

does not fall within the limits of the question referred to us, and we therefore do not consider it necessary to determine it. We think that a share in an undivided mahál is not susceptible of "physical possession" in the sense of art. 10, sch. ii, Act XV of 1877.

STUART, C. J.—Without absolutely adopting all the reasons and arguments advanced in the judgment proposed by Mr. Justice Straight, I yet unhesitatingly concur in his conclusion that a share in an undivided mahál is not susceptible of "physical possession" within the true intent and meaning of art. 10, sch. ii of the present Limitation Act (XV of 1877). The point appears to me to be a very simple one, whether as regards the obvious nature of the right in question or the plain meaning of the limitation law applicable to it.

APPELLATE CRIMINAL.

Before Mr. Justice Straight and Mr. Justice Duthoit.

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Escape from custody under process of Revenue Court—Exemption from arrest—Act X of 1877 (Civil Procedure Code), ss. 642, 651.

A Revenue Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section.

S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code."

Held, therefore, where a person, who had been convicted by a Magistrate and had been fined, was arrested in execution of the process of a Revenue Court while waiting in court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."

On the 30th July, 1880, Harakh Nath Singh was under trial before the Magistrate of Ballia on certain charges under the Penal Code. He was convicted on that date, and was fined Rs. 100. While waiting in Court for his friends to bring the amount of such fine, he was arrested in execution of a decree for arrears of rent made by a Revenue Court, and was committed to jail. On the

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way to jail he escaped from custody, and for such escape was convicted by the Magistrate of Ballia, under s. 651 of the Civil Procedure Code, and sentenced to pay a fine of Rs. 500. He appealed to the Sessions Judge of Gházipur, who held, thinking apparently that Harakh Nath Singh had been summoned as a witness when arrested, that his arrest was unlawful, being opposed to the provision of s. 642 of the Civil Procedure Code, and that being so, his escape from custody could not be punished under s. 651 of the Code, and acquitted him. The Local Government appealed to the High Court from the Sessions Judge's judgment.

The *Junior Government Pleader* (Babu *Dwarika Nath Banarji*), for the Local Government.

Mr. *Ross*, for Harakh Nath Singh.

The Court (STRAIGHT, J., and DUTHOIT, J.) delivered the following judgments :—

STRAIGHT, J.—I am of opinion that the provisions of s. 651 of the Civil Procedure Code are applicable to a person who escapes from custody under a warrant of a Revenue Court. For the purpose of this enactment it appears to me that Revenue Courts may be properly regarded as falling within the expression "Court of Civil Judicature," and now that resistance or illegal obstruction to lawful apprehension, or escape or attempt to escape from the custody under the process of the Civil Procedure Code, is made an offence, I cannot conceive any logical principle upon which Revenue Court process should have been excluded from alike protection. Seeing that the powers of arrest and committal vested in Revenue Courts are very extensive, it is difficult to understand why any distinction should be drawn in this matter between them and the Civil Courts. Looking at the very general terms of s. 651, "or under the warrant of any Court of Civil Judicature," it seems to me that they have been intentionally used for the purpose of including all Courts of civil in contradistinction to Courts of criminal procedure. I therefore think that the escape of Harakh Nath Singh from the Revenue Court peons in the present case was an offence, assuming him to have been "lawfully in custody," and that he was rightly convicted and punished by the Officiating Magistrate of Ballia. The question then

arises; was the arrest of Harakh Nath Singh, when he was attending the Magistrate's Court as an accused person, a legal and proper one? The determination of this point must turn upon whether the protection created by s. 642 of the Civil Procedure Code is by implication applicable to arrests under warrants of the Revenue Courts. Now it is to be remarked that the latter paragraph of that section, as it now stands, was introduced by Act XII of 1879, and that the words "Civil Court," as originally mentioned in Act X of 1877, have been altered to "tribunal," a comprehensive term, which I presume is intended to cover Criminal as well as Revenue and Civil Courts. It is unnecessary for the purposes of the present case to say anything with reference to the innovation that has apparently been introduced of exempting accused persons from arrest under civil process, though its policy and propriety may be open to question. But the effect of the amendment of s. 642 is to afford a general protection to the parties, which I understand to include prosecutors and accused persons, their pleaders, mukhtárs, revenue agents, and witnesses under summons, from arrest under any process issued under the provisions of the Civil Procedure Code, while going to, attending at, or returning from, any tribunal. It will be at once observed that the arrest from which these persons are protected is arrest under the Civil Procedure Code, which words would seem to create a clear limitation, and to exclude process under the Rent and Revenue Acts, though why such a distinction should be drawn is by no means intelligible. For it must be remembered that the privilege is the privilege of the Court and not of the individual, and it is difficult to see why, if the above-mentioned persons going to, attending at, or returning from, a Revenue Court are exempt from arrest under the Civil Procedure Code, there should not be an equivalent protection afforded them from revenue process when going to, attending at, on returning from, a Civil Court. Nevertheless there are the words "from arrest under this Code," and the only way in which the counsel for the respondent argues that the provisions of s. 642 can be made applicable to Revenue Court process is by the implication inferrible from the terms of s. 129 of the Rent Act. Upon examination of that section, however, I fail to find anything to bear out this contention. Exemption from arrest has nothing to

