

any intention of causing wrongful gain to himself or wrongful loss to the University. On the other hand he paid three Rupees in cash for the certificate which certainly seems to be greatly in excess of its cost price. Then as to the charge of forgery,—assuming that the petitioner fabricated the document B-2, there is no evidence, for the reasons already stated, that he did so fraudulently or dishonestly and with intent to cause damage or injury to the public or to any one. The question before us is not whether he intended to use the certificate subsequently in order to obtain some temporal advantage by pretending that he had passed the Matriculation Examination. Had he had such intention this mere preparation towards such object would not amount to an attempt to commit an offence within the meaning of section 511 of the Penal Code.

We must therefore reverse the conviction, acquit the prisoner, and direct that he be set at liberty.

KING-
EMPEROR
v.
C. SRINI-
VASAN.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.

KING-EMPEROR

v.

GOPALASAMY AND SEVEN OTHERS, ACCUSED.*

1902.
January 28.

Indian Penal Code—Act XLV of 1860, s. 424—Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in absence of such proof—Illegality.

Where a distraint is made under the Rent Recovery Act for arrears of rent, there is no presumption that it is legally made, and if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint. In the absence of such proof, persons who have resisted the distraint or have removed their property to avoid it, cannot be convicted of an offence, inasmuch as they had a right of private defence of their property unless the distraint was legal.

CHARGES of rioting, resisting the taking of property by the lawful authority of a public servant, and voluntarily causing hurt, under

* Criminal Revision Petition No. 431 of 1901, under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of Lionel Vibert, Joint Magistrate of Tanjore, in Criminal Appeal No. 46 of 1901 presented against the finding and sentence of the Second-class Magistrate of Kodavasal in Calendar Case No. 159 of 1901.

KING-
EMPEROR
I.
GOPALASAMY.

sections 147, 193, and 323, Indian Penal Code. The petitioners were convicted of rioting and dishonestly removing property, under sections 147 and 424, and sentenced (some of them) to pay fines and (some of them) to suffer imprisonment. The case for the prosecution was that fourth accused had made default in payment of rent in respect of fashi 1310, and that a demand had been served on him by the manager of the Maruthanthanallur estate, of which he was a tenant. It was alleged that the manager had gone to the house of this accused accompanied by seven or eight persons, and demanded payment of the arrears. Fourth accused said that he would pay the amount in ten days. Some cattle and a cart were thereupon distrained, but the accused drove them away. They were accordingly charged, and convicted as above. An appeal was preferred to the Joint Magistrate, who said:—"In this Court, almost the whole ground of appeal is that the distraint proceedings were illegal. This was not put forward in the lower Court until after the charge was framed, and the lower Court, rightly or wrongly, refused to allow questions on the point. It is certainly an objection to this defence that it is only put forward as a last resort." He discussed the evidence and dismissed the appeal.

Petitioners preferred this Criminal Revision petition.

C. Sankaran Nair for petitioner.

JUDGMENT.—The distraint having been made under the Rent Recovery Act, there is no presumption that it was a legal distraint. It therefore lay on the prosecution to prove the distraint was legal, and especially so when its legality was challenged by the accused before the convicting magistrate. In the absence of such proof, the petitioners were guilty of no offence under either section 147 or 424 of the Penal Code inasmuch as they had a right of private defence of their property unless the distraint was legal. We must express our surprise at the Sub-divisional Magistrate in appeal thinking it unnecessary to consider the question which was the chief ground of the appeal to him, viz., whether the Sub-Magistrate was right or wrong in declining to enquire into the legality of the distraint.

We reverse the convictions of all the petitioners and acquit them, and direct the refund of the fines inflicted if they have been paid.
