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to realise the assets vested in him. I would, therefore, set aside the order of the learned District Judge and direct him to proceed with the application of the appellant and dispose of it according to law. It will be open to him to take steps to realise the assets of Gurdatt Singh vested in the receiver wherever they may be found and may be lawfully realisable and to take such legal steps for their realisation as the parties may ask him to take. The appeal no. 217 of 1930 is allowed with costs. Hearing fee two gold mohurs.

COURTNEY TERRELL, C.J.—I agree.

Appeal no. 210 dismissed.

Appeal no. 217 allowed.

Before Courtney Terrell, C.J. and Khaja Mohamad Noor, J.

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Contempt of Courts Act, 1926 (Act XII of 1926), section 2, sub-section (3), scope and meaning of—High Court, cognisance by, barred only when contempt of court is punishable as such under Penal Code, 1860 (Act XLV of 1860)—section 228 of the Code, whether is the only section dealing with contempts of court.

The Contempt of Courts Act, 1926, enables the High Court to punish contempt of the inferior courts notwithstanding that such contempt as is complained of is not an offence (as contempt) against any of the sections of the Penal Code; only those contempts which are punishable by the Code as contempts of court are excluded from the jurisdiction of the High Court by the Act.

Kaulashia v. King-Emperor(1), followed.

Sections 175 to 179 of the Penal Code define as offences various acts and those acts are offences not against the court

* Civil Revision no. 554 of 1932, against an order of Babu A. N. Singh, Subordinate Judge of Cuttack, dated the 26th August, 1932.

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itself because they are applicable whether or not in many cases a court is concerned at all.

The only section of the Penal Code which deals with contempts committed against a Judicial Officer, that is to say, a court, is section 228.

Per Khaja Mohamad Noor, J.—It is of the utmost importance for the administration of justice that citizens should submit to the orders and authority of courts.

By obstructing the execution of a process of law the offender commits two offences: one is the alleged obstruction and the other is the contempt of court, the offender being deemed to have undermined the authority of that court. The first offence is covered by the Penal Code, while the second one is not.

Sub-section (3) of section 2 of the Contempt of Courts Act obviously excepts those cases of contempt which are punishable under the Penal Code as contempt and not if they are punishable independently of that contempt.

Application in revision by the decree-holders.

The facts of the case are set out in the judgment of Courtney Terrell, C.J.

Sir Sultan Ahmad (with him *G. P. Das* and *P. Misra*), for the petitioners.

S. C. Bose, for the opposite party.

COURTNEY TERRELL, C.J.—These are two civil revisions arising out of certain matters before the Subordinate Judge of Cuttack in which a somewhat extraordinary course has been followed. There was litigation between the plaintiff and the defendant which ultimately reached the Privy Council and under the decree of the Privy Council the defendant was ordered among other things to deliver to the plaintiff possession of a certain house. The decree of the Privy Council was sent down to the lower court for execution by order of this Court. There were a number of intermediate proceedings which it is unnecessary to recount but the

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Subordinate Judge sent his naib nazir to the house in question with instructions to deliver it up to the plaintiff. On arriving at the place an individual named Satyabadi Das was found in possession of the house taking up a defensive attitude with the encouragement and support of a number of his local friends. The naib nazir appears to have been overawed by this display and furthermore, to have been affected in some way by a statement on behalf of Satyabadi Das that he was entitled to remain in possession. He thereupon sent from the spot a message to the Subordinate Judge and asked what he was to do. The Subordinate Judge wrote back on the message that the naib nazir was to execute the writ of delivery of possession according to law. But the naib nazir was apparently too alarmed to do this and, notwithstanding that he had the assistance of an officer of police and two constables, the threatening attitude of Satyabadi Das appears to have entirely overcome his resolution and he made a further report to the Subordinate Judge in which he said that he had had to come back without executing the writs. This incident took place on the 19th August, 1932.

As a result of this on the 22nd August, 1932, the decree-holder's advocate appeared before the Subordinate Judge who directed a re-issue of the writ and directed that the writ in this particular case was to be executed by the other naib nazir in his service. The second naib nazir went to the spot and again found Satyabadi Das and considered that he was not entitled in law to execute the writ being convinced by the legal arguments which were apparently put forward by Satyabadi Das before him, so that notwithstanding the order of the Subordinate Judge the writ was not executed.

On the 25th August, 1932, the matter came before the Subordinate Judge again on the report of the second naib nazir that he had not executed the orders of the Subordinate Judge and the Subordinate Judge

appointed a day apparently for the hearing of the parties on the matter. It is hardly necessary to say that what he should have done was immediately to have directed the naib nazir to arrest the resisting Satyabadi Das and bring him before him promptly to be dealt with. But apparently being fonder of a lengthy legal proceeding, on the 27th August, 1932, he heard an objection which was actually filed by the decree-holder and directed that it should be registered as a miscellaneous case and fixed the 24th of the following September for hearing that case and at the same time issued notice to Satyabadi Das returnable by the date fixed and directed the decree-holder to pay the process fee and file a written notice by the 29th August. Then on the 29th August the execution case was directed to be put down to be heard with the miscellaneous case.

