1929.

SRIRAM PANDE MINOR v. HARICHARAN PANDE.

WORT, J.

the authorities to which I have referred, if I may put it in that way, the Bengal School is less generous than the Mitakshara School. But even so the present law recognizes the right which the plaintiff no. 5 claims in this case. In my judgment the learned Subordinate Judge was, therefore, right in coming to the conclusion that the plaintiffs were entitled to five-sixths of the property.

In those circumstances, the judgment of the learned Subordinate Judge ought to be affirmed and the appeal dismissed with costs.

JAMES, J.—I agree.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Terrell, C.J., and Rowland, J.

1929.

June, 24.

PICHIT LAL MISSER

v.

KING-EMPEROR.*

Penal Code, 1860 *(Act XLV of* 1860*), section* 186—*Income-tax demand—certificate procedure—warrant of distress—attachment of property—property entrusted to surety—warrant for realisation of dues—attachment of other property—obstruction.*

An assessee having failed to pay the amount demanded from him on account of Income-tax a certificate was issued and a distress warrant was served through a peon who attached a bullock belonging to the assessee. This was left

*Criminal Revision no. 275 of 1929, against an order of M. A. Majid. Magistrate, first class, of Monghyr, with appellate powers, dated the 15th February, 1929, modifying an order of Babu Nalinindra Lal Bose, Deputy Magistrate, 2nd class, of Monghyr, dated the 19th January, 1929.

in the custody of a surety. Later, a second peon was directed to realise the tax due by sale of the bullock previously attached, and, if the amount realised proved insufficient, by attachment and sale of other properties of the assessee. The surety having denied that he had received charge of the bullock or stood surety, the peon attached two other bullocks belonging to the assessee who, however, prevented their removal. The assessee having been convicted under section 186 of the Penal Code, contended that the second peon was not justified in attaching the two bullocks until the bullock first attached had been sold. *Held*, that the warrant issued to the second peon amounted to a direction for the sale of other properties of the assessee if, for any cause whatever, the peon found it impossible to realise the tax by sale of the attached property, and, therefore, the conviction was legal.

The facts of this case material to this report are stated in the judgment of Rowland, J.

S. P. Varma with him *G. Sahay*, for the petitioner.

Sir Sultan Ahmad, Government Advocate, for the Crown.

ROWLAND, J.—This is an application to set aside the conviction of the petitioner under section 186 of the Indian Penal Code and sentence of fine of Rs. 100 imposed by a second class magistrate and confirmed on appeal by a first class magistrate having appellate powers.

The petitioner Pichit Lal Misser was assessed to pay income-tax for the realisation of which with interest and costs a certificate was issued and a distress warrant sent through peon Amir Singh. He attached one bullock of the petitioner which he left in the custody of Chandra Kumar as surety and reported to the certificate officer. A second peon named Moinuddin was then sent to realise the amount under warrant by sale of the first bullock and, failing that, by attachment and sale of other properties. Chandra Kumar, the surety, denied that he had received charge of the former bullock or stood surety.

1929.

PICHIT LAL MISSER v. KING-EMPEROR.

ROWLAND, J.

The peon then attached two bullocks belonging to the petitioner and the petitioner forcibly prevented their removal. These are the facts found concurrently by the two Courts and we have to consider the petitioner's application for revision and also a rule which has been issued upon him by this Court to shew cause why the sentence should not be enhanced.

The contention on his behalf is that on the terms of the order of the certificate officer to the peon the peon was not justified in attaching two bullocks of the petitioner until he had sold the bullock formerly attached and failed thereby to realise the amount of the warrant. It has been pointed out that the bail bond of Chandra Kumar (Exhibit 2) contains an undertaking by the surety to be personally responsible for the entire demand should he fail to produce the bullock, and it has been argued that the surety was the person against whom the peon should have proceeded in the first instance. The order of the certificate officer however was a peremptory order to realise the demand by attachment and sale of other properties if it was not realised by sale of the attached cattle. As I understand it the order to attach and sell other properties was to be acted on if from any cause whatever the peon found it impossible to realise the demand by sale of the attached cattle. I am of opinion therefore that the peon was acting within the directions given to him with the warrant and that the petitioner had no justification in obstructing him in the performance of what was his public duty. Under the circumstances there is no doubt that the conviction under section 186 of the Indian Penal Code must be maintained and the petitioner may be considered fortunate in not having been convicted under section 183 of the Indian Penal Code which provides a more serious punishment for resistance to the taking of property by the lawful authority of a public servant.

Coming now to the question of sentence it has been argued before us that the sentence should not

1929.

PICHIT LAL MISSER v. KING-EMPEROR.

ROWLAND, J.

be enhanced as the petitioner may be the victim of circumstances. It is possible that the bailor was not, as the magistrates may have thought, in collusion with the petitioner but had defrauded him. While this explanation of the course of events appears to be not entirely impossible, it does not seem very probable, nor does it appear to have been put forward before either the trial Court or the lower appellate Court. The possibility is, however, a circumstance to which we should have regard in considering the amount of sentence. We have considered whether a substantive sentence of imprisonment should be imposed and have decided that it is unnecessary but that the sentence of fine should be certainly not less than equal to the amount of the distress warrant execution of which was resisted. The sentence of fine will, therefore, be enhanced to Rs. 150, the imprisonment in default to be as awarded by the lower appellate Court.

COURTNEY TERRELL, C.J.—I agree.

SPECIAL BENCH.

Before Kulwant Sahay, Macpherson and Dhavle, JJ.

1929.

July, 1, 19.

TENGAROO SUKUL

v.

CHATHU BHAR.*

Zirat land, accrual of occupancy rights in—no absolute bar—exceptions—land held under a lease for a term of years or under a lease from year to year—Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 116.

There is no absolute bar to the accrual of occupancy rights in zirat land (proprietor's private land) and the only bar to the acquisition of such rights is under circumstances contained in section 116, Bengal Tenancy Act, 1885, namely,

*Appeal from Appellate Decree no. 1493 of 1926, from a decision of Rai Bahadur Ananta Nath Mitter, District Judge of Saran, dated the 1st September, 1926, affirming a decision of Maulavi Saiyid Ahmad, Munsif of Siwan, dated the 30th November, 1925.