virtue of this inherent jurisdiction the special Tribunal which sat at the trial of the "Khulna Gang" case directed the prisoners in that case, on their plea of guilty to the charges, to be released on their entering into recognizance of a bond to appear and receive judgment when called on, and to be of good behaviour and to keep the peace in the meantime. [*Vide* 15 C. W. N. 151n (1911)].

We need hardly add that the object of this benevolent procedure is quite clear, inasmuch as it affords the guilty

persons an opportunity of improving their conduct instead of turning out as hardened criminals by associating with the convicts in jail. Provisions of bail-bonds and sureties are the same as in other instances.

SURETY.

The Code of Criminal Procedure has made no provision regarding status, nature or kind of sureties to be furnished under Chapter VIII. Sec. 122 of the Code, as amended by Act IV. of 1898, enables a Magistrate to refuse to accept any surety offered on the ground that such surety is an unfit person in cases to keep the peace as well as for good behaviour, the distinction in the Code of 1882 having been omitted. There is nothing in the Code to guide the Magistrate in determining the *fitness* of a surety tendered, except his own discretion. As a safeguard against using such discretion perversely or unreasonably, the Legislature has further enjoined that the Magistrate in rejecting a a surety as an unfit person should record his reasons for such rejection. But the main point *viz.*, what should determine the fitness or unfitness, has been left, as it were, to be solved by the decisions of the superior courts of law, but the result has been not very satisfactory.

The Calcutta High Court uniformly held that local residence of the surety is not of so much importance as his pecuniary qualification. The fitness of a surety does not lie in his being a neighbour, or a co-villager of the accused so as to be able to supervise, or. in other words, to exercise a moral control over the accused, but it depends upon the fact of his being able to pay down the amount of the surety bond in the event of default by his principal. In one instance, one of the learned Judges distinguished all the previous cases, while his learned colleague held that "the unfitness referred to in sec. 122, Cr. P. C., though it may not exclude the idea of pecuniary unfitness, is more concerned with the idea of moral unfitness." The Allahabad High Court, on the other hand, held that living at a distance is a disqualification, as a personal supervision over the accused is a great desideratum. The Bombay High Court holds the same view as the Allahabad High Court.

We have not got any ruling on the point of the Madras High Court. The difference of opinion is not limited to the residential qualification of the surety but to other matters as well. [See *Jafar Ali*, 14 C. W. N. 666 (1910)].

The following are the various cases decided by the Calcutta High Court :—

The earliest case was that of *Narain Sooboodhee*, 22 W. R. Cr. 37 (1874). In that case it was laid down that in making an order for security, a Magistrate had no right to impose an arbitrary condition not essential to restrain a party from the infringement of law, *e. g.*, a condition requiring the accused to furnish two sureties being persons of responsibility and substance, not related to him and residing within one mile of his house. In *Sunt Bilas Singh*, Cal. H. C. Pro. March 29, 1879, the High Court held that the sureties required need not necessarily be residents of the district. A Magistrate is not competent to reject as an unfit person a surety offered merely because he resides in another district ; and more especially, when his order does not place any limit with regard to the description of the sureties required. Undue and unnecessary difficulties cannot be legally thrown in the way of persons attempting to furnish the required sureties.

Coming to later decisions, we first notice the ruling in *Abinash Malakar*, 4 C. W. N. 797 (1900). In that case it was ruled that a Magistrate was not competent to refuse to accept a surety on the ground that he lives at a distance and, therefore, he cannot be expected to exercise due supervision. The observations of his Lordship, Mr. Justice Prinsep, who delivered the judgment, are very pertinent. With reference to the remark of the Magistrate to the effect that he refused the sureties because they lived at a great distance from the house of the defendant and therefore they could not be expected to exercise due supervision over his doings, his Lordship said : "That, in our opinion, is no sufficient reason. Cases may constantly occur in which a person who is in a position to give security to any amount on behalf of another may live at a considerable distance and yet he may be prepared to pledge his property on some assurance received from that other person.

It is not necessary, as considered by the Magistrate, that he should live in the neighbourhood and always keep his eye on his principal." In this view Stanley J., who formed Bench, concurred. It will be seen later on that Woodroffe J., does not agree with this view. See *Jalil*, 13 C. W. N. 80 (1908).

In *Ram Pershad*, 6 C. W. N. 593 (1902), the learned Judges pointed out that such grounds as that the sureties " unfit to control the defendant " or that they were " not residents of the village " or that they were " members of the same firm " were not valid grounds. " The question is not whether or not a surety can supervise a person for whom he stands surety, but whether he is a person of *sufficient substance* to warrant his being accepted." Similarly in *Adam Sheikh*, 35 Cal. 400 (1908), it was held that the best test of a surety is not whether he can supervise the person bound down but whether he is a person of *sufficient substance* to warrant his being accepted. Thus, the principle laid down in *Abinash Malakar* was followed in the above two cases.

But in *Jalil*, 13 C. W. N. 80 (1908), which came for decision in the same year as *Adam Sheik*, their Lordships (Woodroffe and Geidt, JJ.) did not follow the principle of a person of *sufficient substance* in accepting or rejecting sureties as enunciated in *Abinash Malakar*. In *Jalil* the two sureties rejected by the Magistrate were ex-convicts and persons of bad character belonging to the gang of the accused. The reason for rejection as given by the Magistrate, was among others, that it was the question of *control*. Woodroffe J., declined to interfere observing that under sec. 122 the Magistrate has to determine whether a person offered as surety is a fit or unfit person. " The Legislature has not particularized any kind of fitness. It has left the matter to the discretion of the lower Court, though this Court will in each case consider, according to its own circumstances, whether the order passed by the Magistrate is a reasonable order to make or not." His Lordship distinguished the decision in *Ram Persad* as *obiter dictum*, and that in *Abinash Malakar* as " making certain general observations which if binding at all upon a matter which is one

of discretion, bind only upon the same state of facts." His Lordship Geidt J., held : "The word 'unfit' (in sec. 122, Cr. P. C.), does not, in ordinary language, connote that idea (*i.e.*, the pecuniary position). If we look at sec. 513, Cr. P. C., we find that whereas in an ordinary case a Magistrate may accept a deposit money in place of a surety, an exception is made where a person is called on to furnish security for good behaviour. In my opinion, the unfitness referred to the sec. 122, Cr. P. C., though it may not exclude the idea of pecuniary unfitness, is more concerned with the idea of *moral* unfitness."

We may observe that the Allahabad High Court did not consider an ex-convict as an unfit person to become a surety for a party who was required to give security for good behaviour. [*Raghu Nath Singh*, 26 All. 189 (1903)]. Further, it does not appear from the judgment in the case of *Jalil*, that their Lordships considered the case of *Adam Sheikh*, which, as we have already said, followed *Abinash Malakar*. It is difficult to understand what is meant by *moral unfitness* as Geidt J., seems to interpret the meaning of the word "unfit" in sec. 122 Cr. P. C.

In *Jafar Ali*, 14 C. W. N. 666 (1910), which is a later case, the Court followed *Ram Pershad* and *Adam Sheikh*, and observed that "the first matter to be inquired into is the ability of the sureties to pay the sums for which they became bound down in case of default of the persons who are bound down. Beyond this, as is shown in the judgment in the matter of *Jalil*, 13 C. W. N. 80, there may be other matters to be considered which would be taken as objections to the sureties." But where the sureties are "competent from the pecuniary point of view and no other cause of unfitness is shown they should be accepted."

The following are the cases decided by the Allahabad High Court, which are on the same point.—

In *Toni*, A. W. N. (1895) 143, the Court observed : "It would be advisable, as a rule, in making an order for sureties that the order should define the class and the part of the country that the sureties should come from. There is no doubt that one object in obliging men to produce sureties

for good behaviour is that the sureties should have an interest in seeing that the man does behave well, and that they should also be in a position to exercise some influence over the man for whom they are to be sureties. As a rule the latter object could not be affected if the sureties were men from a great distance, and if they were persons who from their age, social position, or otherwise were unlikely to be able to exercise influence over the person for whom they were put forward as sureties."

In *Rahim Baksh*, 20 All. 206 (1898), it was held that as the object of requiring securities to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizance, but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order. It is, therefore, reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they could exercise any control over the man for whom they were willing to stand sureties. In this case the defendant lived in the city of Saharanpur, and the sureties tendered lived in the Roorkee tashil. [The Allahabad High Court did not follow *Narain Sooboodhi*, 22 W. R. Cr. 37, in this case.]

In *Babu*, A. W. N. (1898) 199, the Court held that the question whether the security offered for good behaviour is sufficient or not is a question to be decided upon the merits of each case The mere fact that the sureties tendered live in a different district from that of the person called upon to furnish security does not of itself disqualify them. At the same time the sureties should not be persons resident at such a distance as to make it unlikely that they could exercise any control over the man for whom they were willing to stand surety.

In *Nabu Khan*, 24 All. 471 ; A. W. N. (1902) 122, it was held that in ordering security for good behaviour, the Court is competent to assign some geographical limits within which the sureties required must reside.

The Bombay High Court in *Yesu Khandu*, 1 Bom. L. R. 520 (1899), where a Magistrate, in ordering security under sec. 110, directed that "the surety must be not from Karhati, and must not be of Kunbi class as these persons

assist the accused often for the sake of money," held that such conditions were illegal and observed : "The applicant is a resident of Karhati and would naturally be able to find security there. To forbid this and require him to find security from a distance is a condition which was condemned by the Chief Justice of the Allahabad High Court. [Vide *Rahim Bakhsh*, 20 All. 206 (1898)]. In addition to this, to cut him off from the whole of the Kunbi class is an arbitrary condition which we cannot approve of. The result is equivalent to saying that no security will be accepted but that the applicant must go to jail."

Recording reasons.—

Sec. 122 enables a Magistrate, as we have said already, to reject a surety tendered as being an "unfit person" but the Magistrate shall have to record his reasons therefor. [*Ela Buksh*, 14 C. W. N. 709 (1910) ; *Kalu Mirza*, 14 C. W. N. 49 (1909)]. He must not adopt the reasons of the subordinate Magistrate who enquired into the fitness of the sureties. [*Kalu Mirza*, 14 C. W. N. 49 p 53 (1909)]. But Coxe J., in the same case, held that in refusing to accept sureties the Magistrate should record his reasons, but his omission to do so did not justify any interference by the High Court, as it is clear that the Magistrate adopted the reasons of the subordinate Magistrate who inquired into the fitness of the sureties. The ground on which a Magistrate has power to refuse to accept any surety must be a valid and reasonable ground, mere conjectures and surmises are not sufficient. [*Narain Sooboodhee*, 22 Cr. P. C. 37 (1874)].

The intention of the Legislature in insisting on the condition that a Magistrate should record his reasons in refusing to accept a surety on the ground of unfitness is, we presume, that the Magistrate should exercise his independent judgment. The implicit acceptance of opinions expressed in police-reports without considering the facts upon which such opinions were based would place all persons ordered to furnish security entirely at the mercy of the Police. [*Abdul Khan*, 10 C. W. N. 1027 p 1028 (1906)]. The best way to test the police-reports or local inquiry

made unfavourably against the sureties tendered is to bring them to the notice of the persons offered as sureties and allowing them an opportunity of controverting them. [*Ela Buhsh*, 14 C. W. N. 709 (1910)].

Mode of Inquiry.—

Regarding the mode of inquiry into the fitness of the sureties required under Chapter VIII. no procedure has been laid down in the Code. But it is clear from the decisions of the High Courts that the Magistrate must not rely on the police-reports for that purpose. [*Abdul Khan*, 10 C. W. N. 1027 (1996) ; *Suresh*, 9 C. W. N. 23n : 3 C. L. J. 575 (1904) : see also observations of Ryves J., in *Kalu Mirza*, 14 C. W. N. 49 p 55.] In our opinion the inquiry should be a judicial inquiry where the sureties will be given opportunity to meet the allegations made against them.

The Allahabad High Court in *Prithi Pal Sing*, A. W. N. (1898) 154, held that when a Magistrate decides whether a surety is or is not a fit person, he is to do so upon evidence. This case was followed in *Tota*, A. W. N. (1903) 36. In *Ghulam Mustafa*, 26 All. 371 (1904) : A. W. N. (1904) 52, where the point was whether a Magistrate in making an inquiry under the provisions of sec. 122 into the fitness of a surety tendered in obedience to an order under Chap. VIII. of the Code had power to record evidence on oath or solemn affirmation : the Court held that the Magistrate was competent to administer an oath, while he, in the exercise of a "power conferred and a duty imposed by sec. 122," holds an inquiry into the fitness or unfitness of a surety.

Delegation.—

From decided cases it may be inferred that the inquiry should be directed mainly to the financial position of sureties, and, also, to their power of supervising and controlling the accused. Now the question is who should conduct this inquiry, or, in other words, can the Magistrate, who has initiated the proceedings under this Chapter, delegate this inquiry to a subordinate Magistrate or should he himself make the inquiry. There is a divergence of opinion on this

point in the Calcutta High Court, but the Allahabad High Court is unanimous, as the following cases will illustrate.

The Calcutta High Court in *Suresh*, 3 C. L. J. 575 (1904): 9 C. W. N. 23n, held that the Magistrate in determining the question of the sufficiency of a surety can not act on a report submitted by the police but must hold an inquiry thereto. In *Kalu Mirza*, 14. C. W. N. 49 (1909), Ryves J., following *Prithi Pal*, A. W. N. (1894) 154, *Suresh* 3. C. L. J. 578 (1904), and *Bulwant*, 27 All. 293 (1904), held that the Magistrate, who decides the bad livelihood case, should himself hold an inquiry into the fitness of proposed sureties. Coxe J., (in the same case) held that sec. 122 Cr. P C. does not necessitate a judicial inquiry, and even if it does, there is no reason why such an inquiry should not be delegated to another Magistrate.

The Allahabad High Court in *Prithi Pal*, A. W. N. (1894) 154, held that the Magistrate must satisfy himself by legal methods of the sufficiency of the security tendered. He cannot delegate his functions in this respect to a subordinate, as for example, by sending a security bond tendered to a Tahsildar for report. The Court observed: "We know of no power which the law gives to Magistrates to call upon other persons to exercise the functions which are entrusted by law to Magistrates alone. It is the Magistrate who is to decide whether the surety is or is not a fit and proper person. He is to do that upon evidence and cannot do so upon a report furnished by another person, which is not evidence."

In *Tota*, 25 All 272 (1903): A. W. N. (1903) 36, which followed *Prithi Pal*, A. W. N. (1894) 154, the same Court held that it is not competent to a Magistrate who has passed an order under sec. 118, Cr. P. C., to delegate to another officer the inquiry into the sufficiency of the security tendered, but such inquiry must be made by the Court *by which the original order was passed.* In *Balwant Singh*, 27 All 293 (1905): A. W. N. (1904) 231: A. L. J. 501, which is a later case, the Court held the same view *viz.*, that the inquiry must be made by the Court by which the original order was passed. [Followed *Prithi Pal*, A. W. N. (1894) 154, and *Tota*, 25 All. 272.]

The Calcutta High Court in *Jafar Ali*, 14 C. W. N. 666 (1910), held that in deciding whether sureties tendered are to be accepted or refused, the first matter to be inquired into is the ability of the sureties to pay the sums for which they become bound in case of default of the persons who are bound down for good behaviour; but there may be other objections to be considered, but any such objections must be dealt with in each case as it arises. The expression "other objections" their Lordships used in reference to the decision in the case of *Jalil*, 13 C. W. N. 80 (1908), where the sureties tendered were alleged to be ex-convicts and persons of bad character belonging to the gang of the defendant in that case. But where the sureties were found to be competent from the pecuniary point of view and no other casue of unfitness was made out their objection would be wrong and improper.

Grounds not sufficient for rejecting sureties.—

(*i*) *Relationship.*

In *Shib Singh*, 25 All. 131 (1902) : A. W. N. (1908) 197, it was held that the relation to the person called upon to find sureties under sec. 110 Cr. P. C. is so far from being an objection, a most useful qualification in the persons tendered as sureties. In *Abdul Khan*, 10 C W. N. 1027 (1906), where the police-report showed that the persons offered for surety were related to the defendants, and the Deputy Magistrate without recording any reason rejected them, the High Court said : " It is not at all clear why relationship is necessarily a disqualification, whereas it is easy to conceive cases where a relation would possess special advantages in watching and controlling the conduct and movements of a bad character." See also *Narain Sooboodhee*, 22 W. R. Cr. 37 (1874), where one of the conditions imposed was that a surety should not be related to the defendant and the Court held that was an arbitrary condition.

(*ii*) *Previous conviction.*

In *Raghunath Singh*, 26 All 189 (1903) ; A.W.N. (1903) 220, it was held that the fact that a proposed surety had

on one occasion offended against the law, and been punished for an offence under the Indian Penal Code does not of itself render such person for ever afterwards unfit to be surety for a party who is required to give security for good behaviour. In this case the surety was convicted under secs. 147 & 325 I. P. C. See. *Jalil*, 13. C. W. N. 80, *contra.*

(*iii*) *Non-residents of the village.*

See *Abinash Malakar*, 4 C. W. N. 797 (1900); *Suresh*, 9 C. W. N. 23n : 3 C. L. J. 575 (1904); *Ram Pershad*, 6 C. W. N. 593 (1902); *Babu*, A. W. N. (1898) 199.

Contra.—*Toni*, A. W. N. (1895) 143; *Rahim Baksh*, 20 All 206.

The Calcutta High Court did not consider the following grounds as sufficient to reject sureties. *viz.*, (*i*) that none of the sureties have sufficient moveable properties; (*ii*) that three of them are relations of a person who was suspected to have in his possession properties stolen by the defendant. See *Suresh*, 9 C. W. N. 23n : 3 C. L. J. 575 (1904).

Grounds sufficient.—

That all the sureties are reported as bad characters This ground may be sufficient, but the Magistrate in determining that question cannot act on a report submitted by the police, but must hold an inquiry in respect thereto. (*Suresh*, 3, C. L. J. 575).

When a surety offered has once been accepted, a Magistrate has no power subsequently to cancel the surety-bond, though he might be of opinion that such surety is an unfit person. [*Ramlal*, 1 C. W. N. 394 (1897); *Bawan Sonar*, Cal. H. C. Rev. No. 66, March 14, 1900]. Nor has a District Magistrate jurisdiction under sec. 125, Cr. P. C., on receiving police-report that surety-bond already accepted was unsatisfactory, to cancel such security and to make an order requiring fresh security, or, in default, to undergo imprisonment for the remainder of the term. [*Panchu Gazi*, 6 C W. N. 291 (1901) : 29 Cal. 455; see also 16 P. R. 1905.]. The District Magistrate is not competent to reject a surety who was offered and who fulfilled the re-

quirements laid down in the order of the Court demanding security. [*Toni*, A. W. N. (1895) 143].

Where certain persons were ordered to execute bonds with sureties under sec. 118 by a Sub-divisional Magistrate, the former within a fortnight presented their bonds duly executed by sureties, and the latter asked the Police to enquire into the fitness of the sureties. The Police having reported the sureties as fit and proper, the Sub-divisional Magistrate delayed in accepting the sureties and releasing the defendants as he desired "to look into the sureties personally." The High Court said that his explanation of the delay is not satisfactory and directed the release of the defendants on the bonds and sureties tendered. [*Poshi Mahomed*, 12 C. W. N. 99n (1908)].

A Magistrate is justified in refusing to accept sureties, who being called upon by the Magistrate to attend for examination, do not do so. [*Kalu Mirza*, 16 C. W. N. 49 (1909)]. But it would not be proper for a Magistrate to reject the sureties on the ground that they having been asked by him to state in writing what influence they have over the persons bound down for good behaviour have failed to do so. (*Ibid*).

There is no provision of law by which a person required to find security to be of good behaviour can be called upon to provide sureties without at the same time entering into his own bond for that purpose. [*Udmi*, 27 All. 262 (1905) : A. L. J. 593 (1904) : A. W. N. (1904) 230.].

In a case of security for good behaviour a Magistrate cannot, in his final order under sec. 118, impose conditions as to the nature of the security required which were not in the notice. [*Jangi Singh*, A. W. N. (1906) 276]. When a Magistrate calls upon persons to show cause why they should not be bound down in their own recognizances to keep the peace, he cannot go beyond the requisition, and, on the adjudication of the matter, order them to furnish other securities besides. (*Abdul Bari*, 25 W. R. Cr. 50].

Enhancement of security.—

A Magistrate is not justified in increasing the amount of security, and in demanding sureties on a summons to

show cause, which provided only for recognizance of a smaller amount and made no mention of sureties at all. [*Isree Prashad*, 18 W. R. Cr. 61 : 9 B. L. R. App. 44. (1872)].

Where notice is issued under sec. 112, Cr.P.C, to a defendant to show cause why he should not give security to be of good behaviour for 3 months, the Magistrate has no power to order security to be given for a longer period. [*Belagal Ramacharlu*, 26 Mad. 471 (1902)]. Magistrate's final order under sec. 118 must correspond with the notice to show cause issued under sec. 122 Cr. P. C. [*Jangi Singh*, A. W. N. (1906) 276]. But see the following cases *contra*.

Where a Court has made an order calling upon persons to furnish security to an amount named in the order of keeping the peace, it is competent to the same Court to enhance the amount of security required, provided that the persons from whom security is demanded have an opportunity to appear and show cause against the order so made for enhancement of the security. [*Barjore Singh*, A. W. N. (1895) 241].

Straight J., observed: "The Magistrate's procedure would have been more satisfactory and proper if, before passing final judgment in the matter, he had intimated in terms the increase of security he proposed demanding so as to give the defendant an opportunity of showing cause why he should not be bound in so large an amount." But his Lordship did not interfere as the defendant was not prejudiced or inconvenienced by the Magistrate's action. In this case in the summons the amount mentioned was Rs. 500 to keep peace for one year. In the final order the defendant was directed furnish a bond for Rs. 1,500 with two sureties in Rs. 750 each to keep peace for six months. [*Muhammad Ismail*, A. W. N. (1881) 152].

Illegal order of security.—

Where a Magistrate after convicting an accused under sec. 380 I. P. C. ordered him to be rigorously imprisoned for two years, to enter into his own recognizances in Rs. 50, and to find two sureties, each in a like sum, to be of good behaviour for one year after the term of his imprison-

ment had expired ; in default, to suffer rigorous imprisonment for another : The High Court held that the order of security and for a further term of one year's rigorous imprisonment failing security was not legal. [*Tamiz*, 9 Cal. 215 (1882) : *Partab*, 1 All. 666].

It is illegal to take recognizance from one person, in order to prevent another person committing a breach of the peace. [*Ram Coomar Banerjee*, 17 W. R. Cr. 54].

An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth Rs. 200 was held to be illegal. [*Ganni*, 7 N. W. P. H. C. R. 249 (1875)].

A Magistrate must not delay in accepting the sureties whom the police reported to be fit persons, and detain the defendants in jail on the ground that he himself desired "to look into the sureties personally." [*Foshi Mahomed*, 12 C. W. N. 994 (1908)].

FORFEITURE OF BOND.

Sec. 121 provides that the bond to be executed under Chapter VIII. will bind the executant to keep the peace or to be of good behaviour as the case may be. It further provides that in the case of a bond for good behaviour, the commision or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond. The section is silent as to what would constitute a breach of the bond in the case of security to keep the peace. But by referring to Schedule V. No. X, which gives the terms of the bond to be executed for keeping the peace, it is is clear that the executant binds himself "not to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, during the (specified) term" ; and in case of default therein he binds himself "to forfeit to His Majesty, the Emperor of India, the sum of Rupees (the amount of the bond)." That is to say, when the executant of the bond to keep the peace *commits a breach of the peace or does any act that may probably occasion a breach of the peace* during the term of the bond, he is liable to forfeit

the amount of his bond to the Crown.* Therefore, the terms of a bond to keep the peace can be enforced only on conviction of an offence connected with a breach of the peace. Thus a conviction for theft will not justify a forfeiture of such bond. [*Haran*, 18 W. R. Cr. 63 (1872)]. Nor a conviction for wrongful confinement and extortion. [*Zearuddin*, 9 W. R. Cr. 48 (1873)]. But it is otherwise if the bond is for good behaviour.

Sec. 514 Cr. P. C.—

Sec. 514 Cr. P. C. lays down the procedure on forfeiture of a bond. See. also Sch. V., Nos. 44-53, which contains various forms for use under this section. Sec. 514 provides that whenever it is proved to the satisfaction of the Court by which a bond has been taken that such bond has been forfeited, the Court shall record the ground of of such proof, and may call upon the person bound by the bond to pay penalty or to show cause why it should not be paid. The Court may proceed to recover the same by issuing a warrant of attachment and sale of moveable property belonging to such person or his estate if he be dead. If the penalty be not paid and cannot be recovered by attachment and sale, the person shall be liable to imprisonment in the civil jail for a maximum period of six months. The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only. Where surety to a bond dies before the bond is forfeited his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

The words " whenever it is proved " may be presumed to mean *prima facie* proof. Therefore, before any proceeding under sec. 514 Cr. P. C. is taken, it is necessary that the Magistrate shall record evidence. In *Hariram*, 11 Bom. H. C. R. 170 (1874), it was held that a Magistrate had no jurisdiction to call on a person who had entered into a

---

* See Appendix for Bond to keep the peace and Bond for good behaviour.

recognizance bond, under sec. 493 Cr. P. C., to pay the penalty, or show cause why he should not do so, without previous *prima facie* proof, by which is meant evidence on oath, that it has been forfeited.

In *Mohesh*, 10 C. L. R. 571 (1882), it was laid down that an order estreating a recognizance or bail-bond must be made upon evidence duly recorded in the case, and not upon evidence taken in other cases. Where a Magistrate makes an order under sec. 502 (Act X of 1872) *i.e.* sec. 514 Cr. P. C. the terms of the section must be strictly followed. It is not competent to direct that in default of payment, the person whose recognizance is forfeited should be imprisoned without first issuing a warrant for the attachment and sale of their immoveable property.

There must be a regular judicial trial and legal inquiry before an order to forfeit recognizances can be passed and the evidence taken should be recorded in the presence of the accused, or in the presence of an agent of the accused duly authorised to appear in such inquiry. [*Kalikant*, 12 W. R. Cr. 54 (1869)]. A Magistrate is not justified in forfeiting a recognizance under sec. 502 (Act X of 1872) unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause why the recognizance should not be forfeited has been issued. [*Nobin*, 4 Cal. 865 (F. B.) (1879) : 4 C. L. R. 243.] The mere fact of the person for whom another stands surety being convicted of a breach of the peace ought not to be sufficient to make the surety-bond executed by the latter to be forfeited without any evidence taken in the presence of the surety to show that the forfeiture has been incurred. [*Har Chundra*, 25 Cal. 440 (1897)]. Sec. 514 does not indicate that the final order making a surety liable can be made without taking any evidence in his presence or giving him any opportunity of cross-examining the witnesses on whose evidence the forfeiture is held to be established. (*Ibid*).

The mere production of the original record or of a certified copy of the original record, of the trial in which the principal had been convicted of breaking the peace within the period covered by a bond would not be con-

clusive, if indeed it would be any evidence, against the surety in a proceeding under sec. 514 Cr. P. C. (*Ibid*). The judgment convicting the person bound over to keep the peace is admissible in evidence against him and may prove a sufficient basis for an order under sec. 514, Cr. P. C., he having had an opportunity of cross examining the witnesses on whose evidence the forfeiture is held to be established. So also the judgment will be admissible in evidence under sec. 43, Evidence Act, against the surety as evidence of the fact of conviction as a relevant fact. But when the bond is given by a surety, and the condition in the bond is that it shall be forfeited, not if the principal is convicted of a breach of the peace, but if he commits a breach of the peace, the judgment is no evidence against the surety who was no party to it to prove that the person bound over to keep the peace has really committed a breach of the peace. Such fact must be proved by evidence taken in the presence of the surety unless it is admitted by him. (*Ibid*).

Under sec. 514 it is the duty of the Magistrate to give notice to the surety to pay, or show cause why he should not pay, the penalty mentioned in the bond. It is only when the surety fails to show sufficient cause that a warrant can issue attaching the property of a surety. It must appear clearly on the face of the record that the Magistrate had given any notice to the surety before the warrant is issued. [*Doorgadass*, 15 W. R. Cr. 82 (1871)].

Where a Magistrate has taken a bond from any person, and that person is brought before him on trial for an offence committed within the period covered by the bond, he ought, at the time of convicting for that offence, to take into consideration the fact that there is an outstanding bond and to determine, once for all, whether he will proceed on it or not. The Magistrate having abstained from making any order for the forfeiture of the bond, it must be taken that he determined not to proceed on it for that particular instance of breach of the peace. That being so, it was not open to him to reconsider and add to his order. [*Ramchunder*, 1 C. L. R. 134 (1877); *Parbutti*, 3 C. L. R. 406 (1878)]. The Allahabad High Court dissented

from the above views and held that the mere fact that no immediate action under sec. 514, Cr. P. C., is taken against a person under recognizances to keep the peace, or against his surety, on the conviction of the former of an offence involving a breach of the peace, is no bar to the taking of such proceedings at a subsequent time, as for example, after the time for appealing has expired or after an appeal by the principal has been dismissed. [*Raja Ram*, 26 All. 202 (1903)].

Where the terms of the bond to keep the peace are general, the recognizances may be forfeited on any breach of the peace, whether the assault be committed against the person on whose charge the bond was originally taken or not. [*Jahu Bux*, 15 W. R. Cr. 14 (1871)].

Where the penalty under a recognizance-bond has been forfeited, neither the Magistrate nor the High Court has power to reduce the amount of penalty. (*Naki*, 8 C. L. R. 72 (1881); *Nurul*, 3 Cal. 757 (1878)].

