

1901.
May 20.

SITTARA PUPALU *v.* NALLATAMPI *et al.*

P. C., Butticaloa, 15,327.

Resistance to Fiscal's officer taking property—Penal Code, s. 181—Resistance to measurement of land by Fiscal's officer—Civil Procedure Code, s. 237.

Resistance to a Fiscal's officer measuring the land which was directed to be seized, is not an offence under section 181 of the Penal Code.

THE accused was charged with having offered resistance to the taking of property by the lawful authority of a public servant, to wit: K. Sittara Pupalu Udaiyar, a Fiscal's officer, knowing or having reason to believe that he was a public servant, and thereby committed an offence punishable under section 181 of the Penal Code.

The Police Magistrate held that the accused resisted the measurement of the garden pointed out by the judgment-creditor, which measurement was necessary for purposes of seizure by the Fiscal's officer, and that the resistance amounts to a resistance to taking of property within the meaning of section 181. He sentenced him to a fine of Rs. 30

The accused appealed.

H. Jayewardena, for appellant.

Cur. adv. vult.

20th May, 1901. LAWRIE, A.C.J.—

Section 237 of the Civil Procedure Code regulates the mode of seizure: "A seizure of immovable property shall be made by a notice signed by the Fiscal prohibiting the judgment-debtor from transferring or charging the property in any way. The notice shall specify.....the name, situation and boundaries of the land seized, and shall be proclaimed at some place on or adjacent to such property by beat of tom-tom or other customary

... mode, and a copy of the notice shall be affixed by the Fiscal to
"a conspicuous part of the property and of the court-house and
"of the Fiscal's office.....But in no case shall the Fiscal enter
"upon actual possession of the immovable property so seized."

The law supports a Fiscal in discharging these duties of seizure,
&c., and makes resistance or obstruction an offence; but it shall
not be accounted an offence if a man in possession insists on the
Fiscal keeping strictly within the terms of the Ordinance. It
seems to me that it was not a part of the Fiscal's duty to measure
the land. Can it be said, as the Magistrate says, that the measure-
ment was necessary for the purposes of seizure?

It is not explained why the complainant did not seize the land
by signing and affixing the notice of seizure, and by beating tom-
toms; perhaps it was because he was uncertain whether the land
belonged to the judgment-debtor or to the first accused's wife.

I am of the opinion that the accused kept within the letter of
the law, and that his conduct did not amount to an offence
punishable under section 181, and I must set aside the conviction.

1901.
May 29.
LAWRIE,
A.C.J.

