

five years' rigorous imprisonment in the case of each of the appellants.

1932

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 EMPEROR  
 v.  
 RAM CHAND
 

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 REVISIONAL CRIMINAL
 

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Before Mr. Justice Pullan

EMPEROR v. GURDIAL AND OTHERS \*

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 1932  
 October, 5
 

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*Indian Penal Code, section 424—Removal of crops attached in execution of decree—Warrant of attachment executed after the date on which it was returnable—Attachment invalid and removal no offence—Civil Procedure Code, order XXI, rule 24(3).*

The provisions of order XXI, rule 24(3) of the Civil Procedure Code are mandatory and where the process has a date fixed for its return under this rule it cannot be executed after that date. So, where property is attached after the date fixed for the return of the warrant of attachment, the property is not lawfully attached and the owner does not commit an offence under section 424 of the Indian Penal Code by removing the attached property from the possession of the custodian and taking it into his own use.

Mr. K. D. Malaviya, for the applicants.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

PULLAN, J. :—This is an application in revision of an order of the Sessions Judge of Mainpuri. The four applicants are cultivators whose crop was attached in execution of a decree and they have been prosecuted under section 424 of the Indian Penal Code for removing that crop from the possession of the *shakna*. The main ground for revision of the order is that the warrant of attachment was returnable on the 12th of April, 1932, and the attachment was made on the 15th of April, 1932. The warrant, therefore, had no force on

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\*Criminal Revision No. 612 of 1932, from an order of Babu Ganga Prasad Varma, Sessions Judge of Mainpuri, dated the 6th of August, 1932.

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the date on which the attachment was made, and it is argued on behalf of the judgment-debtors that in these circumstances they committed no offence when they removed the crop from the possession of the *shahna* on the 18th of April. The Sessions Judge would not consider this point, because in his opinion once the attachment had been made and no application was made by the judgment-debtors to challenge its legality, they could not lawfully remove the crop and they are, therefore, guilty of an offence under section 424 of the Indian Penal Code in that they dishonestly removed their own property. The provisions of order XXI, rule 24, are mandatory and clause (3) as applied to this High Court runs: "In every such process a day shall be specified on or before which it shall be executed and a day shall be specified on or before which it shall be returned to the court." It appears to me that where the process has a date fixed for its return under this section it cannot be executed after that date, and any person whose property is attached after the date fixed for the return of the process may, when charged with a criminal offence under section 424 of the Indian Penal Code, say that this property had never been lawfully removed from his possession and that therefore he can commit no offence by taking the property in his own use. This appears to be the view taken by the Calcutta High Court in the case of *Sheikh Nasur v. Emperor* (1) and by the Madras High Court in the case of *King-Emperor v. Gopaldasamy* (2). In the latter ruling it is pointed out that there is no presumption that a distraint made for arrears of rent is legally made, and if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint. In this case the prosecution has failed to prove that there was a legal distraint. Thus, in my opinion no offence under section 424 was committed.

(1) (1909) I.L.R., 37 Cal., 122.

(2) (1902) I.L.R., 25 Mad., 729.

A second question arises in this case owing to the fact that the *shahna* immediately made over the property to the judgment-debtors for threshing, and it is at least questionable whether it can be held that once the property was made over to the judgment-debtors for threshing, it can be said to be no longer in their possession but in that of the *shahna*. If the property is in their possession they could only be charged with refusing to return it, not with removing it, and such an offence is not contemplated by section 424 of the Indian Penal Code.

I accordingly allow this revision and set aside the conviction and sentence of all the applicants and direct that the fine, if paid, shall be returned to them. They need not surrender to their bail.

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## APPELLATE CIVIL

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Kisch*

SHIAM LAL (OBJECTOR) *v.* JASWANT SINGH AND OTHERS  
(OPPOSITE PARTIES)\*

1932  
October, 12

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*Civil Procedure Code, order XXI, rule 90—Who can apply—  
“Whose interests are affected by the sale”—Not necessary  
that applicant must have interest in the property sold—  
Interest may be pecuniary.*

A decree directed that two items of property were to be sold first, and if the sale proceeds were insufficient to satisfy the decretal amount, then the third item of property was to be sold. The two items of property were sold, but they fetched only a small price. A mortgagee of the third property applied under order XXI, rule 90 of the Civil Procedure Code for setting aside the sale on the ground of fraud. *Held* that the applicant was a person whose interests were affected by the sale, within the meaning of order XXI, rule 90, and so he had a *locus standi* to apply. Although he had no direct interest in the property which was sold, yet his interests would be

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\*First Appeal No. 194 of 1931, from an order of Ram Saran Das, Subordinate Judge of Aligarh, dated the 15th of September, 1931.