

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

QUEEN-EMPRESS

1897.
July 15.

v.

KATTAYAN AND OTHERS.*

*Warrants issued under Act XIII of 1859—Execution outside jurisdiction—
Criminal Procedure Code, s. 83.*

Section 83 of the Criminal Procedure Code applies to warrants issued under section 1 of Act XIII of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrates issuing them.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by J. K. Batten, Acting District Magistrate of Trichinopoly.

The case was stated as follows :—

“The second-class Stationary Magistrate of Kulittalai in this district has received three warrants issued, apparently under section 1 of Act XIII of 1859, by the second-class Magistrate of Coonoor for the arrest of three persons resident in this district.

“As the Government of India is advised that there is reasonable room for doubt whether the provisions of the Code of Criminal Procedure (1882) regarding warrants apply to warrants issued under section 1 of Act XIII of 1859, and whether a warrant under that Act can be executed at all outside the jurisdiction of the Court which issues it, I have the honour to request an authoritative ruling on the point.”

The Public Prosecutor (Mr. *Powell*) for the Crown :

I am instructed to put before the Court the arguments for and against the legality of executing warrants issued under section 1 of Act XIII of 1859 outside the jurisdiction of the Court issuing them. Whether such a procedure is legal or not depends upon

* Criminal Revision Case No. 29 of 1897.

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whether section 83 of the Criminal Procedure Code applies to these warrants, for there is no other provision by which they could be executed outside the jurisdiction.

First as to the considerations which would seem to show that the procedure in question is illegal, and that section 83 of the Criminal Procedure Code does not apply to these warrants: Sections 75 and 93 of the Code would seem to limit the provisions of Chapter VI, in which section 83 occurs, to warrants issued under the Code. Now warrants issued under the Code, as opposed to warrants not issued under the Code, must mean warrants for the arrest of persons triable under the Code. But the workman for whose arrest a warrant is issued under the Act is not triable under the Code. Only those persons are triable under the Code who are charged with having committed an offence (see section 5 of the Code), *i.e.*, with having done some act which renders them liable to punishment [section 4, clause (p)]. Now the workman for whose arrest a warrant is issued under Act XIII of 1859 has done nothing punishable; he only becomes liable to punishment when he has failed to obey the Magistrate's order directing him to repay the advance or perform the work. It would, therefore, appear that when the warrant issues he is not triable under the Code and that consequently the warrant is not issued under the Code.

Next as to the considerations which show that section 83 of the Criminal Procedure Code is applicable to warrants issued under Act XIII of 1859: The reasoning which I have put before the Court assumes that the fraudulent breach of a contract is not an offence within the meaning of the Code, because it is not the mere breach of contract which is punishable, but the failure to obey the order of the Magistrate. But the preamble to Act XIII of 1859 would show that it was intended to punish fraudulent breaches of contract; for it declares that "the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breaches of contract should be subject to punishment"; and the Act prescribes the modes of bringing such fraudulent breaches of contract to punishment.

Moreover before the Procedure Code of 1882 was passed, it seems clear that warrants issued under Act XIII of 1859 could be executed outside the jurisdiction. At the time when that Act was passed, Acts VII of 1854 and XVII of 1856 were in force;

and under section 5 (1) of the former Act and section 1 (2) of the latter Act, warrants issued under Act XIII of 1859 could have been executed outside the jurisdiction. Before these Acts were repealed, the Criminal Procedure Code, Act XXV of 1861, came into force. Under section 84 of that Code, warrants could be issued outside the jurisdiction of the Magistrate issuing them. The provisions of that Code were, by section 21, applicable to all offences, whether under the Penal Code, or under any special or local law, triable by Criminal Courts. Now the word offence was not defined in that Code and consequently was not restricted to punishable acts. The effect of this was to make section 84 of the Code applicable to warrants issued under Act XIII of 1859,

(1) Section 5 of Act VII of 1854 was as follows :—

The warrant of any Magistrate or Justice of the Peace having jurisdiction in any part of the territories under the Government of the East India Company for the arrest of any person charged with having committed any offence, whether such warrant be issued under the provisions of this Act or not, may be executed within the jurisdiction of any other Magistrate or Justice of the Peace having jurisdiction in any part of the said territories, whether in the same Presidency or not, upon having a written authority under the hand and seal of the Magistrate or Justice of the Peace within whose jurisdiction it may be executed, previously endorsed thereon, and which endorsement may be to the following effect :—

To the Nazir [or other officer as the case may be] of the Zillah of

“ This warrant may be executed in the Zillah or District of [describing the Zillah or District of the indorsing Magistrate or Justice of the Peace] by any of the officers to whom the same is directed or by

” [describing by his name of office the officer to whom a similar warrant, issued by the indorsing Magistrate or Justice of the Peace, would be directed].

