

1926

RAWAT
SHEO
BAHADUR
SINGH
v.
RAJA,
BISHUNATH
SARAN
SINGH.

fact the circumstances of the enjoyment show that the grant by Raja Shankar Singh was a grant of full under-proprietary rights. I accordingly would allow this appeal and dismiss the suit of the plaintiff-respondent with costs in both the Courts.

BY THE COURT.—The appeal is allowed and the plaintiff's suit is dismissed with costs in both the Courts.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice King.

KING-EMPEROR (APPELLANT) v. MAHADEO (RESPONDENT).*

1926
Decem-
ber, 16.

Indian Penal Code, section 186—Resistance to attachment under an expired warrant of attachment, whether an offence—Attachment, resistance to.

Held, that when the date fixed in a warrant of attachment has expired, then the warrant is no longer in force and capable of execution, and if any person offers resistance to execution purporting to be made under the time-expired warrant, then he is not guilty of any offence under section 186 of the Indian Penal Code.

Anand Lal Bera v. The Empress (1), *Abinash Chandra Aditya v. Ananda Chandra Pal* (2), *Mohini Mohan Banerji v. King-Emperor* (3), *Sheikh Nasur v. Emperor* (4), followed. *Subed Ali v. Emperor* (5), distinguished.

The Government Pleader (Mr. *H. K. Ghosh*), for the Crown.

[The accused was not represented.]

KING, J. :—This is a reference from the learned Additional Sessions Judge of Bahraich recommending that a conviction under section 186 of the Indian Penal Code should be set aside.

* Criminal Reference No. 64 of 1926.

(1) (1883) I.L.R., 10 Calc., 18. (2) (1904) I.L.R., 31 Calc., 424.
(3) (1916) 1 P.L.J., 550. (4) (1909) I.L.R., 37 Calc., 122.
(5) (1913) I.L.R., 40 Calc., 849.

The facts of the case are briefly as follows :—

One Mahadeo is a tenant of the Piagpur estate under the Court of Wards and his rent fell into arrears. The manager of the Court of Wards moved the Deputy Commissioner of Bahraich to have the arrears of rent recovered under sections 39 and 40 of the United Provinces Court of Wards Act as arrears of land revenue. The Deputy Commissioner issued an order on the 24th of June, 1926 that the arrears should be recovered from the defaulter by attachment and sale of his movable property. On the 25th of June, 1926 the Assistant Collector issued a warrant for the attachment and sale of the defaulter's movable property, and it was specified in the warrant that the attachment should be made on or before the 5th of July, 1926. The *kurk amin* was ordered to execute the warrant, but failed to attach the property before the date specified. He attempted to make an attachment on the 29th of July, 1926, but the defaulter resisted the attachment, whereupon the *kurk amin* reported the matter to the higher authorities, with the result that the defaulter was prosecuted and convicted under sections 186 and 504 of the Indian Penal Code by a Magistrate of the second class.

A Magistrate of the first class exercising the powers of an appellate court has quashed the conviction and sentence under section 504 of the Indian Penal Code, but has maintained them under section 186 of the Indian Penal Code.

The learned Additional Sessions Judge submits this reference on the ground that the conviction under section 186 of the Indian Penal Code cannot be sustained because the warrant of attachment was to be executed on or before the 5th of July, 1926, whereas the *kurk amin* did not attempt to make the attachment until the 29th of July, 1926, after the time

1926

 KING-
EMPEROR
v.
MAHADEO.

1926

KING-
EMPEROR
s.
MAHADEO.

fixed in the warrant had expired, so he was not acting under any legal authority, and the accused committed no offence in resisting the *kurk amin*.

I agree with the view taken by the learned Additional Sessions Judge who relies on the cases *Anand Lal Bera v. The Empress* (1); and *Sheikh Nasur v. Emperor* (2). I have also studied rulings to the same effect in *Abinash Chandra Aditya v. Ananda Chandra Pal* (3); and *Mohini Mohan Banerji v. King-Emperor* (4). These cases establish the principle that when the date fixed in a warrant of attachment has expired, then the warrant is no longer in force and capable of execution, and if any person offers resistance to execution purporting to be made under the time-expired warrant, then he is not guilty of any offence under section 186 of the Indian Penal Code.

The Magistrate, in his explanation, has relied upon the case of *Subed Ali v. Emperor* (5), but (as the learned Additional Sessions Judge has pointed out) this ruling can clearly be distinguished because in that case the attachment was within the time fixed by the court which issued the warrant although it was beyond the time fixed by the Nazir.

In the present case the *kurk amin* sought to make an attachment after the expiry of the period fixed by the court which issued the warrant, so he was not acting under any lawful authority.

I therefore accept the reference and set aside the conviction and sentence under section 186 of the Indian Penal Code. The accused is on bail. I direct that his bail bond be discharged and the fine, if paid, shall be refunded.

Reference accepted.

(1) (1883) I.L.R., 10 Calc., 18.

(2) (1909) I.L.R., 37 Calc., 122.

(3) (1904) I.L.R., 31 Calc., 424.

(4) (1916) I. P.L.J., 550.

(5) (1913) I.L.R., 40 Calc., 849.