

July 22, 1931. DRIEBERG J.—

In P. C. Jaffna, No. 3,988, a warrant was issued on October 31, 1930, for the arrest of Eliyatamby ; it was issued for execution to Selvadurai, a Police Vidane, and was returnable on November 3. On the morning of November 1 Eliyatamby surrendered before the Police Court. The Magistrate noted that he was charged, but how this was done does not appear, that he pleaded not guilty, and he directed that the case be called on November 3 ; the Magistrate made no order regarding the warrant. In the afternoon of November 1 Selvadurai, who was not aware that Eliyatamby had surrendered earlier in the day, met him and explained the warrant to him. Eliyatamby said he had already surrendered. Selvadurai asked him for proof of this and as he had none he asked Eliyatamby to go with him to the Court so that he might verify his statement. The first respondent then came up, objected to Eliyatamby going to Court with Selvadurai, pulled the warrant from his hand, tore it, and struck him on his arm. The second respondent seized the hand of Selvadurai with which he held Eliyatamby ; the two witnesses say that the second respondent pulled Selvadurai by his arm.

The respondent was charged under section 220 of the Penal Code with intentionally offering resistance or illegal obstruction to the lawful apprehension of Eliyatamby, and under section 344 with using criminal force to Selvadurai with intent to prevent him from discharging his duty as a public servant.

The Police Magistrate accepted the evidence for the prosecution. He thought however that the warrant ceased to be in force on Eliyatamby's surrender and that the resistance by the respondents was not illegal. The complainant appeals with the sanction of the Solicitor-General. The learned Deputy Solicitor-General contended that the warrant was not cancelled and that even if such an order had been made the execution of the warrant by Selvadurai was lawful until

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Present : Driberg J.

KING v. SINNADY *et al.*

221—P. C. Jaffna, 3,988.

Warrant—Accused surrendering into Court before returnable date—No order cancelling warrant—Resistance to officer executing it—Penal Code, s. 220—Criminal Procedure Code, s. 50 (2).

Where a warrant was issued for the arrest of a person, who surrendered to Court before the returnable date, and where the Court made no order cancelling the warrant,—

Held, that the warrant remained in force and that resistance to its execution was unlawful.

A PPEAL by the complainant with the sanction of the Solicitor-General.

L. M. D. de Silva, D. S.G. (with him *Pulle, C.C.*), for complainant, appellant.

its cancellation was communicated to him ; the latter part of his submission does not arise for consideration for in my opinion the warrant was in force when it was executed.

Section 50 (2) of the Criminal Procedure Code enacts that a warrant remains in force until it is cancelled by the Court which issued it or until it is executed. Cancellation can only be effected by an act or by an express order declaring the cancellation. The Court here made no order regarding the warrant and it consequently remained in force ; this being so the respondents on the finding of the Magistrate are guilty of the offences with which they are charged and I set aside the judgment of acquittal and convict them accordingly.

It is possible that the respondents thought the action of Selvadurai was not justified and that they were within their rights in resisting the arrest of Eliyatamby.

I sentence the first respondent, S. Sinnady, on both charges to pay a fine of Rs. 15 and in default to two weeks' simple imprisonment, and the second respondent, V. Suppramaniam to pay a fine of Rs. 5 and in default to undergo simple imprisonment for one week.

Sentence varied.
