

---

**(1920) 11 CAL CK 0001**  
**In the Calcutta High Court**  
**Case No : App. No. 3 of 1920**

The Government of Bengal

APPELLANT

Vs

Kojal Haoladar

RESPONDENT

---

**Date of Decision :** 26-11-1920

**Acts Referred:**

**Citation :** (1920) 11 CAL CK 0001

**Final Decision :** Allowed

---

## **Judgement**

Sanderson, C.J.—This is the appeal by the Government from an order made by the Subdivisional Magistrate of Bhola. The Respondent was charged with offences under secs. 143 and 424 of the Indian Penal Code. Shortly stated the gist of the Charge was that the Respondent had cut some paddy after the peon, an officer of the Court, had attached it in pursuance of an order which was made on the 2nd December 1919. The rent which was alleged to be payable, in respect of which the order of distraint had been made, according to the facts which have been placed before us, was payable on the 15th of Agrahyan 1326 (which corresponds to the 1st of December 1919). Consequently on the 16th Agrahyan 1320 (the 2nd of December), the rent was in arrear : that is clear from sec. 51 (3) of the Bengal Tenancy Act, which provides as follows : "Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear." The order for distraint was made under sec. 121 of the Bengal Tenancy Act; which provides as follows : "Where an arrear of rent is due to the landlord of a raiyat or under-raiyat and has not been due for more than a year and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator, (a) any crops or other products of the earth standing or ungathered on the holding. The order for distraint was made on the 2nd December 1919 under that section. The peon attached the crops on the holding on the 4th of December and, it was alleged, that thereafter the Respondent in spite of the protest of the peon had gone on

the land and had cut the crops. Consequently the charge to which I have already referred was presented against the Respondent. The learned Subdivisional Magistrate has not expressed any opinion as to the facts or the merits of the case, but he has disposed of it on a point of law which was taken by the learned Pleader who was appearing on behalf of the Respondent : and, he has based his decision upon a ruling of this Court in *Sheobarat Singh v. Nawrangdeo Narain Singh* ILR 28 Cal. 364 (1901). The ground of his decision is stated in this way:-- A distraint order under this section (i.e., sec. 121) "is legal only for rent of the holding for the year preceding the current year. In this case the rent was due in the year 1320 B.S. and the distraint order was also passed in the same year." That ruling of the learned Subdivisional Magistrate seems to be directly contrary to the provisions of sec. 121 : and, with regard to the case to which the learned Subdivisional Magistrate has referred, it seems to me that it is no authority for the proposition which the Subdivisional Magistrate has enunciated and which I have just read. The proposition seems to me to be based upon a passage at p. 367. In that case the landlord had distrained not only for rent but also for damage : and this Court held that the distraint was had amongst other reasons on account of the fact that it was a distraint for damages. Then the learned Judges said "He" (the landlord) was only entitled to distrain for the rent of the holding in the preceding agricultural year (not for the rent of the "current year," as the District Judge says, but for the rent of the holding for the year preceding the current year) and under cl. (d) to sec. 122, he was also entitled to distrain for the interest due upon that amount, if he chose to claim any." As I understand that passage, the learned Judges were referring to the particular facts of that case. Apparently the rent, in respect of which the landlord was entitled to distrain, had been described by the District Judge as rent for the current year, which, in the opinion of the learned Judges on the facts of that case, was a mistake and ought to have been described as rent of the holding in the preceding agricultural year. There is nothing in that case to show that the rent for the preceding agricultural year had become due more than a year before the order of attachment was made, and, as I understand the case, it is not an authority for the proposition which has been stated by the learned Subdivisional Magistrate.

2. In my judgment, therefore, the decision is wrong and must be set aside. The appeal must be allowed and the case must go back to the Subdivisional Magistrate for adjudication upon the merits of the case.

Mookerjee, J.

I agree.