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Present: Lascelles C.J. and Middleton J.

THE ATTORNEY-GENERAL v. CAPTAIN SKINNER.

39—*P. C. Colombo, 31,506.*

Police officer—Arrest without warrant—Non-cognizable offence—Police cannot admit to bail—Must take person arrested to Police Magistrate—Criminal Procedure Code, s. 33 (2)—Police Ordinance, No. 16 of 1865, s. 55.

Where a police officer arrested without a warrant a person charged with a non-cognizable offence, and released him on his executing a bail bond with a surety, it was held that the bond was invalid, and was not enforceable, as the provisions of section 33 (2) were not complied with.

Section 55 of Ordinance No. 16 of 1865 applies only to cases where a person is lawfully taken into custody by a police officer without a warrant. These cases are detailed in section 32 of the Criminal Procedure Code.

THIS was an appeal by the Attorney-General against an order of the Police Magistrate of Colombo. The facts are set out in the judgment.

Walter Pereira, K.C., S.-G. (with him *Akbar, C.C.*), for the Attorney-General.—The Superintendent of Police, Colombo, on the receipt of the warrant for the arrest of Captain Harrison, sent a telegram to the Superintendent of Police, Kandy, to arrest him. The Superintendent showed the telegram to Inspector Peris and ordered him to arrest Captain Harrison. The Inspector had sufficient reason to believe that Captain Harrison, who had no permanent residence in Ceylon, was about to leave it. Though the offence was a non-cognizable one, the arrest was legal under section 33 (2) of the Criminal Procedure Code.

Under section 55 of the Police Ordinance (No. 16 of 1865) the officer in charge of a police station may admit the person arrested by the police to bail. That section is still law, and cannot be ignored. Section 55 of the Police Ordinance and section 33 (2) of the Criminal Procedure Code must be read together. Under section 33 (2), when the peace officer makes an arrest for a non-cognizable offence, he must take the person arrested forthwith to the nearest Police Magistrate. But if the person arresting is a police officer, section 55 of the Police Ordinance applies, and the officer in charge of the police station may admit the person arrested to bail.

The term "peace officer" includes a police officer. Section 33 (2) of the Criminal Procedure Code applies to the case of peace officers who are not police officers; when the officer arresting is a police officer, section 55 of the Police Ordinance applies.

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The sections of the Criminal Procedure Code regarding arrest do not render obsolete the provisions of the Police Ordinance. See *Cornelis v. Cookson*,¹ where it was held that section 59 of the Police Ordinance is not superseded by chapters IV and V of the Criminal Procedure Code.

Where the warrant has been directed to the police, it does not matter which officer makes the arrest. A police officer may perform his duties over the whole Island (see *Gressy v. Perera*²).

Elliott, for the respondent, not called upon.

February 2, 1912. LASCELLES C.J.—

This is an appeal from an order of the Police Magistrate of Colombo refusing to forfeit the bail bond marked X 3. The material facts of the case, shortly stated, are as follows. Two warrants were issued by the Police Court of Colombo for the arrest of a Captain Harrison. One of these was issued to the Superintendent of Police, Colombo, for the arrest of the offender within the jurisdiction of the Police Court of Colombo, and the other was issued to the Superintendent of Police, Kandy. The warrants were both issued on December 23, 1911. Captain Harrison was arrested by the Police in Kandy; and it is admitted that the officer who arrested him had not either of the warrants issued in Colombo, or a copy of either of them. The arrest was in effect an arrest without a warrant at all. The officer who arrested Captain Harrison released him on the security bond X 3 being executed with Captain Skinner as surety. The Police Magistrate has held that, inasmuch as Captain Harrison was arrested without a warrant, the bail bond for his release is invalid and of no effect. The question seems to turn upon the construction of section 33 of the Criminal Procedure Code and section 55 of Ordinance No. 16 of 1865—the Police Ordinance. Under the former section it is provided by sub-section (2) that if a police officer has reason to believe that a person who is accused of committing a non-cognizable offence is about to leave the Colony, he may be arrested by the police officer, and thereupon he may be taken forthwith to the nearest Police Magistrate, who may either require him to execute a bond with or without a surety, or may order him to be detained in custody until trial. Now, if the police of Kandy had acted under sub-section (2) of section 33 of the Criminal Procedure Code, their action would have been beyond question. Captain Harrison on arrest would have been immediately taken

¹ (1902) 6 N. L. R. 40.

² (1901) 5 N. L. R. 116.

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before the Police Magistrate at Kandy, who in all probability would have admitted him to bail, and the surety bond would have been a perfectly good and enforceable security. But the police have not conformed to the procedure prescribed by the sub-section. If Captain Harrison was in fact arrested under the provisions of this sub-section, which provides for cases of emergency, then the police ought to have strictly complied with the provisions of the sub-section. It is contended that the arrest, and therefore the bail bond, is valid under section 55 of the Police Ordinance. But this section seems to me to apply only to cases where a person is lawfully taken into custody by a police officer without a warrant. These cases are detailed in section 33 of the Criminal Procedure Code, and it seems to me that section 55 must apply to cases of this character. Otherwise there would be a serious discrepancy between section 55 and section 33 of the Criminal Procedure Code. It is urged that there is a distinction between the two sections, on the ground that section 33 deals with peace officers, and section 55 refers only to police officers of the regular police. But as the term "peace officer" in the Code includes all police officers, I do not see that anything can be based on this distinction. The decision of the Police Magistrate is in my opinion correct, and should be affirmed.

MIDDLETON J.—I agree.

Affirmed.