

1885.

NARAYAN  
RAMCHANDRA  
v.  
DHONDU  
RAGHU.

a tenant for any purpose other than the cultivation of land, is exempt from stamp duty under article 13 of Schedule II of Act I of 1879?"

The Subordinate Judge was of opinion that such *kabuláyats* were not exempted under the article, inasmuch as that article applied only to *kabuláyats* relating to lands let only for the purpose of cultivation, and not for any other purpose.

There was no appearance for the parties.

SARGENT, C. J.—We think the Subordinate Judge is right. The document is a lease, and, therefore, chargeable with stamp duty under Act I of 1879, Schedule I, art. 39; unless Schedule II, art. 13, applies, which we do not think it does. It is not such a lease as the latter article contemplates.

## REVISIONAL CRIMINAL.

Before Mr. Justice Nánabhái Haridás and Sir William Wedderburn, Bart., Justice.

IN RE RAJA' VALAD HUSSEIN SA'HEB.\*

1885.  
October 1.

Security for good behaviour—Criminal Procedure Code (Act X of 1882), Secs. 110, 117 and 118—Previous convictions.

The object of taking security for good behaviour from a person is solely to secure his good behaviour in future. The mere record of previous convictions, on account of which the person has undergone punishment, does not satisfy the requirements of sections 110, 117 and 118 of the Code of Criminal Procedure (Act X of 1882), and it is wrong to use these provisions so as to add to the punishment for past offences.

THIS was a reference from J. L. Johnston, Sessions Judge of Dhárwár, who stated the case thus:—

"It appeared from the *faujdar's* report that the accused had been four times punished under sections 411, 457 and 380, and 332 and under section 110 of the Criminal Procedure Code (X of 1882). Mr. Charles, Magistrate (First Class), ordered him to show cause why he should not give security for being of good behaviour. Under section 118 he was directed to give the securities, which he had agreed to do. He was then in custody, undergoing his

\* Criminal Reference, No. 135 of 1885.

last sentence, which expired on the day the order was passed. The securities named by the accused refusing, the accused was ordered to be kept in custody with rigorous imprisonment for six months. It would appear from the cases of *Naráin Soohoodhi*<sup>(1)</sup> and *Empress v. Nawáb*<sup>(2)</sup> that it is not the intention of the Code to exact security for good behaviour without giving a *locus penitentiæ* to the criminal when he has served out his punishment. In the present act the Magistrate acted only on the report of the *faujdar* of Hubli, that the accused had been more times previously convicted."

No one appeared in the High Court either on behalf of the accused or the Crown.

*Per Ouriam.*—As pointed out by the Sessions Judge, it has been repeatedly held by the High Courts that the object of taking security for good behaviour is solely to secure good behaviour in future, and that it is wrong to use these provisions so as to add to the punishment for past offences. Section 110 of the Code of Criminal Procedure (X of 1882) contemplates some information showing the habitual bad behaviour of the person proceeded against; under section 117, inquiry, as in warrant cases, should be made, and evidence taken as to the truth of this information; and under section 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. The mere record of certain previous convictions, on account of which the person has undergone punishment, does not satisfy the requirements of these provisions.

As the Magistrate's proceedings do not fulfil the above requirements of the law, the order committing Rájá valad Hussein Sáheb to prison should be reversed.

(1) 6 Calc. W. R. Cr. Rul., 6.

(2) I. L. R., 2 All., 835.

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IN Re  
RÁJÁ VALAD  
HUSSEIN  
SÁHEB.