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do with the "law relating to the evidence of witnesses," nor to "the procuring the attendance of witnesses and the production of documents," nor to their "examination, remuneration, or punishment," and all I can remark is that, if the protection of s. 642 of the Civil Procedure Code was intended to comprehend arrest under Revenue Court process, it not only does not say so, but, by mention of arrest under the Civil Code alone, it seems to exclude it.

Such being the view I entertain, I think that Harakh Nath Singh was in lawful custody at the time he made his escape, and, therefore, that all the legal ingredients necessary to constitute the offence under s. 651 of the Civil Procedure Code were satisfied. This appeal by Government must accordingly be allowed, and the decision of the Judge reversed, the conviction and sentence of the Officiating Magistrate being restored.

The Judge's attention must be called to the blunder in his judgment, in which he speaks of Harakh Nath Singh as having been attending the Court of the Magistrate "as a witness." That such a mistake should have been made is scarcely consistent with that care and diligence which a Sessions Judge should employ when investigating an important criminal appeal, and this he should be told.

DUTHOIT, J.—This is an appeal on the part of Government from a judgment of acquittal passed by the Sessions Judge of Gházipur, regarding the respondent Harakh Nath Singh convicted summarily by the Magistrate of Ballia under s. 651 of the Code of Civil Procedure, and sentenced to pay a fine of Rs. 500, or in default to be simply imprisoned for six weeks. The facts of the case may be thus stated: On the 30th July, 1880, Harakh Nath Singh was under trial before the Magistrate of Ballia on charges under ss. 176 and 187 of the Indian Penal Code. He was convicted on that date, and was sentenced to pay a fine of Rs. 100. While he was waiting in Court for his friends to bring the amount of the fine, he was arrested in execution of a Rent Act decree, and was taken before the Revenue Court at Ballia, was committed to the civil jail at Gházipur (there is no jail at Ballia) for ten months, and on the same evening escaped from custody. For so doing he was convicted under s. 651 of the Code of Civil Procedure, and

was sentenced to pay a fine of Rs. 500. The grounds upon which the conviction was set aside are thus stated by the Sessions Judge: "The appellant was attending the Court of the Magistrate as a *witness* in a criminal case, and while there was arrested by some Revenue Court peons, on a decree passed against him. Under s. 642 this arrest was illegal and wrong, for it clearly says that 'witnesses acting in obedience to a summons' shall be similarly exempt, *i.e.*, from arrest. S. 651 says: 'Any one who escapes or attempts to escape from any custody in which he is lawfully detained under this Code, shall &c., &c.'; but as appellant was not lawfully arrested or detained, his escape from custody cannot be punished under this section."

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Three questions arise for our decision in this case. (i) Whether the provisions of s. 651 of the Code of Civil Procedure are, or are not, applicable to the case of an escape from custody, when such custody is under Rent Act process? (ii) Whether the provisions of s. 642 of the Code of Civil Procedure are, or are not, applicable to an arrest under Rent Act process? (iii) Whether the provisions of s. 642 of the Code of Civil Procedure do, or do not, confer upon a person in the position in which Harakh Nath Singh was on the 30th July, 1880, privilege against arrest under civil process? Upon the first of these points I have no doubt. It has been argued that with reference to the terms of the preamble, and of s. 4 of Act X. of 1877, and to the care shown by the framers of ss. 139 and 190 of Act XVIII of 1873, in specifying the particular points as to which the procedure of the Civil Code should be imported into procedure under that Act, the words "any Court of Civil Judicature," which are found in s. 651, Code of Civil Procedure, cannot denote a Revenue Court. But all that s. 4 of Act X. of 1877 provides, *quoad* the Rent Act, is that, save under the circumstances stated, the Code shall not affect the rent law, and s. 651 does not affect Act XVIII of 1873; it supplements it only. And the answer to the plea raised on the wording of the preamble of Act X. of 1877 seems to me the same. As regards ss. 139 and 190 of Act XVIII of 1873, I observe that the doctrine of "*expressio unius est exclusio alterius*" is scarcely a safe doctrine to apply to Indian legislation; that [cf. the quasi-repeal of s. 12,

