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beside or near the Judge, or should converse with him, and we consider the verbal communications and notes which passed between the Magistrate and the Judge in this case highly irregular, and, if such a practice be persisted in, as calling for serious action. If there be any fact supposed to be in the knowledge of the Magistrate and which the Judge considers necessary for the proper determination of the case before him, he should examine the Magistrate as a witness, upon oath or solemn affirmation, according to his creed.

My brothers Melvill and Green, who are engaged in other Division Courts to-day, as well as my brothers Lloyd and Kemball, concur in this judgment.

REG. v. IRA'PA' bin BASA'PA' et al.

Nov. 23.

*Report of Subordinate Magistrate—Credible Information—Evidence of a Breach of the Peace being likely—Security to keep the Peace—Crim. Proc. Code, Secs. 280, 287, and 288.*

The report of a Subordinate Magistrate, although it is credible information on which a Magistrate of the District would be justified, under Sec. 280 of the Code of Criminal Procedure, in issuing a summons, is not evidence on which he can properly arrive at a conclusion that the accused is likely to cause a breach of the peace.

Secs. 287 and 288 of the Code require that evidence in such a case shall be recorded, and if none is forthcoming security to keep the peace should not be demanded.

THE accused were ordered by the District Magistrate of Dhárwár, E. P. Robertson, to enter into a personal recognisance to keep the peace, and in addition to give securities. This order having been confirmed by the Session Judge, Baron DeH. Larpent, this application for the Court's extraordinary jurisdiction was made.

The circumstances under which the order was made are briefly these.

In the little village of Lakundi, in Táluká Dambal, an annual fair is held in honour of a deity, whose car is on that occasion drawn by the inhabitants and paraded through the streets. A small faction, lately sprung up in the village, and represented by the accused, having objected to the procession going by the usual route, the Subordinate Magis-

trate inquired into the matter and informed the Magistrate of the District, by a written report, that if the fair should be held and no precautions taken, the accused would assuredly commit a breach of the peace.

The District Magistrate, upon receipt of this report, issued summonses to the accused to show cause why they should not enter into a bond to keep the peace. The accused appeared on the appointed day before the Magistrate, who recorded the report of the Subordinate Magistrate, and, without taking any more evidence, directed each of the accused to enter into a personal recognisance and to furnish two sureties in the sum of Rs. 200 each.

The Acting Session Judge, before whom the case came on appeal, considered that the taking of security was entirely within the Magistrate's discretion, and refused to interfere.

The application was heard by GIBBS and LLOYD, JJ.

*Nánábhái Haridás* for the petitioners.

PER CURIAM:—The period for which the security was furnished has expired, owing to the delay which has occurred in calling for the reports and proceedings. But as the Court considers that the procedure of the District Magistrate was illegal, it will record its opinion for future guidance. The District Magistrate did not record any evidence when the parties were before him, but contented himself with the report of the Subordinate Magistrate that a breach of the peace was likely to occur. Now this, although credible information, on which he could, under Sec. 280 of the Code of Criminal Procedure, call on the parties to appear and show cause, was not evidence on which he could arrive at a conclusion, when the parties were present in his court, that they were likely to cause a breach of the peace. Secs. 287 and 288 require a judicial proceeding,—*i.e.*, evidence to be recorded—and if none could be found, security could not be demanded. The question is very fully discussed in the case of *Behari Patak v. Mahomed Hyat Khan* and two other cases (a), and the same course was directed by this court in *Reg. v. Dalpatráam Pemábhái* (b).

*Order accordingly.*

(a) 4 Beng. L. Rep., F. B. R. 46. (b) 5 Bcm. H. C. Rep., Cr. Ca. 105.

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