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of title with consequential relief, although the relief was in the nature of a declaration only. Therefore there was no dispute as to the category in which the suit fell. But the case of *Deokali Kuer v. Kedar Nath* ⁽¹⁾ lends strong support to the view which I have taken. In that case there was no specific prayer in the memorandum of appeal for an interim injunction and there was, as in the present case, only a prayer for declaration of plaintiff's title. But in that case, as in the present, there was an interim injunction on the court below on the application of the plaintiff and that was construed by Sir Lawrance Jenkins, C. J., as bringing the case within section 7 (iv) (c).

The questions put in the reference are answered as above and the plaintiff is bound to pay ad valorem court-fee.

REVISIONAL CRIMINAL.

Before Bucknill and Adami, J.J.

BADRI GOPE

v.

KING-EMPEROR.*

Penal Code, 1860 (Act XLV of 1860), sections 99 and 186—Obstruction to public servant—Attachment under unsealed writ, illegality of—Right of private defence—Code of Civil Procedure, 1898 (Act V of 1898), Order XXI, rule 24(2).

Where a Civil Court peon, in execution of an unsealed writ of attachment, attached a bullock and calf belonging to the judgment-debtor, the latter being absent at the time, and the judgment-debtor subsequently followed and obstructed the peon and others who were with him, and rescued the cattle

* Criminal Revision no. 341 of 1925, from an order of H. R. Meredith, Esq., I.C.S., Sessions Judge of Monghyr, dated 26th June, 1925, affirming the order of Maulavi H. Shamsul Huda, Deputy Magistrate of Monghyr, dated 1st June, 1925.

(1) (1912) I. L. R. 39 Cal. 704.

after attacking the identifier, held, in the circumstances of the case, that the petitioners should not be convicted under section 186, Penal Code.

Reg v. Boyle (1), *Reg v. Williams* (2), *Reg v. Knight* (3), *Bisu Haldar v. Emperor* (4), *Shaikh Moinuddin v. King-Emperor* (5), *Khidir Bux v. King-Emperor* (6), *Sheikh Nasur v. Emperor* (7), *Arjun Suie v. King-Emperor* (8), *Mohini Mohan Banerjee v. King-Emperor* (9), *Debi Singh v. Queen-Empress* (10) and *Tannakilal Mandar v. King-Emperor* (11), followed.

Order XXI, rule 24(2), provides : " Every process..... shall be sealed with the seal of the Court..... ".

Held, that an attachment made under a writ which does not bear the seal of the Court as required by this rule, is an invalid and illegal attachment.

Khidir Bux v. King-Emperor (6), followed.

The facts of this case were as follows : A decree having been passed against Badri Gope, a writ of attachment was drawn up and made over to the Civil Court peon, Lalji Misser, who, on December 3rd, 1924, went to Gobindpur where Badri lived, together with the identifier, Ramcharan Tanti. Badri Gope was away from home when they arrived at his house, but his mother was there. The peon attached a bullock and a calf and proceeded to take them to Monghyr in company with the identifier and a servant of the decree-holder.

When the party had proceeded and reached a well, situated three miles along the road from Jamalpur to Monghyr, the petitioner, Badri, with the two

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- (1) (1857) C. C. Cas. 428; 6 Ir. C. L. R. 598.
 - (2) (1800) 2 Car. & Ker. 1001.
 - (3) (1908) 73 J. P. 15; 1 Cr. App. R. 186; 25 T. L. R. 87.
 - (4) (1900-01) 11 Cal. W. N. 846.
 - (5) Cr. Rev. 36 of 1921.
 - (6) (1918) 3 Pat. L. J. 636.
 - (7) (1910) I. L. R. 37 Cal. 122.
 - (8) (1918) 3 Pat. L. J. 106.
 - (9) (1916) 1 Pat. L. J. 550.
 - (10) (1901) I. L. R. 28 Cal. 399.
 - (11) Cr. Rev. 166 of 1920.

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other petitioners came running up and obstructed the party. The writ was shown to them, but in spite of this, they assaulted the identifier and rescued the cattle. They were prosecuted under section 186, Penal Code, found guilty under that section and sentenced to rigorous imprisonment for one month each. Their defence was a total denial of the attachment and of the occurrence.

When the case came up for trial it was found that not only had a careless mistake been made in dating the writ but also that the writ did not bear the seal of the Court, as required by the provisions of Order XXI, rule 24(2).

On appeal the learned Sessions Judge upheld the conviction and sentence, distinguishing the present case from the cases relied on by the appellants [*Khidir Bux v. King Emperor* (1) and *Sheikh Nasur v. Emperor* (2)] on the ground that here there was no resistance to attachment but a rescue a considerable time after the attachment, so that no right of private defence arose. He held that a technical defect in the warrant could not give the appellants the right forcibly to rescue property of which they had lost possession.

Mihir K. Mukherji, for the petitioners.

H. L. Nandkeolyar (*Assistant Government Advocate*), for the Crown.

ADAMI, J. (after stating the facts as set out above, proceeded as follows): The provisions of Order XXI, rule 24(2), are mandatory and an attachment made under a writ which does not bear the seal of the Court, as required by that rule, is an invalid and illegal attachment, as has been held by Mullick and Thornhill J.J., in the case of *Khidir Bux v. King Emperor* (1). The defect is not a mere technical one; the presence of the seal of the Court to give authority to the writ is an obviously imperative safeguard.

