

CRIMINAL REVISIONAL.

1886
May 4.

Before Mr. Justice Oldfield.

QUEEN-EMPRESS v. JANKI PRASAD AND OTHERS.

Act XLV of 1860 (Penal Code), ss. 99, 353—Warrant of arrest in execution of a decree only initialled by proper officer—Civil Procedure Code, ss. 2, 251—“Signed”—Right of private defence.

A warrant issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code, was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed.

Held that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant.

Held also, with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.

THIS was an application for revision of an order of Hakim Muhammad Amjad Ali, Magistrate of the first class, dated the 26th January, 1886, which order had been affirmed by the Sessions Judge of Benares, Mr. C. Donovan, on appeal.

The applicants, Janki and five other persons, were convicted by the Magistrate of an offence under s. 353 of the Indian Penal Code. It appeared that a warrant for the arrest of Janki in execution of a decree had been delivered by the Munsarim of the Court executing the decree to a process-server of the Court called Imam Bakhsh. This warrant was not signed by the Munsarim, but only initialled by him. When Imam Bakhsh proceeded to execute the warrant, he was assaulted by Janki and the other applicants, his friends.

It was contended for the applicants that the arrest was illegal, the warrant not being signed as required by s. 251 of the Civil Procedure Code, and therefore the resistance to the arrest did not constitute an offence under s. 353 of the Indian Penal Code.

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QUEEN-
EMPERESS
v.
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PRASAD.

Mr. *W. M. Colvin*, for the applicants.

The *Government Pleader (Munshi Ram Prasad)*, for the Crown.

OLDFIELD, J.—This is an application for revision of a conviction under s. 353, Indian Penal Code, for assaulting a public servant in executing a warrant of arrest. The warrant was issued for the arrest of a debtor under the provisions of s. 251, Civil Procedure Code. It was signed with the initials of the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution, who was the officer resisted.

It cannot be disputed that the warrant fulfilled the requirements of s. 251, except in one particular, to which exception is taken, namely, that it was signed with the Munsarim's initials and not his full name, and it is contended that the warrant was, in consequence, bad, and the officer could not legally execute it, and consequently there was no offence committed under s. 353.

I cannot allow this contention. S. 251 directs that the warrant shall be signed by the Judge or such officer as the Court appoints in this behalf. S. 2, referring to the word "signed," is to this effect:—"Signed" includes marked, when the person making the mark is unable to sign his name; it also includes stamped with the name of the person referred to." This paragraph is not very explicit; but assuming it means that the person signing should, if able to write, write his name in full—and certainly it is proper that this should be done in the case of a warrant—I do not hold that because the signature on the warrant is confined to the initials of the name, it was not the duty of the officer to execute it,—and referring to s. 353 of the Penal Code under which the conviction has been made, that is really the question here,—and whether the warrant was such a warrant as it was the duty of the officer receiving it to execute.

I think it was. It was in all other respects in form, and in the particular of the signature it bore what was intended to be the signature of the proper officer, and it bore the seal of the Court, and it was delivered to the proper officer to execute, who received it from the officer authorized to issue the warrant as the warrant of the Court, and I think it became the duty of the officer to whom

it was delivered to execute it. He would in fact have failed in his duty in not executing it; and any resistance to him will be resistance to a public servant in the execution of his duty as such. The officer was acting under s. 353 of the Indian Penal Code, in good faith, under colour of his office. I may notice as bearing on the question that the act of the accused does not cease to be an offence on the ground that the act was done in the exercise of the right of private defence, as there is no such right under s. 99, Indian Penal Code, against an act done or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law. Looking to the facts of the case, I am of opinion that the option of a fine may be given, and I alter the sentence in each case to a fine of Rs. 10, or rigorous imprisonment for one month.

Conviction affirmed.

APPELLATE CIVIL.

1886
May 4.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Tyrrell.

NURA BIBI (PLAINTIFF) v. JAGAT NARAIN AND OTHERS (DEFENDANTS) *

Mortgage—Joint mortgage—Redemption by one mortgagor—Suit by other mortgagor for his share—Suit for redemption—Act IV of 1882 (Transfer of Property Act), ss. 95, 100—Limitation—Act XV of 1877 (Limitation Act), sch ii, Nos. 134, 148—Burden of proof.

K and J jointly mortgaged 36 saham or shares of an estate to C, giving him possession. C transferred his rights as mortgagee to T and M. In execution of a decree for money against K held by M, K's rights and interests in the mortgaged property were sold, and were purchased by P, whose heirs paid the entire mortgage-debt. R, an heir of J, sued the heirs of P, to recover from them possession of J's saham in the mortgaged property, on payment of a proportionate amount of the mortgage-money paid by P. The plaintiff alleged that the mortgage to C had been made forty years before suit. The defendants contended that a much longer period had expired since the date of the mortgage, that forty-one years had elapsed since C transferred his rights as mortgagee, that they had redeemed the property twenty-one years ago and had been since its redemption in proprietary and adverse possession of the saham in suit, and that the suit was barred by limitation. Neither party was aware of the date of the mortgage, and neither adduced any proof on the point.

* Second Appeal No. 1098 of 1885, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 26th June, 1885, reversing a decree of Rai Pandit Indar Narain, Munsif of Allahabad, dated the 2nd January, 1885.

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