

1955

Present : H. N. G. Fernando, J.

ARUMUGAM, Appellant, and A. VIJAYARETNAM
(Inspector of Police, Federation of Malaya) and another, Respondents

S. C. 1450—M. C. Jaffna, 272/P.

Fugitive Offenders Act, 1881—Section 29—Warrant of arrest—Authentication of it.

The evidence before a Court in Ceylon of a witness who states on oath that he was present at the issue of, and identifies the signature on, the warrant of arrest constitutes authentication "by the oath of some witness" within the meaning of section 29 of the Fugitive Offenders Act, 1881.

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

S. Nadesan, Q.C., with *E. B. Sathrukulasinghe*, for the arrested person, appellant.

A. C. Alles, Crown Counsel, with *S. S. Wijesinha*, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 13, 1955. H. N. G. FERNANDO, J.—

This is an appeal against an order of the Additional Magistrate, Jaffna, directing the appellant to be taken in custody by the 1st respondent (who is a Malayan Inspector of Police) and to be produced before the First Magistrate of Georgetown, Penang. The appellant was arrested in Ceylon upon the authority of a warrant of arrest, purporting to have been issued by the First Magistrate of Georgetown, and "backed" by the Magistrate of Jaffna. The only question which counsel for the appellant has been able to press seriously is that the order under appeal is bad on the ground that the original warrant of arrest was not duly authenticated as required by the Fugitive Offenders Act, 1881, which authorises the making of the order.

Section 29 of the Act provides that a warrant is deemed to be duly authenticated if both the following conditions are satisfied :—

- (1) that it purports to be signed by a Magistrate of the territory in which it was issued ; and
- (2) either that it is authenticated by the oath of some witness ;
or that it is authenticated by the official seal of the Governor of the territory.

Mr. Nadesan has argued that the authentication "by the oath of some witness" refers to an endorsement on the warrant by some person, stating on oath that he is a witness to the signature of the Magistrate. I do not agree that such is the plain meaning of the term "authentication by oath of some witness"; nor do I think that a mere writing purporting to be a statement made on oath in a foreign country could have been intended to be a sufficient authentication of the signature of a Magistrate to a warrant of arrest. On the other hand, the evidence before a Court in this country of a witness who states on oath that he was present at the issue of, and identifies the signature on, the warrant of arrest, affords a proper and usual mode of proof of the signature; it is also the mode to which the term used in the section appears in its ordinary connotation to refer. The evidence led in the present case amply fulfils the requirements of the section as I understand them.

Even if that view be incorrect, the second mode of authentication permitted by the section has been complied with. The warrant of arrest purports to be authenticated by the signature and seal of the Resident

Commissioner, Penang. Under the relevant Malayan law, which has been duly proved in these proceedings, the Resident Commissioner is the officer administering the Government of Penang ; and " Governor " in section 29 of the Fugitive Offenders Act includes the officer administering the Government of a British possession.

The appeal was dismissed for these reasons.

Appeal dismissed.