The Allahabad High Court held that where a person has given security-bond under sec. 118 for the good behaviour of another and the principal during the term for which the bond is in force is convicted of an offence punishable with imprisonment, the production of the conviction and, if necessary, of proof of identity of the principal, is sufficient evidence upon which the Magistrate is authorized to issue notice to the surety under sec. 514, Cr. P. C., to show cause why the penalty of the bond should not be paid. In such cases it is for the surety to show what cause he can. It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal. [*Manmahan*, 21 All. 86 (1898)].

Upon the forfeiture of a bond by a person to keep the peace for a term, the surety is liable to pay the amount specified in his bond in addition to the penalty paid by the principal. [*Saligram Singh*, 36 Cal. 562 (1909) : 13 C. W. N. 555 : 9 C. L. J. 296]. *Nga Kaung*, U. B. R. 31 (1905) dissented from.

The object of requiring a surety to such a bond is not to secure the recovery of the amount of the bond from

the principal, but to serve as an additional security for his keeping the peace. [*Rahim Bukhsh*, 20 All. 206 (1898)].

Where a conviction for an offence under the Gambling Act was had against a person who was at the time under security to be of good behaviour, it was held that such a conviction was a good ground for taking action under sec. 514, Cr. P. C., although having regard to the nature of the of the offence the Magistrate might well exercise the discretion conferred on him by clause (5) of that section. [*Abdul Hai*, A. W. N. (1906) 13].

The accused was ordered to give security for good behaviour for one year. He was found in possession, within a year, of costly clothes for which he could not satisfactorily account. Thereupon the police made an application to the Deputy Magistrate for an order that the penalty bond should be paid. The Deputy Magistrate refused to make the order as there was no proof that any actual theft had taken place. The High Court held that the Deputy Magistrate was right. [Mad. Cr. Rev. No. 586 of 1902. January 16, 1903].

Where a person has given security for good behaviour and his security is subsequently forfeited, the amount of his forfeited bond may be exacted, but he cannot be also committed to prison for the unexpired portion of the term for which security has been taken. [*Jagdeo*, 28 All. 629 (1906) : A W. N. (1906) 142]. The Magistrate's remedy is to take fresh proceedings under Chap. VIII.

Before a recognizance-bond can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of one of the rival parties for whose benefit the breach took place is not sufficient. [*Kally Bhyrub*, 11 W. R. Cr. 52 (1869)].

If the accused have forfeited his recognizance given to the Magistrate of Tipperah by committing a breach of the peace in Sylhet, of which he has been convicted and punished, the Magistrate of the former district can proceed under the provision of sec. 293 Cr. P. C. (Act XXV. of 1861). [*Sham Sundar*, 2 B. L. R. App. Cr. 11 (1868)].

The legal representative of a deceased surety under sec.

106, Cr. P. C., is not liable in a summary proceeding under this Chapter. The Punjab Chief Court questioned, but did not decide whether there would be a remedy against the estate of the deceased surety apart from the summary remedy provided in sec. 514. [*Gulab Shah*, P. R. (1894) 77].

A first class Deputy Magistrate decided that a bond for keeping the peace had been forfeited, and, proceeding under sec. 502, Cr. P. C., (*i.e.* sec. 514) levied the penalty. An appeal was entertained from this order by the Sessions Judge, and the order was reversed. A petition was then presented under sec. 294, Cr. P. C., praying the High Court to reverse the order of the Sessions Judge. The High Court held, that the order of the first class Magistrate was not open to appeal. [*Ananthacharri*, 2 Mad. 69, (1881)].

MISJOINDER.

The main principle applicable to a criminal trial regarding joinder of charges and the joint trial of accused persons should be applied to enquiries under Chap. VIII. [*Prankrishna*, 8 C. W. N. 180 (1903)]. With reference to the misjoinder of parties, *i.e.*, the joint trial of accused persons, the Allahabad High Court said : "Upon general principles, each individual member of the community is, in the absence of exceptional authority conferred by the law to the contrary effect, entitled, when required by the judiciary either to forfeit his liberty, or to have that liberty qualified, to insist that his case shall be separately tried." [*per* Mahmood J., in *Abdul Kadir*, 9 All. 452 p. 457 (1886)]. The Madras High Court in a very old case, where three persons were tried together under sec. 296, held that separate proceedings should have been taken against each individual, unless there was any association between them which would justify a contrary course. [4 Mad. H. C. R. App. 46 (1869)].

Clause (4) of sec. 117, Cr. P. C., which has been added to the section by the Amending Act of 1898, lays down the same thing. Under its terms, where two or more persons have been associated together in the matter under

inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just. That is to say, unless association is proved, the joint trial will be illegal. Even this new clause leaves the discretion to the Magistrate to hold separate inquiries in cases where he would think that procedure to be just.

The Allahabad High Court held that the provisions of sec. 239, Cr. P. C., read with sec. 117, are applicable, subject to such modifications as the latter section indicates and to such procedure as the exigencies of each individual case may render advisable in the interest of justice. A joint enquiry in the case of such persons, is therefore, not *ipso facto* illegal ; and even in cases where one and the same proceeding, taken by the Magistrate under secs. 107, 112, 117 and 118, improperly deals with more persons than one, the matter must be considered upon the individual merits of the particular case, and would at most amount to an irregularity which, according to the particular circumstances, might or might not be covered by the provisions of sec. 537. [*Abdul Kadir*, 9 All. 452 (1886)]. *Nathu*, 6 All 214 ; *Batuk*, A. W. N. (1884) 54 referred to.

Where both parties to a proceeding were tried together, (some amongst them having also been examined as witnesses in the case), it was held that the misjoinder in that case was of the nature condemned by the Privy Council in *Subramania Iyer*, 26 Mad. 61 (1901) : 5 C. W. N. 866, and, therefore, sec. 537 could not cure it. [*Prankrishna*, 8 C. W. N. 180 (1903)]. In *Kamal Narain*, 11 C. W. N. 472 (1906) : 5 C. L. J. 231, where the same principle was followed, the Court said : "We are unable to adopt the reasonings of the learned Judges in the case of *Prankrishna*, 8 C. W. N. 180, as far as they are based on the case of *Bechu Mullah*, 14 Cal. 358 (1868), but as we hold that the main basis for the decision in that case was the judgment of the Privy Council in the case of *Subramania Iyer*, we are of opinion that the decision is binding upon us." It may be mentioned that in *Bechu Mullah*, there were counter-charges of rioting and the accused in both the cases were tried together. The learned Judges who decided the case of *Prankrishna* quoted the observations of the learned

Chief Justice who condemned theprocedure adopted by the Magistrate in strong terms. The observations, we think, are worth repeating here. The Chief Justice, Sir W Comer Petheram, said : "I think that is a course which is to be deprecated to the last degree. I think it a very great pity that Magistrates should ever adopt it. There is no doubt, to my mind, that it constitutes a very great irregularity, and the reason why it is so very objectionable is that you call a man as a witness whose conduct has been inquired into, but the decision in whose case has not been pronounced, and you hear his statement of the case given before the very person who is to decide upon his guilt or innocence ; and by doing that you introduce an element into the question whether or not he will tell the truth, which ought not to be there, because he has a personal interest in the inquiry ; his liberty or life may be at stake on what will be the verdict in his own case, and it is not in human nature to suppose that he would, under such circumstances, give his evidence in the impartial way that it ought to be given in a Court of Justice. Therefore it seems to me that it is not only an irregularity, but an irregularity of a grave kind ; and in this matter I am speaking not only for myself but I believe for my brother Beverley also, and therefore I hope that in similar inquiries in future, Judges and Magistrates will discontinue this irregular and highly objectionable practice." But notwithstanding the fact that the procedure was irregular, their Lordships held that sec. 537, Cr. P. C., cured the irregularity.

In a subsequent case it was held that a Magistrate had acted without jurisdiction in binding down two contending parties to keep the peace in a single proceeding. [*Ramkrishna*, 13 C. W. N. 83n. (1909). Followed *Prankrishna*, 8 C. W. N. 180 ; *Kamal Nrrain*, 5 C. L. J. 231]. As we have already said, the Allahabad High Court did not consider such a procedure to be *ipso facto* null and void. But that was decided long before the Privy Council decision re *Subramania Iyer*. See *Abdul Kadir*, 9 All. 452.

In *Kalu Mirza*, 37 Cal. 91 (1909): 14 C. W. N. 49, it was held that a joint inquiry under sec. 117 against the members of a gang formed for the purpose of habitually

cheating in concert, is not illegal under sub-sec. (4), though they were not at all concerned together in each of the various acts alleged against them.

Sec. 117 (4) does not empower a Magistrate to deal with both the contending parties to an apprehended breach of the peace in the same inquiry. Such a joint enquiry, if held, is not a mere irregularity but a breach of an express provision of the law within the meaning of the rule laid down in *Subramania Iyer*, and, as such, is wholly illegal. [*Kamal Narain*, 11 C. W. N. 472 (1906); 5 C. L. J. 231; *Prankrishna*, 8 C. W. N. 180 (1903)].

Misjoinder of Charges :—

In *Wahid Ali*, 11 C. W. N. 789 (1907), the accused was charged with sixty-four cases of alleged extortion extending over "a very long period" under clause (d) of sec. 110. An objection was taken to so many charges being tried at one trial, upon the authority of the well-known Privy Council decision re *Subramania Iyer*, as thereby the accused was seriously prejudiced and hampered. But the learned Judges held that the law as to the joinder of charges against a person accused of definite offences had no application to an inquiry under sec. 110 (d), and distinguished the Privy Council decision by observing : "But in that case the issue was whether the petitioner had or had not committed certain offences with which he was charged. In this case the question of the particular acts with which the defendant is charged is not the issue to which the Court is to direct its attention. It has to look at the whole body of charges which are made against the defendant and see whether they are in the main substantiated in such a manner as to lead to the conclusion that he is a person whose habits are such as are in clause (d) of sec. 110."

But, as we have already said, in *Prankrishna*, 8 C. W. N. 180 (1903), the learned Judges followed *Subramania Iyer*. And their Lordships' observations, which are important, are as follows : "It is true that enquiry under sec. 107 need not be as formal as a criminal trial strictly so called ; but considering the consequences of the order under sec. 107 which may result in the imprisonment of the defendants

in the event of their inability to furnish the security required the main principles applicable to a criminal trial regarding joinder of charges and the joint trial of accused persons may well be held to be applicable to inquiries under section 107. And turning to the sections of the Code relating to the joinder of charges and the joint trial of accused persons we find that sec. 233 lays down the rule that there shall be a separate trial of each person for each offence with which he is charged as a general rule, subject to the exceptions contained in secs. 234, 235, 236 and 239. ..... But here not only were the persons on the same side tried together but persons belonging to the two opposite parties were all tried together and it cannot be said that they were concerned in the same transaction in any proper sense of the term. The enquiry, therefore, was in our opinion most irregular."

In *Wahid Ali* it does not appear that the above observations were either placed before, or considered by, the learned Judges deciding that case, Since the proceedings under Chap. VIII. are criminal enquiries and trials to all intents and purposes, it is unfortunate that uniformity of principle should not be observed in applying law and rulings to them. We venture to submit that the Privy Council decision is binding on all Courts so far as they have to deal with misjoinder of parties and charges in criminal cases and should be strictly followed. The Judiciary should be very careful not deviate from, or distinguish it. For, such a practice would practically deprive the accused of the very salutary principle laid down by the Judicial Committee, prior to which decision the Indian Courts would often resort to the provisions of sec. 537, Cr. P. C., to get rid of the objection of the accused on the ground of misjoinder. The provisions of sec. 233, Cr. P. C., which are subject to secs. 234, 235 236 and 239, are imperative and any departure from them is not cured by sec. 537. Their Lordships of the Privy Council had before them exactly the same kind misjoinder of charges as in *Wahid Ali*, *viz.*, in *Subramania Iyer*, the accused was charged with no less than forty-one acts extending over a period of two years, and in *Wahid Ali*, with sixty-four acts of alleged extortion extending over 'a

very long period.' With reference to so many charges at one trial the Privy Council said: "This was plainly in contravention of the Code of Criminal Procedure, sec. 234, which provided that a person may only be tried for three offences of the same kind if committed within a period of twelve months." And their Lordships held that such trial is illegal and cannot be cured by sec. 537. If proceedings under Chap. VIII. are criminal cases (as has been held in several instances), then in an enquiry under it, the procedure laid down in respect of joinder of charges and parties should be strictly applied without demur or distinction.

Association—

In *Hari Talang*, 4 C. W. N. 531 (1900): 27 Cal. 781, three persons were tried together in the same proceedings under sec. 110 on three grounds, *viz.*, that they habitually committed extortion, that they habitually committed or attempted to commit or abet the commission of offences involving a breach of the peace, and that they are dangerous persons so as to render their being at large without security hazardous to the community. Although separate proceedings were drawn up in respect of each of these persons, they have been tried jointly. Upon objection being taken on this ground before the District Magistrate on appeal, he held that, under the terms of sec. 117 (4), the proceedings could have been jointly conducted against all the three persons because they were habitually associated together and acted together in the interests of their master, the zemindar. The High Court observed: "But even supposing that the Magistrate was right in considering that there was habitual association between the three persons in regard to the first and second points mentioned, there certainly would be no such connection between them in regard to their characters as to make them dangereus persons and thus render their being at large without security hazardous to the community. We think, therefore, that the proceedings should have been separately taken against each of these persons." With regard to this irregularity their Lordships considered the provisions of sec. 537, Cr.C.P., as to how far it has caused a failure of justice. From the evidence of this

case, however, their Lordships held that it did not support an order under sec. 110, Cr. P. C.

In *Raoji Fulchand*, 6 Bom. L. R. 34 (1903), the petitioners were charged under clause (f) of sec. 110 and ordered to be bound down. This case was heard by the Magistrate with the similar cases of other persons and the joint inquiry was taken objection to as illegal, and in support of the contention, besides the Bombay rulings, the case of *Hari Talang*, 27 Cal. 781, was relied upon. The Court observed: "The Bombay rulings were passed under the old Criminal Procedure Code. Under the present, clause 4 of sec. 117 of the Code now in force provides for such joint inquiries. In *Hari Talang*, a joint inquiry under these sections was held bad but the decision there proceeded upon the ground that there was no habitual connection between the different persons in regard to their characters so as to make them dangerous persons. In the case before us it is not contended that such connection does not exist. The Magistrate's judgment proceeds upon the existence of the connection and the evidence also tends in the same direction." In *Srikanta*, 9 C. W. N. 898 (1905): 1 C. L. J. 616, the proceeding was also under sec. 107, and in one inquiry six persons were directed to enter into bonds with sureties. They were the servants of a powerful zemindar and were charged with and shown to have been going about and seizing the *raiyats* of the zemindar and taking them from the zemindari cutchery where *kabuliyats* at enhanced rates were demanded from them, and where, on their refusing to execute these *kabuliyats*, some of the *raiyats* were confined for 2 or 3 days at a time and one had his ears and nose pulled. The rule which was issued by the High Court on the ground that proceedings in the case of each of the petitioners should have been held separately, was at first heard by a Division Bench, but as there was a difference of views among the learned Judges constituting the Bench, it was referred to a third Judge. It was held that, where all the acts alleged against certain persons against whom a joint inquiry under sec. 107 was instituted were found to have been done by them for the benefit of their common master, *viz.*, with a view to extort *kabuliyats* at enhanced

rates from his tenants, they were associated together within the meaning of sec. 117 (4) so as to justify a joint inquiry, although each of the acts alleged was not done by all of them together. It was further held that they could be proceeded against under sec. 107, Cr.P.C., notwithstanding that the acts imputed to them were committed by them not as individual members of society but as servants of another person. This view, it may be pointed out, does quite agree with that taken in *Hari Talang*.

Henderson, J., who was the dissenting Judge in *Srikanta*, said (p. 899): "It may be taken therefore [as the petitioners were the servants of an influential zemindar] that their acts were done not in their own interests but in the course and within the scope of their employment, in the interest of their master and under the orders express or implied of him or his agents. Ordinarily in such a case the acts of the servants would be primarily and I think properly attributable to the orders given, and not necessarily to any association together for the purpose of committing the acts." Again at p. 900: "No doubt if the servants of a zemindar acting under orders of their master or out of zeal for their master's interests or for any other reason join or associate themselves together for the purpose of committing acts of oppression upon the *raiyats* they will render themselves liable to punishment for any offences which they commit and, it may be, if they are shown to have habitually committed extortion so as to bring them within the terms of sec. 110, Cr. P. C., liable to give security for their good behaviour." At p 901 his Lordship further observed: "I am not prepared to say that the words 'associated together' imply that the person to whom they may be properly applied must have been acting in concert, but I am inclined to think that persons associated together in the matter of an inquiry under sec. 107 must be persons shown to have been acting together on the various matters charged against them as grounds for binding them over to keep the peace." Geidt J., with reference to those words (at p. 905) said: "I am opinion that this phrase applies to persons acting in concert, whether that concert is due to mutual agreement among themselves, or to obedience to the orders of a

common master." If there is a common object amongst the persons against whom proceedings under sec. 107 were drawn, then, in his Lordship's opinion, "the condition required in sec. 117 (4) for a joint inquiry is fulfilled."

Though there is no express declaration to that affect, yet it may be inferred that under sec. 117 (4) the intention of the Legislature is that where there is no association together, there should be separate inquiries. (Vide *per* Henderson J., *Ibid* p. 902). Further, the section sec. 117 (4) gives only a discretionary power as we have already pointed out ;, therefore, even if upon the information a Magistrate had started a joint inquiry, and at a later stage it appeared to him that a joint inquiry might prejudice the persons concerned "it would be the duty of the Magistrate to stop the inquiry and institute separate inquiries." (*per* Henderson J., *Ibid*, p. 903).

In *Nilkamal Das*, 6 C. L. J. 711 (1907), it was held that the mere association with men of bad character is not sufficient, unless the association is to commit theft or dacoity, to bring one under sec. 110 Cr. P. C.

In *Parasulla*, 13 C. W. N. 244 (1908), where it was clearly established that the petitioners who were members of the same family, being the father and his three sons, were associated together and formed a gang and the evidence against all of them was the same, it was held that the case was one in which the evidence against the petitioners could rightly be dealt with together and that any minute inquiry into the complicity of each of the accused individually was not necessary.

Two or more persons are not "associated together in the matter under inquiry" within the meaning of sec. 17 (4) when there is a conflict between them, and they cannot be dealt with in the same inquiry under provisions of that section. Such a joinder is not a mere irregularity but an illegality which will vitiate the proceedings. [*Ganapathi Bhatta*, 31 Mad. 276 (1908)].

With reference to "association" the following cases under sec. 401, I. P. C., may be usefully consulted.

In *Shriram Venkatasami*, 6 Mad. H. C. R. 120 (1871), it was held that in the trial of prisoners for the offence of

belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (sec. 401 I. P. C.), the Judge should, in his charge, put clearly to the jury (*i*) the necessity of proof of association (*ii*) the need of proving that association was for the purpose of habitual theft and that habit is to be proved by an aggregate acts.

In *Dwarka Bania*, 4 C. W. N. 97 (1899), it was held that the evidence that some of several co-accused, who have been charged with dacoity were previously convicted of theft, is not suffiicient to connect all the accused with association for habitually commiting an offence within the meaning of sec. 401 I. P. C, even if such evidence were admissible.

In *Kader Sundar*, 16 C. W. N. 69 (1911), it was held that association for the habitual pursuit of dacoity is the gist of the offence punishable under sec. 401, I. P. C., Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime, it must be established for the purpose of conviction under the section that the accused belong to a gang whose business is the habitual commisson of dacoity. The special conspiracy must be proved. Where association for the purpose of habitually committing dacoity had not been made out, the mere fact that some of the accused had been previously convicted of dacoity or theft or had been bound down to be of good behaviour under sec. 110, Cr.P.C., was of no consequence.

The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs where the prosecution is under sec. 400, I. P. C., and the fact that members of the tribe generally were alleged to have been implicated in several dacoity within a period ten years preceding the trial was not sufficient proof against the persons under trial when it appeared that the tribe contained within it thousands of human beings. (*Ibid*).

In. *Tukaram Malhari*, 14 Bom. L. R. 373 (1912), it was held that under sec. 401, I. P. C., for the purpose of determining whether a party of accused persons constituted a gang of persons associated for the purpose of habitual

theft, the evidence that each individual of that party is a convicted thief is relevant. That evidence can be tendered before or after the prosecution have established the association.

Where the other evidence in a case under sec. 401 of the Penal Code establishes association for the purpose of habitually committing theft, the evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit; and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts. [*Bhona*, 38 Cal 408 (1911)].

FURTHER INQUIRY.

[Sec. 437 Cr. P. C.]

In *Iman Mandal*, 6 C. W. N. 163 (1900): 27 Cal. 662, it was held that provisions of sec. 437, Cr. P. C., do not apply to proceedings and inquiries under sec. 110 Cr. P. C. In *Dayanidhi*, 33 Cal. 8 (1905), it was laid down that a District Magistrate has no power under the law to order a "further" inquiry in a proceeding under sec. 110 Cr. P. C., after setting aside, on appeal, an order passed by a subordinate Magistrate directing the accused to furnish security for good behaviour. In *Dharma Naik*, 13 C. W. N. 261D (1909), which followed *Dayanidhi*, the Court held that an order directing further inquiry into a sec. 110 case was illegal. In this case the District Magistrate, on appeal, cancelled the order of security for good behaviour passed by the original Court and remanded the case to it for *further inquiry*, as he thought "mere general evidence and suppositions are hardly sufficient in such a case."

The main principle underlying these rulings is that under sec. 437, Cr. P. C., which is the only section in the Code which authorizes further inquiry, such an inquiry can only be directed into a "complaint" which has been "dismissed" under sec. 203, or sec. 204 (3), Cr. P. C., or into the case of an "accused person" who has been "discharged", and that a proceeding under sec. 110 is not a "complaint" within the meaning of sec. 4 (h), the person against whom the proceeding under sec. 110, Cr.P.C.,

is drawn is not an "accused person." See *Iman Mandal*, 6 C. W. N. 163 (1900); 27 Cal. 662.

Sec. 437, Cr. P. C., authorizes "further inquiry" into—

(i) any complaint which has been dismissed under sec. 203 or sec. 204 (3), Cr. P. C., or into—

(ii) the case of any accused person who has been discharged.

The first branch of the section has no bearing upon the question as the information upon which a Magistrate proceeds to draw up a proceeding under sec. 107, 108, 109 or 110 is not a "complaint" within the meaning of sec. 4 (h) and that such *information* cannot be dismissed under sec. 203 or 204 (3), Cr. P C. The second branch of the section has two expressions, *viz.*, "accused person," and "discharged" which require some consideration. Sec. 437 Cr.P.C. is silent as to the section or sections under which the case of an accused person is to be *discharged*. But looking through the Code, one finds that secs. 209, 253, and 254 relate to the circumstances when an accused person is *discharged*, and also sec. 119 provides for the *discharge* of the person in respect of whom an inquiry under sec. 117, Cr. P. C., is made.* In sec. 119, Cr. P. C., this person is not described as an *accused person*, but, in the marginal note of the section, as "the person informed against." The whole question, therefore, seems to turn on :—whether the person against whom proceedings under sec. 107, 108, 109 or 110, Cr. P. C. is initiated, is an *accused person*.

It is unfortunate, as in several other instances, that the Legislature did not define the term "accused" in the Code or anywhere else. We have, therefore, to fall back on judge-made laws. There again, the light thrown on the subject is not very lucid. Before referring to these decisions, let us turn to the Criminal Procedure Code first. Here we find that the Legislature has used the word "accused" first in Chap. XIV.—Investigation by the Police—secs. 162, 167, 169, 170, 173; in Chap. XV.—Place of Inquiry or Trial—sec. 181; in Chap. XVII.

* Sec. 484 Cr. P. C., also deals with 'discharge' of persons adjudged guilty of contempt under sec. 482 Cr. P. C., but we do not think that sec. 437 will be applicable to such a 'discharge.'

—Commencement of Proceedings before Magistrates—sec. 205 ; in Chap. XVIII.—Inquiry into cases triable by the Court of Sessions or High Court—secs. 208, 209 &c.; in Chap. XXIV.—General Provisions as to Inquiries and Trials —secs. 342, 344 &c., and in other Chapters.

Reading sec. 167, Cr. P. C., it will be noticed that the "accused person" mentioned in cl. (2) of the section is the person against whom there is some *accusation* or *information*. It will also be noticed that the expression has the same meaning in other sections of this Chapter. We see, therefore, no reason why it should not have the same meaning in other sections in other chapters, as the Legislature could not possibly be so careless as to use one and the same expression in different senses in different sections of the same Code. Besides, the presumption is that a particular expression is used in one and the same sense throughout a Code or Act, unless it expressly says otherwise.

Now turning to the decisions of the High Courts we find the earliest decision is the one by the Bombay High Court. In *Mona Puna*, 16 Bom. 661 (1892), that Court, after referring to and discussing various decisions held that by the term "accused" in sec. 342, Cr. P. C., is meant a *person over whom the Magistrate or other Court is exercising jurisdiction*. This decision was followed by the Calcutta High Court in *Jhoja Singh*, 23 Cal. 493. Here the term accused was considered with reference to sec. 340, Cr. P C., in relation to proceedings under sec. 123, Cr. P. C. Sec. 340 prescribes that every person accused before a Criminal Court may of right be defended by a pleader. The learned Judges adopted the definition as given by the Bombay Court in *Mona Puna*, and held that the Sessions Judge is bound to hear the pleader appointed by a person who, though not accused of any offence, is ordered to give security for good behaviour under sec. 118, Cr. P. C. See also *Abinash Malakar*, 4 C. W. N. 797. In *Hoprcroft*, 13 C. W. N. 151 (1908), the same High Court held that a person against whom proceedings under sec. 107, Cr. P. C., are instituted is *in the position of an accused person*.

The Allahabad High Court in *Mutasaddi Lal*, 21 All. 107 (1898), agreeing with the definition of "accused" as

given in *Mona Puna* and followed in *Jhoja Singh*, held that the term "accused" means a person over whom a Magistrate or other Court is exercising jurisdiction, and that a person against whom proceedings under Chap. VIII. of the Code of Criminal Procedure are being taken is an "accused person" within the meaning of sec. 437 Cr. P. C. This case was followed in *Jaggu Ahir*, 34 All. 533 (1912).

From the above rulings it is clear that all the three High Courts, *viz.*, Bombay, Calcutta and Allahabad, agreed in the definition of the term "accused." Yet, in respect of the application of provisions of sec. 437, Cr. P. C., the Calcutta High Court differed from the Allahabad High Court. The former said that "the terms 'accused person' and 'discharge' in sec. 437 clearly refer to a person accused of an offence who has been discharged of that offence within the terms of Chap. XIX. of the Code of Criminal Procedure," and accordingly held that there could not be any *further inquiry* in a proceeding in which the person informed against was discharged under sec. 119, Cr. P. C. [See *Iman Mondal*, 6 C. W. N. 163 (1900): 27 Cal. 662]. The Allahabad High Court, on the other hand, relying on the same definition held that a District Magistrate is competent under sec. 437 to order a further inquiry in a proceeding under sec. 110 in which the rule was discharged by the subordinate Magistrate. With all respects to the learned Judges who decided the case of *Iman Mondal*, we venture to submit that in *Jhoja Singh* the meaning of the term accused was considered with reference to proceedings under sec. 110, and there, their Lordships agreed with the definition, *viz.*, the person over whom the Magistrate or other Court has jurisdiction is the "accused" person. Therefore, it is difficult to understand why the same expression should bear a different meaning. To our mind the Allahabad High Court is more consistent than the Calcutta High Court in this respect at any rate. It must be presumed that the Legislature has used the term "accused" in one sense throughout the Code. It would be unreasonable to think otherwise. If the definition, as has been deduced from the reading of sec. 167, Cr. P. C., *viz.*, the person against whom

there is an accusation or information is an "accused" person, is generally adopted, all difficulties will be smoothed over. A complaint is nothing but the allegation of certain facts against certain person. Information is also nothing more or less than certain allegation against certain person. Proceedings under Chap. VIII. are generally instituted on *information* of certain allegations and the Magistrate assumes jurisdiction as soon as he draws a proceeding based on it, just as a Magistrate takes cognizance of an offence on receiving a *complaint*. From that moment the person informed against stands in the same position as the person who has been charged with some "offence." Both are defendants. The proceeding in both is a criminal proceeding and the procedure observed is that of the Criminal Procedure Code. The only difference is that in the one the defendant is on his defence for his *future* conduct and, in the other, for his past conduct. The ultimate result is the same: in proceedings under Chapter VIII. in default of security, he is liable to imprisonment just as a person is, on conviction of an offence.

The Bombay High Court in a recent case held that a District Magistrate can, under sec. 437, Cr. P. C., order a fresh inquiry into the case of a person "discharged" by a subordinate Magistrate under sec. 119 Cr. P. C. The expression "any accused person" as used in sec. 437 is not confined in its application to a person against whom a complaint has been made under sec. 200, Cr. P. C. It includes a person proceeded against under Chap. VIII. of the Code. The term "discharged" is not defined in the Code, and there is no valid ground for departing, in respect of it, from the rule of construction that where in a Statute the same word is used in different sections, it ought to be interpreted in the same sense throughout unless the context in any particular section plainly requires that it should be uuderstood in a different sense. [*Baba Yeshwant Desai*, 35 Bom. 401 (1911)]. *Mutasaddi*, 21 All. 107, *Fyazuddin*, 24 All. 148, and *Mona Pona*, 16 Bom. 661 followed. *Iman Mondal*, 27 Cal. 662, *Velu Tayi Ammal*, 33 Mad. 85, not followed.