In these circumstances the matter was brought to the notice of this court and this court on the 23rd September, 1932, directed the issue of notice to Satyabadi Das to shew cause why he should not be committed to prison for contempt. Under the Contempt of Courts Act a defect in the old procedure has been remedied. Under the law before that Act this court could not protect the lower courts when contempt of their orders was manifested by anybody but under the Contempt of Courts Act this court is empowered and will use that power to protect the dignity of the courts which are subordinate to it. In so far as the civil revisions are concerned, in my opinion, the proper order to make is that the Subordinate Judge be directed forthwith to give directions to the naib nazir supported by any police force which may be necessary to deliver possession of the house to the plaintiff and furthermore to attach the moveables in execution of the decree for costs. That disposes of the two civil revision cases.

In so far as the notice issued by this court is concerned Satyabadi Das has not appeared in person before us but he is represented by Mr. Bose who has done his best with the materials at his disposal but

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it is perfectly obvious that a gross contempt of the order of the Subordinate Judge was committed. It is absolutely necessary that the courts should be fearless in enforcing the orders that they give in civil cases and acting under the powers given to us by the Contempt of Courts Act we direct that a warrant issue for the arrest of Satyabadi Das and a second warrant to the Superintendent of the jail at Cuttack to keep him in custody in simple imprisonment for a period of six months as provided in the Act. He may purge his contempt by making a proper apology and also by paying the costs of these proceedings as also the proceedings in the lower court. Hearing fee in this court five gold mohurs.

It is necessary to deal with a point of law that was raised by Mr. Bose at the very last moment. He contended that under sub-section (3) of section 2 of the Contempt of Courts Act this court was not empowered to punish his client. That sub-section runs as follows:—

“No High Court shall take cognisance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”

Mr. Bose argued that since there is already a provision under the Indian Penal Code for the punishment of resistance to a public servant notably under section 186 of that Code, the offence comes within the character of one which is punishable under the Indian Penal Code and, therefore, this Court is excluded from taking cognisance of it as a contempt of Court. But it was pointed out by this Court in the case of *Kaulashia v. King-Emperor*⁽¹⁾ that the meaning of the sub-section is not that if the act complained of is not only a contempt of court but is also punishable under the Indian Penal Code the offence is not also punishable as a contempt of court, but that the real meaning of the sub-section is that if the act constitutes an offence against the Penal Code it may well be punishable under the Penal Code and if it

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also constitutes a contempt of court and if as a contempt of court it is not of the character set forth in section 228 of the Indian Penal Code then it is punishable by this Court. As I take it the broad history of the law may be stated thus:—Courts of record have inherent power to punish contempts of their authority whether committed in the face of the Court or whether committed vicariously upon the persons of their officers. It was, however, not thought fit to give power of that character to subordinate courts. The express provisions of section 228 set forth the contempts of inferior courts which are punishable under the Code and it was subsequently held that contempts, which would be certainly contempts of a court of record, if they do not come within the provisions of section 228 or any other section, cannot be punished as offences of the character of contempt of court. And it was further held that the High Courts of record cannot punish contempts of the inferior courts. Subsequently the Contempt of Courts Act was passed which enabled the superior courts to punish contempts of the inferior courts notwithstanding that such contempt as is complained of is not an offence (as contempt) against any of the sections of the Indian Penal Code and the object is that as to contempts considered as contempts of the court which are punishable by the Indian Penal Code they shall not be taken cognisance of by the High Court. Now sections 175 to 179 of the Indian Penal Code define as offences various acts and those acts are offences not against the court itself because they are applicable whether or not in many cases a court is concerned at all. The offence of striking or resisting a public servant is an offence whether that public servant is the public servant of a court or whatever his capacity be provided he be a public servant. The only section of the Indian Penal Code which deals with contempts committed against a judicial officer, that is to say, a court, is section 228. The offence in this case is not punishable under section 228. Therefore, this Court has power to take cognisance of it.

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This point was raised during the actual course of the judgment very courageously by Mr. Bose but in my opinion it is unsound.

KHAJA MOHAMAD NOOR, J.—I agree. At one time I was inclined to hold that the objection of Mr. Bose should prevail; but on further consideration I have come to the conclusion that the view taken by my Lord the Chief Justice is, if I may say so, correct. It has been contended that the obstruction offered to the naib nazir is an offence under section 186 of the Indian Penal Code and, therefore, under sub-section (3) of section 2 of the Contempt of Courts Act of 1926 we are precluded from taking cognizance of that offence. This contention, though plausible, has no substance. Obstruction offered to a public servant in the discharge of his public function is an offence by itself though the public servant may not be acting under the orders of a Court of Justice as long as he was performing a legal public function. But if that public servant is carrying out an order of a court the offender commits another offence, namely, the offence of contempt of the court whose order the public servant is carrying out. Section 186 of the Penal Code takes no notice of this second offence. It is of the utmost importance for the administration of justice that citizens should submit to the orders and authority of courts. By obstructing the execution of a process of law the offender undermines the authority of this Court and this is not punishable under the Penal Code as such. Sub-section (3) of section 2, in my opinion, obviously excepts those cases of contempt which are punishable under the Penal Code as contempt and not if they are punishable independent of that contempt. In this particular case the offender has been guilty of two offences; one is obstruction to the naib nazir and another is contempt of the Court of the Subordinate Judge; while the first one is covered by the Penal Code, the second one is not.

On these grounds I agree with the order passed by my Lord the Chief Justice.

Order accordingly.