

We are very clearly of opinion that they are not bonds, but acknowledgments only, and are therefore sufficiently stamped with one-anna stamps. The definition of a bond which is relied on is: "Any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another." The important word in this definition is the word "obliges," and no document can be a bond within it unless it is one which itself creates an obligation to pay money, as is the case with those documents which are known as bonds according to the common use of the word, but is not the case with acknowledgments of advances, or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to repay advances and to pay for goods, which the law always implies when money is borrowed or goods are purchased.

1895

 HIRA LAL
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v.
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The present documents are, in form, acknowledgments only, and we do not think the mere fact that they contain memorandums as to the rate of interest at which the loan is made, and are attested by witnesses, is sufficient to convert what is otherwise a mere acknowledgment into a bond, which itself creates an obligation to pay the money.

The convictions and sentences must be set aside, and the fines, if paid, must be refunded.

S. C. B.

Conviction set aside.

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

SHBO PROGASH TEWARI (PETITIONER) v. BHOOP NARAIN PROSAD
PATHAK AND ANOTHER (OPPOSITE PARTY.)*

 1895
March 14.

*Penal Code (Act XLV of 1860), sections 21 and 186—Escape from arrest—
Nazir's power of delegation—Public servant.*

A Nazir has authority to delegate the execution of warrants of arrest.
Dharam Chand Pal v. Queen-Empress (1) followed.

* Criminal Revision No. 46 of 1895, against the order passed by G. G. Dey, Esq., District Judge of Shahabad, dated the 29th of December 1894, affirming the order of Babu Nandulal Dey, Munsif of Buxar, dated the 31st of July 1894.

(1) *Ante*, p. 596.

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A peon acting under such delegation is a public servant within the meaning of the definition in section 21, clause 4 of the Penal Code.

Quare, whether the escape of a prisoner from arrest is an obstruction of a public servant within the meaning of section 186 of the Penal Code,

Two warrants of arrest were issued by the Munsif of Buxar against the petitioner in execution of two decrees against him. The warrants were addressed to the Nazir of the Court, who delegated its execution to two peons who arrested the petitioner; and while they were bringing him towards the Court, he called for help, and four persons came and rescued him from the custody of the peons. The Munsif ordered the prosecution of the petitioner and the four other persons "for offences under sections 186 and 225 of the Penal Code, and also for abetting the same, or under any other section which might apply to their case." There was an appeal to the Sessions Judge, who dismissed the appeal, holding that under section 195 of the Code of Criminal Procedure he had no authority to interfere, because the order of the Munsif was under section 476 of the Code of Criminal Procedure. The petitioner alone moved the High Court and obtained a rule.

Babu *Dwarka Nath Chakrabarti* appeared on behalf of the petitioner in support of the rule.

Babu *Dehendro Chundra Mullick* appeared to show cause.

Babu *Dwarka Nath Chakrabarti*.—The petitioner committed no offence at all either under section 186 or section 225 of the Penal Code. Section 225 has no application so far as the petitioner is concerned. The language used in section 186 does not apply to a person escaping from custody. See *Reg. v. Poshubin Dhambaji Patil* (1) [PETHBRAM, C.J.—Were not the peons public servants under section 21, clause 4, of the Penal Code?] But they were not acting in the discharge of their public functions. The warrants were addressed to the Nazir, and he had no authority to delegate their execution to the peons. [BEVERLEY, J.—That point has been decided in the case of *Dharam Chand Lal v. Queen-Empress* (2).] But there is a substantial difference between sections relating to attachment of property and those relating to arrest of the person. In section 269 of the Civil Procedure Code which deals with attach-

(1) 2 Bom., H. C., 134.

(2) *Anis*, p. 596.

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."

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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).⁴

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
⁴ 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.