The Madras High Court held that the power conferred

by sec. 437 Cr. P. C., to order furthe inquiry cannot be exercised in the case of orders of discharge under sec. 119 Cr. P. C., where the Magistrate before making the order of discharge, has called upon the person, into whose conduct the inquiry is made, to establish his defence. The word 'discharged' in sec. 437 must be read equivalent to 'discharged within the meaning of secs. 209, 253 and 259 of the Code. [*Velu Tayi Ammal*, 33 Mad. 85 (1909)]. It is worth noting that the learned Judge in this case has tried to draw a distinction between 'discharge' under sec. 119, and 'discharge' under sec. 209, 253 and 259, Cr. P. C. That is to say, according to his Lordship the word 'discharge' has two meanings——a proposition open to same objection as that of 'accused' having different meaning as afoersaid.

Fresh Proceedings :—

An order under sec. 119 finding that it is not necessary to cause the person whose conduct is under inquiry to furnish security for good behaviour is, whether such order be for the "release" or for the "discharge" of such person, not an order for acquittal, and is no bar to the institution, under sec. 437 Cr. P. C. of fresh proceedings. [*Rtti*, A. W. N. (1899) 203]. Blair J., said: "I do not think that the word 'discharge,' as used in sec. 437, is used, as used in sec. 119, in contadistinction to the word 'release.' I think that whether a person is discharged or raleased under sec. 119 he comes within 'discharge' in sec. 437. It seems to me that the District Magistrate was justified in law in re-opening the proceedings."

It is competent to the Magistrate of the District, in the case of a person who has been called upon, under sec. 110 Cr. P. C., by a Magistrate of the first class, to show cause why he should not furnish security for good behaviour, and has been discharged by such Magistrate under sec. 119 Cr. P. C., to institute fresh proceedings against such person upon the basis of the record that was before the first class Magistrate. [*Fyaz-ud-din*, 24 All. 148, (1901)]. *Mutasaddi Lal*, 21 All. 107 ; *Ratti*, A.W.N. (1899) 203 ; *Ahmad Khan*, A. W. N. (1900) 206, and *Iman Mandal*, 27 Cal. 662, referred to.

With regard to fresh inquiries Henderson J., in *Srikanta*, 9 C. W. N. 898 (1905) at p. 903, said : "Where an inquiry is found to have been defective or improper, a question arises whether a fresh inquiry should be directed, it is ordinarily necessary to look to the evidence." If the evidence showed no material grounds, no fresh inquiry should be directed.

A Magistrate initiated proceedings against a person under sec. 110. The order calling upon him to show cause was not made absolute, but the District Magistrate directed a further inquiry to be made, purporting to act under sec. 437 Cr. P. C. *Held*, that this latter order was without jurisdiction. [*Ahmad Khan*, A. W. N. (1900) 206] *Iman Mandal*, 27 Cal. 662 followed.

JURISDICTION.

Chapter VIII. authorizes a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate and a Magistrate of the first class to take action under its various sections. We will first consider sec. 106.

Sec. 106 Cr. P. C.—

This section empowers a High Court or a Court of Sessions, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class to exercise powers thereunder. It further prescribes in clause (3) that an order under sec. 106 can be made by an Appellate Court or by the High Court when exercising its power of revision.

From the wording of sub-sec. (1) it follows that a Magistrate of a second or third class is precluded from exercising his jurisdiction under it. Any order made by such a Magistrate under this section will be void. (See sec. 530 Cr. P. C.) If he is of opinion that the accused ought to be required to execute a bond under sec. 106, he may record his opinion and submit the whole case to the Dis-

trict or Sub-divisional Magistrate to whom he is subordinate. The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit and as is according to law. (See clause (2) of sec. 349 Cr. P. C.) [See also *Rohimuddi*, 35 Cal. 1093 (1908)].

But a Magistrate of the second or third class cannot, after convicting the accused, submit the case under sec. 349 Cr. P. C. to a superior Magistrate to pass a summary order for execution of a bond to keep the peace. Such an order can be passed only by a competent Court after conviction by itself of one of the offences specified by sec. 106. [*Mahamudi*, 21 Cal. 622 (1893)]. [See also *Boroda Prosonno Chvekerbutty*, 2 C. L. R. 348; *Rahimuddi*, 35 Cal. 1093 (1908); P. R. (1901) 22; 4 L. B. R. 205 (F. B.): 7 Cr. L. J. 472]. In this case the High Court considered the provisions of secs. 106 and 349 Cr. P. C. and observed thus: "Reading these two sections together, we have no doubt that it was the intention of the Legislature that before an order under sec. 106 can be properly passed, the conviction of the accused shall have been by an order made by a Magistrate of a superior class, and not, as in the present case, by a Magistrate of the third class. The terms of sec. 106, which enable any of the Courts or Magistrates specified to require the execution of a bond to keep the peace, direct that such an order may be passed at the time of passing sentence on such person. This also shows that the intention of the Legislature was that the conviction and order under sec. 106 shall be passed by one and the same officer."

This decision lays down a very important principle, *viz.*, where a second or third class Magistrate convicts a person of any of the offences specified in sec. 106, the Appellate Court cannot, in confirming the sentence, pass an order under sec. 106. If the term "Appellate Court" in cl. (3) of sec. 106 is used with reference, and limited, to the Court

specified in sec. 106 (1), *viz.*, a Court of Sessions, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or Magistrate of the first class, then the Appellate Court to which appeal from a second or third class Magistrate lies cannot pass an order under sec. 106 ; for sec. 106 does not authorize a second or third class Magistrate to pass such an order.

The Calcutta High Court in another case followed the same principle and held that an Appellate Court cannot, in the exercise of power given by sec. 106 (3), bind down the accused who preferred the appeal when he was not convicted by a Court such as is referred to in sub-sec. (1) of sec. 106. [*Momin Malita*, 12 C. W. N. 752 (1908) : 35 Cal. 434 : 7 C. L. J. 692]. *Muthia Chetti* 29 Mad. 199 ; *Paramasiva*, 30 Mad. 48 ; *Mahmudi*, 21 Cal. 622 referred to.

The Madras High Court held the same view in two cases and an opposite view in one. In *Mnthiah Chetti*, 29 Mad. 29 Mad. 190 (1905), it was held that an Appellate Court cannot exercise the power under the section when the accused has not been convicted by a Court such as is referred to in the section. In *Paramasiva*, 30 Mad. 48 (1906), the Court held that an order for security under sec. 106 cannot be made by an Appellate Court unless the conviction appealed against was by a Court of the description specified in the first paragraph of the section. In *Dorasami Naidu*, 30 Mad. 182 (1900), the Court doubted the ruling in *Muthia Chetti*. After citing the ruling in *Muthia Chetti* and *Paramasiva Pillay* and three other unreported cases of the Madras High Court, it observed : "Although we are not prepared to dissent from the construction which has been placed on cl. (3) of the section, having regard to the language used, yet we think it may well be doubted whether the Legislature intended that the power of the Appellate Court and of the High Court when exercising its powers of revision, should be confined to such narrow limits.

"The requirements essential to justify an order to give security to keep the peace would, in reason, seem to be—

(*a*) a finding by a Court not inferior to a first class

Magistrate that an offence of the kind specified in the section has been committed, and

(*b*) a finding by such a Court that, in all the circumstances of the case, an order to give security is desirable.

"The former of these essentials is satisfied when an Appellate Court confirms a conviction of such an offence by a second or third class Magistrate, just as much as when the conviction originates with it. That the Legislature does not always deem proceedings by a second or third class Magistrate an insufficient basis for an order to give security to keep the peace is clear from sec. 349 Cr. P. C. which enables a second or third class Magistrate who is of opinion that a person who is being tried before him is guilty, and ought to be bound over under sec. 106, to record his opinion and forward the accused with his proceedings to the District or Sub-divisional Magistrate to whom he is subordinate and empowers the latter to pass sentence and to make an order under sec. 106.

"No doubt in such a case the actual conviction is by a first class Magistrate, but as the conviction may proceed solely on a consideration of the evidence taken, and the opinions formed, by the second or third class Magistrate, it is difficult to see any essential difference between such a case and one in which the first class Magistrate, as a Court of Appeal, confirms a conviction by a second or third class Magistrate.

"It is apparently in regard to the order to keep the peace that the Legislature requires the safeguard of a superior Court's discretion, and it also requires as a basis a finding by a superior Court that the accused is, in fact, guilty of one of the specified offences. But, as we have already said, there is this basis when an Appellate Court confirms on appeal a conviction by a second or third class Magistrate just as much as when a District or Sub-divisional Magistrate acts under sec. 349 on evidence recorded by a second or third class Magistrate. Whether the view which this Court has taken as necessitated by the language of section 106 (3) or whether the view we have suggested as the probable intention of the

Legislature, more correctly represents the true intention of the Legislature, it is desirable that the terms of the section be made explicit, as our experience shows that the Appellate Courts very generally understand the section in the way which this Court has held to be incompatible with the true construction of the language used."

If we have quoted a considerable portion of the judgment, our excuse is that the Bombay High Court has referred to the reasoning contained herein.

The Bombay High Court in *Bhausing Dhumalsing*, 33 Bom. 33 (1908), Scott, C. J., (dissenting from *Mahmudi Sheikh*, 21 Cal. 622, *Muthiah Chetti*, 29 Mad. 190, and *Paramasiva Pillai*, 29 Mad. 48) observed thus: "We are not prepared to accept the construction placed upon sec. 106 in these cases. We think that clause (3) makes it clear that the order for security may be made in appeal whether the original Court had jurisdiction to pass such an order or not. The clause runs—'An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision,' the '*also*' plainly implying that it may be independently made by those Courts as well as by the original Courts specified in the first clause; and it is neither suggested nor implied that the powers of the original Court should in any way control or limit those of the appellate or revisional authority. In support of this view we may refer to the judgment reported in the case of *Dorasami Naidu*, which throws doubt upon the correctness of the decisions above-mentioned. We may say that we entirely concur in the reasoning of the latter part of that judgment." See also P.R. (1908) Cr. 21; P.R. (1907) Cr. 6.

It should be noted that sub-sec. (3) of sec. 106 was added by the Amending Act of 1898 in accordance with the decision of a Full Bench of the Allahabad High Court, [see *Kamta Prasad*, 4 All, 212 (F.B.) 1882], which held that the Appellate Court in affirming a conviction under sec. 323 I.P.C. was competent to make an order under sec. 489 Cr. P. C. (Act X of 1872) requiring the appellant to furnish security for keeping the peace. It is rather anomalous

how the Allahabad High Court, notwithstanding this Full Bench ruling, held, in subsequent cases, that an Appellate Court could not make such an order. [See *Lachman*, A.W.N. (1890) 201 : *Ishri*, 17 All. 67 (1893)]. The Calcutta and Madras High Courts also, (under 1882 Code) held the same view. [*Aslu*, 16 Cal. 779 (1889) ; 1 Mad. L. J. 252 ; Revn. Case Nos. 54—56, Jan. 30, 1887].

It is curious, however, that though this sub-sec. (3) empowers an Appellate Court to pass an order under sec. 106 requiring security, there is no provision in it empowering the same Court to set it aside. In *Abdul Wahiduddin*, 30 Cal. 101 (1902) : 6 C. W. N. 422, this point was first raised and the High Court held that an Appellate Court can set aside such an order under the provisions of sec. 423 (d) as an incidental order.

An Appellate Court, acting under sec. 106 (3) must expressly find that the accused has committed an offence within the terms of sec. 106. If it does not do so, its order will be without jurisdiction. [*Kinoo Sheik*, 6 C. W. N. 678 (1902) : 29 Cal. 393]. It is not competent to an Appellate Court, which sets aside conviction, to order the security to be continued. The order abates *ipso facto* on acquittal. [*Chajju Mal*, A. W. N. (1895) 141 ; see also *Bhaskar*, 3 Bom. H. C. R. C. C. 1 (1886)].

An order under sec. 106 can be passed on conviction in a summary trial, provided that the Magistrate or Bench has jurisdiction to pass such order under that section. [*Lachman*, A. W. N. (1886) 180].

Sec. 107 Cr. P. C.—

Sec. 107 (1) authorizes a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the the first class to act under it. Sub-sec. (2) restricts the power of any Magistrate other than a Chief Presidency or District Magistrate to initiate proceedings to two contingencies *viz.*, both the person informed against and the place where the breach of the peace or the disturbance is apprehended, must be within the local limits of such Magistrates' jurisdiction, whereas the existence of either

of the contingencies will give jurisdiction to a Chief Presidency Magistrate or a District Magistrate.

By reading sub-sections (1) and (2), it is clear that in order to give jurisdiction to a Magistrate of the description mentioned therein, there must be—

(i) an *information* before such Magistrate that any person is likely—

(*a*) to commit a breach of the peace or disturb the public tranquility, or

(*b*) to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquility.

(ii) the *person* informed against or the *place* where the breach of the peace or disturbance is apprehended must be within the local limits of such Magistrate's jurisdsction :

(*a*) the existence of *either* of the contingencies mentioned in (ii) will give jurisdiction to a Chief Presidency or District Magistrate,

(*b*) The existence of *both* the contingencies is *sin equa non* in case of other first class Magistrates.

Sub-sec. (3) prescribes the procedure which a Magistrate not empowered to proceed under sub-sec. (1) of sec. 107 may follow in cases where he has reason to believe that any person is likely to commit a breach of the peace. He may issue a warrant of arrest if he believes that the breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, but he must record his reasons therefor. He has to send the person thus arrested before a Magistrate empowered to deal with the case together with a copy of his reasons. The latter may in his discretion detain such person in custody until the completion of the inquiry.

The wording of sec. 107 is not free from ambiguity. Like sec. 106, sec. 107 also causes some difficulty in its interpretation and application. Sub-sec. (1) excludes a Magistrate of the second or third class and gives powers only to certain Magistrates of the first class specified therein to require persons informed against to give security to keep the peace. That power is subject to the provisions contained in sub-secs. (2). By operation of

sub-secs. (1) and (2) together, sec. 107 gives jurisdiction to a Chief Presidency or District Magistrate to act, if either the *person* informed against or the *place* where a breach of the peace or disturbance is apprehended is within the local limits of such Magistrate's jurisdiction. In case of other first class Magistrates (than a Chief Presidency or District Magistrate), the jurisdiction vests only when both the *person* and the *place* are within their local limits. It follows, therefore, that this class of Magistrates cannot exercise their jurisdiction under sec. 107, if only one of the contingencies mentioned is present. What are they to do under such circumstances? They cannot proceed under sub-sec. (3). For sub-sec. (3) lays down certain procedure to be adopted under certain circumstances by a Magistrate who "is not empowered to proceed under sub-sec. (1), *i.e.*, by a second or third class Magistrate. Probably, he, the first class Magistrate, who cannot act as the person informed against or the place of disturbance is beyond the local limits of his jurisdiction, may cause the information laid before a Magistrate having jurisdiction or bring the matter to the notice of a superior Magistrate to whom he is subordinate for necessary action in the matter. But if the circumstance is such that a breach of the peace cannot be prevented otherwise than by arresting such person, can he issue a warrant of arrest, which presumably a second or third class Magistrate can, under sub-section (3)? The sub-section is not at all clear on the point. The words "any Magistrate not empowered to proceed under sub-sec. (1)" cannot, by a very liberal construction, be made to include such first class Magistrates who cannot exercise their jurisdiction under this section because both the *person* and the *place* are not within their local limits. And yet it would be very difficult to imagine that the Legislature, whose intention, as is clear from sub-secs. (1) and (2), was that the powers under sec. 107 should be exercised only by a superior Magistrate, should invest a second or third class Magistrate to issue a warrant for the arrest of a person under certain circumstances, and a first class Magistrate, not competent to proceed by virtue of sub-sec. (2), should be precluded from doing so under

similar circumstances. The proviso of sec. 114 Cr. P. C. gives a Magistrate similar power of issuing a warrant for the arrest of the person informed against. But this section applies *after* a proceeding under sec. 107 has been drawn up. So this proviso does not assist a first class Magistrate, not competent to proceed under sub-sec. (2), to issue a warrant under the circumstances mentioned in sub-sec. (3). Further, sub-sec. (3) does not seem to be governed by sub-sec. (2) which governs sub-sec. (1). It would seem, however, that in order to enable a subordinate Magistrate to act under sub-sec. (3), the *person* and the *place* of disturbance must be within his local limits of jurisdiction. It may be mentioned that sub-sec. (2) was added to the section by the Amending Act of 1898, after the decision, we presume, of Wilson J., in *Dinonath Mullick*, 12 Cal. 1330 (1884) and sub-secs. (3) and (4) re-enacted sec. 108 of the Code of 1882.

The expression "disturb the public tranquility which occurs in sub-secs. (1) and (3) was added by the Amending Act of 1898. Whether this addition to the section has enlarged its scope or not, the introduction of two expressions, *viz*, "breach of the peace" and "disturb the public tranquility" without defining them, has not rendered the interpretation of the section more easy. See our remarks p. 4 *supra*.

From the provisions of sub-sec. (2), it would appear that the object of the Legislature is to prevent proceedings against an absent person, save under exceptional circumtances, and to give discretion in such a matter only to a superior Magistrate.

A non-resident zeminder cannot be bound over to keep the peace mainly because his local agents are committing acts likely to disturb it. [*Charoo Mullick*, 10 C. L. R. 430 (1882)].

In *Jai Prakash Lal*, 6 All. 26 (F. B.) (1883), a Full Bench held that the terms of sec. 107 Cr. P. C. do not empower a Magistrate to issue process to a person not residing within the limits of his district. This case was followed in *Abdul Aziz*, 14 All. 49 (1891); *Rajendra Roy*

Chowdhury, 11 Cal. 737 (1885); *Dinonath Mullick*, 12 Cal. 133 (1885); *Krishnaji*, 23 Bom. 32 (1897).

In *Rajendra*, 11 Cal. 737 (1885), the defendants were residents of Furreedpur holding property both in Backergunge and Furreedpore, managed by agents and were bound down to keep the peace by the Joint Magistrate of Backergunge, as they were likely to commit a breach of the peace in the District of Backergunge. The High Court in setting aside the order as being made without jurisdiction observed: "The proper course for him (the Magistrate of Backergunge) to take, if he thinks there is evidence that they are likely to commit a breach of the peace within the District of Backergunge, is to have information laid before the Magistrate of Furreedpore, and have evidence in support thereof forthcoming, so that proceedings may be taken by a Court of competent jurisdiction."

In *Dinonath Mullick*, 12 Cal. 133 (1885), it was held that a Magistrate has no jurisdiction to take proceedings under sec. 107 against a person not personally within his jurisdiction.

In *Krishnaji*, 23 Bom. 32 (1897), the Bombay High Court, following the decisions of Calcutta and Allahabad High Courts, held that a Magistrate cannot call upon a person residing beyond his local jurisdiction to give surety against a breach of the peace within that jurisdiction. [Followed *Jai Prokash Lal*, 6 All. 26 (1883); *Abdul Aziz*, 14 All. 49 (1891); *Rajendra*, 11 Cal. 737 (1885); *Dinonath*, 12 Cal. 133].

In *Shama Charan*, 24 Cal. 344 (1897): 1 C. W. N. 129, the Court observed: "It appears to us that if at the time when the Magistrate receives information and institutes proceedings the accused person is residing within the local limits of his jurisdiction, he would have authority to proceed against him under sec. 107, though that person may be habitually or permanently residing in another jurisdiction. To hold otherwise would lead to various difficulties and inconveniences. No doubt there are observations in the cases cited before us which may at first sight seem to be opposed to this view, but having regard to the facts of

those cases, we do not think that those observations militate against the opinion which we have formed in this case." The cases cited were *Jai Prakash Lal*, 6 All. 26 (F. B.) ; *Rajendro*, 11 Cal. 737 ; *Dinonath* 12 Cal. 133.

Further, sub-sec. (3) does not seem to be governed dy sub.-sec. (2), which qualifies sub-sec. (1). It would seem, however, that in order to enable a subordinate Magistrate to act under sub-sec. (3), he must have both personal and local jurisdiction, that is to say, both the person and the place of disturbance should be within his local jurisdiction, as in the case of first class Magistrates other than a Chief Presidency or District Magistrate.

It may be mentioned that sub-sec. (2) was added to the to the section by the Amending Act of 1898, presumably after the decision of Wilson J., in *Dinonath Mullick*, 12 Cal. 133. In that case the learned Judge observed as follows :—

"The construction of the sec. [107] taken by itself may not be wholly free from doubt. It is not very clearly worded : and it might perhaps be capable of two constructions. It might perhaps be read as meaning that, where a Magistrate receives information that any person, wherever that person may be, is likely to commit a breach of the peace within the local limits of such Magistrate's jurisdiction, he may take proceedings. On the other hand, the jurisdiction of the Magistrate is ordinarily confied within local limits, and this is a personal jurisdiction, that is to say, not a jurisdiction for punishing offences, but a jurisdiction for restraining persons from committing offences. It may well be said that the section should be read, with reference to that primary rule, that the Magistrate's jurisdiction is local ; and the words 'where a Magistrate receives information that *any person* is likely to commit a breach of the peace within the local limits of his jurisdiction' apply only to any person subject to his jurisdiction. Speaking for myself personally I should, from the words themselves alone, be disposed to think that the narrower construction of the words is the correct one. It is, we think, certainly the one most in accordance with convenience. The wider construction would empower any Magistrate in any part of India, who receives an *ex parte* information that a breach of the peace

is likely to be committed within his jurisdiction by any person in any part of India, to require the attendance of that person from any part of India in his Court. That would be a very great hardship, and a wholly unnecessary hardship, because the last part of the section provides that, wherever a breach of the peace is likely to be committed, proceedings may be taken against any person in the district in which he is. Considerations of convenience, therefore, are in favour of the narrower construction."

A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area jurisdiction over the entire district. Therefore, where a Sub-divisional Magistrate instituted proceedings under sec. 107 against a person within his Sub-division and the District Magistrate made an order transferring the same to a Deputy Magistrate of the first class appointed to act in the district at the headquarters who on the objection of the accused drew up a fresh proceeding upon the said information, it was held that the proceedings were not without jurisdiction, as under sec. 12, sub-sec. (2), the jurisdiction and powers of such Magistrate extended throughout such district. [*Sarat Roy Chowdry*, 6 C. W. N. 552 (1902) : 29 Cal. 389.

A subordinate Magistrate has no jurisdiction to draw up a proceeding under sec. 107 against a person residing in another district even on the direction of the District Magistrate. In such a case the proceeding must take place and be brought to a conclusion before the District Magistrate himself. [*Nirbeekar Mukerjee*, 13 C. W. N. 580 (1909)].

A Magistrate has no jurisdiction to remand a person to custody under sec. 107 (4) Cr. P. C., when such person is not sent to him by another Magistrate under sec. 107 (3). Sec. 36 of the Code cannot, when read with sec. 107 (3), be construed as conferring such jurisdiction in a District Magistrate. [*Chidambaram Pillai*, 31 Mad. 315 (F. B.) (1908)].

Sec. 110 Cr. P. C.—

Sec. 110 authorizes a Presidency Magistrate, a District

Magistrate or Sub-divisional Magistrate or a Magistrate of the first class *especially empowered in this behalf by the Local Government* to proceed against any person against whom such Magistrate receives information that he is an offender under either of the clauses (*a*) to (*f*) of the section. But such person must be within the local limits of the Magistrate's jurisdiction.

For the purposes of the proceedings under sec. 110 a Magistrate has jurisdiction to try a person who has a residential house and frequently resides, for the purpose of his business, within the local limits of the Magistrate's jurisdiction, provided acts of oppression (the subject matter of the charges under sec 110 Cr. P. C.) are committed while he so resides. [*Kasi*, 31 Cal. 419 (1904)]. It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction, is found to be a person of the description given in sec. 110, that a Magistrate can take action under that section, and it is not contemplated that the Magistrate in such a case should issue a warrant so as to pursue the person concerned into another jurisdiction. [*Ketabdi*, 27 Cal. 993 (1900) : 5 C. W. N. 29].

Where proceedings under sec. 110 are once initiated before a Magistrate, the Magistrate must dispose of it himself. It is not competent to him to send up the case which he is trying to the District Magistrate for action under Bombay Regulation XII. of 1827. [*Kisan Kevaji*, 14 Bom. L. R. 713 (1912)]. Under this Regulation the District Magistrate took action and issued notice in the following terms :—that the defendant should attend roll-call once in the morning and once in the night in the police-station ; that he should not leave his house after sun-set and before sun-rise, &c. &c. The High Court did not go into the question whether, if the District Magistrate had passed such an order independently of the proceedings under sec. 110, it would have been legal. It may be mentioned that the defendant in this case committed petty thefts and was of dangerous character.

An inquiry under sec. 110 Cr. P. C. should not be conducted by a Magistrate at a place which is outside the

limits of his jurisdiction and where he has no power to conduct any proceedings. [*Sonaram*, 3 C. L. J. 195 (1905)]. The person against whom proceedings are taken under sec. 110 must be, at the time when such proceedings are taken, within the local limits of the jurisdiction of the Magistrate taking such proceedings. (*Ibid*). Non-complance with these provisions vitiates the proceedings as made without jurisdiction, and the order passed should be set aside. (*Ibid*).

In sec. 110, the Legislature has advisedly adopted the expression "any person within the local limits" to exclude the necessity of proving anything approaching permanent residence and to leave it in the power of the Magistrate to deal with what are perhaps the most dangerous habitual criminals who wander from place to place and have no well-known residence where the Police or the Magistracy could be sure at any time of finding them. [*Bapoo*, 9 Bom. L. R. 244 (1907)].

Sec. 562 Cr. P. C.—

Sec. 562 has been added to the Code by the Amending Act of 1898 on the basis of the English law on the subject. It gives power to any Court to release, upon probation of good conduct instead of sentencing to punishment, a youthful offender convicted of *theft, theft in a building, dishonest misappropriation, cheating* or *any other offence under the Penal Code punishable with not more than two years' imprisonment.* But there must be no previous conviction proved against the offender. A Magistrate of the second or third class not especially empowered by the Local Government in this behalf, if he is of opinion that the powers conferred by this section should be exercised, shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or a Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate. The latter shall dispose of the case in manner provided by sec. 380.

The power given by the section can be exercised by the Court of Appeal, [*Birch*, 24 All. 306 (1882)], and is not confined to Courts of first instance. [*Narayanaswami Naidu*, 29 Mad. 567 (1906)].

An accused was charged under secs. 302, 304 and 326 I. P. C., and pleaded guilty under sec. 323 I. P. C. He was directed to be bound down to keep the peace and to be of good behaviour. [*Raja*, Cal. H. C. Sessions, May, 1911].

Where a prisoner pleaded guilty to a minor charge, and the Crown did not press the graver charges, he was directed to be bound down with two sureties for his good conduct and to come up for judgment when called upon. [*Giasuddin*, Cal. H. C. Sessions, December 14, 1911].

An accused was dealt with under sec. 562 by a Presidency Magistrate. The complainant moved the High Court against that order. The latter reversed the order and fined the accused Rs. 100. [*Prince Zani Mirza*, Cal. H. C. Rev. July 26, 1899].

POWERS OF SESSIONS JUDGE AND DISTRICT MAGISTRATE.

Sessions Judge.

Under Sec. 123 Cr. P. C.—

The following observations appeared in *Jhojha Singh*, 24 Cal. 155 (1896) :—

"Under sec. 123, the Judge, if he thinks it proper, after examining the proceedings sent to him by the Magistrate, may require any further evidence that he thinks necessary, before passing orders on the case. Ordinarily, where a Court requires further evidence, that evidence must be taken by the Court itself. Under the Code, where a higher Court has power to direct an inferior Court to take evidence, specific powers are given. This may be seen comparing secs. 123, 375 and 428 of the Code. In this case no such specific powers are given, and we think that the Judge has no power to remand such a case to the Deputy Magistrate."

But as the Amending Act of 1898 the words "from the Magistrate" were added in cl. (3) of sec. 123, a Sessions

Judge can now require a Magistrate to take *further evidence* if necessary.

Sub sec. (3) of sec. 123 comtemplates a decision by the Sessions Judge on the merits of the order demanding good behaviour. It does not authorize him to consider the sufficiency of the security offered. [*Gagan*, 12 C. W. N. 63 (907)]. He has no power to decide as to the necessity for taking security for good behaviour, or without inquiry, to pass order as to the nature of the security to be furnished, or as to the time it is to remain in force. The jurisdiction as to the necessity is in the Magistrate, and after sending the accused to the Magistrate under sec. 504 (Act X. of 1879) the Sessions Judge is *functus officio*. [*Gungaram*, 24 W. R. Cr. 10 (1875)].

It is open to doubt whether the provisions of secs. 367 and 424 Cr. P. C. govern orders under sec. 123(3). [*Kalu Mirza*, 14 C. W. N. 49 (1909)]. But even if they do not, the Sessions Judge's order under sec. 123(3) should show that he has considered the case of each individual prisoner. Even if the order need not contain all the details required by sec. 367 Cr. C. P., still each prisoner has a right to have his case considered on its own merits, and the order should show that this has not been lost sight of. (*Ibid*).

