

1954

Present : Nagalingam S.P.J.

K. V. PERERA, Appellant, and K. A. DHARMATILLAKE
(Assistant Clerk, Teldeniya Town Council), Respondent

S. C. 1,054—M. C. Teldeniya, 10,264

Town Councils Ordinance, No. 3 of 1946—Section 183—Arrears of rates—Procedure for recovery—Distress warrant—Must contain necessary particulars—Municipal Councils Ordinance, No. 29 of 1947, s. 252—Penal Code, ss. 183, 314.

When the Chairman of a Town Council authorises an officer to distrain the goods of a rate-payer who is in arrears with his rates, the warrant must specify the name of the defaulter, the description and situation of the properties and the amount of rate in arrears, as required by section 183 of the Town Councils Ordinance read with section 252 of the Municipal Councils Ordinance. Such particulars are an essential part of the warrant, and resistance to the execution of a warrant which does not contain the particulars is not punishable under sections 183 and 314 of the Penal Code.

APPEAL from a judgment of the Magistrate's Court, Teldeniya.

B. S. C. Ratwatte, for the accused appellant.

T. B. Dissanayake, for the complainant respondent.

Cur. adv. vult.

November 23, 1954. NAGALINGAM S.P.J.—

This is an appeal by the appellant from convictions under Sections 183^a and 314 of the Penal Code. The facts briefly are that the appellant was in arrears with his rates and the Chairman of the Town Council authorised certain of his officers to distrain the property of the appellant to recover the arrears. The case for the prosecution is that when the distraining officers had seized and were removing a certain quantity of tiles from the appellant's premises the appellant met them on the highway and upturned a cart in which the tiles were being transported and assaulted the complainant.

On the facts I see no reason to differ from the view taken by the learned Magistrate, but a point of law has been raised by the Counsel for the appellant which does not however appear to have been brought to the notice of the learned Magistrate. It is, that under Section 183 of the Town Councils Ordinance, No. 3 of 1946, the procedure prescribed for the recovery of arrears of rates is the same as that contained in the Municipal Councils Ordinance^b where no other method of recovery is specifically provided by the Town Councils Ordinance. There are no specific provisions in the Town Councils Ordinance and as such the provisions of the Municipal Councils Ordinance have to be looked to, to ascertain the necessary provisions. Section 183 of the Town Councils Ordinance expressly refers to Sections 135 to 148 of the Municipal Councils Ordinance as applicable. The Municipal Councils Ordinance, No. 29 of 1947, replaced the earlier Ordinance No. 37 of 1943 (Chap. 193) and Section 252 (which section is the relevant provision) specifically enacts in Sub-section 2 thereof that every warrant *shall be* in the form contained in the 5th schedule thereto with such variations as circumstances require. The warrant, which is the basis for distraining the appellant's goods, is the document P4, but it is deficient in one important respect. It does not specify the name of the defaulter or the description or the situation of the properties or the amount of rate in arrears, which particulars are an essential part of the warrant. It cannot be said that the omission to particularise these details could be regarded as variations which were necessitated by special circumstances.

The position therefore is that the warrant does not confer authority on the distraining officers to seize the property of the appellant. The evidence of the Chairman of the Town Council lends support to the view that no schedule was annexed to the warrant. His statement " I produce

letter of authority P4 dated 23rd of November, 1953, authorising Kiribanda to distrain the goods of all defaulters in rates" supports the contention of learned Counsel for the appellant that the warrant itself had no schedule attached to it and that it was left to the distraining officers to ascertain who the defaulters were and to proceed to seize the goods of such persons whom they considered to be in default.

The issue of a warrant for distraining the goods of a rate-payer is a serious act and one which should not be looked upon lightly by the Chairman. He must satisfy himself that any particular rate-payer has defaulted and he must particularise the defaulters whose goods are to be distrained by the distraining officer. In the absence of any such specific direction the warrant must be regarded as a nullity and any person acting under such illegal and void document has only to blame himself. I think the objection is sound and the conviction cannot be allowed to stand. In the circumstances the conviction under Section 314 cannot also stand where the charge under Section 183 fails. I therefore, set aside the convictions and sentence and acquit the accused appellant.

Appeal allowed.