

QUEEN v. PODI BABA.

*D. C. (Criminal), Kalutara, 618.*

*Defective warrant of arrest—Competency of a police headman as public servant to arrest a person charged with robbery, independently of a warrant—Causing hurt to such servant—Plea of private defence.*

Causing hurt to a police headman, while in good faith and under colour of his office he was executing a defective warrant of arrest upon a person charged with robbery, is an offence under section 325 of the Penal Code.

And in the absence of any act on the headman's part to cause reasonable apprehension of death or grievous hurt, the right of private defence cannot be availed of against an arrest made by such public servant, who believed *bonâ fide* that he had the power to make the arrest.

THE accused having been charged with robbery, a warrant of arrest was issued against him, addressed to one Jayasuria, Deputy Fiscal and Mudaliyâr of Rayigam koralé, who entrusted it for execution to the complainant, Jayatilaka, Police Headman of Rambukkana. Upon arresting the accused, the accused caused him hurt by cutting him with a knife.

The District Judge convicted the accused under section 323 of the Penal Code.

On appeal, *Jayawardana* appeared for defendant, and contended that the complainant had no authority to arrest the defendant, and that the warrant was informal because it did not disclose the district over which the signing Magistrate had jurisdiction, nor set forth sufficiently clearly the offence with which the defendant was charged.

*Cur. adv. vult.*

19th March, 1895. WITHERS, J.—

The question is whether the accused has been rightly convicted of an offence under section 323 of the Ceylon Penal Code, in that on a certain day in January last he voluntarily caused hurt to the prosecutor, being a public servant, in the discharge of his duty as such public servant. It was strenuously pressed upon me by Mr. Jayawardana that the warrant committed to the prosecutor was bad, and that the prosecutor had no power to execute it.

The prosecutor, one David Perera Jayatilaka, is a Police Headman of Rambukkana. The duty he was supposed to be discharging at the time the accused assaulted him was the execution of a warrant of arrest signed by the Police Magistrate of Pánaduré.

The warrant was produced before the Court, and is marked with the letter A. The warrant, it was urged, does not particularize with sufficient certainty the offence with which the person to be arrested under it stands charged, and it does not disclose the district over which the signing Magistrate has jurisdiction. In addition to these defects this warrant was not directed to the said David Perera Jayatilaka : it was directed to the Deputy Fiscal, Bandaragama.

That officer did not, as he might have done, endorse the name of D. P. Jayatilaka upon the warrant. Hence Jayatilaka was not authorized to arrest the accused under that warrant. I think the warrant should have specified the time and place of the committal of the offence, and that the local jurisdiction of the Magistrate to deal with it should have been disclosed on the face of the warrant. It is certainly clear that Jayatilaka was not authorized to execute the warrant.

Still, this is not a complete defence in the circumstances. Jayatilaka is a public servant, and might have arrested the accused on the charge of robbery without a warrant. He was acting in good faith under colour of his office. He was executing a warrant signed by the Police Magistrate of the district which had been

handed to him for execution. He himself believed he had a right to execute it. In acting under it he did nothing to excite the reasonable apprehension of death or grievous hurt to the accused or to any one.

The 92nd section, sub-section 2, of the Penal Code enacts that "there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law."

The conviction must therefore be affirmed.