A Sessions Judge is bound to hear pleader who may appear on behalf of a person in a case referred to him under sec. 123(2) Cr. P. C. [*Abinash Malokar*, 4 C. W. N. 797 (1900)]. Where a reference is made to the Sessions Judge under sec. 123, he is bound to give notice to the person concerned, and also to hear his pleader, if he should be so represented. [*Nakhi Lal Jha*, 27 Cal. 656 (1900)]. It is expedient and highly desirable for the ends of justice that a date should be fixed for the hearing of such reference and that a notice of such date should be given to the person concerned. [*Girand*, 25 All. 375 : A. W. N. (1903) 79]. Followed *Jhoja Singh*, 23 Cal. 493, *Nakhi Lal*, 27 Cal. 656.

The Sessions Judge, in confirming the order of a Magistrate under this section in regard to imprisonment of a person in consequence of his being unable to furnish the necessary security, is bound to find a special ground, on which the order is passed having special reference to

sec. 110 of that Code. It is not sufficient where he only finds in general terms that it is in the interests of the community at large that such person should be bound over to be of good behaviour. [*Nakhi Lal Jha*, 27 Cal. 656 (1900)].

In a proceeding under secs. 110 and 118 Cr. P. C., the Magistrate ordered the accused to be bound over for a period of three years and referred the case to the Sessions Judge under sec. 123 (3) Cr. P. C. The latter confirmed the order without going into the merits of the case. The High Court held that the words of clause (3) of sec. 123 Cr. P. C. were wide enough to give discretionary power to the Sessions Judge to deal with the case on the merits, and pass such orders as the circumstances of the case might require. [*Amir Bala*, 35 Bom. 271 (1911)].

Where a Sessions Judge has under sec. 295 (Act X. of 1879), called for the record of an inferior Court, he is, before referring the case to the High Court for orders, bound to call upon the inferior Court for an explanation of the order passed, and should submit such explanation, together with the rest of the record, to the High Court. [*Mailamdi Fakir*, 8 Cal. 644 (1882)].

Although it is within the competence of a Sessions Judge acting under sec. 123(3) to direct that a person who has been ordered to give security shall, on failure to give security, be imprisoned for any term not exceeding three years, yet it is advisable that the term of imprisonment in default ordered under that section should always be the same as the period for which the security is directed to be given. [*Karim-ud-din*, 23 All. 422 (1901)].

Sec. 120 authorizes that the period for which security is required in an order under sec. 118, shall commence on the expiration of any sentence which the accused may be sentenced to or may be undergoing at the time when the order under sec. 118 is made. But it is premature and illegal to pass against him an order under sec. 123 while such imprisonment lasts. The order under sec. 123 should not be passed until the expiry of any term of imprisonment which a person may be undergoing. [*Rangya*, 4 Bom. L. R. 934 (1902)].

District Magistrate.

Under Sec. 123 Cr P. C. :—

Sec. 123 Cr. P. C. does not empower a Magistrate, in the event of default in furnishing security to be of good behaviour, to order the imprisonment of the person called upon to find security. The Magistrate is only empowered to order the detention of such person pending the orders of the Sessions Judge, who, and not the Magistrate, is the authority competent to order imprisonment in default of finding security. [*Jafar*, A. W. N. (1899) 151].

A Magistrate having passed an order requiring security for good behaviour for a term of three years went on to direct that in default of finding security, the person against whom the order was made should be rigorously imprisoned for three years. The Sessions Judge acting under sec. 123 confirmed the order of the Magistrate. The High Court held that although the order directing imprisonment on failure to find security was not an order which the Magistrate could pass, yet it might under the circumstances be taken to be the order of the Sessions Judge, who was the proper Court to pass such an order. [*Jawahir*, A. W. N. (1903) 28]. *Jafar*, A. W. N. (1899) 151 referred to.

Under Sec. 124 Cr. P. C.—

The applicant was ordered by a Sessions Judge, on reference by a Magistrate under sec. 123 Cr. P. C., to find security to be of good behaviour for a term exceeding one year, or, in default, to undergo a term of rigorous imprisonment. He did not find the security required and was in consequence committed to prison. After some months he made an application to the Magistrate of the District under sec. 124 to be released. The Magistrate rejected that application on the ground that there was still an appeal from the order of the Judge under sec. 123. On application to the High Court for revision, it was held that no appeal lay from the Judge's order under sec. 123, and as to the application to the Magistrate under sec. 124, that the Court should not interfere, as the taking of an action on such an application was a matter entirely in the discretion of the Magistrate. [*Chhotia*, A. W. N. (1893) 183].

Uunder Sec. 125 Cr. P. C.—

Under sec. 125 Cr. P. C. the Chief Presidency Magistrate or District Magistrate has power to *cancel* any bond for keeping the peace or for good behaviour executed under Chap. VIII. by order of any Court in his district, not supperior to his Court. He must record his reasons for doing so. This power he has under the present Code. But under the Code of 1882 he had such power only in respect of bonds for keeping the peace. [*Ram Lal Acharjia*, 1 C. W. N. 394 (1897). See *Musstt. Anundee Koer*, 10 W.R.Cr. 40, in which it was held that a Magistrate may cancel an order passed by him, summoning a person to show cause why he should not enter into a bond to keep the peace.

In *Panchu Gazi*, 6 C. W. N. 291 (1901) : 29 Cal. 455, the District Magistrate purporting to act under sec. 125 canc elled the security bond for good behaviour on a police-repo rt and ordered that the accused should be imprisoned unti a fresh security-bond should be given. The High Court held that the Magistrate was not entitled to make that order under sec. 125.

In *Barpa Dey*, 9 C. W. N. 860 (1905) : 32 Cal. 948, the Court said : "The jurisdiction conferred by sec. 125 is not an appellate or revisional but an original jurisdiction. That is, if after a bond has been executed it is made to appear that by reason of the circumstances as they exist at the date of the application, that is, circumstances subsequent to the date of the execution of the bond, the continuance of the latter is no longer necessary, the District Magistrate may cancel it. In other words, while a District Magistrate may in the case of an executed bond hold for sufficient reasons that it is no lon ger necessary and occordingly cancel it, he has no power to declare that it was never necessary. In the former case, the order of the subordinate Court is not touched except so far as the District Magistrate may conside r that the circumstrances existing subsequent to such order require that it should cease to be given effect to. In the latter case, the District Magistrate reviews and differs from any authority over which in the particular matter in question he has been

given no appellate or revisional control other than that conferred by sec. 438. We are of opinion, therefore, that the District Magistrate's order was without jurisdiction." The judgment, we are afraid, was not very clearly expressed. What happened in this case was this :—A Deputy Magistrate was entrusted to hold enquiry after a proceeding under sec. 107 had been initiated by the District Magistrate. The former, after taking evidence adduced by both parties, directed the opposite party to be bound down to keep the peace. Before the bonds were actually executed, the opposite party obtained an oder from the District Magistrate calling for record and staying the execution of bonds. Eventualy, the District Magistrate, purporting to act under sec. 125, set aside the order of the Deputy Magistrate. The pith of the judgment is that the power under sec. 125 can only be exercised by a District Magistrate in a case where he finds that the bond is no longer necessary. But the language of the section does not justify such a view.

In *Nabu Sardar*, 34 Cal. 1 (F. B) : 11 C. W. N. 25 (1905)) : 4 C. L. J. 428, a Division Bench, which referred the case to a Full Bench remarked as follows :—"In *Barpa Dey* it has been held that a District Magistrate has no power to declare that it was not necessary for a subordinate Magistrate to make an order under sec. 118 requiring the execution of bonds to keep the peace, though he has power to cancel bonds on the ground that it was no longer necessary. We have doubt as to correctness of the decision in *Barpa Dey*, and it is opposed to the practice that has been followed in Bengal for a long series of years. Sec. 125 of the Code is very wide in its terms, and we do not think that sec. 406 referred to by the learned Judges in *Barpa Dey* limits its operation. The Magistrate of a District is responsible for its peace and we think sec. 125 gives him plenary powers to deal with orders to execute bonds to keep the peace."

Maclean C. J., who delivered the judgment of the Full Bench, said : "With all respect to the learned Judges who decided that case (re *Barpa Dey*), I can find nothing in the language of the section to justify this view. The

language of the section is very wide : and it seems to me that the words 'for sufficient reasons' are opposed to that view, laid down in the case I have referred to. The District Magistrate may at any time cancel the bond for sufficient reasons, that is, for reasons which the Magistrate thinks sufficient. If he thinks that the bond ought never to have been required, is not that a sufficient reason ? I should say so. There is nothing in the section to qualify or restrict the the natural meaning of the language used ; or to indicate that sufficient reasons means reasons in connection with something which has occurred after the execution of the bond."

The case was sent back to the referring Bench by the Full Bench. The former, according to the judgment of the latter, held that the District Magistrate has power under sec. 125 Cr. P. C. to deal with all questions raised before him. *Barpa Dey* was over-ruled.

In *Daya Nath Thakur*, 14 C. W. N. 306 (1909), the Court said : "It appears to us, as has been held in the case of *Nabu Sardar*, that under sec. 125 the Magistrate has full power to cancel the bond for reasons which appear to him sufficient, but that section does not give him a right to hear an appeal.

In *Fakhir-ud-din Khan*, 33 All. 624 (1911), it was held that a District Magistrate may cacel a bond for good behaviour, but he is not competent to send the person whose bond is not cancelled to jail.

TRANSFER.

Sec. 526 Cr. P. C. empowers the High Court, and secs. 192 and 528 Cr. P. C., Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate to transfer and withdraw any case from a subordinate Court. It should be noted that in sec. 526 it is "any particular criminal case" and in secs. 192 and 528, "any case." Whether the expression "any case," covers the cases under Chap. VIII., the Calcutta High Court in *Chintamon Singh*, 12 C. W. N. 299 (1907) ; 35 Cal. 243 : 7 C. L. J. 117.

observed as follows: "It has been contended that sec. 192 Cr. P. C. applies only to criminal cases, as it is part of a chapter which deals with offences, and the preceding section relates to the cognizance of offences. The words are, however, quite wide enough to include cases under Chap. VIII. of the Criminal Procedure Code. We may also point out that in the Code of 1872, sec. 44, which is the section corresponding to sec. 192 of the present Code, provided only for the transfer of 'criminal cases.' By the Amending Act X. of 1874 the word 'criminal' was struck out, and it has been omitted from all subsequent enactments. The words 'criminal case' are intended to be used in a limited sense and not to apply to every case cognizable by a Criminal Court. But when the words 'criminal case' have been altered to 'any case,' it is clear that the Legislature intended that the power of transfer should not be restricted to criminal cases only, and extended the power of transfer to cases of every description." This is certainly the correct view of the law so far as the powers of the Magistrates are concerned under secs. 192 and 528 Cr. P. C. But what about the powers of the High Court with reference to transfer of proceedings under Chap. VIII. ? As already indicated, in sec. 526 the words are 'criminal cases' even in the present Code. Can a High Court under sec. 526 transfer a proceeding under this Chapter to another Magistrate in another District? The answer depends upon the meaning of the words "criminal case."

In *Lolit Mohan Moitra*, 5 C. W. N. 749 (1901): 28 Cal. 709, Ghose J., after discussing at length the meaning of "case" and "criminal case" came to the conclusion that "the expression 'criminal case' occurring in sec. 526 may well be understood, as simply distinguished from a civil case, or in other words, that a 'criminal case' is one over which a Criminal Court exercises jurisdiction." (*Vide* Ibid pp. 751—754). In *Gurudas Nag*, 2 C.L.J. 614 (1906), the learned Judges, following *Satish Pandey*, 22 Cal. 898, held that a proceeding under sec. 145 Cr. P. C. is a "criminal case." Of course this decision was with reference to secs. 192 and 528 Cr. P. C. Their Lordships dissented from *Pandurang Govind Pujari*, 25 Bom. 179.

The Bombay High Court in *Pandurang Govind Pujari*, 25 Bom. 179 (1900), held that a 'criminal case' means a case arising out of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime.

The Madras High Court in *Arumuga Tegundan*, 26 Mad. 188 (1902), did not agree with the view expressed in *Pandurang Govind Pujari*, 25 Bom. 179, and held that "if a case under sec. 145 Cr. P. C. is not a 'criminal case' it is difficult to conceive what it is," and that the High Court has jurisdiction to transfer it, both under sec. 526 Cr. P. C. and clause 29 of the Letters Patent.

The Allahabad High Court held that the expression "criminal case" in sec. 526 Cr. P. C. includes a proceeding under sec. 145 Cr. P. C., and that the High Court under sec. 526 Cr. P. C. has power to transfer such case from one Court to another Court subject to all the conditions under which a transfer can be made. [*Jaggu Ahir*, 34 All. 533 (1912)]. *Arumuga*, 26 Mad. 188; *Lolit*, 28 Cal. 709; *Gurudas*, 2 C. L. J. 614 referred to. *Pandurang Govind*, 25 Bom. 179 dissented from.

Upon these interpretations of the expression "criminal case" in sec. 526 Cr. P. C., the Calcutta High Court held that it is doubtful whether it would transfer under that section a proceeding under sec. 145 Cr. P. C., but under the Charter Act it can. [*Lolit Mohan*, 5 C. W. N. 749.] The Bombay High Court held that sec. 526 should not give any power to direct the transfer of any proceedings initiated under sec. 145. Such proceedings do not constitute "criminal case" within the meaning of sec. 526 Cr. P. C. [*Pandurang Govind Pujari*, 25 Bom. 179]. The Allahabad and Madras High Courts, on the contrary, distinctly held that they have jurisdiction to transfer such proceedings, the latter Court holding that it had such power under clause 29 of the Letters Patent as well. [*Jaggu Ahir*, 34 All. 533; *Arumuga*, 26 Mad. 188].

It may be noted that both Chapter VIII. (*i.e.* the security sections) and Chapter XII. (*i.e.* the sections dealing with disputes regarding immoveable property) are contained in Part IV. of the Code, which is headed "Prevention

of Offences." Therefore, if a proceeding under sec. 145 Cr. P. C. can be transferred under se. 526, *a fortiori* proceedings under secs. 107—110 also. His Lordship Mr. Justice Ghose, in *Lolit Mohan Moitra*, already referred to, in the course of argument, said :—"It will be observed that there are other sections of the Code, which deal with preventive measures, and which are contained in Part IV. *e. g.*, secs. 107 and 110. Are proceedings under these sections criminal cases or what? I think these may well be described as criminal cases ; and this Court, I am informed, has exercised jurisdiction in transferring such cases under sec. 526 Cr. P. C., see, for example, the case of *Ahmed Hossein* (unreported Cr. Rev. 33 of 1899, decided on June 12, 1899) ; and I find that in that case, the question was raised by the Magistrate concerned upon the authority of a case in *In the matter of Amar Singh*, 16 All. 9 (1893), whether this Court had authority to transfer such cases to some other district ; and notwithstanding the objection raised, an order was made for the transfer." (*Ibid.* p. 753).

Thus upon the authority of this unreported case *re Ahmed Hossein*, we find that the Calcutta High Court did transfer cases under Chapter VIII. from one district to another. In *Surjya Kanta Roy*, 31 Cal. 350 (1904), the same Court held that a District Magistrate instituting proceedings under sec. 107 (2) Cr. P. C. has power to transfer the inquiry to any subordinate Magistrate competent to inquire into the same. The object of sec. 107 is to restrict the initiation only of proceedings against persons residing beyond the local limits of the jurisdiction of the District Magistrates, and not to restrict their power to transfer such proceedings, after initiation, to a subordinate Magistrate. [Followed *Munna*, 24 All. 151 ; distinguished *Shama*, 23 Cal. 300 ; *Raghu*, 23 Cal. 442 ; referred to *Dinendro*, 8 Cal. 851 ; *Satish Pandey*, 22 Cal. 898.

In a recent case some observations appeared as to the inconvenience of transferring a preventive proceeding from one district to another, which are as follows : "As a rule it would not be at all in accordance with our view of our duty to transfer any preventive proceeding from one dis-

trict to another. It must be an extremely exceptional case that could justify the interference of this Court with the jurisdiction of the Magistrate of the District taking preventive action within his own boundaries and imposing such foreign and extraneous duty on the Magistrate of another District. It would always involve the employment of no less an authority than the District Magistrate himself, for it is impossible for a subordinate Magistrate in a foreign district to take cognizance of proceedings of the District Magistrate in his own district. This would cause the greatest inconvenience and dislocation of judicial work. [*Chandi Prosad Singh*, 17 C. W. N. 536 (1912)].

The Allahabad High Court held contrary view as will be seen from the following cases :—

In *Amar Singh*, 16 All. 9 : A. W. N. (1893) 183, it was held that proceedings under sec. 110 cannot be transferred to any Court outside the District within which such proceedings have been lawfully instituted. Burkitt J., said : "In my opinion, all proceedings under chapter VII. Cr. P. C,. are intended by law to be taken in and completed within the district in which the person from whom it is sought to require security for keeping the peace or for good behaviour is living at the time when the proceedings were commenced.....With reference to section 110, I am of opinion that, even reading section 526 with that section, the clear intention of the Legislature is that such proceedings must be held within the district in which a person from whom it is sought to take security is residing, and not in any other district." And his Lordship's reason is : "the power given by the sections which prescribe the procedure for the inquiry is one which, as a condition precedent to making absolute the order for security, requires the Magistrate to find that there is *within the limits of his jurisdiction* a person to whom section 110 applies."

In *Gudar Singh*, 19 All 291 (1897), Edge C. J., said : "Having regard to section 117 Cr. P. C., and to the fact that the Magistrate concerned has 'acted' within the meaning of that section, it appears to me that I have got no power to make an order of transfer, and that also is the opinion of other Judges of this Court whom I have consulted

in the matter." In this case the Magistrate, before whom the case came on for hearing threatened the defendant that unless he admitted his guilt and furnished the necessary securities, he would deal with him severely and send him to jail. This alleged threat was made before recording any evidence. Thereupon the defendant moved the High Court for a transfer. The alleged threat which was supported by an affidavit was not denied or controverted by the Magistrate. Yet the High Court did not transfer the case as it thought it had no such power under the law. What the learned Chief Justice did was to quash the proceedings against the petitioner. His Lordship's words are very significant:—"What I have power to do is to quash the proceedings.....; and I accordingly make an order quashing the proceedings in question.....This order will not prevent fresh proceedings being taken against Gudar Singh by any Magistrate other than the Magistrate referred to in the affidavit of Gudar Singh."

In *Munna*, 24 All. 151 (1901), it was held that it was competent to a District Magistrate who had initiated proceedings under sec. 107 (2) Cr. P. C. against a person not at the time within the limits of his jurisdiction, to transfer such proceedings at a later stage to a Magistrate subordinate to himself, though such Magistrate was not competent to initiate such proceedings. Aikman J., said : "This question (*viz.*, whether the District Magistrate, after instituting proceedings under s. 107 (2), had any power to transfer the case) is not altogether free from difficulty. But after consideration, I am of opinion that the intention of the Legislature was to limit the jurisdiction in regard to institution of proceedings in cases like the present to a chief Presidency or District Magistrate ; but that when such Magistrate, in the exercise of his discretion, directed institution of proceedings, there is nothing in the law to prevent him from transferring the case to a Magistrate otherwise qualified to complete the proceedings."

In *Mohendra Singh*, 30 All. 47 : A. W. N (1907) 268, following *Amar Singh*, and *Gudar Singh*, it was held that proceedings under sec. 110 Cr. P. C. cannot be

transferred to any Court outside the district within which such proceedings have been lawfully instituted.

In *Wahid Ali Khan*, 32 All. 642 (1910), it was held that sec. 526 Cr P. C. enables the High Court to transfer criminal proceedings initiated under sec. 107 Cr. P. C., once they have been properly instituted, to any other criminal Court of equal or superior jurisdiction (and which otherwise would have no jurisdiction) and the order of the High Court will give jurisdiction to the Court to which the case has been transferred to make an inquiry under sec. 117 Cr. P. C. and to pass an order under sec. 118. (*Amar Singh*, 16 All. 9 not followed).

It is worth noting that under sec. 107 and sec. 109, a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is authorized to take action. But under sec. 108 and sec. 110 the Magistrate of the first class must be especially empowered by Local Government in this behalf to be able to act under those sections. Therefore the Magistrate, who will be entrusted to hold an enquiry under secs. 108 and 110 after transfer, must have power especially granted to him to hold inquiry into these proceedings. How far the provisions of clause (2) of sec. 192 Cr. P. C. will apply to these proceedings under Chap.VIII. is a matter not quite settled yet.

In *Akbar Ali Khan*, 4 C. W. N. 821 (1900), where a Magistrate of the first class, not being a District Magistrate or a Sub-divisional Magistrate, passed an order to draw up proceedings under sec. 145 (1) Cr. P. C. and transferred the case to another Megistrate who took evidence and passed the final order, the High Court held that although such transfer is not authorized by sec. 192 (2) Cr. P. C., still the proceedings taken upon such transfer may be considered saved under the terms of sec. 529 cl. (f) of the Code. Under the terms of sec. 192 (2) a Magistrate of the first class, even when duly empowered to trasfer cases, can only transfer an inquiry or trial relating to an "offence." In *Raj Mohan*, 5 C. W. N. 686 (1901), it was laid down that any mistake made erroneously and in good faith by one Magistrate in transferring a case under sec. 145 Cr. P. C. to another, under sec. 192, is cured by the pro-

visions of sec. 529 (f). This case was followed in *Gurudas Nag*, 2 C. L. J. 614 (1908), where the Judges expressed the same view.

On the basis of these cases it may be said that if a first class Magistrate, acting under sec. 192 (2) transfers proceedings under sec. 107 and sec. 109, they may be saved by sec. 529 (f). But proceedings under secs. 108 and 110, which he cannot initiate unless he is specially empowered to do so, can he transfer them? and if he does transfer, will that be saved by sec. 529 (f)?

In *Chintamon Singh*, 12 C. W. N. 299, it was held that when a Magistrate having no power to transfer a case under sec. 110 Cr. P. C. transfers the case erroneously and in good faith to another Magistrate, the proceeding before the latter Magistrate will not be void, as such transfer would only amount to an irregularity which would be covered by sec. 529 (f) Cr. P. C. *Akbar Ali*, 4 C. W. N. 821 referred to.

As regards the grounds of transfer the same rule will prevail as in other criminal cases. The Calcutta High Court, on the well-known principle of reasonable apprehension that the party concerned will not have a fair and impartial trial, transferred a proceeding under sec. 107. [*Bibee Kulsum*, 11 C. W. N. 121 (1906)]. In this case the party against whom proceeding under sec. 107 was instituted were further appointed special constables, although the latter order was in abeyance at the time they moved the High Court. The Allahabad High Court, however, declined to direct a transfer of a proceedings under sec. 110 Cr. P. C. where a Magistrate refused to admit to bail the person against whom the proceedings were pending under sec. 110 Cr. P. C. on the ground that "the accused is said to be a dangerous and violent man who might use his liberty for the purpose of intimidating witnesses. [*Mithu Khan*, 27 All. 172. (1905)]. See the observations of Edge C. J., in *Gudar Singh*, 19 All. 291.

Where there was not a word in the petition or in any of the papers prior to the date of the issue of a rule by the High Court against the impartiality of the enquiring Magistrate, but because the latter declined to stay his

hands on a telegram (informing High Court's Rule and stay of proceedings) sent by the petitioner to his mukhtear and placed before the Court by his legal advisers, and, further issued a warrant against the petitioner for his non-appearance, the High Court held that that was no sufficient ground for a transfer. [*Chandi Proshad Singh*, 17 C. W. N. 536 (1912)].

As to the time for making application for adjournment in view of applying to the High Court for transfer, the remarks of the learned Judges in *Tarapati*, 11 C. W. N. 231n (1907), are very pertinent. With reference to the Magistrate's explanation that the petition for adjournment was made at the time of the hearing and not before, and therefore it was vexatious and made for the purpose of delay, their Lordships said: "The petitioners were legally justified in putting off their petition for transfer until the last moment, and it was no justification for refusal to grant such adjournment, because the Magistrate himself had travelled to the place where evidence was to be taken and a large number of persons had assembled to give evidence."

The High Court refused transfer of a proceeding under sec. 107 in the matter of *Mewa Lal Thakur*, 11 C. W. N. 415 (1906), as the petitioner was not involved in any proceeding "at present." But his Lordship added he will be at liberty to apply for a transfer or any other relief that he may seek when any proceeding is taken against him. The most that I can say is that there is at present no valid proceeding against him."

District Magistrate's power to transfer.

In *Dinendra Nath Shanial*, 8 Cal. 851 (1882), it was held that the provisions of sec. 47 (Act X. of 1872), as amended by sec. 6 of Act XI. of 1872, are wide enough to empower a District Magistrate to withdraw a case falling under sec. 491 of the same Code.

In *Sarat Roy Chowdry*, 6 C. W. N. 552 (1902): 29 Cal. 389, where a Sub-divisional Magistrate instituted proceedings under sec. 107, and the District Magistrate made an

order transferring the same to a Magistrate at the head-quarters who on the objection of the accused drew up a fresh proceeding upon the said information, it was held that the proceedings were not without jurisdiction as under sec. 12 (2) the jurisdiction and powers of such Magistrate extended throughout such district.

Even on the direction of the District Magistrate a subordinate Magistrate has no jurisdiction to draw up a proceeding under sec. 107, against a person residing in another jurisdiction. In such a case the proceeding must take place and be brought to a conclusion before the District Magistrate himself. [*Nirbeekar Mukerjee*, 13 C. W. N. 580 (1909)].

When a case is in the hands of a subordinate Magistrate, the Magistrate of the District, if he thinks necessary to pass order in the case himself, should regularly transfer the case to his own file. [*Toni*, A. W. N. (1895) 143].

APPLICATION OF OTHER SECTIONS.

Sec. 55 Cr. P. C.—

Sec. 55 Cr. P. C. authorizes "any officer in charge of a police-station" to arrest or cause to be arrested, (without an order from a Magistrate and without a warrant), any person

(*i*) found taking precautions to conceal his presence within the limits of such station,

(*ii*) who has no ostensible means of subsistence within the limits of such station,

(*iii*) who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

It should be noticed that as regards persons referred to in (*i*) & (*ii*) they must be "within the limits of such (police) station." But as regards persons referred to in (*iii*) no such limitation has been prescribed by the section. Further, secs. 109 and 110 give powers to certain Magistrates to

require from persons referred to in (*i*), (*ii*) and (*iii*) to execute bond for good behaviour ; and the procedure laid down in secs. 112-118 is to be followed in determining whether they should be bound down or not. Sec. 114 provides for issue of warrant under special circumstances. Therefore, the power given by sec. 55 to a police-officer in charge of a police-station is a very exceptional one. And as a police-officer superior in rank to an officer in charge of a police-station may exercise the same power (see sec. 551 Cr. P. C.) every police officer, from the officer in charge of a police-station to that in the highest rank, can arrest these persons without a warrant, although certain Magistrates below the rank of a first class and even first class Magistrates, in certain cases, cannot do so under similar circumstances.

With reference to the exercise of these powers, the observations of Knox J., are very pertinent. His Lordship said : (vide *Daulat Singh*, 14 All. 45 (1891)—

"As I have already remarked in cases of this kind, the powers with which officers in charge of police-stations and District Magistrates have been armed under the Code for the purpose of restraining bad characters are exceptional powers. They provide very strong remedies, and should never be put in force by either the officer in charge of a police-station or the Magistrate of a district, without the greatest deliberation, and except upon evidence which convinces the Magistrate that in the interests of the public welfare it is absolutely necessary to demand from the person before him security to be of good behaviour.

"Still there can be no doubt that the Code of Criminal Procedure contemplated that cases would occur, though they might be rare and exceptional cases, in which it would be the clear duty of the officer in charge of a police-station to arrest or cause to be arrested any person within the limits of his station who is by repute an habitual robber, house-breaker, or thief, &c. It would and will be a clear dereliction of duty in such a case for police-officers in charge of the station to abstain from arrest. While, on the one hand, any case in which the section was put into force without care and good faith would call for the strongest measures

against the police-officers so offending, on the other hand, the officer who has the courage honestly to act in a case of necessity under the powers given to him by the section is acting faithfully to the trust reposed in him. Comparing, however, section 55 of the Code of Criminal Procedure with the provisions contained in sec. 112 and the following sections, I think there is little doubt that sec. 55 was intended as the learned Judge rightly pointed out, for suppression of habitual bad characters whom an officer in charge of a police-station suddenly finds within his circle, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under sec. 112. That, at any rate, would be a safe way of using the powers given by the section.....I am distinctly of opinion that, when the police do act under sec. 55, they are bound to give the person arrested the option of bail; and that bail shall be, as the Code requires, not excessive, and in accordance with the position in life occupied by the person arrested."

Regarding the action of the Magitrate in this case his Lordship observed :—

"Looking to the explanation given by the Magistrate, while I am not prepared to say that the arrest by the police was illegal, I do think that it was unnecessary, and that it would have been better for the District Magistrate to have used *suo motu* the procedure laid down in Chapter VIII. of the Code.....I am of opinion that the order in writing setting forth the substance of the information upon which he professes to act should always, except in cases in which action has been taken under sec. 55 of the Code, accompany the summons issued under section 114; and in no case should a Magistrate acting unders ection 112 issue a warrant of arrest except upon the clearest grounds for belief that, unless he issues such warrant, a breach of the peace is inevitable. It is the intention of the Code that any man called to meet the exceptional procedure laid down in Chapter VIII, should at his own house have the fullest information compatible with the circumstances of the case as to the

reasons why his liberty is in danger of being interfered with. Only where a breach of the peace is imminent should the action taken under Chap. VIII. be of a prompt and vigorous nature. To deprive any person of his liberty is a most serious step to take, and it is hardly too much to say that every step in the process should show extreme deliberation and care, and if a person has to be arrested previous to inquiry, he should be given the option of release upon proper bail."

