CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Sharfuddin.

SUKHESWAR PHUKAN

v.

EMPEROR.*

1911

June 16.

Warrant—Witness—Rescuing from lawful custody—Warrant against a witness issued in the first instance without recording reasons in writing—Legality of warrant and arrest—Penal Code (Act XLV of 1860) s. 225B—Criminal Procedure Code (Act V of 1898) s. 90, Sch. V, Form VII—Practice.

The issue of a warrant of arrest by a Magistrate against a witness in the first instance, drawn up in the terms of Form VII of Schedule V of the Criminal Procedure Code, but without recording his reasons in writing therefor, as required by s. 90 of the Code, is illegal; and a person rescuing the witness arrested on such warrant is not guilty of an offence under s. 225B of the Penal Code.

One Molaram Mohun filed a complaint before the Deputy Magistrate of Sibsagar alleging that certain persons, including one of the petitioners, had broken into his house and carried away his wife, Musammat Mahi, by force. The Magistrate thereupon directed a summons against the accused under s. 426 of the Penal Code. During the trial of the case he issued a warrant, drawn up on a printed form in the terms of Form VII of Schedule V of the Criminal Procedure Code, against Mahi for her attendance in Court, but he recorded no reasons in writing for believing that she would not attend on a summons. The constable, who was entrusted with the execution of the warrant, went to her house and arrested her, whereupon the petitioners released her and took her to the house of one of them. They were tried by a Bench of Honorary Magistrates at Sonari, and convicted and sentenced, under s. 225B of the Penal Code, to various terms of imprisonment An appeal was preferred to the District Magistrate of Sibsagar

* Criminal Revision, No. 527 of 1911, against the order of A. Playfair, District Magistrate of Sibsagar, dated April 3, 1911.

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who, by his order, dated the 3rd April, dismissed the same. The petitioners then moved the High Court and obtained the present rule.

Mr. P. Lall and *Mr. N. C. Bardoloi*, for the petitioners.

No one for the Crown.

CASPERSZ AND SHARFUDDIN JJ. The petitioners have been convicted under section 225B of the Indian Penal Code for resisting the execution of a certain warrant for the arrest of a witness, named Musammat Mahi, whose attendance was desired in the case, No. 610 of 1910. We granted this rule on the ground that the action of the Court issuing the warrant of arrest was illegal, and vitiated the subsequent proceedings including the conviction of the petitioners for resisting an invalid process. The warrant was issued under section 90 of the Criminal Procedure Code which provides that the Court must record its reasons in writing before adopting that extreme measure. It appears from the order sheet of the case, No. 610 of 1910, that no summons was issued on Musammat Mahi. Warrant was ordered in the first instance. That procedure appears to have been illegal inasmuch as, on the face of the order sheet, no reasons were recorded by the Court issuing the warrant. Nor has the Magistrate submitted any explanation to elucidate the matter.

On the warrant itself there is a printed form, in accordance with Form No. VII of Schedule V of the Code of Criminal Procedure, reciting that "whereas I have good and sufficient reasons to believe, that he (the witness) will not attend as a witness on the hearing of the said complaint unless compelled to do so," but the natural meaning of section 90 is that the Court should record its reasons in writing. The adoption of a stereotyped printed form is, in our opinion, not a sufficient compliance with the imperative language of the section. The printed form may be intended for the information of the person whom it is sought to arrest. But that is a different matter. We think, therefore, that the conviction is unsustainable.

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We may add, that the incident appears to have been greatly magnified. Musammat Mahi duly appeared in Court and gave her evidence. The convictions and sentences are, therefore, set aside. We direct that the petitioners be discharged from bail. The rule is made absolute.

Rule absolute.

E. H. M.

CIVIL RULE.

Before Mr. Justice Mookerjee and Mr. Justice Caspersz.

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March 23

KESHO PRASAD SINGH

v.

SRINIBASH PRASAD SINGH.

Injunction—Cases where injunction might be granted—Plaintiff out of possession—Prima facie claim to the disputed property—Irreparable injury.

Where the plaintiff is out of possession and claims possession, the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right; but where the threatened injury will be irreparable, an injunction will lie at the instance of a complainant out of possession.

No injunction should be granted in a case where there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste.

Where the plaintiff has another adequate remedy, and where if an injunction were granted it would be of the vaguest description, no injunction ought to be granted in such cases.

RULE obtained by the plaintiff, Kesho Prasad Singh.

The plaintiff brought a suit for recovery of possession of a large estate, known as the Dumraon Raj, on declaration of his title thereto, against the defendants, Srinibash Prasad Singh and another. The suit of the plaintiff was decreed in the Court of first instance. Defendant Srinibash Prasad, who is a minor under the Court of Wards, preferred an appeal to

* Civil Rule, No. 1149 of 1911, in connection with Appeal from Original Decree, No. 441 of 1910, under section 45 of the Specific Relief Act.