1954 *Present :* **Sansoni J.**

C. S. ARUMUGAM, Appellant, *and* A. VIJAYARATNAM (Inspector of Police) *et al.*, Respondents

*S. C. 701—M. C. Jaffna, No. 2 (Extradition)*

*Extradition—Foreign warrant—Form of endorsement—Same warrant cannot be executed twice—Fugitive Offenders Act, 1881, ss. 3, 13, 14, 26.*

A warrant is sufficiently endorsed for the purpose of compliance with sections 13 and 26 of the Fugitive Offenders Act if it bears the mere signature of the authority endorsing ; the endorsement need not be specifically directed to the police officers or other officials entitled to execute the warrant.

Once a warrant has been executed, no further action can be taken on it. If, therefore, an offender arrested under it is discharged on the ground that there is not enough proof that it was issued by a person having lawful authority to issue it, he cannot be arrested again on the same warrant even if the officer executing it establishes that it was issued by lawful authority.

APPEAL from an order of the Magistrate's Court, Jaffna.

*E. R. S. R. Coomaraswamy*, with *E. B. Vannithamby* and *Daya Perera*, for the appellant.

*Douglas Jansze*, Acting Solicitor-General, with *Sam. Wijesinha*, Crown Counsel, for the respondents.

*Cur. adv. vult.*

August 6, 1954. SANSONI J.—

The appellant, who has also filed an application for revision, is dissatisfied with an order of the Magistrate of Jaffna directing that he be handed over to an Inspector of Police of the Federation of Malaya for removal to Malaya. This officer first gave evidence before the Magistrate on 23rd April, 1954, after the appellant had been arrested. That arrest was upon a warrant issued by the Magistrate of Penang, sitting at George Town, and endorsed on 22nd April, 1954, by the Magistrate of Jaffna. The offence alleged to have been committed by the appellant is criminal breach of trust of 12,000 dollars while acting as an agent. After inquiry the Magistrate of Jaffna on 9th May, 1954, discharged the appellant as he was not satisfied that the warrant had been issued by a person having lawful authority to issue it. If the Magistrate had paid heed to section 14 of the Fugitive Offenders Act, 1881, he would have required proof of this important element before he endorsed the warrant—see *Kandasamy v. Bandaranayake* [1]. The far-reaching consequences of his failure to do so will presently appear.

Subsequently a copy of the warrant, which had also been signed by the Magistrate of Penang and which the Inspector of Police had brought with him, was placed before the Magistrate of Jaffna who endorsed that copy on 24th May, 1954. The appellant was arrested again and produced before the Magistrate. After inquiry the order now appealed from was made as the Inspector was then in a position to establish that the Magistrate of Penang had lawful authority to issue the warrant.

The appellant's counsel raised several grounds of objection to the order but I intend to deal with only the two most substantial objections raised:—

(1) That the warrant had been executed once, after the first endorsement, and no further action could be taken on it.

(2) That the warrant was not properly endorsed.

As regards the second objection, it was submitted that merely signing on the back of the warrant under the words "warrant endorsed for execution within the jurisdiction of this Court", was not a sufficient compliance with sections 13 and 26 of the Act which deal with the backing of warrants.

[1] *(1947) 48 N. L. R. 449.*

It will be noted that section 3, like section 13, stipulates that a warrant should be endorsed " in manner provided by this Act ", and section 26 particularises how a warrant should be endorsed. It was held by de Villiers, J.P., and Bristowe, J., in *R. v. Robertson* [1] that a warrant is sufficiently endorsed by the mere signature of the authority endorsing, and that the endorsement need not be specifically directed to the police officers or other officials entitled to execute the warrant. I therefor hold that the objection to the form of endorsement must fail.

But the first objection seems to me to be fatal to the validity of the arrest, and it is directly supported by authority. I refer to the case of *Jackson v. Attorney-General* [2]. In that case a warrant was issued by the Magistrate in the Cape Colony for the arrest of an accused who was in the Transvaal. The warrant was endorsed by the Magistrate in the Transvaal, before whom the accused was later arrested and produced. He was discharged for want of sufficient proof of identity but was again arrested on the same warrant. By that time the officer who arrested the accused led evidence to prove the accused's identity and the Magistrate ordered the accused's removal to the Cape Colony. The accused thereupon appealed. On appeal it was argued that once the appellant had been discharged from arrest under the warrant in question he could not be re-arrested under the same warrant. It was held by a Bench of three Judges consisting of Innes, C.J., Solomon, J., and Bristowe, J., that once the order of discharge had been made the warrant ceased to be of force in the Transvaal. Innes, C.J., in considering the effect of the first order of discharge, said : " When that had been done it seems to me the warrant ceased to be of any force in the Transvaal, whatever virtue, if any, it still retained in the Cape Colony. It had been fully used here ; it had served its purpose. The man had been brought up and discharged ; and for any purpose within the Transvaal the warrant in my opinion was dead ". Bristowe, J., who put the matter a little differently, said :—" Here the original warrant was issued by the Resident Magistrate of Aberdeen, Cape Colony. But a warrant issued in Cape Colony does not run in the Transvaal. In order that it may do so it requires to be indorsed, under sec. 13, by a Transvaal magistrate. That indorsement is an authority to apprehend the person charged within the jurisdiction of the indorsing magistrate, and to bring him before a magistrate in the Transvaal. And the function of the magistrate before whom the person is then brought is to decide whether or not he should be surrendered to the Cape Colony authorities. The authority by which such surrender ultimately takes place is not the warrant issued in Cape Colony, nor is it the indorsement of the magistrate here ; but it is the order made by the magistrate before whom the person charged is brought. In this case the accused was brought before the magistrate, who considered the case, and decided that he was not the person referred to in the Cape Colony warrant. Instead of remanding the case (as he might have done, but apparently was not asked to do) he discharged the prisoner. The case therefore seems to me to stand on exactly the same footing as if the applicant had been arrested on a charge of having committed an offence in this country, tried by the Court, and discharged. That being so, it seems to me that the warrant is at an end, and there can be no rearrest upon it. "

[1] *(1912) T. P. D. 10.*

[2] *(1910) Transvaal Law Reports.*

I have cited these passages from the judgments in that case because they seem to me to meet a submission of the learned Acting Solicitor-General who supported the order appealed against. One argument he raised was that as the warrant in the present case had not been fully executed it could not be said to be dead. But this was one of the grounds urged in support of the Extradition Order in the case cited, and it was rejected for reasons with which I am in respectful agreement.

Another submission was that there were actually two warrants issued in this case, each separate document being a separate warrant. It was sought to distinguish the South African case on this ground. I cannot agree with this submission. It appears from the proceedings that the Magistrate of Penang signed three separate writings, all of them bearing the same date and worded in exactly the same terms. All three, in my opinion, constituted one and only one warrant. It may well be that if one copy was lost or mislaid another copy could have been acted upon. But I reject the submission that where an arrest which has been effected upon one copy is held to be invalid the accused will be liable to rearrest upon another copy. The Act itself contemplates the issue and endorsement of only *one* warrant for the apprehension of a person accused of an offence, and nowhere in the Act is it even suggested that several warrants can be issued or indorsed for the arrest of a single accused. Moreover, it seems contrary to principle that an accused who has been arrested on a warrant and discharged by order of a Magistrate should, without fresh proceedings being taken for the issue of a second warrant, be liable to rearrest upon what is in reality the same warrant.

I would therefore allow this appeal and order that the appellant be discharged from these proceedings.

*Appeal allowed.*