

1883
 FUSEEHUN
 v.
 KAJO.

The result is that the order of the lower Court as regards Beebee Sulima will be set aside, and Mussamut Kajo will be declared entitled to the guardianship of her person. The parties will bear their own costs.

Decree modified.

APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice Tottenham.

1883
 August 2.

IN THE MATTER OF THE PETITION OF ANAND LALL BERA AND OTHERS.
 ANAND LALL BERA AND OTHERS v. THE EMPRESS ON THE PROSECUTION OF AZIM PEON.

Public servant—Resistance to Public Servant—Warrant—Return of Warrant—Penal Code, s. 183.

A person was convicted under s. 183 of the Penal Code for offering resistance to the attachment of property by a public servant. The offence was committed on the 4th of February 1883, but the warrant under which the public servant acted was returnable on or before the previous day. *Held*, that the conviction was bad.

In this case the accused were found guilty by the Deputy Magistrate of Tumlook, in that they offered resistance to the taking of property by the lawful authority of a public servant, and thereby committed an offence punishable under s. 183 of the Penal Code. The facts were that one Azim, a revenue peon, in the service of Government, was charged with the execution of a warrant under the Public Demands Recovery Act, 1880, for the attachment of the movables of one Tulseeram Bera. On the 4th of February last, the peon proceeded to execute the warrant, and while doing so, he met with obstruction and resistance from the accused. The warrant under which the peon acted was returnable on or before the 3rd of February.

The accused moved the High Court to quash the order of the Magistrate.

Baboo *Jogesh Chunder Dey*, and Baboo *Dwarikanath Mookerjee*, for the petitioners.

The judgment of the Court (PRINSEP and TOTTENHAM, JJ.) was delivered by

*Criminal Motion No. 166 of 1883, against the order of Baboo U. C. Balavayal, Deputy Magistrate of Tumlook, dated the 6th April 1883.

PRINSEP, J.—The petitioners were convicted under s. 183 of the Penal Code for offering resistance to an attachment of the property of one Tulseeram Bara, which the Deputy Collector had ordered in execution of a certificate under the Public Demands Recovery Act (Beng. Act VII) of 1880. The warrant under which the peon acted stated that the return should be made on or before the 3rd February.

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EMPEROR.

The resistance, it has been found in the present case, was offered on the 4th February, and it is contended before us that under such circumstances, no lawful order was in force, and consequently the prisoner has committed no offence. It appears to us that, having regard to the terms of the second clause of s. 251 of the Code of Civil Procedure, this objection is fatal to the conviction, and that the conviction, therefore, must be set aside and the fine, if paid, refunded.

Conviction set aside.

PRIVY COUNCIL.

NILMONI SINGH DEO (PETITIONER) v. UMANATH MOOKERJEE
AND OTHERS (DEFENDANTS).

P. C.*
1883
April 4.

NILMONI SINGH (DEFENDANT) v. BHOYHAKINI DEBI
(PLAINTIFF).

[On appeal from the High Court at Fort William in Bengal.]

Probate—Application for order revoking probate—Succession Act (X of 1865), s. 243—Locus standi of attaching creditor of next-of-kin to apply for revocation.

A will, on the evidence, was held duly proved. An application for revocation of probate was made by a judgment-creditor who had attached his debtor's right, title, and interest in family estate, whereof a one-fourth share would, but for this will, which made other dispositions, have been inherited by such debtor. Whether such an attaching creditor can oppose the grant of probate, or apply to have it revoked, is a matter of grave doubt; at least, in a case which is not founded on the ground that the probate has been obtained in fraud of creditors. *Bairjnath Sahai v. Desputty Singh* (1), referred to, and *Komolookun Dutt v. Nilruttun Mundle* (2), distinguished.

Present: SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH and SIR A. HOBHOUSE.

(1) I. L. R., 2 Cal., 203; S. C., 25 Suth. W. R., 489.

(2) I. L. R., 4 Calc., 360.