

CHAPTER 15.

Proceedings against Absconders and Record of Evidence in their absence.

PART A.—MEASURES TO ENFORCE APPBNFARANCE.

1. Sections 87 and 88 of the Code of Criminals Procedure provide for the attachment and sale of the property of any accused person or witness whose presence is required by a Criminal Court as a last remedy for compelling his attendance. The procedure laid down must be strictly followed, otherwise the attachment and subsequent sale will be liable to be set aside. The proper forms for the proclamation, attachment etc., to be used in such proceedings are given in Schedule V of the Code.

Attachment and sale of property.

2. No proclamation can issue under section 87 unless a warrant has issued in the first instance and the Court has reason to believe that the person against whom it was issued has absconded or is concealing himself so that such warrant cannot be executed. The proclamation must fix a date for the appearance of the person at a specified place and that date must be not less than thirty days from the date of the publication of the proclamation. The proclamation must be published in the manner specified in subsection (2) of section 87, and the Court should be careful to record the statement as regards the due publication of the proclamation as required by subsection (3) of that section. The Court has the discretion to issue an order for attachment of property simultaneously with the issue of a proclamation. Section 88 (as amended in 1923) now provides for the summary investigation of claims of objectors to the attachment by Magistrates. The decision of the Magistrate can be challenged by a civil suit within a year.

Proclamation

3. If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment remains "at the disposal of

Consequences of non-appearance of proclaimed person. Sale of property.

Government". It can be sold at once at the discretion of the Court when it is liable to speedy decay if the Court considers that the sale would be for the benefit of the owner. But, otherwise it cannot be sold until the expiration of six months from the attachment and until the disposal of claims of objectors (if any) by the Magistrate.

Directions for sale. Only life interest can be sold in certain cases.

4. In conducting sales, the interest of the absconding person in the attached property which is to be sold should be clearly specified so as to avoid complications in the future. It has been held by a Full Bench of the Punjab Chief Court that only the life-interest of an absconder governed by agricultural custom in ancestral immovable property can be sold under section 87-88, Criminal Procedure Code. As a result the reversioners of the absconder have a right to claim such property after the death of the absconder. (*Sec 18 P. R. 1908 F.B., 52 P.R. 1915*).

Property or its proceeds may be given to absconder if he appear before Court.

5. If the absconder appears or is apprehended and brought before the Court within two years from date of the attachment of his property and satisfies the Court *(i)* that he did not abscond or conceal himself for the purpose of evading execution of the warrant and *(ii)* that he had no such notice of the proclamation as could enable him to attend within the specified time, he can get the property back or its net proceeds if it has been sold (section 89).