1906.
April 12.

Present : The Hon. Mr. A. G. Lascelles, Acting Chief Justice, and Mr. Justice Middleton.

SURIAN PULLE *et al.* v. SILVA *et al.*

P. C., Galle, 30,824.

Warrant of arrest in Sinhalese—Validity—English the language of the Courts—Civil Procedure Code, ss. 40, 75, 169, 186, 374, 758, *and form No.* 60.

Held (by LASCELLES A.C.J. and MIDDLETON J.), that a warrant of arrest issued against a judgment-debtor in the Sinhalese language is valid.

Per MIDDLETON J.—Though English is the undoubted language of the Courts in Ceylon, yet there may be cases in which process may be issued in the language of the person against whom it is directed, provided that the Judge who issues it is acquainted with the language of the document he signs.

Per MIDDLETON J.—The fact that the Code lays down that certain forms of process are invariably to be in the English language seems to imply that other forms might possibly be in the language of the person upon whom they have to be served.

APPEAL from a conviction.

The facts sufficiently appear in the judgment of Middleton J.

H. J. C. Pereira, for 1st and 4th accused, appellants.

A. St. V. Jayewardene, in support of the conviction.

Cur. adv. vult.

12th April, 1906. MIDDLETON J.—

The appellants in this case were the 1st and 4th accused. The 1st accused Arnolis has been convicted under section 484 of insult, section 183 for obstructing a Fiscal's officer in the execution of his duty, and under section 334 of using criminal force, and sentenced to a cumulative punishment for all three offences of one month's rigorous imprisonment. The 4th accused, one Teberis Samarasinghe, has been convicted under section 484 of insult and under section 314 of causing hurt and sentenced to the cumulative punishment of a fine of Rs. 50.

It would seem that a warrant against the person of the 1st accused in No. 3,719, C. R., Galle, had been granted to Arnolis Silva, the Fiscal's peon, who arrested the 1st accused and charged him and the 4th accused and others with committing the various offences of which they have been convicted upon the execution of the warrant.

The warrant had been granted and signed by Mr. Baumgartner, but was couched entirely in the Sinhalese language.

It was contended before us—(1) that inasmuch as English is the language of the Courts the warrant, being in Sinhalese, was bad in

law; (2) that there was no evidence upon which the 1st accused could have been convicted under section 484; (3) that the 4th accused was wrongly convicted under section 314, inasmuch as the evidence showed that the offence, if any, committed by him was one of criminal force and not of causing hurt; (4) that the sentences, being cumulative on convictions for separate charges, were bad in law under section 17 of the Criminal Procedure Code of 1898.

With regard to the language of the warrant the dictum of Bonser C. J., was relied on in *Cornelis v. Uluwitike* (1) where that learned Judge expressed the opinion that serious doubts might arise as to the legality of an arrest upon a warrant written in the Sinhalese language, when the language of the Courts of the Colony was the English language.

In the case before us the person to be arrested was a Sinhalese, and it seems somewhat opposed to reason that he should complain of being arrested upon a warrant written in a language which presumably he was better able to understand than the English language.

Looking at the judgment of Moncreiff A. C. J. in *Thurasami v. Sellachi* (2), where it was decided that a signature in Sinhalese to an affidavit was not a mark, we find that that learned Judge says at page 29: " I have not been able to find it expressly provided that no language but English can be admitted in any form in this Court."

Again, on reference to sections 40, 75, 169, 186, 374, and 758 of the Civil Procedure Code, it is laid down that the documents therein respectively referred to are to be in the English language.

Form No. 60 of the Civil Procedure Code, which is the form in English of which the impugned document is a Sinhalese copy, has a reference beneath it to section 305 of the Civil Procedure Code.

On looking at that section there is no reference to the form, nor is it laid down in the section that the warrant shall take the Form of No. 60 or any other form.

The fact that the Code lays down that certain forms of process are invariably to be in the English language seems to imply that other forms might possibly be in the language of the person upon whom they have to be served.

Section 55, as a matter of fact, obliges a translation of the summons into the language of the defendant to be attached to it.

The omission of any reference to Form No. 60 in section 305, while there is a distinct obligation in the same section that a warrant of conviction shall be in the Form No. 61 in the 2nd schedule thereto annexed, seems also to imply that there is no obligation that

(1) (1895) 1 *N. L. R.* 248. (2) (1902) 6 *N. L. R.* 25.

a warrant of arrest of a judgment-debtor should necessarily follow Form No. 60 or be in the English language.

My opinion, therefore, is upon a consideration of the sections of the Code, that though English in this Colony is the undoubted language of the Courts, yet there may be cases in which process may be issued in the language of the person against whom it is directed, provided that the Judge who issues it is acquainted with the language of the document he signs. As a matter of fact, gentlemen of the Civil Service of this Colony are to be presumed to be acquainted with at least one of the two principal vernacular languages, and the warrant in question is signed by a gentleman in the Civil Service of the Colony.

The signature, it is true, is not followed by any designation of the office he holds, but no question has been raised on this point. I therefore sustain the warrant as not being bad in law.

As regards the second point, it is clear, and admitted there was no evidence upon which the 1st accused could be convicted under section 484; I therefore set aside his conviction under that section.

With respect to the third point, it is plain that the Magistrate should have inflicted separate sentences upon each conviction on each section.

We have been appealed to to alter the sentence of imprisonment on the 1st accused to a fine, and no objection has been raised against this course being adopted, and the offences appear to be such as might be adequately punished by the infliction of a fine.

As regards the conviction of the 4th accused under section 314, I think that the evidence would only warrant his conviction under section 343 of using criminal force.

In my opinion, therefore, the sentence on the 1st accused of imprisonment should be set aside, and in lieu thereof a fine of Rs. 30 should be inflicted upon him under section 183, and a further fine of Rs. 30 be inflicted upon him for his conviction under section 343, and the form of conviction should be amended accordingly.

The sentence of fine on the 4th accused must stand at Rs. 25 for each offence, but his conviction under section 314 must be set aside and the form of conviction amended by inserting that he was guilty of criminal force under section 343 of the Ceylon Penal Code, and by inserting that a fine of Rs. 25 is inflicted under each section.

LASCELLES A.C.J.—I concur.