

to the execution of the decree. So far as regards the second point, therefore, the suit is also barred by section 244.

The third point raised by the suit is that the sale was effected by the Collector in disregard of an order directing the postponement of the sale passed by the Munsif who had transferred the execution of the decree to the Collector. As to that it is sufficient to say that no such order of postponement could be legally made by the Munsif. The execution having been transferred to the Collector, the Munsif, so long as it remained with the Collector, had no power to interfere with the proceedings, as by postponing the date of sale: only the Collector himself could do that.

These are the only grounds on which the suit has been brought. It follows from what I have said that the suit ought to have been dismissed. This appeal is allowed, the decrees of the Courts below set aside, and the suit dismissed with costs in all Courts.

BANERJI, J.—I am of the same opinion.

*Appeal decreed.*

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SINGH  
v.  
JUGAL  
KISHORE.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Blair.*

W. J. ELLIS (APPLICANT), v. THE MUNICIPAL BOARD OF MUSSOORIE  
(OPPOSITE PARTIES).\*

*Act No. XV of 1883 (N.-W. P. and Oudh Municipalities Act), Section 46—Issue of distress warrant for recovery of alleged arrears of Municipal tax—Jurisdiction of Magistrate.*

*Held* that where a Magistrate, acting under section 46 of Act No. XV of 1883, issues a warrant for the realization of arrears of Municipal taxes alleged to be due, the Magistrate is acting in a ministerial capacity only and has no jurisdiction to inquire as to whether such arrears are really due or not.

THIS was an application for revision arising out of the following circumstances. The Secretary of the Municipal Board of Mussoorie wrote to the Magistrate of Mussoorie, on the 2nd May 1899, stating that a sum of Rs. 135-9-9 was due from one W. J. Ellis, Esq. of Kenneth Lodge Mussoorie on account of Municipal taxes from 1894 to 1898, and requesting the Magistrate to realize such amount under section 46 of Act No. XV of 1883.

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\* Criminal Revision No. 433 of 1899.

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Orders were thereupon issued by a Magistrate of the first class to the police for the realization of the sum in question, no intimation of the application of the Board having apparently been given to the alleged defaulter. Mr. Ellis declined to pay the sum demanded and applied to the High Court for revision of the Magistrate's order for realization of the said sum. The main grounds of the application were that no arrears of any tax imposed under Act XV of 1883 were due by the applicant to the Municipal Board and, that no opportunity was given to the applicant to show cause why distress should not be levied on his property. Applicant's counsel relied on *Municipality of Ahmedabad v. Jumna Punja* (1).

Mr. W. Wallach for the applicant.

The Government Pleader (for whom Munshi Gulzari Lal) for the Municipal Board.

BLAIR, J.—In this case a Municipality has levied a tax; it has charged the present applicant with certain arrears alleged to be due. It has applied to a Magistrate for recovery of those arrears by distress and sale of the movable property of the applicant. Under protest payment was made. The applicant here challenges the right of the Magistrate to make such an order, and contends that the Magistrate ought to have judicially heard and determined the question whether any such arrears were due at all. The action which was taken by the Municipality and the Magistrate was apparently taken under section 46 of Act No. XV of 1883. That section is couched in the following words:—"Arrears of tax imposed under this Act may be recovered, on application to a Magistrate having jurisdiction within the limits of the Municipality, by the distress and sale of any movable property belonging to the defaulter within those limits." There are no provisions indicating that the Magistrate is applied to in a judicial capacity, and no provision for a judicial dealing with the case by him. I do not find my mind influenced by a decision cited from I. L. R., 17 Bom., 731, because that decision was upon a section of an Act containing words which did import a judicial determination. Nor do I find myself able to draw any inference from the statutory provisions

for the enforcement of the recovery of income tax or land revenue. It seems to me that, had the Legislature intended to impose upon the Magistrate the duty of judicial inquiry and finding, it would have used appropriate words. In the absence of such words I find it impossible to believe that the Legislature intended to confer upon the youngest and most inexperienced officer a function of trying such a question, for instance, as the legality of the imposition of a tax.

In my opinion the duty imposed on the Magistrate is purely ministerial, and provides the means whereby the recovery of the taxes could be enforced by a legal authority. This petition is therefore dismissed.

*Before Mr. Justice Knox and Mr. Justice Aikman.*

QUEEN-EMPRESS v. NANNI AND OTHERS.\*

*Act No. XLV of 1860 (Indian Penal Code), sections 268, 290—Public nuisance—Soliciting for purposes of prostitution.*

*Held that the soliciting for purposes of prostitution of passers by on a public road is not a public nuisance as that term is defined in section 268 of the Indian Penal Code.*

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Shahjahanpur. Three persons, prostitutes, being on a public road in Shahjahanpur about midnight, accosted a person who was going along the road and solicited him to go with them. The person thus accosted, being a Reserve Inspector of Police, caused the three women to be taken into custody, and they were tried for and convicted of the offence punishable under section 290 of the Indian Penal Code, *viz.*, a public nuisance. The accused applied for revision of their convictions and sentences to the Sessions Judge, who, being doubtful whether the acts complained of could properly be regarded as constituting a public nuisance, as that term is defined in section 268 of the Indian Penal Code, referred the case to the High Court. On this reference the following orders were passed.

KNOX, J.—This is a reference by the Sessions Judge of Shahjahanpur. The District Magistrate at Shahjahanpur has convicted three persons, prostitutes, of an offence which he

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\* Criminal Reference No. 345 of 1899.