

NONCHI HAMY v. CHRISTIAN.

1896.

October 24.

P. C., Colombo, 5,592.

Proclamation and attachment of property—Jurisdiction of Court—Warrant of arrest—Criminal Procedure Code, ss. 62 and 63.

A proclamation against a person and an order for the attachment of his property under sections 62 and 63 of the Criminal Procedure Code can be issued by such Court only as had issued in the first instance a warrant for the apprehension of such person.

IN this case application was made by R. Abilina Hami to the Supreme Court that the orders of the Police Magistrate dated respectively the 12th and 19th November, 1895, be cancelled. By the first order the Police Magistrate had issued a proclamation against the accused—applicant's husband—under section 62 of the Criminal Procedure Code, and by the second he had ordered attachment of his property under section 63. No warrant for the arrest of the accused had in the first instance been issued by the Police Magistrate who made the above orders.

De Saram, Acting C.C., had no cause to show against the orders being discharged.

24th October, 1896. WITHERS, J., in discharging the above orders stated his reasons as follows :—

The prisoner, in the first instance, was charged before Mr. Philip de Saram, Police Magistrate of Avisáwella, with a criminal offence against the person of one Adonis Appu since deceased, and the Police Magistrate signed and issued a warrant for the arrest of the prisoner. That warrant, for some reason or another, was apparently not executed. Afterwards proceedings were taken in the Police Court of Colombo relative to the very offence on account of which the late Mr. Philip de Saram issued a warrant of arrest against the prisoner ; and as the person of the prisoner had up to that time not been secured, Mr. Moor, Police Magistrate, Colombo, having satisfied himself that the prisoner was avoiding arrest, ordered a written proclamation to be published requiring the accused to appear at a specified time and place. Thereafter, on the 19th November, he made a further order directing the attachment of the property belonging to the prisoner then previously proclaimed. These are the orders complained of which I have discharged. Section 62 of the Criminal Procedure Code enacts as follows :—

“ If any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded, or is concealing himself, so that such warrant cannot be executed, such court may publish a

1896. "written proclamation requiring him to appear at a specified
October 24. "time not less than thirty days from the date of publishing such
WITHERS, J. "proclamation."

Now, it is clear from the language of this section that the only Court competent to order such a written proclamation to be published is the Court which has issued the warrant of arrest. It is that Court which has to satisfy itself whether or not the person against whom it issued a warrant of arrest has absconded or is concealing himself.

Now, Mr. Philip de Saram at the time presided over the Police Court of Avisawella, which is a Court of distinct jurisdiction from that of the Police Court of Colombo. Therefore Mr. Moor, as Police Magistrate, Colombo, had no authority to order the publication of this proclamation or the attachment of the prisoner's property. There being no foundation for those orders they are null and void.
