

SUPPRAMANIAN CHETTY *et al.* v. CURERA *et al.*

1898.

January 17.

Writ of execution—Arrest of debtor—Commitment to jail—Refusal of jailer to receive prisoner for want of maintenance money—Offer of prisoner to return next day to Court, if released—Order of District Judge made at his house—Re-arrest of debtor on subsequent day—Re-committal to jail—Validity of such orders.

C, having been arrested on a writ of execution and committed, was refused admittance to prison, and was thereupon taken to the District Judge at his house. C then voluntarily offered to appear in Court the next day and was allowed to go, no order of discharge having been made.

Held, that C's re-arrest and commitment to jail on a subsequent day was legal.

A District Judge cannot act judicially except in Court, and an order of discharge made at his house is liable to be set aside as invalid.

IN execution of a decree passed against the three defendants in this case the third defendant was arrested and brought before the District Court. On the 22nd November the District Judge ordered his committal and directed the plaintiff to deposit a sum of Rs. 30 for his maintenance in jail. The defendant and the

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January 17. warrant of committal were taken to the jail without an acknowledgment under the hand of the Fiscal of the receipt of the money for the maintenance of the defendant. The jailer refused to take charge of the defendant. As it was past 6 P.M. the peon took the defendant to the District Judge's house, and upon the defendant voluntarily offering to appear before him the following day in Court the District Judge let him go.

He did not appear on the following day, and the District Judge issued a warrant for his re-arrest, on the motion of the Deputy Fiscal. On the 26th November the defendant was arrested, and on being produced the Court ordered his commitment to jail on a fresh committal.

Defendant appealed against the orders of the 22nd and 26th November.

Jayawardana, for third defendant.

Dornhorst, for respondent.

17th January, 1898. LAWRIE, J.—

The District Judge committed this appellant to jail when he was brought before him on a civil warrant of arrest.

In the evening, after the Judge had left the Court-house, the Fiscal's peon brought the appellant to the Judge's house and reported that the jailer refused to receive the debtor because subsistence money had not been deposited. In a recent case this Court decided that a District Judge could not act judicially except in Court, and it set aside a discharge made by the District Judge at his own house. Here the District Judge did not discharge the debtor. He was allowed to go away promising to return next day, which he failed to do. As there was no discharge, the debtor's re-arrest was lawful, and his present incarceration is, in my opinion, legal.

WITHERS, J.—

In my opinion the judgment-debtor in this case is liable to be arrested a second time, because he had not been discharged from custody under the first warrant by an order of the Judge of the Court in which the warrant of arrest was taken out.
