

1915

DEBRAJ
v
SAGAR MAL.

desirable would be to give up any property that was of value. We allow the appeal, set aside the order of the District Judge and remand the case to him with directions to re-admit it under its original number in the file and to proceed to hear and determine the same according to law having regard to what we have said above. Costs of both sides will be costs in the matter.

Appeal decreed and cause remanded.

REVISIONAL CRIMINAL.

Before Sir Henry Richards, Knight, Chief Justice.

EMPEROR v. RAM DAYAL AND OTHERS*

1915
September, 9.

Act (Local) No. II of 1901 (Agra Tenancy Act), section 124—Distress—Attachment—Removal by tenants of distrained crops—Theft—Act No. XLV of 1860 (Indian Penal Code), section 379.

A distress legally carried out according to the provisions of the Agra Tenancy Act, 1901, takes priority over the rights of a decree-holder who has attached the crops distrained, and this notwithstanding that the distress may be the result of collusion between the landlord and his tenants.

When, therefore, certain cultivators acting under section 124 (1) of the Agra Tenancy Act, cut and stored certain crops which had been distrained by their landlord, but which had also been previously attached by a decree-holder, it was held that they had committed no offence.

THE facts of this case were as follows :—

One Harnam Singh had a decree for rent against Ram Dayal, Bhawani and Bhagirathi. He put this decree into execution and attached certain crops belonging to the judgement-debtors, and one Asa was appointed as *shahna* or custodian. This was on the 15th of March, 1915. On the 23rd of March, 1915, Sundar Singh, the landlord of the fields in question, distrained these very crops and appointed one Rattu as his *shahna*. The distress was carried through regularly according to the provisions of the Agra Tenancy Act. Thereafter the tenants cut and stored the crops in question for the benefit of the distrainer, and in respect of this action they were charged with and convicted by a Magistrate of the offence of theft. From this conviction they applied in revision to the Sessions Judge, who, being of opinion that the action of the tenants was justified, referred the case to the High Court recommending their acquittal.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

*Criminal Reference No. 757 of 1915.

The opposite parties were not represented.

RICHARDS, C.J. :—It appears that a decree was obtained against certain tenants. The *karinda* of the landlord purported to distrain the crops which had been attached in execution of the decree. The cultivators then cut and carried away the crops. They were charged under section 379 with having committed theft and sentenced to one month's rigorous imprisonment each. The learned Sessions Judge, on the matter coming up before him in revision, thought that the fact that the landlord had distrained the crops made this subsequent cutting and taking away of the crops by the accused lawful. He considered that this would be so notwithstanding that the distraint might have been more or less collusive between the landlord and his tenants. He therefore thought that the accused were wrongly convicted. The learned Magistrate has explained that in his opinion distraint having been made by an agent who was not authorized in writing was illegal, and that therefore the illegal distraint could not justify the removal of the crop. The learned Sessions Judge points out that the distress was held to be lawful by the Revenue Court. In my opinion it is unnecessary to decide whether or not the distress was lawful. A landlord who has rent due to him is entitled to distrain, notwithstanding that the result of the distraint may be in whole or in part to defeat the execution of a decree. Before the accused could be found to be guilty of the offence of theft it must be found that they dishonestly took the property out of the possession of another person. If the present accused believed that a legal distraint had been made by their landlord and in such belief cut and removed the crop I do not think that they could be said to have "dishonestly" taken the property out of the possession of any other person. The accused of course are entitled to the benefit of any reasonable doubt and I think it may very well have been that the accused in the present case honestly believed that the distraint had been made by their landlord. I set aside the convictions and sentences passed upon the accused. If they are in prison they will be released. If they are on bail they and their sureties will be released.

1915

 EMPEROR
 v.
 RAM DAYAL.

Conviction set aside.