

(1868) 09 CAL CK 0017

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Bhagai Dafadar

RESPONDENT

Date of Decision: Sept. 2, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

The question is, whether the resistance of process of a Civil Court is punishable under the Code of Criminal Procedure by the Courts of Criminal Jurisdiction. It is unnecessary to determine whether the offence is punishable by a Civil Court, if it chose to take cognizance of it. By section 186 of the Penal Code, it is an offence to obstruct any public servant in the discharge of his public functions, and by section 21, every officer of a Court of Justice whose duty is to execute any judicial process, is a public officer. The offence, therefore, is punishable under the Penal Code. Offences punishable u/s 186 of the Penal Code are by the Code of Criminal Procedure made punishable by the Courts mentioned in column 7 of the Schedule to that Act.

Bayley, Macpherson, and Glover, JJ.

Concurred.

L.S. Jackson, J.

2. I only wish to add, that it appears to me that there has been a misapprehension in regard to the applicability of the provisions of sections 22 to 25 of Regulation IV of 1793 to the subordinate Civil Courts. These provisions, as originally enacted, applied only to the Courts of the Zilla Judges. It was held in Illah Buksh Chowdhry, petitioner S.D.R. (1852), 71, that by the provisions of Act VI of 1843, the power of punishing resistance of process, being part of, as being included among the rules for, the trial and decision of all original suits, had been extended to the Courts of the Principal Sudder Ameens; and the Sudder Court would, doubtless, have held that, by the parity of reasoning, the power had been subsequently conferred by Act XXVI of 1852

on the Sudder Ameens and Munsiffs. Whether that view was correct or no, those Acts have been since wholly repealed by Act X of 1861; consequently, the provisions of section 24, Regulation IV of 1793, if they are still in force, now stand as they originally did, applicable only to the Courts of the Zilla Judges. It, therefore, seems to me that there is no ground for holding that resistance of process of the subordinate Civil Courts can be dealt with by those Courts under the Regulation of 1793. It also appears to me more than doubtful, whether the provisions of the section are not superseded by section 2 of the Indian Penal Code, in so far as any case of resistance of process falls within the provisions of the Code.