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Act VII of 1870, by s. 588 of Act X of 1877, *Ajoodhya Pershad v. Gunga Pershad* (1)] if a conflict arise on a comparison of two enactments the one of later date must be followed; that we may not shut our eyes to the fact that a Revenue Court constituted under Act XVIII of 1873 is a "Court of Civil Judicature;" and that s. 92 of Act XVIII of 1873 specially declares that resistance of Rent Act process shall be punishable under the law for the time being in force for the punishment of resistance to Civil Court process. There is, as it seems to me, a marked comprehensiveness in the alternative words of s. 651, Code of Civil Procedure, "or any Court of Civil Judicature;" and looking to the fact that at the time when Act X of 1877 was passed there was no provision in the law [ss. 186 and 224, Penal Code, had been declared inapplicable] for the punishment of resistance to, or escape from, custody under any process of arrest other than that issued by a Criminal Court, I think that the words "Court of Civil Judicature" in s. 651 of that Act must have been intended to cover all Courts other than those of criminal jurisdiction. I hold, therefore, that the provisions of s. 651 of the Code of Civil Procedure do cover the case of an escape from custody, when such custody is under Rent Act process. The second question is, I think, one of much greater difficulty. For the respondent it has been contended that s. 92 of Act XVIII of 1873 expressly applies current Civil Court procedure to Rent Act processes; that if the Crown be allowed to take advantage, as against the respondent, of the provisions of s. 651 of the Code of Civil Procedure, it should also be made to concede to him the privilege of s. 642, which is to be found in the same part and same chapter of the Code; that although s. 642 appears in the concluding chapter of the Code, under the heading "Miscellaneous," yet it is really part of the law for procuring the attendance of witnesses; and that by the terms of s. 139 of the Rent Act the law for Courts constituted under that Act is the same in this respect as that which is in force in the Civil Courts. To this it is replied, on the part of the appellant, that the privilege conferred by s. 642 is privilege from arrest under such process only as may have been issued *under the Code of Civil Procedure*, and that the process under which

(1) I. L. R. 6 Calc., 250.

the respondent was arrested was issued, not under the Code of Civil Procedure, but under chapter VII of Act XVIII of 1873. After some hesitation I am of opinion that the appellant is right, and that there is no privilege against arrest in execution of Rent Act process. The respondent's case seems to me to rest mainly on the argument from the terms of section 139 of the Rent Act, and on the assumption that privilege from arrest is part of the law for procuring the attendance of witnesses; but I think that if this had been the intention of the framers of the Code, they would have placed the provision under chapter XIV, and not relegated it to chapter XLIX, and I think that it may well have been the intention of the framers of Acts XVIII and XIX of 1873 that there should be no privilege against Revenue (for if there be privilege against Rent Act process, it would surely have to be admitted as against Revenue Act process as well) or Rent Act process of arrest. There is no privilege against Criminal Court process. I hold that the provisions of s. 642 of the Code of Civil Procedure are not applicable to an arrest under Rent Act process. This being the view I take of the second point raised before us, it is perhaps unnecessary that I should discuss the third; but I may mention that although the Sessions Judge is in error in describing Harakh Nath Singh as a "witness" at the time of his arrest, I have no doubt that in the language of Indian legislation he would be correctly described as a "party," and that the word "tribunal," which under Act XII of 1879 has taken the place of the words "Civil Court" of the original s. 642, does include a Criminal Court. I do not think that the sentence passed upon Harakh Nath Singh is, under the circumstances of the case, unduly severe. I would, therefore, set aside the order of the Court of Session, and restore the conviction and the sentence passed upon the respondent by the Magistrate.

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Appeal allowed.