In *Kandhaia*, 7 All. 67 (1884), the question arose that, when a police-officer acting under the provisions of sec. 55 Cr. P. C. arrests a person of bad livelihood and the latter resists the apprehension and escapes, whether the latter is punishable under sec. 224 or 225 I. P. C. The Court after discussing sec. 110 and 118 held that the accused K. was not charged with any *offence* within the meaning of sec. 40 Cr. P. C. and therefore no offence either under sec. 224 or 225 was committed. The learned Judge observed : "With the apparent anomaly of providing in sec. 55 Cr. P. C. for the arrest of the persons described in (b) and (c) of that section, and of making no provision similar to those of sec. 651 Cr. P. C. and of sec. 225A I. P. C. for punishing them for breaking their arrest we are not here concerned. Our duty is to administer the law as it stands. And we have the satisfaction of noting that the Calcutta Court (*Shasti Napit*, 8 Cal. 331) has taken the same view as we do."

Sec. 87 Cr. P. C.—

In ordering arrest of a person a Magistrate must act on recorded information. It is not enough for him to express a belief that such a course is necessary ; not only must he have "reason to fear the commission of a breach of the peace but that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person." [*Babua*, 6 All. 132 (1883)].

A proclamation issued under sec. 87 Cr. P. C. against an absconding person should allow at least 30 days' time to the absconding person for his appearance and if the Magistrate fixed a less period, the proclamation is bad in law. [*Subba Naicken*, 15 Mad. L. J. 438 (1907)]

In a proceeding under sec. 110, the Magistrate issued a warrant to arrest the accused who had already left his jurisdiction. As the warrant was not executed, the Magistrate took proceedings under sec. 87 Cr. P. C., and attached the moveable and immoveable properties of the accused under sec. 88 Cr. P. C. An application having been made to cancel the warrant and attachment proceedings, it was held that as the accused was no longer living within the limits of the Court's jurisdiction, the warrant, proclamation, and attachment issued against him were illegal. [*Ramjibhai*, 14 Bom L. R. 889 (1912)].

Sec. 116 Cr. P. C.—

Where a person residing at a distance, and there is no special circumstance making his personal attendance necessary, the Magistrate has power under sec. 116 to allow him to appear by a pleader. [*Dinonath Mullick*, 12 Cal. 133].

When the party to whom an order under sec. 112 is directed appears in Court in obedience thereto, the inquiry must be conducted on the lines laid down in sec. 117 Cr. P. C. [*Babua*, 6 All 132].

Sec 167 Cr. P. C.—

Section 167 Cr. P. C. applies to investigation under Chap. XIV. and gives no authority to a Magistrate to re-remand an accused person in custody in proceedings under Chapter VII. of the Code in order to enable the police to trace other persons to be proceeded with under that Chapter. [*Basya*, 5 Bom L. R. 27(1902]). Under this section the period for which a Magistrate can authorize the detention of the accused in police-custody is fifteen days on the whole, including one or more remands. [*Krishnaji Pandurang*, 23 Bom 32 (1897). Followed *Engadu*, 11 Mad. 98 (1887).

Secs 190 & 191 Cr. P. C.—

Sec. 190 (*c*) and sec. 191 Cr. P. C. do not apply to proceedings under Chapter VIII. [*Mithu Khan*, 27 All. 172].

Sec. 192 Cr. P. C.—

A case under sec. 110 Cr. P. C. can be transferred by a District Magistrate as he is competent under sec. 192 Cr.

P. C. to transfer any case cognizable by a Criminal Court and his power of transfer is not restricted to criminal cases only. [*Chintamon Singh*, 12 C. W. N. 229 (1907)].

Sec 250 Cr. P. C.—

An award of compensation must be in respect of a frivolous and vexatious accusation of an offence of which the accused person has been discharged or acquitted. The section is not applicable to an application made to a Magistrate solely with a view to his taking proceedings under sec. 110 Cr. P. C. [*Lakhpat*, 15 All. 365 (1893)]. This case was followed by the Bombay High Court in *Govind Hanmant*, 25 Bom. 48 (1900) : 2 Bom. L. R. 339. In this case A. applied to a Magistrate of the first class to give security to keep the peace under sec. 107 Cr. P. C. The Magistrate after inquiring into the matter discharged B. under sec. 119 Cr. P. C., and directed A to pay to B. Rs. 50 as a compensation under sec. 250 Cr. P. C. The High Court held that the award of compensation was illegal. The institution of proceedings under sec. 107 Cr. P. C. was not an accusation of an offence triable by a Magistrate within the meaning of sec. 250 Cr. P. C.

Sec. 256 Cr. P. C.—

Section 256 Cr. P. C. has no application to a case under sec. 110. and a person called upon to show cause under this section has no right to further cross-examine the prosecution witnesses under section 256 Cr. P. C. [*Chintamon Singh*, 35 Cal. 243 : 12 C. W. N. 299 (1907)].

The prosecutor and the accused are both equally entitled to a full cross-examination of witnesses called by the Court under sec. 540 on mattters relevant to the inquiry. The Court cannot restrict the cross-examination of such witnesses by either party to the subjects on which it had examined them. (*Ibid*).

Where an attempt was being made to protract the examination-in-chief of the defence witnesses to a most unnecessary extent so as to delay, if not to prevent, the final termination of the case, and the address of the Counsel had proceeded for fifteen days, it was held that the Magistrate was not unreasonable in fixing a time-limit for the

examination-in chief of the remaining witnesses and for the close of the address. (*Ibid.*)

Sec. 257 Cr. P. C.—

Sec. 257 Cr. P. C. is imperative in its terms. It leaves to a Magistrate no discretion to refuse to isssue process to compel the attendance of any witness unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice; such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show in writing the ground of refusal as applied to such individual. [*Purshottam Kara*, 26 Bom. 418 (1902) : 4 Bom. L. R. 38]. This was a case under sec. 110 (*d*) & (*e*). The Magistrate decided to call out of a list of 33 witnesses, and declined to call more than five witnesses on this point (*i.e.* of respectability)." The High Court said : " The law on the subject is contained in sec. 257 which, under clause 2 of section 117, is applicable to this case."

See *Surjya Kanta Acharjee*, 30 Cal. 508 (1902), which was a case under sec. 145 Cr. P. C. and where a Magistrate refused to assist a party in procuring the attendance of his witnesses : the High Court held that the Magistrate had acted without jurisdiction.

It is a sufficient compliance with the requirements of sec. 257 (1) Cr P.C. if a Magistrate, while rejecting an application for summoning further defence witnesses, states facts which have led him irresistibly to the conclusion that the application was for no other purpose than that of vexation or delay or defeating the ends of justice, although he does not say expressly that the application was for that purpose. [*Wahid Ali Khan*, 11 C. W. N. 789 (1907)].

Sec. 350 Cr. P. C.—

The provisions of section 350 Cr. P. C. apply to inquiry under Chapter VIII., as the term " inquiry " includes every inquiry under the Code conducted by a Magistrate or Court. [*Vide* sec. 4 cl. (*c*)]. In *Boroda Kant Roy*, 4 C.

L. R. 452, it was held that the proceedings to require security to keep the peace are an "inquiry" so as to enable a Magistrate to resume them on succeeding one who has held them. The succeeding Magistrate can resume the proceedings *de novo*. The person concerned may insist on re-examination of all the witnesses.

Sec. 362 Cr. P. C.—

Under sec 362 Cr. P. C., a Presidency Magistrate has to take down evidence of witnesses only when he imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months. In other instances, he need not take down any evidence. In a proceeding under sec. 110, a Presidency Magistrate does not inflict a fine, nor passes a sentence of imprisonment, but only directs the defendant to be bound down to be of good behaviour. Therefore, apparently the procedure laid down in sec. 362 does not apply to the proceedings under Chap. VIII. In *Shaik Babu*, 33 Cal. 1036 (1906), in which the third Presidency Magistrate passed an order under sec. 110, without recording any evidence, the High Court held that he was not bound to record evidence in any summons cases or warrant cases, or cases in which enquiries have to be made as in summons cases or warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. It is, however, desirable that he should keep some record of the statements made by witnesses or that his judgment should indicate what these statements are, so that the High Court, as a Court of revision, may judge the propriety or legality of the order passed by him. This case was distinguished in *Nepal Shikary*, 13 C. W. N. 318 (1908). The Court observed: "The first point which strikes us is that sec. 362 Cr. P. C., does not apply to cases under sec. 110, where it has become necessary to make a reference to the Appellate Court. The case of *Shaik Babu*, to which one of us was a party, does not refer to case of this nature. It refers to cases which are held to be not appealable and in which no reference has to be made. There it was held that the section speaks of substantive

sentences of imprisonment, and not imprisonment on the failure of the accused to carry out an order as to fine or security, and the case of *Schein*, 16 Cal. 799 (1889), was relied on. That case, we find, merely lays down the doctrine that no appeal lies from a sentence of six months' rigorous imprisonment or a fine of Rs. 200 or further period of three months' simple imprisonment passed by a Presidency Magistrate. This, therefore, leads us to find that the case which we have cited can be clearly distinguished from the present one and we are fortified in this opinion by a very recent case in the Allahabad High Court, *re Tula Khan*, 30 All. 334 (1908). It was there argued that 'in this case two questions would arise (1)—whether the words 'detained in prison' in sub-section (2) of sec. 123 of the Code of Criminal Procedure are equivalent to imprisonment in jail or detention in custody, and if the former, i.e., imprisonment, do the provisions of sec. 397 of the Code apply to the case of a person imprisoned in default of furnishing security who is subsequently convicted and sentenced to imprisonment for an offence.' It was then argued that in a case where accused was unable to furnish security for good behaviour and where he was liable to three years' rigorous imprisonment and that sentence could not be inflicted without the confirmation of a superior Court, that was a substantive sentence of imprisonment. That view was accepted by the Allahabad High Court which went a good deal further and held that the same doctrine applies to every case under sec. 110. But we need not go so far as that, as in fact we are precluded from doing so by the ruling in the case of *Shaik Babu*, but we do not think that in a case where a Presidency Magistrate finds it necessary to refer a sentence of three years' rigorous imprisonment to this Court that he must provide us with the same materials as we get in a similar case from the Mofussil Court." Their Lordships directed new trial in the case.

Sec. 443 Cr. P. C.—

When a proceeding under sec. 107 Cr. P. C. is instituted against an European British subject, his case falls

within the purview of sec. 443 Cr. P. C., and he is is entitled to claim that he should be tried by a Justice of the Peace or a District Magistrate or Presidency Magistrate provided the Justice of the Peace is a Magistrate of the first class and a European British subject. [*Hopcroft*, 13 C. W. N. 151 (1908)].

Where a proceeding under sec. 107 Cr. P. C. was instituted against a European British subject by a Magistrate not competent to try a European British subject, on application to the High Court, the proceeding was directed to be transferred to the file of a Magistrate competent to try him under sec. 443 Cr. P. C. (Ibid).

Sec. 496 Cr. P. C.—

Persons against whom proceedings for bad livelihood has been taken should be admitted to bail. A Magistrate is not competent to refuse bail unless law sanctions such refusal. [*Kookor Singh*, 1 C. L. R. 130 (1877)]. Where a Magistrate in allowing bail imposed condition on the defendants that they must undertake that no attempt would be made by them or their agents to realize rent by force, and nothing would be done to induce a breach of the peace, it was held that such conditions could not be imposed under sec. 112, and should be struck out of the bail-bond. [*Bibee Kulsum*, 11 C. W. N. 121 (1906)]. The law does not empower a Magistrate to detain in custody, until the completion of the inquiry, a person against whom proceedings are pending under sec. 107 or sec. 110. In the case of proceeding under section 107, it is only in the special circumstances referred to in clauses (3) and (4) of that saction that the law empowers the Magistrate to detain a person in custody until the completion of the inquiry. Section 496 Cr. P. C. is imperative and under its provisions the Magistrate is bound to release such person on bail or recognizances. [*Raghunandan Pershad*, 32 Cal. 80 (1904) : 8 C. W. N. 779]. In this case the Court doubted whether the proviso to sec. 114 empowers a Magistrate to re-arrest a person who has already appeared and been admitted to bail. The learned judges observed : "Having regard to the terms of section 115, and to

the fact that the petitioners had already appeared and been admitted to bail, it may be doubted whether the proviso to sec. 114 applies to such a case as this. But conceding that the Deputy Commissioner had power to re-arrest, it is very clear that he was not authorized to send the petitioners to *hajut*. He speaks of remanding them to *hajut*, as if they had come out of jail, which was not the case. Manifestly the Deputy Commissioner has misapplied the section which cannot possibly have the meaning he now seeks to give it. Only in the special circumstances referred to in clauses (3) and (4) of sec. 107, and which are admittedly not applicable here, does the law empower a Magistrate to detain the person in custody until the completion of the inquiry. Sec. 496 of the Code is imperative, and under its provision the Deputy Commissioner was bound to release the petitioners on bail or recognizances."

A Magistrate is not bound as a matter of law to allow bail to a person brought before him for proceeding under sec. 107 Cr. P. C. Section 496 Cr. P. C. must be taken subject to the special provisions of clause (4) of sec. 107. [*Narayanaswami Naiker*, 7 Mad. L. J. 357 (1912)]. In this case the learned Judge discussed sections 167 cl. (2), 334 and 107 Cr. P. C. Sees *Raghunandan Pershad*, 32 Cal. 80 ; *Chidambaram Pillai*, 31 Mad. 315 ; *Mewa Lal Thakur*, 11 C. W. 415.

A Full Bench of the Madras High Court held that a Magistrate has no jurisdiction to remand a person to custody under sec. 107 (4) Cr. P. C., when such person is not sent to him by another Magistrate under sec. 107 (3). Section 36 of the Code cannot, when read with section 107 (3), be construed as conferring such jurisd iction on a District Magistarte. [*Chidambaram Pillai*, 31 Mad. 315 (F. B.) (1908)].

No bail should be called for from a person against whom proceedings under sec. 107 Cr. P. C. are contemplated but not actually initiated. The most that can be required of him is to furnish recognizance and that only when there is any likelihood of his absenting himself from Court. [*Mewa Lal Thakur*, 11 C. W. N. 415 (1906)].

Sec. 513 Cr. P. C.—

Section 513 Cr. P. C. provides that when any person is required by any Court to execute a bond with or without sureties, he can with the permission of the Court deposit cash or Government promissory notes in lieu of executing the bond, except in the case of a bond for good behaviour. Therefore, an order requiring persons to deposit cash in lieu of entering into a bond as security for their future behaviour is illegal. [*Kala Chand*, 6 Cal. 14 (1880) : 6 C. L. R. 128. See also *Kristendra Roy*, 7 W. R. Cr. 30 (1867), and sec. 288 Cr. P. C. of 1861 Code.

Secs. 514 & 515 Cr. P. C.—

When a person executes a bond for keeping the peace under sec. 107 Cr. P. C., and another stands surety for him, on the breach of the bond both the surety and the principal are liable to pay the penalty of their respective bonds, quite irrespective of the question whether the amount of the bond of the principal has been realized or not. The object of taking a security-bond in such cases is not to obtain money for the Crown but to prevent crime, and the liability of the surety is not co-extensive with that of the principal as in the ordinary cases of a surety for a debtor for the payment of his debt. [*Saligram Singh*, 13 C.W.N. 555 (1909)].

Sec. 529 Cr. P. C.—

When a Magistrate having no power to transfer a case under sec. 110 Cr. P. C. transfers the case erroneously and in good faith to another Magistrate, the proceeding before the latter Magistrate will not be void as such transfer would only amount to an irregularity which would be covered by the provisions of sec. 529 (f) Cr. P. C. [*Chintamon Singh*, 12 C. W. N. 299 (1907)].

Sec. 540 Cr. P. C.—

When a witness is called by the Court under sec. 540 Cr. P. C. in a proceeding under sec. 110 Cr. P. C. his cross-examination by the parties cannot, under the law, be restricted to the points on which he has been examined by the Court. [*Chintamon Singh*, 12 C. W. N. 299 (1907)].

Sec. 556 Cr. P. C.—

Where a Magistrate has framed a proceeding under sec. 110 Cr. P. C. against a party and has proceeded in some measure, if not mainly, on his own knowledge of the character of the party, such Magistrate is not a proper person to proceed with the trial under sec. 117 Cr. P. C. and inquire into the truth of the information upon which action has been taken. [*Alimuddin Howladar*, 29 Cal. 392 (1902) : 6 C. W. N. 595].

Where a Magistrate commits many irregularities and passes order under sec. 118, the High Court setting aside his order directed that if any fresh proceedings are necessary they should be initiated and carried out by some other competent officer in strict compliance with the direction of the Criminal Procedure Code. [*Babua*, 6 All. 132 (1883)].

A Magistrate is not disqualified from trying a case, merely by the fact that in the departmental inquiry in the case he forwarded the papers to the Collector with his opinion that there was apparently sufficient evidence to justify criminal prosecution. [*Ravji Nanji Kulkarni*, 5 Bom. L. R. 542 (1903)].

"SENTENCE."

Whether an imprisonment in default of security is a "sentence" within the meaning of section 397 of the Code of Criminal Procedure has been the subject of several decisions by different High Courts and the inevitable consequence has been disagreement in views, which, we venture to submit, is very deplorable, as far as the administration of justice is concerned. For, though the people in India live under one King and are governed by one system of law, yet the law being differently interpreted by different High Courts, they do not get the same uniform administration of justice, as other people get in other parts of the world. It is a pity that by some method of Conference, held periodically, among the Judges of different High

Courts, this difference of views is not adjusted so as to give His Majesty's, subjects whether in Bengal or Bombay, Madras or Allahabad, the Punjab or Burma, the benefit of uniform administration of justice and law throughout the British Empire.

As we have already shown the wording of some of the sections in Chapter VIII. is not clear and free from ambiguities. Sec. 123 is another. Stanley, C. J., in a recent case had to express adversely regarding the looseness of language of the section.

With regard to the point whether imprisonment in default of security is a "sentence" the Calcutta, Bombay and Madras High Courts as well as the Chief Court of the Punjab range on one side, while the Allahabad High Court holds contrary view. In short, the former Courts hold that such imprisonment is not "sentence" within the meaning of sec. 397 Cr. P. C., and the latter, the contrary view, as will be seen from the following decided cases :—

We may say at the outset that there are not many decisions of the Calcutta High Court directly bearing on the point. But here is one which indicates their views. In *Shona Dagee*, 24 W. R. Cr. 13 (1875), it was held that when a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound. See also the observations of the learned Judges in *Nepal Shikary*, 13 C. W. N. 318.

Bombay High Court's Decisions :—

A person was undergoing imprisonment for failing to find security for good behaviour under sec. 123 Cr. P. C. He was subsequently convicted of the offence of theft (sec. 379 I. P. C.), and was sentenced to six months' rigorous imprisonment. The Magistrate,however, ordered that the latter sentence was to take effect on expiry of the first imprisonment. It was held that the sentence passed in the theft case could not be postponed to the expiry of the imprisonment which the accused was undergoing for failing to find security, and which was not a sentence of imprison-

ment. [*Vishnu Balkrishna*, 14 Bom. L. R. 965 (1912)]. (Followed *Kanji*, 5 Bom. L. R. 26 ; *Durga*, 6 Bom. L. R. 1098 ; *Arjun*, 12 Bom. L. R. 129 : 34 Bom. 326). The Court after referring to other cases observed : "Our opinion is that the correct view that has been taken by this Court (in those three cases), that is to say, in our construction of the Code, when a person is committed to prison under sec. 123 for failure to give security, he is not undergoing a sentence of imprisonment within the meaning of sec. 397. We think that the authorities which we have referred to constitute a sufficiently uniform *cursus curiæ* to preclude the necessity of any further reference, though we do not overlook that a somewhat divergent view was taken in 1895 by Mr. Justice Jardine and Mr. Justice Ranade in *Pandu Khandu* (unreported criminal case 774 of 1885). It is represented to us that possibly some embarrassment has been caused in the Courts below by the order which was passed in *Dongrya Gauaram Bhil*, (Cr. Ref. 91 of 1911, unreported), to which order one of us was a party. It should, therefore, be explained that in that case this Court returned the papers without making any order for the reason that the ground, upon which an order was sought by the District Magistrate of East Khandesh, was the existence of a certain Government Resolution which, in the opinion of this Court, was irrelevant to the purpose then in hand. There is nothing in the order passed upon that Reference which conflicts with the view which we have now expressed as to the meaning of secs 123 and 397 Cr. P. C. We observe that this is the view which has found acceptance in the Madras High Court. See *Muthukomaran*, 27 Mad. 525 (1903) ; and *Joghi Kannigan*, 31 Mad. 515 (1908) ; and it is in our judgment the view which must at present be adhered to by the Courts subordinate to this Court."

If a person required to give security is already in prison under sentence, or if before that sentence has expired he is again sentenced to imprisonment, he cannot be obliged to give security, until such sentences have terminated. The order for imprisonment on default of security cannot therefore be passed at once, and if security has been tendered

before that time he should be released. [*Pandu*, Bom. H. C. Aug. 8, 1895 ; *Appa*, Bom. H. C. July 18, 1895].

Madras High Court's Decisions :—

A person dealt with under Chap. VIII. of the Code of Criminal Procedure is not a person "charged with or convicted of an offence" and a requisition of security cannot with any accuracy of language be called a punishment. [Mad. H. C Proc. May 9, 1863 ; 4 Mad. H. C. R. App. 22 (1868)].

A substantive sentence of imprisonment passed on a person who has been committed to prison under sec. 123 for failure to give security should be ordered to commence from the date of the sentence and should not be postponed to commence at the expiry of the imprisonment awarded in default of giving security. [Cr. Rev. No. 466, Feby. 27th, 1903 : 2 Weir 453].

When a person is committed to prison under sec. 123 Cr. P. C. for failure to give security to be of good behaviour he is not undergoing a "sentence of imprisonment" within the meaning of sec. 397 Cr. P. C. [*Muthukomaran*, 27 Mad. 525 (1903)].

Where a person is committed to prison under sec. 123 for failure to give security to be of good behaviour he is not undergoing a sentence of imprisonment within the meaning of sec. 397 Cr. P. C. [*Venkatagadu*, Cr. Rev. No. 393, Dec. 1, 1903 : 2 Weir 452]. Followed 27 Mad. 525.

An order requiring a person to furnish a security has the effect of conviction, as the person so required is liable to imprisonment if he fails to comply with his order. [*Prathipati Venkatasami*, 30 Mad. 330 (1907) ; 17 Mad. L. J. 407].

A person committed to prison under sec. 123 is not undergoing a "sentence" of imprisonment. Where such a person is convicted of an offence and sentenced to a term of imprisonment, such term cannot, under sec. 397 Cr. P. C, be made to commence on the expiry of the period for which he has been committted to prison under sec. 123, but must commence from the date of the order. [*Foghi*

Kannigan, 31 Mad. 515 (1908)]. Followed *Muthukumaran*, 27 Mad. 525. Dissented from *Tula Khan*, 20 All 334.

Punjab Chief Court's decision :—

Imprisonment in default of giving security for good behaviour is not a "sentence" of imprisonment within the meaning of sec. 397 Cr. P. C. [*Diwan Chand*, Punj. Rec. 1895 Cr. J. 45 : 30 P. R. 14 of 1895].

Allahabad High Court's decisions :—

The Allahabad High Court held a contrary view. In *Tula Khan*, 30 All. 34 : A. W. N. (1908) 133 : 5 A. L. J. 318, a Full Bench held that where a person is ordered by a Magistrate to be "detained in prison" pending the orders of the Sessions Judge under section 123 Cr. P. C., such person must be considered as a person undergoing a sentence of imprisonment, and not merely as an under-trial prisoner detained in custody. An order of imprisonment on failure to furnish security for good behaviour is a sentence within the meaning of section 397 Cr. P. C. [*Diwan Chand*, Punj. Rec. 1895 Cr. J. 45 referred to].

In this Full Bench Case, Tula Khan was on the 14th of November, 1907, ordered under section 118 Cr. P. C. to give security for good behaviour for a period of three years, and in default of his doing so, was ordered to undergo rigorous imprisonment for that period. Later on, namely, on the 27th November, 1907, he was convicted of an offence punishable under sec. 332 I. P. C., and sentenced therefor to two years' rigorous imprisonment to take effect forthwith. The order of the Magistrate of the 14th November, 1907, was maintained by the Sessions Judge on the 7th of December, 1907. Two questions then arose :—(i) The first was whether in the interval between the 14th of November, 1907, the date of the Magistrate's order, and the 7th of December, 1907, the date of the order of the Sessions Judge, Tula Khan was to be regarded as a prisoner undergoing a sentence of imprisonment or merely an under-trial prisoner in custody. (ii) Whether under the circumstances the sentence of imprisonment passed upon him for the offence punishable under section 332 was to

commence at the expiration of the imprisonment ordered by the Magistrate and maintained by the Sessions Judge. On these two points Stanley C. J., (at p. 338 *Ibid*) observed as follows :

" Owing to the looseness of the language used in the sections of the Code dealing with this matter, the question is not free from difficulty. Section 123 (1) provides that if any person ordered to give security under sec. 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in sub-section (2) of the section, be *committed to prison*, or if he is already in prison, be *detained in prison* until such period expires, or until within such period he gives security to the Court or Magistrate who made the order requiring it. Sub-section (2) provides that when such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or High Court as the case may be. Then sub-section (3) provides that the Court, that is, the Sessions Judge or High Court, as the case may be, after examining the proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, shall pass such orders in the case as it thinks fit.

" I have no doubt that the words 'committed to prison' in sub-section (1) are equivalent to a sentence of imprisonment and do not merely mean 'committed to custody.' In the succeeding portion of the section the words 'if he is already in prison' give an indication of the meaning of the words 'committed to prison.' They imply that the party is undergoing imprisonment, and the succeeding words 'be detained in prison' seem necessarily to mean that the imprisonment which the party is already undergoing shall be continued. This meaning derives support from sub-section (6), which provides that imprisonment for failure to give security for good behaviour may be rigorous or simple. This sub-section gives us an insight into the mind of the Legislature and indicates the meaning

attributed by it to the words 'committed to prison' or 'detained in prison' In section 3 (3) of Act No. IX of 1894 (the Prisons Act), which gives a definition of convicted criminal prisoners, we find that a person ordered to give security for good behaviour under the bad livelihood sections of the Code is included in the term. This is an Act in *pari materia*, and may be looked to in determining the language of the sections with which we are dealing.

"Then we come to sub-section (2) in which fall the words which we are called upon to interpret. It provides for the case in which a person has been ordered by the Magistrate to give security for a period exceeding one year, and directs the Magistrate if such person does not give the security, to 'issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge.....' Are the words 'detained in prison' equivalent to imprisonment or do they merely mean 'detained in custody' as an under-trial prisoner? As used in sub-section (1) they must, as I have attempted to show, be regarded as equivalent to imprisonment, and there seems to be no good reason why they should not have a similar meaning in this sub-section. It would be contrary to the principle of interpretation to assign a different meaning to the same words when used in an Act of the Legislature, and particularly so when they occur, as here, in the same section. In view then of the language of the section, I think that the Legislature intended that a person failing to give security for his good behaviour should be liable to imprisonment, either simple or rigorous, and that in a case to which sub-section (2) applies such imprisonment should have effect, pending the orders of the Sessions Judge, from the date on which the warrant of the Magistrate directing detention in prison has been executed.

"I now come to the second question, that is, whether Tula Khan was undergoing a sentence of imprisonment within the meaning of sec. 397 of the Code when the sentence was passed upon him for the offence punishable under sec. 332. In other words, whether the last mentioned sentence is to be treated as commencing at the expiration of the imprisonment ordered by the Sessions

Judge. It seems to me to follow as a corollary to the answer which I would give to the first question that section 397 is applicable. The order of the Sessions Judge cannot be regarded otherwise than as amounting to a sentence of imprisonment if the words 'committed to prison' or 'detained in prison' mean imprisonment. I would therefore answer this question in the affirmative."

APPEAL, REFERENCE AND REVISION.

APPEAL.

Section 406 Cr. P. C. provides for an appeal from an order requiring security for good behaviour passed by a Magistrate other than a District or a Presidency Magistrate. No appeal, therefore, lies from such an order passed by a District or a Presidency Magistrate. [*Phulla*, A. W. N. (1898) 127].

No appeal lies to the High Court from an order passed by a District Magistrate under the provisions of sec. 123 Cr. P. C., and on reference by the Magistrate confirmed by the Sessions Judge under the same section requiring persons to be detained in prison, until he should provide security for his good behaviour. [*Chand Khan*, 9 Cal. 878 (1883)]. No appeal lies from the order of the Sessions Judge under sec. 123 Cr. P. C. [*Chhotia*, A. W. N. (1893) 183].

No right of appeal lies from the order of a Sessions Court fixing a period of detention under sec. 508 (Act X. of 1872) for an accused person refusing to furnish security. [*Roghoo Dome*, 24 W. R. Cr. 12 (1875)].

The object of Chapter VIII. is the prevention and not the punishment of offences. The Chapter gives a certain amount of discretion to Magistrates, and the High Court must be always slow to interfere with that discretion unless there is an error of law. [*Raoji Fulchand*, 6 Bom. L. R. 34 (1903)].

No appeal will lie from an order under sec. 118 Cr. P. C.

requiring security to be furnished for keeping the peace. [*Chet Ram*, A. W. N. (1905) 135 : 2 A. L. J. 716 : 27 All. 623].

An order under sec. 106 Cr. P. C. may be set aside on appeal. An order in appeal setting aside an order under sec. 106 is an incidental order within the meaning of sec. 423 (*d*). [*Abdul Waheduddin*, 6 C. W. N. 423 (1902) : 30 Cal. 107].

