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person in wrongful possession of such property actually received, but also those which he might, with ordinary diligence, have received therefrom. And as regards the former, the amount has to be ascertained by taking an account of what the defendant has realized from, and spent for, such property, though, as regards the latter, the taking of an account may be unnecessary. Thus, though a suit for mesne profits is, strictly speaking, not a suit for an account, it is a suit in which in most cases an account has to be taken of profits received from, and expenses incurred in the management of, immoveable property.

The words "any other suit for an account including a suit, &c.," in Article 31 quoted above, mean, in my opinion, "any other 'suit for an account,' *taking the expression 'suit for an account' as comprehending also a suit, &c.*" For if the word 'including' was meant to exclude every thing that did not come within the strict sense of the expression 'suit for an account,' then the specification of the two distinct classes of suits that follows would be unnecessary.

In my opinion, therefore, a suit for mesne profits comes under the last clause of Article 31, Schedule II of Act IX of 1887, and is excepted from the cognizance of a Court of Small Causes, and so a second appeal lies in such a suit, although it may be valued at less than Rs. 500.

S. C. G. *Appeal dismisssed.*

CRIMINAL REVISION.

Before Mr. Justice O'Kinealy and Mr. Justice Banerjee.

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May 22.

ABDUL GAFUR AND OTHERS (PETITIONERS) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

Warrant of arrest—Criminal Procedure Code (X of 1882), sections 75 and 80—Signature of Magistrate—Initials—Notification of substance of warrant—Penal Code (XLV of 1860), section 186—Discharge of public functions.

A public servant executing a warrant of arrest which is not signed by the Magistrate as required by section 75 of the Criminal Procedure Code,

* Criminal Revision, No. 301 of 1896, against the order passed by J. Lang, Esq., District Magistrate of Hooghly, dated the 1st of May 1896, modifying the order passed by Babu Kadernath Banerjee, Sub-Deputy Magistrate of Jahanabad, dated the 8th of April 1896.

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but only bears his initials and the substance of which is not notified to the person to be arrested as required by section 80 of the Code, cannot be said to be acting in the discharge of his public functions in a manner authorized by law.

A person obstructing him cannot be convicted under section 186 of the Penal Code.

THE petitioners were convicted by the Sub-Deputy Magistrate of Jahanabad of an offence under section 353 of the Penal Code for assaulting a constable, while executing a warrant of arrest. The District Magistrate on appeal altered the conviction into one under section 186, and reduced the sentence. The warrant of arrest was not signed by the Magistrate, but bore his initials, and its substance was not notified to the person to be arrested. The petitioners moved the High Court, contending that the conviction under section 186 of the Penal Code could not stand, inasmuch as the warrant was not properly signed as required by section 75 of the Criminal Procedure Code, nor was its substance notified to the person to be arrested as required by section 80.

Babu *Bishnupada Chatterji* appeared for the petitioners.

The judgment of the High Court (O'KINEALY and BANERJEE, JJ.) is as follows :—

This is a rule calling upon the District Magistrate to show cause why the conviction and sentence under section 186 of the Indian Penal Code should not be set aside and a retrial ordered.

The facts of the case are shortly these : The petitioners before us were convicted by the Sub-Deputy Magistrate of an offence under section 353 of the Indian Penal Code for assaulting a constable in the execution of his duty, and sentenced to rigorous imprisonment for three months. On appeal the learned District Magistrate altered the conviction into one under section 186 of the Indian Penal Code, and reduced the sentence to one of fifteen days' rigorous imprisonment in the case of each of the petitioners. Against this conviction and sentence the petitioners moved this Court, asking us to interfere, under section 439 of the Code of Criminal Procedure, on the ground that as the warrant

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of arrest, in the execution of which the constable is said to have been obstructed, was not signed by the Magistrate, as required by section 75 of the Code of Criminal Procedure, but only bore his initials, and as its substance was not notified as required by section 80 of the Code of Criminal Procedure, the accused ought not to have been convicted of any offence under section 186 of the Indian Penal Code.

As the judgment of the learned District Magistrate does not clearly show what the nature of the obstruction to the constable was, we thought it fit to grant a rule in the terms stated above. On now reading the Magistrate's explanation with his judgment, we find that the warrant of arrest, in execution of which the constable is found to have been obstructed, is not signed as required by law. We also observe that the learned Magistrate does not find that the substance of the warrant was notified at the time the constable proceeded to make the arrest. That being so, the conviction under section 186 cannot, in our opinion, stand. To sustain a conviction under that section, it must be shown that the accused voluntarily obstructed the constable in the discharge of his public functions. There cannot be any voluntary obstruction of a public servant in the discharge of his public functions, unless it is shown that the public servant was acting in the discharge of his public functions in the manner authorized by law. Of course if the constable was actually assaulted, the accused would be guilty of an offence under section 352 of the Indian Penal Code. But whether the action of the accused amounted to an assault under the last mentioned section or not, the District Magistrate has not found in his judgment ; nor are any facts found by him sufficient to show whether petitioners have or have not committed an offence under that section. The case must therefore go back to the District Magistrate in order that he may rehear the appeal.

S. C. B.