executive action in the form of a departmental inquiry which was continued by the further inquiry made under paragraph 383 of the Police Regulations. There was no judicial proceeding before the District Magistrate and therefore he had no power to take action under section 476. The present applicant is one of those whose prosecution for perjury has been directed, and it cannot be said that he committed perjury in course of a departmental inquiry. No oath ought to have been administered to him at all. I would point out that throughout the inquiry made by the District Magistrate, he nowhere mentioned that he was taking action under any specific section. If, as the District Magistrate says, the unfortunate police officers will not have an opportunity of clearing their character, they will have only the District Magistrate to blame for their unfortunate position, though perhaps it is still open to the District Magistrate to prosecute Paras Ram for giving false information. I allow the application, set aside the order of the District Magistrate and quash the proceedings.

1215

EMPEROR v. BHOLE SINGH.

Order set aside.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1915
August, 4.

DESRAJ (OBJECTOR) *v.* SAGAR MAL (JUDGEMENT-DEBTOR) AND RAO GIRRAJ SINGH AND OTHERS (DECREE-HOLDERS.)*

Act No. III of 1907 (*Provincial Insolvency Act*), *section* 37—*Insolvent—Effect of lease of occupancy holding granted shortly before filing petition of insolvency.*

Section 37 of the Provincial Insolvency Act, 1907, has no application to the case of a lease granted for good consideration by an insolvent shortly before the filing of his petition, unless the object thereof is to give a preference to one creditor over the others. If the lease is found to be a merely colourable transaction, the insolvent still retaining possession of the property leased, it can be avoided and the property placed in the hands of the receiver; otherwise the rents should be paid to the receiver for the benefit of the creditors. The leased property being an occupancy holding, *held* that there was no reason for directing the surrender thereof to the zamindar.

THE facts of this case were as follows :—

One Sagar Mal was adjudicated an insolvent upon his own petition on the 1st of August, 1914. His petition of insolvency

* First Appeal No. 113 of 1915, from an order of L. Johnston, District Judge of Meerut, dated the 7th of May, 1915.

1915

DESRAJ v. SAGAR MAL.

was presented on the 3rd of May previously. A receiver was duly appointed, who attached certain crops growing on an occupancy holding which belonged to the insolvent. Desraj objected and said that the crops were his, Sagar Mal having executed a lease in his favour on the 16th of April, 1914. He lodged security with the receiver and had the crops released. He then made an application to have his money returned to him. Rao Girraj Singh, one of the creditors who had obtained a decree against Sagar Mal, challenged the validity of the lease, alleging that the lease was fictitious and that the value of the occupancy holding was far beyond the rent mentioned in the lease, which was the sum of Rs. 260 per annum. He further alleged that the insolvent was in actual possession and cultivated the land. The learned District Judge in a short judgement states as follows :—" Under section 37, Act III of 1907, this lease shall be deemed fraudulent and void, and I now annul it. Desraj then has no *locus standi*. He has got the crops and his deposit of Rs. 330 is forfeited. I dismiss this objection with costs." Later on the learned Judge says—" The receiver will arrange to surrender the insolvent's occupancy rights and to vacate the holding. He should enter into negotiations with Rao Girraj Singh for this purpose. The government demand must be secured and my official expenses."

The lessee appealed to the High Court.

Pandit *Mohan Lal Sandal* and Babu *Girdhari Lal Agarwala*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondents.

RICHARDS, C.J., and BANERJI, J.:—This appeal arises out of an insolvency matter. One Sagar Mal was adjudicated an insolvent upon his own petition on the 1st of August, 1914. His petition of insolvency was presented on the 3rd of May previously. A receiver was duly appointed, who attached certain crops growing on an occupancy holding which belonged to the insolvent. Desraj objected and said that the crops were his, Sagar Mal having executed a lease in his favour on the 16th of April, 1914. He lodged security with the receiver and had the crops released. He then made an application to have his money returned to him. Rao Girraj Singh, one of the creditors who had obtained a decree against Sagar Mal, challenged the validity of the lease, alleging

that the lease was fictitious and that the value of the occupancy holding was far beyond the rent mentioned in the lease, which was the sum of Rs. 260 per annum. He further alleged that the insolvent was in actual possession and cultivated the land. The learned District Judge in a short judgement states as follows :— "Under section 37, Act III of 1907, this lease shall be deemed fraudulent and void, and I now annul it. Desraj then has no *locus standi*. He has got the crops and his deposit of Rs. 330 is forfeited. I dismiss this objection with costs." Later on the learned Judge says—" The receiver will arrange to surrender the insolvent's occupancy rights and to vacate the holding. He should enter into negotiations with Rao Girraj Singh for this purpose. The government demand must be secured and my official expenses." It seems to us that the order of the District Judge was altogether wrong. In the first place section 37 had no application whatsoever. This section deals entirely with transfers, payments *et cetera* made in favour of one creditor by an insolvent with a view of giving that particular creditor a preference over the other creditors (see marginal note to the section). If the insolvent in the present case had in truth made a lease in favour of Desraj at a reasonable rent, the transaction would have been a perfectly valid one. The receiver would step into the shoes of the insolvent and become entitled to the rent reserved by the lease which he would hold for the benefit of the creditors. Of course, on the other hand, if the court came to the conclusion that the lease was a mere blind, that it never was intended that any person except the insolvent should cultivate the land, then the crop which was attached still belonged to the estate of the insolvent and the receiver was entitled to them. It seems to us also that the learned District Judge made a great mistake when he directed the receiver to surrender the occupancy holding. According to the objection taken by Rao Girraj Singh, the occupancy holding was a very valuable holding. He goes so far as to say that it would let for Rs. 450 a year. It is very difficult to see how the creditors of the insolvent would profit by the surrender of this very valuable holding. It is the duty of the receiver and the court when administering the estate of an insolvent to preserve such estate as far as possible for the benefit of the creditors. The last thing

1915

DESRAJ 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.

1915
September, 9.

EMPEROR *v.* RAM DAYAL AND OTHERS*

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.