A Sessions Judge is not competent to make over an appeal to the District Magistrate. On non-compliance with a provisional order under sec. 112 to be of good behaviour, the proceedings were sent to the Sessions Judge under sec. 123 that the order might be made absolute. The Sessions Judge after reducing the amount of security made the order absolute. Thereafter the defendants filed an appeal in the Court of the Sessions Judge who sent the petition of appeal to the District Magistrate for disposal. This procedure was irregular. It was held that the Sessions Judge should have disposed of the appeal himself. Section 406 Cr. P. C. does not confer power on the District Magistrate to hear appeal from an order passed by the Sessions Judge. The High Court observed : "A person ordered to find security for a period exceeding one year may furnish the security required from him. In such case proceedings should not be forwarded to a Court of Sessions, and the right of appeal would be to the District Magistrate. On the other hand, he may not furnish the security demanded, the record must then be forwarded to the Court of Sessions, and the order passed, whatever its nature, is an order passed by a Court of Sessions, and consequently an order to which sec. 406 does not apply. [*Haridas*, A. W. N. (1891) 219].

Appeal under Letters Patent Art. 15.

A person was ordered under sec. 107 Cr. P. C. to furnish security for keeping the peace. The order was confirmed on appeal. In revision the application was rejected by a single Judge. An appeal was filed against this order of rejection under Letters Patent, Art. 15. It was held that no appeal lay. *Per* the Offg. C. J.—"The order requiring security was an order in a criminal trial, and, in

consequence, the order passed in revision was also an order in a criminal trial. *Per* Russel J.—The order appealed against was not a 'judgment' within the meaning of Art. 15. [*Ramasamy Chetty*, 27 Mad 510 (1903)].

The Code of Criminal Procedure of 1898 makes a careful distinction between an order directing security to be given for keeping the peace and an order directing security to be given for good behaviour. It allows appeal in the latter case only. [*Suelman Adam*, 11 Bom. L. R. 740 (1909)].

In *Nabu Sardar*, 11 C. W. N. 25 (F. B.) (1906), Mitra and Holmhood JJ. in making a reference to the Full Bench said :

"It is true that sec. 406 gives right of appeal to District Magistrate from orders directing the execution of bonds for good behaviour but no right to appeal is given from orders to give security for keeping the peace. The distinction,, however, between the two classes of cases *viz.*, cases under sections 107 and 110, bonds for keeping the peace and bonds for good behaviour, seems to us to be that whereas in the case of an order for execution of a bond for good behaviour the District Magistrate may on appeal under sec. 406 set aside the order of a subordinate Magistrate before execution of the bond, in the case of an order for a bond to keep the peace he cannot interfere until the bond is actually executed. Bonds for good behaviour are generally demanded from persons who find it extremely difficult to procure sureties and in their cases the orders should be revised at once, whereas in the other class of cases no such necessity generally arises."

REFERENCE.

Sec. 438 Cr. P. C. does not authorize the District Magistrate to refer to the High Court a case in which the Sessions Court has under sec. 123 Cr. P. C. refused to confirm his order under sec. 118 Cr. P. C. If the District Magistrate as the officer responsible for the peace of his district is dissatisfied with any such order, his proper course is to ask the Public Prosecutor to move the High Court for the revision of the same. [*Jahandi*, 23 Cal. 249 (1895)].

A Sessions Judge on reference to him under sec. 123

Cr. P.C. is bound to give notice to the party concerned and hear his pleader if he is so represented. [*Nakhi Lal Jha*, 27 Cal. 656 (1900)]. See *Abinash Malakar*, 4 C. W. N. 797.

It is expedient and highly desirable for the ends of justice that a date should be fixed for the hearing of such reference and that notice of such date should be given to the person concerned. [*Girand*, 25 All. 375 (1903)]. See *Jhoja Singh*, 23 Cal. 493; *Nakhi Lal Jha*, 27 Cal. 656; *Ajudhia*, A. W. N. (1898) 60, and *Mutasaddi*, 21 All. 107.

The words of cl. (3) of sec. 123 are wide enough to give discretionary power to the Sessions Judge to deal with the case on the merits and pass such orders as the circumstance of the case may require. [*Amir Bala*, 35 Bom 271 (1911)].

REVISION.

An application from jail—worded as an appeal—against an order passed under section 110 and 118 was summarily rejected by means of the following order: "No appeal lies in this case and no sufficient ground appears for interference in revision. The application is dismissed." The order was signed by the Judge who passed it, but was not sealed with the seal of the Court. The High Court held that the Judge who had passed the order quoted above, was not under the circumstances precluded from entertaining an application for revision presented by Counsel in relation to the same matter. [*Kallu*, 27 All. 92 (1904)]. Followed *Lalit Tewari*, 27 All 177 (1899).

When a rule is issued upon the Magistrate to show cause, and the order sought to be set aside is one that is only intended to secure the peace of the District by binding down the defendants, the Magistrate is the only party entitled to be heard. Any other party interested in the result of the order cannot appear. [*Driver*, 25 Cal. 798 (1898)].

On an application in revision to set aside an order calling upon certain persons to furnish security to keep the peace, the High Court declined to consider the merits of the application when the applicants had not moved the District Magistrate under the provisions of sec. 125 to cancel their security bonds. [*Abdur Rahim*, A. W. N. (1905) 143).]

On a requisition from the High Court a Magistrate is bound to state the grounds upon which he fixed the amount of security. [*Dedar*, 2 Cal. 384 : 1 C. L. R. 95].

Orders passed by Sessions Judge in confirmation of orders by Magistrates calling upon parties to give security for their good behaviour, though not subject to appeal, are open to revision. [*Juswant Singh*, 6 W. R. Cr. 18].

The High Court acting in revision under sec. 435 Cr. P. C. is bound to accept the finding of the lower Court unless there is any error of law or procedure vitiating that finding or unless there are any special circumstances apparent on the record to show that in arriving at its conclusion of fact the lower appellate Court has misapprehended the evidence. [*Narayan*, 9 Bom. L. R. 1385 (1907)].

In *Muhammad Jafar*, A. W. N. (1881) 33, certain persons were convicted of wrongful restraint and assault on the complaint of L., who having preferred a petition to the High Court complaining of the conduct of such persons together with a copy of the Magistrate's judgment, Straight J., before whom the petition was laid, directed the Magistrate to summon such persons before him to show cause why they should not be required to furnish security to keep the peace. The Magistrate accordingly summoned such persons to show cause and eventually made an order directing them to furnish security. Thereafter, these persons applied to the High Court to revise Magistrate's order contending that inasmuch as the order was made without jurisdiction, and the Magistrate had taken action under sec. 491 Cr. P. C., the Magistrate's order was contrary to law. This application came before Pearson J., who referred the matter to a Full Bench, which held that an order by Straight J., was one which he was competent to make under sec. 297 Cr. P. C. Stuart C. J., held that the application could not be entertained as the order made by Straight J., was final.

See *Chhotia*, A. W. N. (1893) 183, under District Magistrate's power under sec. 124 Cr. P. C. ; and *Mahadeo Kunwar* 25 All. 537 (1902) *Debi Prosad* 30 All. 41 (1907), under Land Disputes and Proceedings under sec. 107. *Supra*.

A party asking for redress at the hands of an Appellate

or Revisional Court on the ground that the Court below has wrongly excluded a question which the party wished to put to a witness must state the form and substance of the question proposed to be put to enable the Appellate or Revisional Court, as the case may be, to determine whether the particular question in each case was so framed as to make it admissible under the Indian Evidence Act, 1872. [*Narayan*, 9 Bom. L. R. 1385 (1907)].

MISCELLANEA.

An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour, is not punishable under either sec. 224 or 225 I. P. C. [*Shasti Napit*, 8 Cal. 331 (1882)].

An order directing an accused to be imprisoned until he gives security is bad. A definite period for such imprisonment should be stated in the order. [*Mailamdi Fakir*, 8 Cal. 644 (1882)].

An order passed by a Joint Magistrate directing a person to give security for a period more than one year and that, on failure to give the security, he should be imprisoned for two years, was held bad on the face of it, and not cured by the District Magistrate reducing on appeal the period for security to one year and the period of imprisonment also to one year. [Mad. H. C. Criml. Revn. No. 47 March 24, 1903 : 2 Weir 57].

An order postponing proceedings instituted under sec. 107 Cr. P. C. until the person called upon to show cause shall have established in a Civil Court the title claimed by him to the property disputed with reference to which there is a likelihood of a breach of the peace, amounted to a discharge. The Court observed : "The likelihood of his committing a breach of the peace would in no way depend upon his instituting a case in the Civil Court to establish his right under a certain deed, and any order postponing further proceedings until he did this, in our opinion, amounts to a discharge so far as the proceedings are concerned. [*Dhuniram*, 5 C. L. R. 366 (1879)].

APPENDIX.

STATEMENT OF OBJECTS & REASONS.

[*Gazette of India, October 16, 1897, Part V.—Page 365*].

Clause 106.—As reported cases have been contradictory in regard to the exercise of powers under this section, the doubt has been removed by expressly extending it to Courts of Appeal or Revision. The words "by threatening injury to person or property," which occur after the words "criminal intimidation" have been omitted.

Clause 107.—The amendments express more clearly what has been the general interpretation of this section and what its scope should be.

Clause 109.—In this provision the period of six months has been raised to twelve, which brings the period into accord with that fixed by section 107 of the present Code.

Clause 110.—These amendments have been proposed to make this section more complete. They are taken from clause 2 of the Habitual Offenders Bill, which it is proposed to abandon. Sub-clause (f) reproduces a part of the corresponding section of the Code of 1872, as its omission has been found to be inconvenient.

Clause 117, para (2).—This amendment will enable a Magistrate in one proceeding to deal with two or more persons associated in the same matter which is under inquiry relating to security for good behaviour or to keep the peace.

Clause 118.—The provisions are intended to admit of an order for police supervision (see clause 565) being passed where that is deemed more appropriate than an order requiring security.

Clause 122.—It is here proposed by omitting the words "for good behaviour" to extend the power of refusing any surety to cases of security to keep the peace.

Clause 123.—It is proposed to omit the last portion of the first clause and by the addition of another clause to

deprive the Superintendent of a Jail of the power of determining the sufficiency of security tendered and thereupon releasing the particular person from prison, as this is inconsistent with section 122 and the Superintendent is not a proper person to determine such a matter. The second clause provides the course to be taken when security is tendered to the Superintendent.

Clause 124.—It is first proposed to limit the exercise of these powers in Presidency towns to the Chief Presidency Magistrate and next to enlarge the operation of the section to mitigation of the particular order.

Clause 125.—This is merely an extension of the present law in regard to security to an order for police supervision.

THE CODE OF CRIMINAL PROCEDURE.

(ACT V OF 1898)

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

Of Security for keeping the Peace and for Good Behaviour.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

Sec. 106. (1) Whenever any person accused of rioting, assault or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, or a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its power of revision.

B.—Security for keeping the Peace in Other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

Sec. 107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquility, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

Procedure of Magistrate not empowered to Act under sub-section (1).

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under

this section, may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from persons disseminating seditious matter.

Sec. 108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in any wise abets the dissemination of,—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under sec. 124A of the Indian Penal Code, or

(*b*) any matter the publication of which is punishable under sec. 153A of the Indian Penal Code, or

(*c*) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, except by the order or under the authority of the Governor General in Council or the Local Government or some officer empowered by the Governor General in Council in this behalf.

Security for good behaviour from vagrants and suspected persons.

Sec. 109. Wherever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person

is taking such precautions with a view to committing any offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in 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 for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

Sec. 110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction—

(*a*) is by habit a robber, house-breaker or thief, 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 mischief, extortion or cheating or counterfeiting coin, currency notes or stamps or attempts so to do, 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,

such Magistrate may, in 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 for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Proviso as to European vagrants.

Sec. 111. The provisions of secs. 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Order to be made.

Sec. 112. When a Magistrate acting under section 107, section 108, section 109 or 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, 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.

Procedure in respect of person present in Court.

Sec. 113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

Sec. 114. If such person is not present in Court, the Magistrate shall isssue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Courts :

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under sec. 112 to accompany summons or warrant.

Sec. 115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

Sec. 116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

Sec. 117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and, where, the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) For the purpose of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Order to give security.

Sec. 118. (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

First, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

Secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

Thirdly, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Discharge of person informed against.

Sec. 119. If, on an inquiry under sec. 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—PROCEEDINGS IN ALL CASES SUBSEQUENT TO ORDER TO FURNISH SECURITY.

Commencement of period for which security is required.

Sec. 120. (1) If any person in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases, such period shall commence on date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Contents of bond.

Sec. 121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

Sec. 122. A Magistrate may refuse to accept any surety offered under this Chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Sec. 123. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given, commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

Imprisonment in default of security.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Proceedings when to be laid before High Court or Court of Session.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such orders on the case as it thinks fit :

Provided that the period (if any) for which any person is imprisoned for failure to give security, shall not exceed three years.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

Kind of imprisonment.

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

Sec. 124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency Magistrate or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter as ordered by the Court of Session or High Court may be released without hazard to the community, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

Sec. 125. The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Discharge of sureties.

Sec. 126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

OTHER SECTIONS BEARING UPON THE SUBJECT.

Procedure when Magistrate cannot pass sentence sufficiently severe.

Sec. 349 (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different different in kind from, or more severe than, that which such Magistrate is empowered to inflict or that he ought to be required to execute a bond under sec. 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence, in the case, and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law :

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under secs. 32 and 33.

Appeals.

Appeal from order requiring security for good behaviour.

Sec. 406. Any person ordered by a Magistrate other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under sec. 118 may appeal to the District Magistrate.

Provisions as to Bonds.

Deposit instead of recognizance.

Sec. 513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for

good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Procedure on forfeiture of bond.

Sec. 514. (1). Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that, such bond has been forfeited, the Court shall record the ground's of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

Appeal from, and revision of, orders under sec. 514.

Sec. 515. All orders passed under sec. 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

Sec. 516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

First Offenders.

Power to Court to release upon probation of good conduct instead of sentencing to punishment.

Sec. 562. In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating, or any other offcence under the Indian Penal Code punishable with not more than two years' imprisonment before any Court, and no previous conviction is proved against him, if it appears to the Court before whom he is so convicted, that, regard being had to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed, it is expendient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with without securities, and during such period (not exceeding one year) as the Court may direct, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or Subdivisional Magistrate, forwarding the accused to, or taking

bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

Provisions in case of offender failing to observe conditions of his recognizances.

Sec. 563. (1). If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2). An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard, or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

Conditions as to abode of offender.

Sec. 564. (1). The Court, before directing the release of an offender under section 562, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.

Act No. I. of 1882.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

Of Security for keeping the Peace and for Good Behaviour.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

Sec. 106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injuiry to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

Sec. 107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Procedure of Magistrate, &c., not empowered to act under sec. 107.

Sec. 108. When any Magistrate not empowered to proceed under sec. 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under sec. 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

Sec. 109. Whenever a Presidency Magistrate, District Magistrate Sub-divisional Magistrate or Magistrate of the first class receive information—

(*a*) That any person is taking precautions to conceal

his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may in 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, for such period not exceeding six months as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

Sec. 110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in 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 for such period not exceeding three years as the Magistrate thinks fit to fix.

Proviso as to European vagrants.

Sec. 111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Order to be made.

Sec. 112. When a Magistrate acting under section 107, section 109 or 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, 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.

Procedure in respect of person present in Court.

Sec. 113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substances thereof shall be explained to him.

Summons or warrant in case of person not so present.

Sec. 114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to aapear, or, when such person is in custody, a warrant directing the the officer in whose custody he is to bring him, before the Court :

Provided that, whenever it appears to such Magistrate, the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arres to.

Copy of order under sec. 112 to accompany summons or warrant.

Sec. 115. Every summons or warrant issued under section 114, shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

Sec. 116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

Sec. 117. When an order under section 112 has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a

Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials fn summons cases ; and where the order requires security for good behaviour, in the manner hereinafter provided for conducting trials in warrant cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

Order to give security.

Sec. 118. If, upon such inquiry, it is proved, that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly.

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112 ;

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

thirdly—that when the person in respect of whom the the inquiry is made is a minor, the bond shall be executed only by his sureties.

Discharge of person informed against.

Sec. 119. If, on an inquiry under sec. 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in

respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—PROCEEDINGS IN ALL CASES SUBSEQUENT TO ORDER TO FURNISH SECURITY.

Commencement of period for which security is required.

Sec. 120. If any person in respect of whom an order requiring security is made, under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

Contents of bond.

Sec. 121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

Sec. 122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Imprisonment in default of surety.

Sec. 123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the

order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

Sec. 124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned, for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report

of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Powers of District Magistrate to cancel any bond for keeping the peace.

Sec. 125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this Chapter by order of any Court in his District not superior to his Court.

Discharge of sureties.

Sec. 126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

Act No. X of 1872.

CHAPTER XXXVII.

Of Security for keeping the Peace.

Personal recognizance to keep the peace in case of conviction.

Sec. 489. Whenever a person accused of rioting, assault or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magistrate of a Division of a District, or Magistrate of the first class,

and the Court or Magistrate, by which or by whom such person is convicted, or the Court or Magistrate by which or by whom the final sentence or order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in such instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that if the same be not given the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by Court of Session, unless within such period such person execute such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recogni-

zance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

Where convicting officer is not in charge of division of district nor a Magistrate of first class.

When any accused person is convicted of any offence specified in this section by a Magistrate neither in charge of a Division of a District nor of the first class, such Magistrate, if he considers it just and necessary to require a personal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District, the Magistrate of the Division of the District, or to a Magistrate of the first class to whom such Magistrate is subordinate, and the Magistrate to whom the case is so reported, shall deal with the case as if the conviction had been before himself.

In any case where the order is not made at the time of signing, or by the Court which signs the judgment, the convict must be produced before the Magistrate who adds the order to enter into a personal recognizance to the original sentence.

Security to keep the peace.

Sec. 490. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate, empowered to require a personal recognizance, may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties ; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a Division of a District, or by a first class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

Summons to any person to show cause why he should not give bond to keep the peace.

Sec. 491. Whenever a Magistrate of a Division of a District of the first class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon

such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

EXPLANATION I.—A summons, calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible, and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

EXPLANATION II.—A Magistrate may call a summons issued under this section if he thinks proper.

Form of summons.

Sec. 492. Such summons shall set forth the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if security is called for, the number of sureties required, and the amount in which they are to be bound respectively; and the time and place at which the person summoned is required to attend.

EXPLANATION—When the parties are present in Court no summons is necessary, but the person to whom a summons would have been issued must have an opportunity to show cause why he should not be bound.

Penalty of bond.

Sec. 493. The bond shall be in the form (E) given in the second schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

The amount in which the sureties shall be bound shall not exceed the penalty named in that bond.

Warrant of arrest.

Sec. 494. If the person summoned does not attend at the time and place named in the summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a warrant for his arrest.

Provided that, whenever it appears to such Magistrate, upon the report of a Police Officer or upon other credible information (the substance of which report or information

shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

Magistrate may dispense with personal attendance of informed against.

Sec. 495. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person informed against, under section 491, and may permit him to appear and enter into the required security, or show cause against such requisition, by an agent duly authorized to act in his behalf.

Discharge of person informed against.

Sec. 496. If on the appearance of such person informed against, or of his agent, if he is permitted to appear by an agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his discharge.

Non-compliance with order to give bond.

Sec. 497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly ; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

Time for which person may be bound to keep peace.

Sec. 498. The period for which the Magistrate may bind a person to keep the peace with or without surety, shall not exceed one year.

Limit of imprisonment under sec. 497.

When a person is imprisoned under section 497 he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever, within that term, he complies with the order.

Extension of time for which person may be bound.

Sec. 499. Whenever it appears to the Magistrate that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session.

Such Court, after examining the proceedings of the Magistrate and making such further inquiry as it thinks necessary, may, if it sees cause, authorize the Magistrate to extend the term for a further period not exceeding one year.

If such person fails to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate under the orders of the Court of Session directs, he may be kept in simple imprisonment for such further period, or until, within that period, he gives such bond.

EXPLANATION.—When the subject of dispute, or ground for apprehension, is the same as that on which the first order was passed, the Magistrate must proceed under section 491.

Discharge of recognizances.

Sec. 500. The Magistrate of the District may, if he see sufficient cause, discharge any recognizance and surety for keeping the peace taken by him, or by any Magistrate subordinate to him, or by his predecessor under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

Discharge of sureties.

Sec. 501. A surety for the peaceable conduct of another person may at any time apply to the Magistrate to be relieved from engagement as surety.

On such application being made, the Magistrate shall issue his summons or warrant in order that the persons, for whom such surety is bound may appear or be brought before him.

On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and, in default thereof, shall order him to be kept in simple imprisonment.

Recovery of penalty rom principal.

Sec. 502. Whenever it is proved before the Magistrate that any recognizance or other bond taken under this Chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person, bound by such

recognizance or bond, to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause be not shown and the penalty be not paid, the Magistrate shall proceed to recover the same by issuing a warrant for the attachment and sale of any of the moveable property belonging to the person bound by such recognizance or bond.

Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued ; and it shall authorize the distress and sale of any moveable property belonging to the person bound without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such person shall be liable to imprisonment by order of the Magistrate in the civil jail for a period not exceeding six months.

The penalty shall not be enforced until the person bound has had an opportunity of showing cause and until the breach of the conditions has been proved.

The commission or attempt to commit or abetment of any offence whatever and wherever it may be committed is a breach of the bond.

Proceedings under this Chapter may be taken either in the District in which the breach of the peace is apprehended, or where an offence has been committed in breach of the bond, or in any district where the person it is desired to bind may be.

Recovery of penalty from surety.

Sec. 503. Whenever it is proved before the Magistrate that any bond with a surety has been forfeited, the Magistrate may, at his discretion, give notice to the surety to pay the penalty, to which he has been thereby become liable, or to show causes why it should not be paid.

If no sufficient cause is shown, and such penalty is not paid, the Magistrate may proceed to recover payment of the penalty from such surety in the same manner as from the principal party.

CHAPTER XXXVIII.

Of Security for Good Behaviour.

Sec. 504. Whenever it appears to the Magistrate of the District, or to a Magistrate of the first class, that any person is lurking within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such security for such person's good behaviour for a period not exceeding six months as to him may appear good and sufficient.

When Magistrate may require security for good behaviour for six months.

If in any case under this or the two following sections the person to be bound is under sentence for an offence, he must be brought up on or after the expiration of his sentence for the purpose of being bound.

Binding of sentenced person.

If a Sessions Judge, or Magistrate of second or third class, considers from evidence taken in any proceedings before him, that any person should be required to enter into a bond to be of good behaviour, he may send such person in custody to a competent Magistrate.

Wheu Sessions Judge or unauthorized Magistrate thinks a person should be bound.

A Magistrate in charge of a Division of a District, exercising the powers of Magistrate of the second class, may make any inquiry necessary under this chapter, and may submit his proceedings to the Magistrate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

Powers of Magistrate of Division of District being a Magistrate of the second class to inquire.

Sec. 505. Whenever it appears to such Magistrate from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief,

or a receiver of stolen property knowing the same to have been stolen,

When Magistrate may require security for good behaviour for one year.

or of notoriously bad livelihood, or is a dangerous character,

such Magistrate may require similar security for the good behaviour of such person for a period not exceeding one year.

Procedure where security required for more than one year.

Sec. 506. Whenever it appears to such Magistrate from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief, or receiver of stolen property, knowing the same to have been stolen,

or of a character so deperate and dangerous as to render his release. without security, at the expiration of the limited period of one year, hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of secnrity which should, in his judgment, be required from such person, as well as the number, character, and class of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour, and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

Proceedings to be laid before Court of Session.

Sec. 507. If a person required to furnish security, under the provisions of the last preceding section, does not furnish the same, or offer sureties whom the Magistrate sees fit to reject, the proceedings shall be laid, as soon as conveniently may be, the Court of Session.

Such Court, after examining such proceedings and requiring any further information on evidence which it thinks necessary, may pass orders on the case, either confirming, modifying or annulling the orders of such Magistrate as it thinks proper.

Court of Session may require security for period not exeeeding three years.

Sec. 508. If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Sec. 509. Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount, the security, the number and description of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security shall be stated in the order.

Contents of order for security.

The security-bond shall be in the Form (G) given in the second schedule, or to the like effect.

Sec. 510. In the event of any person, required to give security under the provisions of this chapter, failing to furnish the security so required, he shall be committed to prison until he furnish the same.

Imprisonment in default of security.

Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Term of imprisonment.

Imprisonment under this section may be rigorous or simple, as the Court or Magistrate in each case directs.

Sec. 511. The Magistrate of the District may at any time exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order, or that of his predecessor in office, or by the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

Release of prisoners under requisition of security.

Sec. 512. Whenever the Magistrate of the District is of opinion, that any person confined under the requisition of security for good behaviour by order of a Court of Session can be safely released without such security, such Magistrate shall make an immedite report of the case for the orders of such Court of Session.

Report in case of prisoner under requisition of security by order of Court of Session.

Discharge of surety.

Sec. 513. A surety for the good behaviour of a person may at any time apply to a competent Magistrate to be relieved from his engagement as such surety.

On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

On the appearance of such person pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

Recovery of penalty from sureties.

Sec. 514. Whenever a competent Magistrate is of opinion that, by reason of an offence, proved to have been committed by a person, for whose good behaviour security has been given, subsequent to his having given such security, proceedings should be had upon the bond executed by the surety, such Magistrate shall give notice to the surety to pay the penalty, or to show cause why it should not be paid.

If such penalty be not paid and no sufficient cause for non-payment be shown, such Magistrate shall proceed to recover the penalty from such surety by issuing a warrant for the attachment and sale of any moveable property belonging to him. Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued ; and it shall authorize the distress and sale of any moveable property, belonging to such surety, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty is not paid, and cannot be recovered by such attachment and sale, the surety shall be liable to imprisonment by order of such Magistrate in the civil jail for a period not exceeding six months.

Issue of summons and warrant of arrest.

Sec. 515. The provisions of secs. 492, 494, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against when

such party is not in custody, shall apply to proceedings, taken under this chapter against persons required to give security for their good behaviour.

Place where proceedings may be held.

Proceedings may be taken under this chapter against persons amenable to its provisions, in any District where they may be.

Manner of taking evidence under Chapter XXXVII or this Chapter.

Any evidence, taken under Chapter XXXVII or this Chapter, shall be taken as in cases usually heard by a Magistrate upon summons.

Previous convictions may be proved.

Any previous conviction against the person to be bound may be proved on proceedings held under this chapter.

Sureties may be rejected on the ground of character.

Sec. 516. A Magistrate may refuse to accept any surety offered under this chapter on the ground that such surety is an unfiit person.

Chapter not applicable to European British subjects.

The provisions of this chapter shall not apply to European British subjects.

Act XXV of 1861.

CHAPTER XVIII.

Of Recognizance and Security to keep the Peace.

Personal recognizance to keep the peace in cases of conviction.

Sec. 280. Whenever a person charged with rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Court of Session or the Magistrate of the District or other officer exercising the powers of a Magistrate, and the Court or Magistrate or other officer as aforesaid, by which the accused person is convicted, or the Court or Magistrate or other officer as aforesaid, by which the final sentence or order in the case shall be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace from the person so convicted, it shall be lawful to such Court or Magistrate or other officer as aforesaid so convicting the accused person, or so passing the final sentence or order as aforesaid, in addition, to direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by the Magistrate of the District or other officer exercising the powers of a Magistrate, or three years if the sentence or final order be passed by a Court of Session. When any accused person shall be convicted of any offence specified in this section by an officer not exercising the powers of a Magistrate, such officer, if he considers it just and necessary to require a penal recognizance for keeping

the peace from the person so convicted, shall report the case to the Magistrate of the District, or other officer exercising the powers of a Magistrate to whom such officer may be subordinate, who shall deal with the case as if the conviction had been before himself.

Security to keep the peace.

Sec. 281. In cases in which it may appear necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, it shall also be lawful to the Court or Magistrate or other officer as aforesaid, empowered to require a penal recognizance under the last preceding section, to reqiure security in addition thereto, and to fix the amount of the security-bond to be executed by the surety or sureties ; with a provision that, if the same be not given, the party required to find the security shali be kept in custody for any time not exceeding one year if the order be passed by the Magistrate of the District or other officer exercising the powers of a Magistrate, or three years if the order be passed by the Sudder Court or by a Court of Session.

Summons to any person to show cause why he should not enter into a bond to keep the peace.

Sec. 282. It thall be lawful for the Magistrate of the District or other officer exercising the powers of a Magistrate, whenever he shall receive credible information that any person, whether a European British subject or not, is likely to commit a breach of the peace, to probably occasion a breach of the peace, to summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties as such Magistrate shall think fit.

Form of summons.

Sec. 283. The summons shall set forth the substance of the information, the amount of the bond, and the term for which it is to be in force, and if security is called for, the number of sureties required, and the amount in which they are to be bound respectively. Such summons shall be served in the manner provided by this Act for the service of a summons on an accused person.

Sec. 284. The penalty of such bond which shall be in the form (D) given in the Appendix, or to the like effect shall be fixed with a due regard to the circumstances of the case and the means of the party, and the amount in which the sureties shall be bound shall not exceed the said penalty.

Penalty.

Sec. 285. If the person summoned shall not attend on the day appointed, the Magistrate or other officer as aforesaid, if satisfied that the summons has been duly served, may issue a warrant for his arrest. Provided that whenever it shall appear to the Magistrate or other officer as aforesaid, upon the report of a Police Officer, or upon other credible information, the substance of which report or information, the substance of which report or information shall be recorded, that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warrant for the arrest of such person.

