mention, looking to the source from which those Code have in a great measure originated, that the view I have laid down above is consistent with that which holds in Criminal Courts in England.

For these reasons I refuse the application to quash the commitment.

1900 DEC. 14 & 18.

ORIGINAL CRIMINAL

28 C. 217.

28 C. 211.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Handley.

SUNDER DASADH (*Complainant*) *v.* SITAL MAHTO AND OTHERS (*Accused*).* [20th August, 1900.]

***Penal Code** (Act XLV of 1860), s. 206.—Attachment of crops in execution of certificate under Public Demands Recovery Act—Want of sanction not occasioning failure of justice—Code of Criminal Procedure (Act V of 1898), ss. 195, 438, and 537—Public Demands Recovery Act (Bengal Act I of 1895), ss. 7, 8, 19 and 22.*

The cutting and carrying off crops, which the accused knew to be under attachment in execution of a certificate under the public Demands Recovery Act [218] of 1895, is an offence under the latter part of s. 206 of the Penal Code. The amount due under the certificate cannot be regarded as a forfeiture or fine, but is money due under a decree, the certificate having the force and effect of a decree of a Civil Court.

Where such an offence was taken cognizance of by a Magistrate without sanction for the prosecution being given, as should have been the case, but there was nothing in the proceeding to show that the want of such sanction had in fact occasioned a failure of justice, *Held*, that the conviction was not bad only on that account.

IN this case the petitioners were convicted and sentenced to fine under s. 206 of the Penal Code for having cut and carried off crops which they knew to be under attachment in execution of a certificate under the Public Demands Recovery Act (Bengal Act I of 1895). The Sessions Judge of Shahabad being of opinion (1) that s. 206 of the Penal Code did not apply to the case of property attached under the Public Demands Recovery Act, and (2) that the sanction required by s. 195 of the Code of Criminal Procedure was wanting, referred the matter to the High Court under s. 438 of the Code of Criminal Procedure. The letter of reference was as follows:—

In a proceeding under the Public Demands Recovery Act (Bengal Act I of 1895) in connection with an estate under the Court of Wards, some fields were attached. Subsequently the three accused, it is alleged cut the crop.

They were prosecuted under s. 206, Penal Code, and have been sentenced to pay a fine of Rs. 20 each, in default to undergo three weeks' rigorous imprisonment.

The order appears to me to be bad for two reasons: (1) that s. 206, Penal Code, does not apply to the case of property attached under the Public Demands Recovery Act; (2) that the sanction required by s. 195, Code of Criminal Procedure, is wanting.

I do not think it can be said that property attached for the realisation of a demand under a certificate is taken as a "forfeiture" or in "satisfaction of a fine." The demand is a debt due in this case to the Court of Wards. The word "forfeiture" appears to me to apply to cases where forfeiture is part of the penalty provided for an offence, *e.g.*, for an offence under s. 121, Penal Code. The word "fine" appears to me to apply to such cases as a fine under the Penal Code, or when a fine is imposed as a penalty by any other Act or Regulation, such as a fine imposed on a juror or assessor for non-attendance in obedience to a summons, or a fine imposed for failure to supply *rasad* for troops.

[219] The Magistrate also does not defend the order as coming under the first part of s. 206, but as coming under the latter part, and he relies on s. 8 of the

* Criminal Reference No. 149 of 1900, made by C. P. Beachcroft, Esq., Sessions Judge of Shahabad, dated the 28th July 1900.

1900 AUG. 20.

CRIMINAL REFERENCE

28 C. 217.

Public Demands Recovery Act. That section provides that "every certificate made under s. 7 shall, as regards the remedies for enforcing it, and so far only, have the force and effect of a decree of a Civil Court." The section then goes on to explain who is to be deemed to be the decree-holder and who the judgment-debtor.

The question is whether the words quoted limit the force and effect to such steps as attachment and sale for realizing the debt. Ss. 19 and 22 in which the words "enforce" and "execute" are both used, seem to suggest that "enforce" has a wider meaning, and the absence of any penal provision in the Act beyond that contained in s. 19 (2) also seems to suggest that s. 206, Penal Code, is applicable, for it is difficult to imagine that the Legislature would have made no provision for punishing resistance.

Again, s. 19 (2) gives the Certificate Officer the power given to a Civil Court by Chapter XIX of the Code of Civil Procedure. Ss. 328, 329 and 330 of that Code deal with resistance or obstruction. In the case of the first resistance or obstruction the Court after enquiry may pass such order "as it thinks fit," but in the case of a continued resistance or obstruction may commit the judgment-debtor to jail. The present case is of first obstruction, so all the Certificate Officer could do was to order a prosecution. If s. 206 does not apply there is no section that does. The question then resolves itself into this, whether the word "enforce" includes prosecution for resistance so as to make such resistance an offence under s. 206. Of this I am doubtful. I know of no authority on the point. The case of *Gaur Chandra Chuckerbutty* v. *Krishna Mohan Singh* (1) is not quite to the point. That was a case of a Collector trying a rent suit under Act X of 1859 and his decree was held to be a decree of a Court of Justice in a Civil suit. The point is of considerable importance, and not without difficulty, and an authoritative decision appears desirable.

