APPELLATE CRIMINAL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

1898.
January 26.

QUEEN-EMPRESS,

v.

POOMALAI UDAYAN.*

Penal Code—Act XLV of 1860, *ss.* 99, 186, 353—*Local Boards Act (Madras)—Act V of* 1884, *ss.* 77, 78, 81, 94, 163—*Service of notice of demand of house-tax—Omission to fill up the house-register completely—Illegal distraint—Resistance to distraining officer.*

A notice of demand of a house-tax under the Local Boards Act V of 1884 (Madras) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint:

Held, that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under section 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, sections 186 and 353.

APPEAL on behalf of Government under Criminal Procedure Code, section 417, against the judgment of acquittal pronounced by T. Varada Rau, Assistant Magistrate of South Arcot, in Criminal Appeal No. 20 of 1897, preferred against the judgment of V. Ponnambala Mudaliar, Stationary Second-class Magistrate of Kallakurichi, in Calendar Case No. 95 of 1897.

The accused, who was a potter and a cultivator by occupation, was tried and convicted in the Court of the First Instance of the offences of voluntarily obstructing a public servant in the discharge of his public functions under Penal Code, section 186, and using criminal force to a public servant with intent to deter a public servant. The South Arcot District Board, under the Local Boards Act V of 1884 (Madras), section 60, notified that a tax on all houses situated within Kallakurichi Union should be levied at the full rates specified in schedule A of the Act. The accused failed to pay the tax due on his house after service of a notice of demand. A warrant or distress was then issued and a bucket and spade belonging to him which was found within his house were attached. The distraint was resisted by the accused who recovered and retained these articles. There had been an omission to fill up

* Criminal Appeal No. 792 of 1897.

one column of the house-register and it was objected that the service of notice of demand was irregular and also that the articles attached were not liable to distraint. On these grounds the Magistrate on appeal who referred to *Queen-Empress* v. *Kalian*(1), *Queen-Empress* v. *Pukot Kotu*(2), *Queen-Empress* v. *Tulsiram*(3), *Rakhal Chandra Rai Chowdhuri* v. *The Secretary of State for India in Council*(4), and *Cohen* v. *Nursing Dass Auddy*(5), reversed the conviction holding that the charges had not been substantiated. As to the second point he said: "Section 163, clause (1), gives the "manner of service of notice regarding any money due in respect of "assessment or tax. It shall, if practicable, be presented to or "served personally upon the person to whom the same is addressed " . . . In this case the demand notice is said to have been "pasted on the wall of the appellant's house by the monigar on "3rd December 1896. The appellant, it is admitted, was in the "village and in fact in the house three hours before the monigar ap-"peared. The question is should any attempt be made to discover "or find the person to whom the notice is addressed or would his mere "absence from his usual place of abode or business suffice, to adopt "the other modes of service specified in the section quoted above."

The present appeal was preferred on behalf of Government.

The Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

Mahadeva Ayyar for the accused.

JUDGMENT.—Upon the facts, we agree with the finding of the Subordinate Magistrate that there was a resistance by the accused to the attachment, and we cannot agree with the Assistant Magistrate that such resistance was not proved. The evidence of the Union servants is corroborated by the probabilities as well as by the official report that was submitted at once, and it is impossible to believe the defence story that the Chairman of the Union with a large escort should have come to make the distraint and then have gone away without doing so, although there was no resistance.

The next question is whether the resistance was lawful as has been ruled by the Assistant Magistrate on the ground that the provisions of the Local Boards Act (V of 1884) under which the distraint was made were not regularly complied with in regard to (1) the preliminary steps for making the demand, (2) the service of the notice, and (3) the subjects of seizure. In regard to (1) the

(1) I.L.R., 19 Mad., 310.
(2) I.L.R., 19 Mad., 349.
(3) I.L.R., 13 Bom., 168 at p. 170.
(4) I.L.R., 12 Calc., 603.
(5) I.L.R., 19 Calc., 201.

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only defect appears to have been an omission to fill up one column in the house-register, which defect may be taken to be cured by section 155, clause (1) of the said Act (V of 1884), inasmuch as the provisions of the Act were in substance and effect complied with. The Assistant Magistrate was wrong in saying that no house-register was kept, and also in saying that it is not shown the demand notice was served ten days after the tax was payable, because the Chairman gives evidence proving both these points. In regard to (2) we consider that there was no real departure from the procedure prescribed in the Act (V of 1884) for the service of notices. As regards (3) we must admit that the articles seized—a spade and a bucket—were either tools of an artisan, such as a potter or implements of husbandry, and were therefore exempt under section 94 of the Act (V of 1884) from attachment. The question then is whether this circumstance justified the resistance, and rendered it no offence. We clearly think that it did not as the act, however irregular or illegal it may have been, was the act of a public servant acting in good faith under color of his office, and against such an act, the accused had no right of self-defence under section 99 of the Penal Code, inasmuch as there was no apprehension of death or of grievous hurt. This case is governed by the rulings of this Court in several previous cases (*Queen-Empress* v. *Ramayya*(1), *Queen-Empress* v. *Pukot Kotu*(2), and *Queen-Empress* v. *Tiruchittambala Pathan*(3)). The case, *Queen-Empress* v. *Tulsiram*(4), referred to by the Assistant Magistrate, was a case in which it was found that the person acting was in effect not a public servant. The other case, *Queen-Empress* v. *Kalian*(5), has no application here, the question there being only in regard to the lawfulness or otherwise of the custody from which the accused escaped.

We must therefore set aside the judgment of acquittal passed by the Appellate Court and uphold the conviction of the accused under sections 186 and 353 of the Penal Code. As regards the sentence of two months' rigorous imprisonment and Rs. 50 fine imposed by the Subordinate Magistrate, we consider it to be excessive as no violence was used. We reduce the imprisonment to the 26 days' imprisonment, which the accused has already undergone and remit the fine which, if paid, must be refunded.

Ordered accordingly.

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(1) I.L.R., 13 Mad., 148. (2) I.L.R., 19 Mad., 349. (3) *Vide ante* p. 78.
(4) I.L.R., 13 Bom., 168 at p. 170. (5) I.L.R., 19 Mad., 310.