Warrant of arrest.

Sec. 286. The Magistrate or other officer as aforesaid, may, if he see sufficient cause, dispense with the personal attendance of the person informed against, and permit him to appear and enter into the required security, or show cause against such requisition by agent only authorized to act in his behalf.

Magistrate may dispense with personal attendance of party informed against.

Sec. 287. If, on the appearance of the person, or of his agent, if he is permitted to appear by agent, the Magistrate or other officer as aforesaid, shall not be satisfied that there is occasion to bind such person to keep the peace, he shall direct his discharge.

Discharge of party informed against.

Sec. 288. If the Magistrate or other officer as aforesaid shall be satisfied that is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if the person shall fail to comply with the order, it shall be lawful for the Magistrate or other officer as aforesaid, to commit him to jail.

Consequence of not complying with order of Magistrate to enter into a bond.

Limit for confinement.

Sec. 289. The period for which the Magistrate or other officer as aforesaid may bind a person to keep the place with or with or without security, shall not exceed one year. When a person shall be committed to jail under the last preceding section, he shall not be detained by authority of Magistrate or order of ther officer as aforesaid beyond the term of one year, and shall be released whenever he shall comply with the order within that term.

Extension of period of enhancement.

Sec. 290. Whenever it shall appear to the Magistrate or other officer as aforesaid that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session, and such Court, after examining the proceedings of the Magistrate or other officer as aforesaid, and making such further inquiry as such Court may think necessary, may, if it shall see cause, authorize the Magistrate, or other officer as aforesaid to extend the term for a further period not exceeding one year, and if the party shall fail to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate or other officer as aforesaid shall direct under the orders of the Court of Session, he may be kept in confinement for such further period, or until he shall give such bond within that period.

Discharge of recognizance.

Sec. 291. The Magisttate or other officer as aforesaid may, if he shall see sufficient cause, discharge any recognizance and surety for keeping the peace taken under the preceding section, and may order the release of the person confined for default in entering into such recognizance or giving such security.

Discharge of sureties.

Sec. 292. A surety for the personal appearance of another person may at any time apply to the Magistrate or other officer as aforesaid, to be relieved from his engagement as surety. On such application being made, the Magistrate shall issue his summons or warrant in order that the

person for whom such surety is bound, may appear or be brought before him. On the appearance of the person to such warrant or on his voluntary surrender, the Magistrate or other officer as aforesaid shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof shall commit him to custody.

Enforcement of penalty against the principal party.

Sec. 293. Whenever it may be proved before the Magistrate or other officer as aforesaid that any recognizance or other bond taken under this chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by the bond to pay the penalty thereof, or to show cause why it should not be paid; and if sufficient cause be not shown, and the penalty be not paid, the Magistrate or other officer as aforesaid shall proceed to recove the same by the attachment and sale of any of the moveable property belonging to the person bound thereby, which shall be found within the jurisdiction of the Magistrate of the District, and if the penalty be not paid and cannot be recovered by such attachment and sale, the party shall be liable to imprisonment by order of the Magistrate or other officer as aforesaid in the Civil Jail for a period not exceeding six months.

Recovery of penalty from surety.

Sec. 294. Whenever, it may be proved before the Magistrate or other officer as aforesaid that any bond with a surety has been forfeited, the Magistrate or other officer as aforesaid may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable or to show cause why it should not be paid; and if no sufficient cause be shown, and the penalty be not paid, the Magistrate or other officer as aforesaid may proceed to recover payment of the penalty from such surety in the same manner as from the principal party.

CHAPTER XIX.

Surety for good behaviour.

When a Magistrate may require security for good behaviour for six months.

Sec. 295. Whenever it shall appear to the Magistrate of the District or to an officer exercising the powers of a Magistrate, that any person is lurking within his jurisdiction not having any ostensible means of subsistence, or who cannot give a satisfactory account of himself, it shall be competent to such Magistrate or other officer as aforesaid to require security for the good behaviour of such person for a period not exceeding six months.

When Magistrate may require security for good behaviour for one year.

Sec. 296. Whenever it shall appear to such Magistrate or other officer as aforesaid from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief, or a receiver of stolen property knowing the same to have been stolen, or of notoriously bad livelihood, it shall be competent to such Magistrate or other officer as afaresaid to require security for the good behaviour of such person for a period not exceeding one year.

How to proceed in cases beyond one year.

Sec. 297. Whenever it shall appear to such Magistrate or other officer as aforesaid from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief, or a receiver of stolen property knowing the same to have been stolen or of a character so desperate and dangerous as to render his release, without security. at the expiration of the limited period of one year, hazardous to the community, the Magistrate or other efficer as aforesaid shall record his opinion to that effect, with an order specifying the amont of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

Sec. 298. If the person required to furnish security, as provided in the last preceding section, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session, which, after examining them and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case either confirming, modifying, or annulling the orders of the Magistrate or other officer as aforesaid as it may judge proper.

Case to be laid before the Court of Session.

Sec. 299. If the Court of Session shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Court of Session may require security not exceeding three years.

Sec. 300. In every instance in which security for good behaviour shall be required by the Court of Session, or the Magistrate or other officer as aforesaid, the amount of the security, the number of sureties and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order. The security-bond shall be in the form (F.) given in the Appendix, or to the like affect.

What the order for security is to contain.

Sec. 301. In the event of any person required to give security under the provisions of the foregoing sections, failing to furnish the security so required, he shall be committed to prison until he furnish the same. Provided that no party shall be kept in prison for a longer period than that for which the security has been required from him,

In default of security party to be committed to prison

Proviso.

Sec. 302. The Magistrate of the District or other officer exercising the powers of a Magistrate is empowered, at any time, to exercise his jurisdiction in releasing, without reference to any other authority, any prisoner confined under requisition of security for

When Magistrate may release persons under requisition of security.

good behaviour, whether by his own order, or by the order of any officer subordinate to him, provided he shall be of opinion that such person can be released without hazard to the community.

When he must report.

Sec. 303. In any case in which a Magistrate or othor officer as aforesaid shall be of opinion that any pesson confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, the Magistrate or other officer as as aforesaid shall make an immediate report of the case for the orders of the Court which shall have required the person to furnish the security.

Discharge of surety.

Sec. 304. A surety for the good behaviour of a person may at any time apply to the Magistrate or other offices as aforesaid to be relieved from his engagement as surety. On such application being made, the Magistrate or other officer as aforesaid shall issue his summons or warrant in order that the person may appear or be brought before him. On the appearance of the party pursuant to the warrant, or on his voluntary surrender, the Magistrate or other officer as aforesaid shall direct the engagement of the surety to be cancelled, and and shall call upon the person to give fresh security, and in default thereof, shall commit him to custody.

Proceeding to compel payment of penalty by sureties.

Sec. 305. Whenever the Magistrate or other officer as aforesaid shall be of opinion that, by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, subsequent to his having given such security, proceeding should be had upon bond executed by the surety, he shall give notice to the surety to pay the penalty, or to show cause why it should not be paid, and if no sufficient cause be shown, the Magistrate or other Officer as aforesaid shall proceed to recover the penalty from such surety by the attachment and sale of any moveable property belonging to such surety which may be found within the jurisdiction of the Magistrate of the District ; and if the penalty be not paid, and cannot

be recovered by such attachment and sale, such surety shall be liable to imprisonment by order of the Magistrate or other officer as aforesaid in the Civil Jail. for a petiod not exceeding six months.

Issue of summons and warrant of arrest.

Sec. 306. The several provisions of the last preceding Chapter, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Manner of taking evidence under Chapter XVII, or this Chapter.

Sec. 307. Any evidence taken under Chapter, XVIII, or this Chapter, shall be taken in the manner prescribed by sec. 267, subject to the provision contained in Sec. 268 of this Act.

Act No. V. of 1898.

(Schedule V.—Forms.)

X.—BOND TO KEEP THE PEACE.

(*See Sec. 107.*)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of..... I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees.....

Dated this.....day of....., 19 . (*Signature*).

XI.—BOND FOR GOOD BEHAVIOUR.

(*See secs. 108, 109 and 110.*)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to His Majesty the King, Emperor of India, and to all His subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to His Majesty and to all His subjects during the said term; and in case of my making default therein, I bind myself to forfeit to His Majesty the sum of rupees.....

Dated this.....day of....., 19... (*Signature.*)

(*Where a bond with sureties is to be executed*, add)—We do hereby declare ourselves sureties for the above-named .....that he will be of good behaviour to His Magisty the King, Emperor of India, and to all His subjects during the said term; and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to His Majesty the sum of rupees .....

Dated this.....day of....., 19... (*Signature.*)

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE

(*See Section 114.*)

To.....of.....

Whereas it has been made to appear to me by credible information that (state the *substance af the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly autorized agent) at the office of the Magistrate of.....on the.....day of....., 19... at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for Rupees .....[*when sureties are required, add*, and also to give security by the bond of one (*or* two, *as the case may be*,) surety (*or* sureties) in the sum of rupees.....(each *if more than one*), that you will keep the the peace for the term of.....

Given under my hand and the seal of the Court, this .....day of.....19.....

(*Seal*) (*Signature*)

XIII.—WARRANT OF COMMITMENT ON FAIURE TO FIND SECURITY TO KEEP THE PEACE.

(*See Section. 123*).

To

The Superintendent (*or* Keeper) of the Jail at.....

Whereas (*name and address*) appeared before me in person (*or* by his authorized agent) on the .....day of .....in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees.....with one surety (*or* a bond with two sureties each in rupees...), that he, the said (*name*), would keep the peace for the period of.....months ; and whereas an order was

then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order ;

This is to authorize and require you the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this.....day of..... 19.....

(*Seal*) (*Signature*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See Sec. 123.*)

To

The Superintendent (*or* Keeper) of the Jail at.....

Whereas it has been made to appear to me that (*name and description*) has been and is lurking within the district of .....having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself) ;

or

Whereas evidence of general character of (*name and description*) before me and recorded, from which it appears that he is an habitual robber (*or* house-breaker, etc., *as the case may be*) ;

And whereas and order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties,

as the case may be), himself for rupees....., and the said surety (*or* each of the said sureties) for rupees....., and the said (*name*) has failed to comply with the said order and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant and safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this .....day of.....19 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See Secs. 123 and 124.*)

To

The Superintendent (*or* Keeper) of the Jail at.....
(*or other officer in whose custody the person is.*)

Whereas (*name and description of the prisoner*) was committed to your custody under warrant of the Court, dated the.....day of....., and has since duly given security under section.....of the Code of Criminal Procedure ;

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and seal of the Court, this..... day of.....19....

(*Seal.*) (*Signature.*)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To.....of.....

Whereas on the.....day of....., 19....., you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of.....and bound yourself in default thereof to forfeit the sum of rupees.....to His Majesty the King, the Emperor of India ; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety whereby your security bond has become forfeited ;

You are hereby required to pay the said penalty of rupees....., or to show cause within.....days why it should not be paid.

Given nnder my hand and the the seal of the Court, this day of,.....19.....

(*Seal*) (*Signature.*)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(*See sec. 514*).

To (*name, description and address*).

Whereas on the.....day of....., 19....., you entered into a bond not to commit, etc. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded ;

You are hereby called upon to pay the said penalty of rupees....., or to show cause before me within.....days why payment of the same should not be enforced against you.

Dated this.....day of....., 19.....

(*Seal.*) (*Signature.*)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See sec. 514*).

To (*name, and description of Police-officer*), at the Police-station of.....

Whereas (*name and description*) did, on the.....day of ....., 19....., enter into a bond for the sum of rupees... binding himself not to commit a breach of the peace, etc. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees.....which you may find within the district of....., and, if the said sum be not paid within....., to sell the property so attached, or so much of it as may be sufficient to realize the same ; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this .....day of....., 19.....

(*Seal.*) (*Signature.*)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See sec. 514*).

To the Superintendent (*or* Keeper) of the Civil Jail at.....

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to His Majesty the King, Emperor of India, the sum of rupees..... ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannnot be enforced

by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail, for the said period of (*term imprisonment*); and to return that warrant with an endorsement certifying the manner of its execution.

Given under my hand add the seal of the Court, this .....day of....., 19.....

(*Seal.*) (*Signature.*)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See sec. 514*).

To the Police-officer in charge of the Police-station at.....

Whereas (*name, description and address*) did, on the...day of....., 19..., give security by bond in the sum of rupees..... for the good behaviour of (*name etc., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of..... whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees.....which you may find within the district of....., and, if the said sum be not paid within .....to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under may hand and the seal of the Court, this .....day of....., 19.....

(*Seal.*) (*Signature.*)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See sec. 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at.....

Whereas (*name, description and address*) did, on the..... day of.....19....., give security by bond in the sum of rupees.....for the good behaviour of (*name, etc., of the principal*) and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to His Majesty the King, Emperor of India, the sum of rupees....., and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*).

This is to authorize and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this .....day of..... ....., 19.....

(*Seal.*) (*Signature.*)

Rule No. 197. Reports under sec. 107 Cr. P. C. shall be in P. M. Form No. 43, and those under sec. 109 and 110 Cr. P. C., in P.M. Form No. 44.

Reports under secs. 107, 108 and 109.

Rule No. 402. Applications for proceedings under secs. 109 and 110 Cr. P. C., shall be submitted to the Magistrate through the Superintendent of Police, who shall scrutinize them and satisfy himself that they are supported by sufficient evidence.

Bad livelihood cases.

Rule No. 279. (*a*). In proceedings under secs. 109 and 110 Cr. P. C., the prosecuting officer shall apply to the Court, as soon as the order to give security is passed, not to accept the sureties offered without first affording him an opportunity of objecting, if necessary, to any of such sureties, and of producing evidence, if required, in support of the objection.

Sureties in bad livelihood cases.

(*b*) The fitness or unfitness of a surety is a matter for the Magistrate's discretion, and such discretion is not limited to any particular kind of unfitness. For instance, pecuniary unfitness is not the only kind of unfitness which the Magistrate is entitled to take into consideration.

Bail and Recognizances.

Rule No. 301. (*a*) The Court officer shall draw out bail and recognizance bond and get them duly executed.

Bail and recognizance bonds.

(*b*) Witness, parties to cases, and sureties having to execute bonds, shall be taken to the Court officer's office, after the Magistrate's orders are passed, to have bonds properly drawn out and executed.

(*c*) Court officers shall make careful inquiries into the position in life of proposed sureties ; and if there is any objection to their being accepted, shall report it at once to the Magistrate concerned.

(*d*) When money is put down by a party as security under sec. 513 Criminal Procedure Code, the Court officer shall deposit it promptly in the treasury for safe custody.

(*e*) Court officers shall obtain receipts for the bail and recognizance bonds made over to the Magistrate's amla to be filed with the records.

INDEX.

PAGE.

Accused person—

whether person against whom proc. under secs. 107—110 initiated an, ... 127
defn. of, as deduced from sec. 167 Cr. P. C. ... 128
meaning of, under sec. 342 Cr. P. C. ... ,,
——as used in sec. 437 Cr. P. C. ... 130
a judgment of acquittal fully establishes innocence of, ... 61

Acquittal—

proceedings on indefinite charges under sec. 110 after, 61
a judgment of, establishes innocence of accd. ... ,,
——cannot be relied upon by Crown as evidence of bad character in subsequent proc. under sec. 110 61, 62
proceedings under sec. 110 shd. not be taken as a means of punishing in an indirect way a person, though acquitted, in Police opinion guilty ... 62

Admission—

Magistrate's power to bind down on, ... 78
how, to be recorded ... ,,
without corroboration ... ,,
where order based on, illegal ... ,,
statement of a vakil as an, ... 79
a person's own, as to his general repute ... 81

Appeal—

no, lies from S. J.'s order under sec. 123 Cr.P.C. 149, 180
nor from a Dist. or Presy. Mgte. ... 180
no, lies to H. C. from Dist. Mgte's. order ... 180

PAGE.

will lie from an order under sec. 118 ... 180
an order under sec. 106 may be set aside on, ... 181
S. J. not competent to make over, to Dist. Mgte. 181
under Letters Patent Art. 15 ... 181
1898 Code allows, in security for good behaviour 180
——not for keeping peace ... ,,

Appellate Court—

power of, to set aside order under sec. 106 ... 137
must expressly find accd. committed offences within terms of sec. 106 ... ,,
not competent to set aside conviction and to order security to be contd. ... ,,

Arbitrary Condition—

in making order for security Mgte has no right to impose, ... 95
under sec. 118 no, can be imposed ... 96

Arrest—

in ordering, Mgte must act on recorded infmn. ... 164
whether escape from, under sec. 55 Cr.P.C. punishable ... ,,

Association—

habitual, under s. 114 (4) Cr. P. C. 121-123
where no., there shd. be separate inquiries ... 124
mere, with men of bad character ... 124
of members of same family ... ,,
two or more persons are "associated together" ... ,,
what is, 124-126

Binding down—

circumstances necessary for, both parties in a proc. under sec. 107 ... 44
——*bona fide* dispute as to the right to the possession of land between two rival parties 44, 45, 46
——where order under sec. 106 would practically prevent party from taking possn. of property ... 46

Bond— PAGE.

under sec. 106 Cr. P. C. ... 93
to be executed under sec. 121 ... 110
terms of a, to keep peace can be enforced only on conviction of offence connected with breach of peace ... 111

Breach of the Peace—

diffce. btn., and disturbance of public tranquility... 5
other offences involving a, ... 5
cases relating other offences involving a, 12 to 18
See **Indian Penal Code**—s. 143 *et seq.*

Complainant—

when a Court not competent to call on, to furnish security under sec. 106 ... 18

Criminal Procedure Code—

S. 12 (2)—
jurisdn. and powers of a Mgte. at head quarters under, ... 161
where a proc. under sec. 107 transferred by Dist. Mgte. to such Mgte. not without jdn. ... ,,
S. 55—
officer in ch. P. S. can arrest without warrant any person conducting in manner described in sec. 109 ... 54
whether illegal arrest under, ousts jurisdn. of Mgte. to deal under sec. 109 Cr. P. C. ... ,,
applicable to Police in Calcutta ... ,,
what, authorizes ... 161
how powers under, to be exercised ... 162
whether escape from arrest under, punishable ... 164
Ss. 69-71—
provide for service of summons ... 66
Ss. 75-86—
provide for warrant of arrest ... 66
——in ordering arrest Mgte. must act on recorded infmn. ... 146

PAGE.

S. 87—
proclamation issued under, shd. allow 30 days' time ...164, 165
S. 88—
attachment under, ... 165
S. 106—
does not refer to offences affecting human body ... 3
conviction of offences specified in, necessary to bring one under, ... ,,
does not apply to a possible apprehension of a further breach of peace ... ,,
order of security under, should not form part of sentence for offences for which a person is convicted ... ,,
——shd. be passed simultaneously with conviction ,,
——shd. not be passed in absence of accd. ... 3
nor upon suggestion of his adversary ... 4
before an order under, made, accd. shd. have opportunity of answering to accusation ... 4
diffce. btn , and sec. 107 ... 4
applies only after conviction ... 4
order of security under, is *in addition to* substantive sentence ... 4
meaning of breach of the peace in, ... 4
ambiguities in, ... 5
"other offences involving a breach of the peace" in, 6
——"same" ... 8
——"assembling armed men" ... 9
——"other unlawful measures" ... 10
——abetment ... 11
——sub-sec. (3) ... 11
cases relating to other offences involving a breach, of the peace under, 12 to 18
(See **Indian Penal Code** sec. 143 *et seq.*)
where a Mgte. cannot require a witness to give security under, ... 18
when a Court not competent to call on a complainant to furnish security under, ... ,,

PAGE.

after acquittal of substantive charges, to order accd. to furnish security under, illegal ... 18
where an order under sec , is defective ... 18
See **Joint Owner**,— ... 43
liability of legal representative of a deceased surety under, ... 115
See **Jurisdiction**— ... 132
powers of H. C , S. C , & first class Mgtes. under, 132, 134
——of second & third class Mgtes ... 133
appellate Court's power to set aside under, ... 133
——must expressly find accd. committed offence within terms of, ... 137
——not competent to set aside conviction & to order security to be contd. under, ... 137
an order under, can be passed in a summary trial... 137
an order under, may be set aside on appeal ... 180

S. 107——

a Mgte. must adjudicate on evdce. before him & not on his own opinion formed extra-judicially in a proc. under, 4, 26, 27
nature of information required under, ... 19
See **Information**—
onus in a proceeding under, ... 23
See **Onus**—
proceedings under, are precautionary & not punitive ... 24
——is a precautionary measure & not a trial for offence ... ,,
to take recogzce from one in order to prevent another from committing breach of peace is contrary to provision of, ... 25
an order, not justifiable when there is no present danger of a breach of peace ... 25
there must be a reasonable probability & not merely a bare possibility of a breach of peace to justify order under, ... 25
——party likely to do illegal acts or violence ... ...

PAGE.

——likelihood of breach of peace must be imminent ... ,,
presupposes person is likely (not *was* likely) to commit a breach of peace ... 26
it is not intended by, to prevent one from exercising his legal right of property ... 29
See **Legal Right**— ... 29
,, **Land Disputes**— ... 34
,, **Joint Owner**— ... 43
,, **Rival Hats**— ... 44
when to bind down both parties to proceeding under, ... 44
meaning of wrongful act in, ... 46
bad order under, ...48, 49
proceedings under, against European British subject ... 49
Mgte. must take evidence. in presence of accused or his agent in a proc. under, ... 74
law does not empower a Mgte. to detain in custody a persom against whom proceeding under, pending ... 75
See **Joint Inquiry**—
proceeding under, against several persons ...77, 78
evidence of general repute not admissible in a proceeding under, ... 81
See **Jurisdiction**— ... 137
provisions of, ... 137
ambiguities in, 138, 139, 140, 142
when a non-resident zemindar cannot be bound over under, 140, 141
Magistrate's power to issue process againt a person not residing within limits of his district ... 140
Magistrate has no jdn. to take proc. under, agst. one not personally within his jurisdiction ... 141
a subordinate Mgte's. jdn. to draw up proc. against person residing in another district ... 143
Mgte's jdn. to remand under cl. (4) of, ... 143

PAGE.

where a proc. under, transfered by Dist Mgte. to a Mgte. at head quarters held to be not within jurisdiction ... 161
District Magistrate's power to withdraw a proc. under sec. 107 160, 161
a sub. Magistrate has no jurisdiction to draw up proceeding under, against person residing in another district even at direction of District Mgte. ... 161
award of compensation on institution of proc. under, ... 166
whether a Magistrate bound as a matter of law to allow bail in proc. under, ... 171
Magistrate no jurisdiction to remand person to custody under cl. 4 of, ... 171
no bail should be called for against whom proc. under, contemplated and not instituted ... 171
no appeal from order under, ... 182
an order postponing proceeding under until party established title in Civil Court ... 185

S. 108—

who are authorized to take proceedings under, ... 49
proceedings under, against editor, printer or publisher ... 50
procedure to be observed in proc. under ... 50
incitement to members of a public meeting to exert themselves to secure 'swaraj' not within ... 50
test under, whether the person has been dissminating seditious matter ... 50

S. 109—

persons authorized to take proceedings under, ... 51
procedure under, ... "
proceedings cannot properly be taken under, and sec. 110 ... ,, 52
and sec. 110 have same object ... 52
what facts do not justify an order under, ...52, 53
——young man out of employment ... 53

PAGE.

object of second part of cl. 6 of, ...
where sentence ought not to run consecutively but concurrently ... 53 "
playing ring-game does not come within, ... 54
an officer in charge police station can arrest without warrant any person conducting in manner described in, ... "
a Magistrate has jurisdiction to deal with person under, though his arrest illegal ... "

S. 110—
object of, is prevention and not punishment of crime ... 55
power under, should be used only for *future* good behaviour "
any attempt to use, for punishing past offences wrong "

See General Principle—
contemplates information showing habitual bad character ... 56
proceedings under, should be conducted in interest of public generally, and not in interest of private individuals ... 56

See Informaion—
See Magistrate—
H. C.'s power to interfere at initial state of proc. under, ... 57
not necessary to give specific instances of crime under, ... 58
after prosecution in definite charges failed, no proc. under, should be instituted on indefinite charge 58
evidence of general repute quite sufficient to bind one under, ... 59
exercise of powers under, not to be confined to cases in which positive evidence forthcoming ... 59
persons committing extortion as individual members of community may be bound down under, but not when such act done in respect of tenants by servants of zemindar ... 59

PAGE.

statutory provisions of, are to protect society from habitual offenders but not to coerce landlords to adopt method of management of their estate 59
a landholder having tenants of bad character does not come within, ... 59
repute that a person is a leader of a gang of petty bullies and extortioners not sufficient to justify order under, unless shown he is dangerous and desperate character ... 60

See Discretion –

See Locus Penitentiæ—

before an order under, passed accused should be given opportunity of entering into his defence and clearly informed of accusation he has to meet ... 62
in proceedings under, examination of witnesses must be in presence of accused ... 70
omission to hear parties ... 71
person against whom proceeding under, taken should be offered asstce. to procure his witnesses' attendance ... 71

See General Repute and Evidence—

under terms of, meaning of reputation ... 79
what findings sufficient to warrant action under .. 81

See Suspicion—

not sufficient to say generally there is suspicion in a proceeding under, 83, 84

See General Evidence— ... 85
a man earning livelihood by prostituting his wife not under, ... 85

See Cases under cls. (a) to (f)— ... 88
——habitual extortion ... ,,
————cheat ... 89
when person to be bound down under cl. (*e*) ... ,,
————zemindars ... 90

PAGE.

——person addicted to immorality ... 90
——naib of two co-sharer zemindars ... 90
what is necessary to prove charge under cl. (*f*) ... 91
what does not constitute conduct to be within cl. (*f*) ... ,,
——acts of extortion must be accompanied by acts causing danger to person and property ... ,,
evidence of general repute not admissible to prove charge under cl. (*f*) 82, 91

See Jurisdiction—

provision of, ... 143
a Magistrates's jurisdiction under, ... 144
a Magistrate initiating proceeding under, not competent to send it up to District Magistrate to take action under Regln. XII of 1827 ... 144
inquiry under, should not be conducted by a Mgte. at a place outside limits of his jdn. ... 144
person must be within local limits of Magistrate's jurisdiction against whom proceeding under, taken ... 145
non-compliance with provision of, vitiates proceeding ... ,,
"any person within the local limits" in, excludes necessity of proving permanent residence ... 145
District Magistrate can transfer a case under, under sec. 192 Cr. P. C. ... 165
award of compensation on institution of proceeding under, illegal ... 166
1898 Code allows appeal in security for good behaviour ... 182

S. 111—
is a proviso to secs. 119 & 110 ... 2

S. 112—
provisions of, ... 2
Mgte. to comply with, when drawing proceedings 65
setting forth infmn. from police-officer in the order under, in terms of cl. (a) to (f) sufficient statement of substance of infmn. reqd. by, ... 67

PAGE.

before taking action under sec. 107 Mgte. bound to issue notice reqd. by, ...67, 68
Mgte. calling for a report before issuing notice under, ...
Mgte. has no power to order security for longer terms than stated in notice issued under, ... 68
Mgte's final order under sec. 118 must correspond with notice issued under, ... 69
where notice under, not accompanied by order under, ... "
omission of Mgte to send copy of order under, ... "
notice under, should give defendant sufficient time to produce evidence ... 70
where persons called upon to show cause under, do not do so ... 73

S. 113—
provisions of, ... 65

S. 114—
provisions of, ... "
proviso to, ... 140
summons or warrant issued under, ... 66
to be accompanied by a copy of order under s. 112 66
ommission to send copy of such order ... 69

S. 115—
provisions of, ... 66

S. 116—
Mgte's power under, to allow person to appear by pleader ... 165

S. 117—
how inquiry under, to be made, ...72, 73
Mgte. before whom enquiry under, pending not competent to take action under 202 Cr. P. C. ... 74
Mgte. proceeding under, must state to accd. particulars of matters agst them the same way as under sec. 242 Cr. P. C. ... 74
Mgte. bound to proceed under, to enquire into truth of information ... "
what is not sufficient complce. with, ... 75

PAGE.

quantum of evdce. in inquiry under, ... 75
inquiry provided by, and sec. 118 limited by terms of order under sec 112 ... 76
what cl. (3) of, provides ... 79
meaning of "otherwise" in cl. (3) of sec., cl. (4) of, 116, 119
See Association— 121—126
when a person appears in Court, inquiry to be conducted under, ... 165
S. 118—
Mgte to give reasons under, for finding it proved security necessary ... 73
where overt acts must be proved before order under, made ... 75
evidce. necessary to support order under, ... 75
inquiry provided by sec. 117 and, limited by terms of order under sec. 112 ... 76
where evdce not sufficient to support order under, 84
no conditions and limitations can be imposed upon of persons ordered to give security under, ... 96
S. 119—
meaning of discharge in, 127, 130, 131
order under, no bar to fresh proceedings under sec. 437 ... 131
S. 121—
provisions of, ... 110
S. 122—
enables Mgte. to reject sureties ... 103
S. 123—
See Sessions Judge—
sub-sec. (3) of, contemplates decision by S. J. on merits 147, 183
——does not authorize S. J. to consider sufficiency of security offered ... 147
——jdn. as to necessity is in Mgte. ... "
open to doubt whether provisions of secs. 367 & 424 Cr. P. C. govern orders under cl. (3) of, ... "

PAGE.