On the second point I have no doubt. The Sub-divisional Officer admits, that no sanction was given except by the Court of Ward's manager. If the Certificate Officer is a Court the sanction was necessary. The word "Court" is not defined in the Criminal Procedure Code or in the General Clauses Act. I do not think that a Certificate Officer can be called a Court of Justice as defined in s. 20, Penal Code, for though the Certificate Act enjoins the procedure followed in civil cases for the realization of a certificate demand, I do not think a certificate proceeding can be called a civil proceeding within the meaning of s. 19, Penal Code. But a Certificate Officer is clearly a Court within the meaning of the Evidence Act, for s. 13 of the Certificate Act empowers him to take evidence.

In the circumstances the conviction appears to be bad, and I would recommend the remission of the fines.

[220] The judgment of the Court (PRINSEP and HANDLEY, JJ.) was delivered by

PRINSEP, J.—The petitioners have been convicted and sentenced to fine under s. 206, Penal Code, for having cut and carried off crops which they knew to be under attachment in execution of a certificate under Bengal Act I of 1895. The Sessions Judge has referred this order to be set aside, (1) because there was no offence committed under s. 206, Penal Code, because property attached for the realization of a demand under a certificate is not taken as a *forfeiture* or in *satisfaction* of a *fine*, and (2) if the petitioners prevented the crop from being taken in execution of a decree or order made by a Court of Justice and the Court of the Certificate Officer was such a Court no sanction under s. 195 of the Code of Criminal Procedure to the prosecution had been given.

We are of opinion that the offence is under the latter part of s. 206, Penal Code, for the amount due under the certificate cannot be regarded as a *forfeiture* or *fine*. It was money due under a decree, for the certificate has the force and effect of a decree of a Civil Court, Bengal Act I, 1895, s. 6 (1), and the law declares that it shall have such force and effect as regards the remedies for enforcing the same and so far only. If a judgment-debtor can with impunity break an attachment, as in the present case, there would be no remedy for enforcing payment under the

(1) (1868) 2 B. L. R. S. N. iv.

1900 AUG. 20.

CRIMINAL REFERENCE.

28 C. 217.

decree. It seems to us that in this respect the Court issuing the certificate is vested with all the powers conferred by the law on a Civil Court to enforce compliance with the certificate by payment or by realization, through distress, of the amount so declared to be due. In this view we are of opinion that the Magistrate has rightly held that the petitioners have committed an offence under s. 206, Penal Code. No doubt sanction to the prosecution should have been given before the Magistrate took cognizance of that offence, but unless the want of such sanction has, in fact, occasioned a failure of justice (s. 537, Code of Criminal Procedure), the conviction is not bad only on that account. There is nothing in the proceedings to show that this is so. We, therefore, find no sufficient reason to interfere in revision.

28 C. 221.

[221] MATRIMONIAL JURISDICTION.*

Before Mr. Justice Harington.

YOUD v. YOUD AND OTHERS [10th December, 1900].

Divorce—Condonation—Revival—Co-respondent—Costs—Evidence of misconduct on a date after suit.

Where a husband has condoned adultery committed with one co-respondent which has been revived by adultery committed with another co-respondent a decree *nisi* will be granted against both co-respondent, but costs will not be given against the co-respondent whose adultery was condoned.

During the hearing of the suit evidence was tendered to show misconduct with one co-respondent on a date after suit.

***Held*, such evidence was admissible.**

Costs as between attorney and client against first co-respondent were disallowed.

THIS was a husband's petition for dissolution of marriage by reason of his wife's adultery with two co-respondents, Meade and Metcalfe. The petitioner in his prayer to the plaint asked for damages, but not costs against both co-respondents.

The respondent filed an answer denying adultery, but did not appear at the hearing.

Mr. *W. H. Knight*, for the petitioner proved his case, but gave up his claim for damages.

He also wished to give evidence of Meade, the co-respondent, on a date after the suit was filed, being found in his shirt outside respondent's open bedroom door at 7 A.M. Phips on Evidence, 2nd edition, 136 referred to; *Boddy* v. *Boddy* (1) cited. It was contended that the evidence was admissible.

The evidence having been admitted, to explain previous acts of the respondent and co-respondent.

HARINGTON, J.—I find that there has been: (1) Adultery of respondent with Metcalfe in October 1899.

(2) Condonment of that adultery by the Petitioner in December 1899.

(3) Adultery with Meade in January 1900.

[222] Mr. *Knight*—I ask for a decree *nisi* against both co-respondents. [HARINGTON, J.—The adultery of Metcalfe was condoned.] Yes, but revived by subsequent adultery with Meade. [HARINGTON, J.—That

* Suit No. 1 of 1900.

(1) (1861) 30 L. J. P. & M. 95.