(2) The preamble to Act XVII of 1856 and section 1 thereof were as follows :—

Whereas by Act VII of 1854, certain provisions were made for the execution, in any part of the territories under the Government of the East India Company, of warrants of arrest issued by competent officers in any other parts thereof, and whereas it is expedient that similar means should be provided for the execution as aforesaid of all other criminal process issued as aforesaid, it is enacted as follows :—

Any criminal process whatever including summonses, subpoenas, and search warrants, as well as warrants of arrest, issued by any Magistrate having jurisdiction in any part of the territories under the Government of the East India Company, may be executed within the jurisdiction of any other Magistrate having jurisdiction in any part of the said territories, whether in the same Presidency or not, upon having a written authority under the hand and seal of the Magistrate within whose jurisdiction it is to be executed previously endorsed thereon. Provided that no summons or subpoena shall be issued by a Magistrate to compel the attendance of a defendant or witness from any place beyond the local limits of his jurisdiction, unless special ground shall be proved to the satisfaction of the Magistrate in support of the application, which grounds shall be recorded before the summons or subpoena is issued,

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because the word offence would cover fraudulent breaches of contract. The same reasoning applies to the Code of 1872, in which the corresponding sections were section 8 and section 167, and in which the word offence was not defined.

Again by sections 7 and 8 of the Code of 1872, all criminal trials, and by section 6 all enquiries by Magistrates were to be held according to the provisions of the Code. It cannot be denied that even in its first stage a case under Act XIII of 1859 is either a criminal trial or an enquiry. The only reported case that can be found with reference to this is *Pollard v. Muthial*(1), where the question was whether a case under Act XIII of 1859 could be tried summarily. The point deserving of notice in this case was that all the Courts dealing with it accepted the fact that the Criminal Procedure Code governed Act XIII of 1859. The Procedure Code Act X of 1882 for the first time defined the word 'offence' (as an act or omission made *punishable* by any law). It is unreasonable to suppose that the Legislature by this mere definition intended to take away from Magistrates issuing process under Act XIII of 1859, the right so essential for its working and so long existent of having process executed in another jurisdiction. Had this been the intention, it would have been clearly expressed.

If the new Code does not apply to Act XIII of 1859, there is no provision of law and no procedure prescribed governing the proceedings before a Magistrate under that Act. How is the Magistrate to secure the attendance of witnesses and what process is to be adopted to compel production of documents?

If process cannot be executed beyond the jurisdiction of the Sub-Magistrate, *e.g.*, if the Sub-Magistrate of Coonoor cannot issue any summons or warrant beyond a radius of 5 or 6 miles, and can neither summon a defaulting cooly from Ootacamund, nor issue a bailable warrant for him in Mettupalaiyam, Act XIII as a safeguard of the planting interest is absolutely valueless.

ORDER.—We are clearly of opinion that section 83 of the Criminal Procedure Code is applicable to warrants issued under the provisions of the Act XIII of 1859. There are no words in that section limiting the operation of it to warrants issued under the Code. The reference to warrants issued under the Code made in sections 75 and 93 cannot, we think, be taken to have the effect

(1) I.L.R. 4 Mad., 234.

suggested. It cannot be supposed that, if when the Code of 1861 and 1872 were in force, the sections in them corresponding to section 83 of the present Code were applicable to warrants issued under Act XIII of 1859, that state of the law was intended to be altered in the Code of 1882. To hold that none of the provisions of Chapter VI of the Code apply to such warrants would lead to the conclusion that there is no provision made for the issuing or executing of them. It is not necessary to say whether, under the Act of 1859, breach of contract is constituted an offence. The language of the Act appears to us to indicate that such was the intention of the Legislature, but at any rate the Act authorizes the Magistrates, on a complaint being made, to issue a warrant, and the only question is whether the provisions of the Criminal Procedure Code apply to that warrant. We think that the provision in question does apply.

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APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Benson.*

IN SECOND APPEAL No. 792 of 1895:

PERIAVENKAN UDAYA TEVAR (DEFENDANT), APPELLANT,

v.

SUBRAMANIAN CHETTI (PLAINTIFF), RESPONDENT.*

1896.
October
5, 7, 13.

IN SECOND APPEAL No. 1440 of 1895:

SUBRAMANIAN CHETTI (PLAINTIFF), APPELLANT,

v.

PERIAVENKAN UDAYA TEVAR (DEFENDANT), RESPONDENT.*

Limitation Act, s. 19—Acknowledgment—Deposition signed by the debtor.

To satisfy the requirements of section 19 of the Limitation Act an acknowledgment of a debt must amount to an acknowledgment that the debt is due at the time when the acknowledgment is made.

A record made by a Judge of the evidence given by a debtor as a witness at the trial of a suit and signed by the debtor is a writing signed by the debtor within the meaning of section 19 of the Limitation Act.

* Second Appeals Nos 792 and 1440 of 1895.