(1) (1918) 3 Pat. L. J. 636,

(2) (1910) I. L. R. 37 Cal. 122.

The writ being thus invalid and the attachment illegal, if resistance had been made to its execution at the time the cattle were being attached, there can, I think, be no question that the petitioner, Badri, would be held to be free from liability for his action as long as no excessive force was used [*Khidir Bux v. Emperor* (1), *Sheikh Nasur v. Emperor* (2), *Arjun Suie v. King Emperor* (3), *Mohini Mohan Banerji v. King Emperor* (4), *Debi Singh v. Queen Empress* (5) and *Tannakilal Mandar v. King Emperor* (6)].

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The question to be decided here is whether, when an illegal attachment has been made in the absence of the judgment-debtor and the property has been taken into possession by the Civil Court peon and has been in his possession for some time, the judgment-debtor commits an offence when he obstructs the peon and takes back his property. The learned Sessions Judge has held that in such circumstances no right of private defence of property still exists.

The learned Assistant Government Advocate follows this same line of argument. He contends that in attaching the cattle under a writ which he believed to be valid, the Civil Court peon was not committing an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which was an attempt to commit any of those offences, and therefore the right of private defence of property, as described and defined in section 97 of the Indian Penal Code, did not subsist, and he further contends that, even if ordinarily there would be such right of private defence, the provisions of section 99 of the same Code would prevent the petitioners pleading that right because the peon was acting in good faith under colour of his office, though owing to the defect in the writ his action may not have been strictly

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- (1) (1918) 3 Pat. L. J. 636.
 (2) (1910) I. L. R. 37 Cal. 122.
 (3) (1918) 3 Pat. L. J. 106.
 (4) (1916) 1 Pat. L. J. 550.
 (5) (1901) 28 Cal. 399.
 (6) Cr. Rev. no. 156 of 1920.

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justifiable by law. He explains that the effect of section 99 was not taken into consideration in the cases on which the petitioners rely.

In the case of *Bisu Halidar v. Emperor* (1) Stephen and Cox, J.J., and in that of *Shaikh Moinuddin v. The King Emperor* (2) Jwala Prasad, J., did consider the effect of the words "not strictly justifiable by law" and held that, where the warrant is altogether invalid and illegal the words will not take away the right of private defence.

In the present case the question of private defence of property hardly arises. The petitioner came upon the peon taking his cattle along the road and claimed them. The peon showed him a writ which was of no force because it bore no seal of the Court (though probably Badri did not notice this). The peon not being able to justify his possession of the cattle, the petitioner committed no offence in taking them. There was no assault on the peon, who gave up the cattle when he saw the identifier being assaulted. It was fortunate for the petitioners that the writ proved to be an invalid one, they can have had no knowledge of this, but in their defence they were entitled to rely on its invalidity.

The cases of *Reg. v. Boyle* (3), *Reg. v. Williams* (4) and *Reg. v. Knight* (5) show that under the law of England the petitioners would not in the circumstances of this case be held liable to punishment.

As to the effect of section 99 of the Indian Penal Code a clear explanation has been given by Sir John Edge, C. J., and Burkitt, J., in the case of *Queen Empress v. Dalip* (6). If in the present case the petitioners had assaulted or caused grievous hurt to

(1) (1900-01) 11 Cal. W. N. 846.

(2) Cr. Rev. no. 96 of 1921.

(3) (1857) 7 C. C. Cas. 428; 6 Ir. C. L. R. 598.

(4) (1800) 2 Car. & Ker. 1001.

(5) (1908) 73 J. P. 15; 1 Cr. App. 186; 25 T. L. R. 87.

(6) (1896) I. L. R. 18 All. 246.

the peon, under section 99 they would not have been able to plead the right of private defence of property as a justification because the peon was acting in good faith under colour of his office, though his attachment of the cattle may not have been justifiable by law.

After careful consideration I am of opinion that in the circumstances of this case, the conviction of the petitioners under section 186 should not be upheld, and I would set aside the conviction and sentences and acquit them.

BUCKNILL, J.—I agree.

Convictions set aside.

APPELLATE CIVIL.

Before Das and Ross, J.J.

EAST INDIAN RAILWAY CO., LTD.

v.

KISHUN CHAND KASARWANI.*

1925.

Oct., 27.

Railways Act, 1890 (Act IX of 1890), section 72(2)(a), meaning of—Risk Note B, execution of, by person delivering the goods—contract, effect of, against the sender.

Section 72(2) of the Railways Act, 1890, declares that an agreement purporting to limit the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to it to be carried by railway, shall, in so far as it purports to affect such limitation, be void, unless it: “(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods”.

Held, that the sub-section does not contemplate that the sender of goods must necessarily be the person delivering them to the railway administration.

* Appeal from Appellate Decree no. 638 of 1923, from a decision of Rai Bahadur Amrita Nath Mitra, Subordinate Judge of Ranchi, dated the 9th April, 1923, affirming a decision of B. Narendra Lal Bose, Munsif of Palamau, dated the 13th February, 1922.

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