——even if they do not, S. J.'s order under cl. (3) of, shd show he has considered case of each individual prisoner ... 147
S. J. bound to hear pleadar under cl. 3 of, ... ,,
—— to give notice when refce. made under, ... ,,
——notice of date shd. be given ... 183
cl. (3) of, wide enough to give discretionary to S. J. to deal on merits ... 148
under cl. 3 of, S. J. shd always order same period of imprisonment as directed to be given in default of security ... ,,
when an order under, premature and illegal ... ,,
order under, shd not be passed until expiry of term of imprisonment a person may be undergoing ... ,,

See District Magistrate—

does not empower a Mgte to order imprisonment for failing to find security for good behaviour ... 149
——where H. C. upheld such order under, ... ,,
no appeal lies from S. J.'s order under, ... 149

See Reference—

S. 124—
taking action under, entirely in Magistrate's discretion ... 149
S. 125—
powers of Magistrates under, to cancel bonds ... 150
——Magistrate must record his reasons ... ,,
an illegal order under, ... ,,
nature of jurisdiction conferred by, ... ,,
gives Magistrate plenary powers ... 151
District Magistrate has power under, to deal with all questions raised before him ... 152
Magistrate has full power under, to cancel bond for sufficient reasons ... ,,
does not give Magistrate right to hear appeal ... ,,
under, District Magistrate may cancel bond, but not competent to send to jail ... ,,

PAGE.

S. 145—
where there is conflict between, and sec. 107 in their application to land disputes ... 34
whether proceeding under, a "criminal case" 153, 154
where a transfer of a proceeding under, not authorized by sec. 192 (2), such proceeding may be saved under, sec. 529 (*f*.) ... 158

S. 167—
definition of accused person in, 128, 129
does not authorize to remand in order to trace other persons ... 165
——period of remand under, is 15 days ... "

Ss. 190 (*c*) and 191—
provisions of, do not apply to proceedings under chap. VIII. Cr. P. C. 23, 165

S. 192—
meaning of "any case" in, ... 152
provisions of cl. (2) of, how far applicable to certain proceeding under Chap. VIII. ... 158
where a transfer not authorized under, may be saved under sec. 529 (*f*) ... "
under cl. (2) of, a first class Magistrate can only transfer an inquiry relating to an "offence" ... "
District Magistrate can transfer case under sec. 110 under, ... 165

S. 202— ... ...
Magistrate before whom enquiry under sec 117 pending not competent to take action under, ... 74

S. 242—
Magistrate proceeding under sec. 117 must state to accused particulars of matters against him same way as under, ... 74

S. 250—
not applicable to application made to Magistrate for his taking proceeding under sec. 110 ... 166
———nor under sec. 107 ... "

S. 256—
has no application to a case under sec. 110 Cr. P. C. 166

PAGE.

where a Court can restrict cross-examination ... 166

S. 257—

is imperative in its terms ... 167

leaves Magistrate no discretion to refuse to issue process ... ,,

what is sufficient compliance with cl. (1) of, ... ,,

S. 349— 133, 135

S. 350—

applies to inquiry under Chap. VIII. ... 167

S. 362—

recording evidence by a Presy. Mgte. under, ... 168

S. 367— ... 147

S. 397—

whether imprisonment in default security a sentence within meaning of, 173, 176

S. 424 ... 147

S. 437—

provisions of, do not apply to proceedings and inquiries under sec. 110 ... 126

meaning of discharge under, ... 127

——accused person as used in, ... 130

order under sec. 119 no bar to fresh proceeding under, ... 131

where an order of fresh proc. under, illegal ... 132

S. 438—

when, does not authorize District Magistrate to refer to H, C. ... 180

S. 443—

proceeding under sec. 107 against a European British subject 169, 170

S. 496—

is imperative ... 170

whether a Magistrate as a matter of law bound to allow bail in proceeding under sec. 107 ... 171

no bail should be called for under, from person against whom proceeding under sec. 107 contemplated and not initiated ... 171

PAGE.

S. 513—
order requiring person to deposit cash under, ... 172

S. 514—
lays down procedure on forfeiture of a bond ... 111
Mgte. shall record evidce before any proceeding taken under, ... "
—— not upon evdce taken in other cases ... 112
must be a regular judicial trial and legal inquiry "
——parties must have opportunities to cross-examine ... "
Mgte to give notice to surety under, ... 113
where a Mgte abstained from making any order for forfeiture of bond ... 113
production of conviction and proof of identity of principal sufficient evdce upon which Mgte can issue notice upon surety under, ... 114
if no immediate action taken under, ... 114
whether conviction under Gambling Act good ground for action under, ... 115
both surety and principal liable under, ... 172

S. 515— ... 172

S. 526—
meaning of "any particular criminal case" in, 151, 153, 154
powers of H. C. under, to transfer proc. under Chap. VIII. 153, 154
——— Cal. H. C.'s views ... 155
——— All. H. C.'s 156—158

S. 528—
" any case " in, ... 152
powers of Magistrate under, ... 153

S. 529—
provisions of cl. (*f*) of, ... 158
transfer of proceeding under secs. 107, 108 109 and 110 saved by cl. (f) of, 159, 172
where a transfer not authorized under sec 192 (2) may be saved under cl. (f) of, ... 158
———a proceeding under sec. 145 ... "

S. 530 — ... 132

PAGE.

S. 537—
cannot cure misjoinder ... 117
S. 540—
prosecution and accused both entitled to cross-examination witness called under, 166, 172
S. 556—
when a Magistrate disqualified ... 173
S 562—
object of, ... 97
power given to Court under, ... 145
——can be exercised by Court of Appeal and not confined to Courts of first instance ... ,,
——Court of Sessions ... 146

Delegation—
in determining sufficiency of a surety a Mgte. cannot act on police-report ... 105
——he himself must hold inquiry thereto ... ,,
——can't send security bond to a Tahsildar for report ... ,,
—— not competent to Mgte to delegate to another officer ... ,,
—— inquiry must be made by the Court by which original order made ... ,,

Discharge—
proceedings on indefinite charges under sec. 110 after, ... 61
proceedings under sec. 110 shd. not be taken as means of punishing in an indirect way, a a person, though discharged, in Police opinion guilty ... 62
meaning of, under secs. 437 and 119 127, 130, 131
when an order postponing sec. 107 proc. amounts to ... 185

Discretion—
a large, vested in Mgtes by Chap. VIII. Cr. P. C.... 62
——putting in force these stringent secs. shd be exercised with *extreme*, 62, 63
See **Magistrate—**

PAGE.

District Magistrate—
See sec. 123 Cr. P. C.—
See sec. 124 Cr. P. C.—
See sec. 125 Cr. P. C.—
powers of, to withdraw a case falling under sec. 491 160
—— to transfer proc. under sec. 107 from Sub-Divl. Mgte ... 160
even on direction of a, sub-mgte has no jdn to draw up a proc. under sec. 107 agst person residing in another district ... 161
shd regularly transfer to his own file case in hands of sub-mgte ... 161
can transfer case under sec. 110 under sec. 192 Cr. P. C. ... 165
no appeal lies from order of, ... 180
where sec. 438 does not authorize, to refer to H. C. 182

Enhancement of Security—
whether a Mgte justified in increasing amount of security ...108, 109
Mgte's final order under sec. 118, must correspond with notice under sec. 112 ... 109
dfdt. shd. have opportunity to show cause against enhancement ... ,,

Escape—
whether, from arrest under sec. 55 Cr. P. C. punishable ... 164
from custody when being taken before Mgte. for being bound over to be of good behaviour ... 185

European British Subjects—
proceedings under sec. 107 against, 49, 169, 170

Evidence—
quantum of, under sec. 117 ... 75
necessary to support order under sec. 118 ... 75
necessary, when a large body of men proceeded against under sec. 110 ... 75
in a joint inquiry ... 77 78
See **Joint Inquiry—**
See **General Repute and Evidence—**

PAGE.

of general repute ...80, 81
of association ...82, 87
of general repute not admissible in proc. under sec. 107 ... 81
See **General Evidence**—
there must be satisfactory, for sureties to keep peace or good behaviour ... 85
what, did not prove accd. a habitual thief ... 85
what is not, of general repute ... 86
loose statements of Tahsildar and Sub-Inspr. ... ,,
taken in another case ... ,,
of acts committed several years ago ... ,,
relating to events before period of first binding down order ... ,,
where, did not show person by habit a robber &c. ,,
of witnesses from villages where dacoities occurred 87
of specific conduct ... ,,
of extracts from Mgte's admistrn. reports ... ,,
where, fn favour of accd. ... ,,
produced on both sides ... 88
where, for defence as weighty as, for pros. ... ,,
of accd's good character ... ,,
where a Mgte. does not specifically consider, for defence ... ,,
of general repute not admissible in charge under cl. (f) of sec. 110 ...82, 91

Evidence Act—
Sec. 54 ... 83
Sec. 33 ... 86

Ferfeiture of Bond—
conviction for theft will not justify, to keep peace 111
——nor for wrongful confinement and extortion ... ,,
See **sec. 415 Cr. P. C.**— ... 111
may take place on any breach of peace, when terms of bond are general ... 114
neither Magistrate nor H. C. has power to reduce amount of penalty when, taken place ... ,,
liability of a surety on, ... ,,

PAGE.

where a, not justified ... 115
on a, amount of forfeited bond may be exacted, but defendant cannot be also committed to prison for unexpired portion of term ... 115
before, can take place there must be proof accused personally broke peace ... ⋮

Fresh Proceedings—
an order under sec. 119 no bar to, under sec. 437 131
when District Magistrate competent to institute, 131
before, directed it is necessary to look to evidence 132
when order of, illegal ... 132

Further Inquiry—
Magistrate no power to order a, in proceeding under sec. 110 ... 126
——order illegal ... ,,

General Principle—
of sec. 106 Cr. P. C. ... 3
of sec. 107 Cr. P. C. ... 24
of sec. 110 Cr. P. C. ... 56

General Repute—
sec. 117 cl. (3) provides for, ... 79
definition of, ... 79
difference between, and rumours ... 80
evidence of witnesses as to, ... 81
———of, ... ,,
——, not admissible in a proceeding under sec. 107 ... ,,
a person's own admission as to his, ... ,,
sufficient evidence of, ... ,,
where evidence of, not admissible 82, 91
See **Suspicion—**
—General Evidence— ... ...
must be universal ... 85
what is not evidence of, ... 86

High Court—
power of, to interfere with proceedings under sec. 110 initial stage ... 57

PAGE.

will interfere if amount of recognizances out of proportion ... 94
powers of, under sec. 106 ... 132
See **Jurisdiction—**
—Appellate Court—
powers of, in revision ... 183
on requisition from, a Magistrate bound to state grounds upon which he fixed amount of security ... 183
where, declined to consider merits of application ,,
acting in revision, bound to accept finding of lower court ... 183

Illegal Order of Security—
an instance of, ... 109
to take recognizance from one person to prevent committing a breach of peace ... 110
to order to pledge all proprietary right in land ... 110
to detain defendants in jail on ground Magistrate himself desired "to look into the sureties personally" ... 110

Indian Penal Code—
S. 11— ... 5
S. 143—
a conviction under, does not necessarily involve a breach of peace ... 12
offence under, not specified in sec. 106 Cr. P. C. ... 13
where an order under sec. 106 justifiable in a conviction under, 13, 15
S. 144—
where sec. 106 applicable in a conviction under, ... 13
S. 147—
where a conviction under, does not justify order under sec. 106 Cr. P. C. ... 17
S. 151— ... 5
S. 152— ... 6
S. 153—
a conviction under, does not bring accd. within sec. 106 Cr. P. C. ... 13

PAGE.

S. 157— ... 9
S. 159 ... 5
S. 224 ... 164
S. 225 ... ,,
S. 225 A. ... ,,
S. 294—
an offence under, does not come within sec. 106 ... 14
Ss. 296 & 298—
a conviction under, not sufficient to bring one under sec. 106 Cr. P. C. ... 14
S. 379—
not an offence specified in sec. 106 Cr. P. C. ... 14
there shd. be express finding a breach of peace committed in course of offence under, ... ,,
conviction under, not of itself sufficient to sustain order under sec. 106 Cr. P. C. ... 15
—— unless clearly found force was employed ... ,,
S. 434—
an offence under, comes within sec. 106 Cr. P. C. 16
S. 447—
when a person may be bound over under sec. 106 Cr. P. C. upon a conviction under, ... 16
house-trespass under, to have illicit intercourse ... ,,
S. 448—
in a conviction of, where it is committed for purpose of causing hurt, accd. bound down under sec. 106 Cr. P. C. ... 16
S. 504—
does not come within sec. 106 ... 17

Information—
nature of, required under sec. 107 ... 19
must be credible ... ,,
what is not a credible, ... 20
——petition unsupported by any complaint ... ,,
—— statement of private persons not on oath ... ,,
—— unproved charge of false imprisonment ... ,,
—— conversation out of Court ... ,,
what is a credible, ... 20

PAGE.

——report of a Police-officer ... 20
——of a Sub-Mgte ... 21
——but they are not evdce. ... 21
not necessary to call witness in support of an, ... ,,
must be clear and definite ... 22
order showing cause must adequately disclose substance of, ... 22
every person entitled to proper, as to materials ... 22
act of which, is given must be shown to have been in contemplation at time, was given ... 22
Mgtes left very wide discretion as to kind of, ... 23
sec. 110 contemplates some, showing habitual bad character ... 56
must be to the effect that person *by habit* commit offence enumerated in sec. 110 ... ,,
Mgte. may initiate proceedings on, from any source 56
statute does not impose any restriction as to the quarter from which, may be derived ... 57
Mgte. not bound to reveal source of, ... ,,
it is sufficient if Mgte states substance of, ... ,,
what is a sufficient statement of substance of, as reqd by sec. 110 ... 58
a Mgte not competent upon, suggesting likelihood of breach of peace, to resort to sec. 110 ... ,,
Mgte bound to proceed under sec. 117 to inquire into truth of, ... 74

Inquiry—

how, under sec. 117 to be made ...72, 73
——must be a judicial ... 72
——Mgte. bound to proceed under sec. 117 ... 74
until completion of, Mgte's power to detain in custody person against whom proc. under sec. 107 pending ... 75
quantum of evidence in, under sec. 117 ... 75
provided by secs. 117 & 118 not strictly limited by terms of order drawn up under sec. 112 ... 76
See **Joint Inquiry—** ... 77

PAGE

provisions of sec. 350 Cr. P. C. apply to, under Chap. VIII. ... 167
term, includes every, conducted by a Mgte or Court ... ,,

Joint Inquiry—
a proceeding under sec. 107 against 17 persons ... 77
what is essential to establish in, ... 77
re members of a gang ... 78
under sec. 117 against members of a gang ... 118
sec. 117 (4) does not empower a Mgte. to deal both conteding parties in, ... 119
See **Association—**
members of same family ... 124
when persons are not "associated together" ... 124

Joint Owner—
where one, bound down under sec. 106, it is desirable to bind down other side under sec. 107 ... 43

Jurisdiction—
of High Court, Sessions Court and first class Mgte under sec. 106 Cr. P. C. 132, 134
of second and third class Mgte ... 133
of Appellate Court to set aside order under sec. 106 Cr. P. C. ... 137
——under sec. 107 Cr. P. C. 137-143
——under sec. 110 Cr. P. C. ... 143

Land Disputes—
whether there is conflict between sec. 145 and sec. 107 in their appln. to, ... 34

Legal Representative—
liability of a, of a deceased surety under sec. 106 115

Legal Right—
sec. 107 does not prevent one from exercising his, of property ... 29
proper course ... ,,
of a Mahomedan to kill cows ... ,,
—— to read "Amen" ... 80

PAGE.

where opposing party acts within their, ... 30
———co-sharer landlord's, ... ,,
a widow's, ... ,,
Mokhasadar's, ... 31
See **Religious Procession—**

Locus Penitentiæ—
before order under sec. 110 is passed against a person repeatedly convicted and imprisioned he shd. be allowed a fair chance of leading a new life .. 63
it is rather duty of Police to assist a man recently released from jail in finding for him honest employment than to apply for his incarceration for a further period ... 63
the greatest thief entitled to, ... 64
where an accd. not given, ... 64
period of interval necessary for, ... 64
See **Period of Interval—**

Magistrate—
proceeds upon infmn. in a proc. under sec. 107 ... 4
must adjudicate on evdce. before him and not on his own opinion formed extra-judicially 4, 26, 27, 29
has a very wide discretion as to kind of infmn. on which to institute proceedings under Chap. VIII. Cr. P. C. ... 23
a, cannot bind over where there is no evidce. to commit a breach of peace ...24, 27
must beleive person about to commit a breach of peace ... 25
must act on legal evidce. ... 25
—— a police-report *per se* no legal evidence ... ,,
taking security for keeping peace within discretion of a, ... 28
duties of a, when public peace likely to be disturbed In taking religious procession ... 32
See **Religious Procession—**
whether illegal arrest under sec. 55 ousts jdn. of, to deal under sec. 109 Cr. P. C. ... 54
may initiate proceedings under sec. 110 on infmn. from any source ... 56

PAGE.

not bound to reveal source of infmn. ... 57
sufficient if, states substance of infmn. ... "
police-report on which, takes action, furnishes adequate foundation ... "
not competent to pass an order under sec. 110 as part of sentence in same judgment by which accd. convicted and sentenced for one of offences enumerated in sec. 110 ... 58
a large discretion is invested in, by Chap. VIII. Cr. P. C. ... 62
Spankie J.'s caution to, ... 62
expected to exercise his judicial discretion in a reasonable and judicial manner ... 63
See **Summons & Notice—**
bound to issue notice ... 68
can't proceed on different grounds ... 68
has no power to order security for a longer term ... 68
final order of, must correspond with notice under sec. 112 Cr. P. C. ... 69
bound to enforce attendance of witnesses ... 70
bound to proceed under sec. 117 to enquire into truth of infmn. ... 74
must take evidence in presence of accd. or his agent in proc. under sec. 107 ... "
not competent to take action under sec. 202 Cr. P. C. after a person has been called upon to show cause ... "
how a, to proceed under sec. 117 ... 74
law does not empower a, to detain in custody a person against whom 107 proc. pending ... 75
can order person to be bound down on his admission ... 78
——where held illegal ... 79
proc. liable to be quashed if, fails to record statement in accd.'s words as nearly as possible ... 78
to test prosn. evdce. with great care where no previous conviction proved ... 87
where, does not specifically consider defence evdce. 88

PAGE.

Magistrate—*contd.*

in determining sufficiency of a surety a, must not act on a police-report ... 105
—— himself must hold inquiry thereto ... ,,
—— can't send security bond to a Tahsildar for report ... ,,
—— not competent to delegate inquiry to another officer ... ,,
See **Jurisdiction**—
power of, to issue process under sec. 107 agst. person not personally his jdn. ... 141
jdn. of, to take proc. under 107 agst. person not personally within his jdn. ... 141
jurisdn. of sub., to draw up proceedings under sec. 107 agst. person residing in another district ... 143
jdn. of, to remand under cl. (4) of sec. 107 ... ,,
jdn. of, under sec. 110 ... 144
not competent to, to send it up to Dist. Mgte. to take action under Regln. XII. of 1827 ... 144
inquiry under sec. 110, shd not be conducted by, at a place outside limits of his jdn. ... 144
——person must be within local limits of jdn. ... 145
where a, cannot require witness to give security under sec. 106 ... 18
powers of, under sec. 106 132, 133
a, has jdn. to deal with person under sec. 109 though his arrest illegal ... 54
See **Secs. 123, 124, 125 Cr. P. C.**—
,, **District Magistrate**—
sub., jdn. to draw up proc. under sec. 107 agst. person residing, in another district at direction of Dist. ... 161
jurisdn. and powers of, at head quarters under sec. 12 (2) ... 161
—— where a proc. under sec. 107 transferred by Dist. Mgte. to such, not without jdn. ... ,,
in ordering arrest, must act on recorded infmn. ... 164
power of, under sec. 116 Cr. P. C. ... 164

PAGE.

has no discretion under sec. 257 to refuse to issue process ... 167
to assist party in procuring attdce. of witnesses ... ,,
not competent to refuse bail in bad livelihood proc. ... 170
whether, bound as a matter of law to allow bail in proc. under sec. 107 ... 171
power of, to remand to custody a person under sec. 107 (4) ... ,,
when a, disqualified under sec. 556 Cr. P. C. ... 173

Misjoinder—
main principle to be applicable 116, 117
cl. (4) of sec. 117 Cr. P. C. 116, 119
where both parties to a proc. tried together ... 117
binding down two contending parties in a single proceeding ... 118
joint inquiry under sec. 117 against members of a gang ... 118
See **Association—** ...

Misjoinder of Charges—
where accd. charged with sixty-four cases of "alleged" extortion ... 119

Non-resident Zemindar—
when a, cannot be bound over under sec. 107 140, 141
Mgte's power to issue process under sec. 107 agst. person residing within district ... 140
Mgte's jdn. to take proc. under sec. 107 against person not personally within his jdn. ... 141
Sub-Mgte's jdn. to draw up proc. under sec. 107 agst. person residing in another district ... 143

Notice—
a Mgte. bound to issue, before taking action ...67, 68
to keep peace but order for good behaviour ...68, 69
omission to issue, ...68, 69
ordering security longer term than in, ... 68
Mgte's final order under sec. 118 must correspond with that in, under sec. 112 ...68, 69

PAGE.

under sec. 112 shd. give accd. sufficient time to meet accusation ... 70
issued under sec. 107 and a case for sec. 145 Cr. P. C. ... 68
under sec. 112 must be served ... 68
when such, given and ground of com plaint found to be unfounded ... 68
issued with refce. to sec. 110 (e) is not prelim. to to making order under sec. 107 ... 69
where, under sec. 112 not accompanied by order .. ,,

Object—
of sec. 107 ... 23
of sec. 110 ... 55
of sec. 562 ... 97

Onus—
lies on person who calls upon party to show cause to prove affirmative ... 23
lies upon prosecution ... 23

Opportunity—
before ordering security accd. should be given, of entering into his defence ... 70
Mgte's record shd. show, given ... ,,
defdt. shd. have, of cross-examg. ... ,,

"Otherwise"—
meaning of, in sec. 117 (3) ... 82

Parties—
binding down both, ... 44
——under circumstances ...44, 45
——*bona fide* dispute and binding both, ...45, 46

Police Report—
prima facie, adequate foundation for proceeding under sec. 110 ... 57
when proceedings under sec. 110 are not *bona fide*, production of, no answer to allegation ... ,,
H. C. has power to interfere at initial stage, when proceedings not *bona fide*, notwithstanding ... ,,
contra ... ,,

See **Procedure—**

PAGE.

what a person proceeded under, is entitled to, ... 66
... See **General Evidence**—
a Mgte must not rely on, but shd. take evdce. of general character ... 185
a Mgte. in determining sufficiency of a surety cannot act on a, ... 105

Presidency Magistrate—
has to take down evdce. under sec. 362 Cr. P. C.... 168
no appeal lies from order of, ... 180

Previous Conviction—
mere fact of a, of offence involving dishonesty not sufficient to put in force sec. 110 ... 60
——there must be some additional evdce, showing accd.'s intention to return to former course of life ... ,,
for a simple breach of peace not sufficient to demand security for good behaviour ... ,,
not substantive evdce. in a case under sec. 110 ... ,,
Mgte. to test prosn. evdce. with great care where no, proved ...61, 87
whether, a disqualifn. in a surety ... 106

Procedure—
to be found in secs. 113-117 Cr. P. C. ... 65
See **Summons & Notice**— ... 66
,, **Opportunity**— ... 70
,, "**Showing Cause**"— ... 71

Reference—
where sec. 438 does not authorize Dist. Mgte. to refer to H. C. ... 182
on, to him S. J. bound to give notice ... 183

Relationship—
whether, a disqualification in persons tendered as sureties ... 106

Religious Procession—
when a party have a right to take, along a particular road ...32, 33

PAGE.

no sect can deprive others for ever right to use public streets for, on plea of worship day and night ... 33

Revision—
powers of High Court in, 183, 184
S. J.'s order open to, ... 184
See **High Court—**

Rival Hats—
in cases of dispute re, most appropriate section is sec. 107 Cr. P. C. ... 44

Second Security—
when, cannot be demanded ... 96
an order to execute, during time the first recogzce. in force illegal ... ,,

Security—
order of, under sec. 106 shd. not form part of sensence for offences for which a person convicted ... 3
——nor shd. it be passed in lieu of any other punishment ... ,,
——must be passed in addition to the sentence ... ,,
——should be passed simultaneously with conviction ... ,,
——if omitted at the time, Mgte. not competent to pass order subsequently ... ,,
——should not be passed in absence of accused ... ,,
——nor upon suggestion of his adversary ... 4
Under secs. 106, 107 and 108, personal recogzce. may be with or without, ... 92
under secs. 109 and 110 with, ... 93
period of, under secs. 106—110 ... ,,
Mgte. to consider station of life in fixing amount of, ... ,,
individual should be given fair chance of complying with condition of, ... ,,
——not to make alternative imprisonment unavoidable ... ,,
H. C. will interfere if amount of, out of proportion 94

PAGE.

order of, under sec. 106 shd. not direct to execute same at end of imprisonment ... 94
instances of excessive, ... 94
Mgtes. to act discreetly in requiring, ... 94
order to give, for good behaviour must specify a definite period for which, reqd. ... 95
Mgte. has no right to impose arbitrary conditions in making order for, ... 95
See **Arbitray Conditions**— ... 95
" **Second Security**— ... 96
" **Enhancement of Security**— ... 108
" **Illegal Order of Security** - 109, 185
order directing to be imprisoned until, given ... 185

"Sentence"—
whether an imprisonment in default of security a, within meaning of sec. 397 Cr. P. C. 173, 176
——Bom. H. C.'s decisions ... 174
——Mad. H. C.'s decisions ... 176
——Punj. Ch. C.'s decisions ... 177
——All. H. C.'s decisions ... 177

Sessions Judge—
powers of, under sec. 123 Cr. P. C. ... 146
sub. sec. (3) of sec. 123 does not authorize, to consider sufficiency of security offered ... 147
order of S. J. under sec. 123 (3) shd. show he has considered case of individual prisoner ... "
bound to hear pleader in a case referred under sec. 123 (2) Cr. P. C. ... "
——to give notice to persons concerned ... "
——a date shd. be fixed for refce. and a notice of such date given to dfdt. ... "
in confirming order of Mgte., bound to find special ground on which order passed ... "
——not sufficient to find in general terms ... 148
under sec. 123 (3) S. J. has discretionary power to deal on merits ... 148
bound to call for record of inferior Court before referring case to H. C. ... "

P

shd. always give same period of imprisonment as directed to be given in default of security ... 149, 180
no appeal lies from order of, under sec. 123 ... 181
not competent to make over appeal to Dist. Mgte.

"Showing Cause"—
meaning of, 71

Summons—
what a, must set forth 66, 67
where a, not necessary to issue ... 67
what is not a, as is required by the section ... 67
an order directing recognizance without issuing a, 67
where Mgte. issued, agst witnesses, he is bound to have processes enforced before disposing of the case ... 70

Surety—
fitness of, ... 98
——local residence 98-102
——pecuniary state 98-102, 106
a Mgte. can reject, under sec. 122 but must record reasons ... 103
grounds to refuse to accept, must be valid and reasonable ... 103
best way to test police-report made unfavourably agst. ... 103
mode of inquiry regarding fitness of, ... 104
——should be directed mainly to financial position of, 104, 106
——who shd. conduct inquiry ... 104

See **Delegation—**
what are not sufficient grounds for rejecting, ... 106
——sufficient grounds ... 107
object of requiring a, ... 114
liability of a legal representative of a deceased, under sec. 106 Cr. P. C. ... 116

Suspicion—
not sufficient in a proc. under sec. 110 83, 84
—of dacoity not sufficient ... 85

ALLAMA IQBAL'S PERSONAL COLLECTION NO.

PAGE.

Transfer—
whether expression "any case" in secs. 192 and 528 covers cases under chap. VIII. ... 152
meaning of "criminal case" in sec. 526 151, 153, 154
saving of, of a proc. under sec. 145 Cr. P. C. ... 158
—— under sec. 107 and 109 ,, ... 159
——under sec. 110 ,, ... ,,
See **Sec. 529 Cr. P. C.—**
grounds of, ... 159
time for applying for adjt. for, to H. C. ... 160
where H. C. refused in proc. under sec. 107 ... 160
powers of Dt. Mgte. to, ... 160
See **Dist. Mgte—**

Witness—
Mgte. bound to enforce attdce. of, 70, 71
dfdt. shd. have opportunity to cross-examine, ... ,,
shd. be axamd. in presce of accd. ... ,,
evdce. of, as to general repute ... 81
well-known fellow-citizens not living in immediate neighbourhood competent, ... 81
evdce of, from villages where dacoities occurred ... 87
where a Mgte. cannot require a, to give security under sec. 106 Cr. P. C. ... 18
both prosecutor and accd. entitled to cross-examine, called under sec. 540 ... 166
Mgte. to assist party in procuring attdce. of, ... 167

Wrongful Act—
meaning of, ... 46
instances which are not, within meaning of sec. 107 47

ISLAMIA COLLEGE LIBRARY Bk. No..... LAHORE.

350 M.A. SECTION R81L

This book was taken from the Library on the date last stamped. A fine of one anna will be charged for each day the book is kept overtime.

16087/3860

241

M.A. SECTION

350 R81L

Roy

: relating to bad livelihood:

16-5-2018 9-8-18

ISLAMIA
COLLEGE
LIBRARY,
LAHORE.

Extract from the Rules:—

Books are issued for fourteen days only.

A fine of one anna per day will be charged for each volume kept over time.

Borrowers will be held responsible for any damage done to books while in their possession.