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ment of moveable property the words used are "the attaching officer" and "one of his subordinates," and so in section 271 the words "person executing the process" have been used; but in sections 336 and 337 dealing with the arrest of persons the words "the officer *authorized* to make the arrest" and "the officer *entrusted* with its execution," respectively, have been made use of. See also Form No. 154 in schedule 4 of the Code. There the words are "these are to command *you* to arrest."

Babu *Debendro Chundra Mullick* in showing cause relied upon the case of *Abdul Karim* v. *Bullen* (1).

The judgment of the High Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows:—

We are of opinion that this case cannot be distinguished from the case of *Dharam Chand Lal* v. *Queen-Empress* (2) decided by a Bench of this Court on the 6th instant, and this rule must, therefore, be discharged.

The point whether the escape of a prisoner from arrest is or is not an obstruction of a public servant within the meaning of section 186 of the Penal Code does not arise in this case, as it was proved that the petitioner being present abetted four other persons in obstructing a public servant.

We may refer to the case of *Queen* v. *Bhagai Dafadar* (3) as showing that a peon of a Court of Justice, whose duty it is to execute any judicial process, is a public servant within the meaning of the definition in section 21 of the Penal Code, clause 4.

S. C. B. *Rule discharged.*

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

QUEEN-EMPRESS v. MAHALABUDDIN AND OTHERS (PETITIONERS).* 1895 *May* 8.

Criminal Procedure Code (Act X of 1882), section 523—Seizure of property on suspicion—Order by the Magistrate.

By the provisions of section 523 of the Code of Criminal Procedure it is

* Criminal Rules Nos. 194 and 195 of 1895, against the order passed by Babu Jagabandhu Bhuttacharjee, Sub-Divisional Magistrate of Contai, dated the 25th of March 1895.

(1) I. L. R., 6 All., 385. (2) *Ante*, p. 596.
(3) 2 B. L. R., F. B., 21.

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not intended that any final steps should be taken by the Magistrate, nor is he bound to take any final steps, to ascertain whether the property seized on suspicion belongs to the person in whose possession it was found, until after the expiry of the six months mentioned in the section; but when the proclamation has been issued, and the six months have expired, then, under the provisions of section 524, the person in whose possession the property was found can come forward and show that it is his own.

ON the 2nd of March 1895 the Sub-Inspector of Police at Contai made a report to the Deputy Magistrate that he had, on suspicion that they were stolen property, seized certain ornaments found in the house of the petitioners. Acting upon this report, the Deputy Magistrate, on the 7th of March, issued notices on the petitioners, directing them to appear before him and to satisfy him that the ornaments were not stolen property. On the 19th of March the petitioners applied for summonses upon certain witnesses on their behalf, but as there was great delay in making the application the Magistrate refused it. On the 25th of March the Deputy Magistrate examined four witnesses, and was satisfied that the ornaments found in the houses of the petitioners did not belong to them, and held, under the provisions of section 523 of the Code of Criminal Procedure, that they were not entitled to their possession, and directed that the proclamation referred to in the above section be duly published. The petitioners moved the High Court and obtained rules against the order of the Deputy Magistrate.

Mr. *Barrow* and Dr. *Ashutosh Mukerjee* appeared in support of the rules in case No. 195.

No one appeared to show cause against the rules; but the Deputy Magistrate submitted an explanation, stating it was not necessary to record evidence before passing an order under section 523 of the Criminal Procedure Code, and further pointing out that, if his order was set aside, it would interfere with the peace of the district, as the local zemindars were notoriously receivers of stolen property.

Mr. *Barrow*.—Under section 523 of the Criminal Procedure Code the Magistrate, who is directed to "make such order as he thinks fit respecting the delivery of the property" seized on suspicion, can only do so after giving the persons, in whose

possession it was when seized, an opportunity of being heard and adducing evidence. The section says that if the persons entitled to possession "cannot be ascertained," then the Magistrate is to pass certain orders. The words "cannot be ascertained" indicate an enquiry by the Magistrate, and at that enquiry the persons whose property is seized on suspicion have a right to be heard and to adduce evidence. An order dealing with the possession of property which is presumably mine ought not in common fairness to be made behind my back.

The following judgment was delivered by the Court (PETHERAM, C.J., and BEVERLEY, J.):—

We think that in this case the rule must be discharged. The question is a very simple question of law, and is, whether a Magistrate, to whom a seizure of property by the Police has been reported, under section 523 of the Code of Criminal Procedure, as property which they suspect to have been stolen, is justified in detaining the property and issuing a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim to appear before him and establish his claim within six months from the date of such proclamation, until he has first called upon the person in whose possession the property was when it was seized to show cause why this should not be done.

The case has been argued before us by Mr. Barrow for the petitioners, but we think that he failed to show anything on the face of these sections which imposes any such obligation on the Magistrate. The duty of the Magistrate, when the matter is reported to him, is to deliver over the property to the person entitled to the possession of it, if there is no doubt about such property belonging to him; but if there is any doubt about it, he is to detain it and issue a proclamation to ascertain whether or not there are any claimants to the property; and it is clear to us that it is not intended that any final steps should be taken by the Magistrate, or that he is bound to take any final steps, to ascertain whether the property belongs to the person in whose possession it was found, until after the expiry of the six months, but when the proclamation has been issued and the six

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months have expired, then the provisions of section 524 come in, and the person in whose possession it was found can come forward and show that it is his own. We cannot say that the Magistrate has in any way exceeded his powers, and, therefore, these two rules must be discharged.

S. C. B. *Rules discharged.*

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

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DEBI DIAL SAHU (DECREE-HOLDER) *v.* MOHARAJ SINGH (JUDGMENT-DEBTOR).*

Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1882), sections 223, 226—Execution of decree passed in another district—Jurisdiction.

On the application of the decree-holder, a decree for money passed by a Munsif in one district was sent for execution to the Court of a Munsif in another district, and not to the District Court, as provided for in section 223 of the Civil Procedure Code: *Held*, that the Munsif's Court to which the decree was sent for execution had no jurisdiction to execute it without an express order of the District Judge under section 226.

THE appellant obtained a decree for rent in the Munsif's Court at Daltongunj in the district of Palamow, and applied to that Court for transmission of the decree for execution in the Court of the Munsif of Aurungabad in the district of Gya. The application was granted and the decree was sent for execution directly to the Court of the Munsif at Aurungabad. The appellant then applied for execution of his decree in the latter Court. One of the objections raised by the judgment-debtor was that the application could not be granted, as the decree "did not come to the Court of Aurungabad through the proper channel."

The last paragraph of section 223 of the Code of Civil Procedure enacts :—

*Appeal from Appellate Order No. 129 of 1894, against the order of A. C. Brett, Esq., District Judge of Gya, dated the 29th January 1894, reversing the order of Babu Suresh Chunder Banerjee, Munsif of Arrah, dated the 12th of July 1893.