

1947

*Present : Soertsz S.P.J.*MOHIDEEN, Petitioner, and MANT *et al.*, Respondents.

174-175—C. R. Matale, 7,970.

Execution—Resistance to execution of proprietary decree—Provision for committing person obstructing to prison—Not penal in nature—Civil Procedure Code, s. 326.

Resistance to a writ of execution cannot be punished under the provisions of section 326 of the Civil Procedure Code if, subsequent to the resistance, the judgment creditor has recovered possession of the property in question.

APPEALS from a judgment of the Commissioner of Requests, Matale.

H. V. Perera, K.C. (with him *H. W. Jayewardene* and *G. T. Samarawickreme*), for the fourth respondent, appellant in 174 and respondent in 175.

N. E. Weerasooria, K.C. (with him *Walter Jayewardene*), for the first respondent, appellant in 174 and respondent in 175.

N. Nadarajah, K.C. (with him *C. T. Olegasegarem*), for the petitioner, respondent in 174 and appellant in 175.

Cur. adv. vult.

March 24, 1947, SOERTSZ S.P.J.—

This, in my opinion, was a flagrant attempt on the part of a man called Mant to defy his landlord and to flout the law with the assistance of a few of his relations and friends. There is no merit whatever in his appeal and the only reason for which I reserved my order was to enable me to consider whether I ought not to commit the respondents to prison for this organised resistance to the writ issued by the Court. I find, however, that the landlord has since recovered possession of the premises. I have been referred to a case, namely, *Kumarihamy v. Banda*¹, in which Sir Anton Bertram observed as follows:—

“The obstruction, resistance, or hindrance referred to in section 326 is not declared to be punishable as a contempt of Court. Further, the special procedure prescribed in that section, namely, the petition of complaint, is not consistent with the procedure which is prescribed in Chapter 65, which is initiated by a summons. Moreover, there is express authority on the point. In two cases *Waas v. Samaranayaka*² and *Hadjar v. Mohamadu*³ it has been explained that the procedure contemplated by the section is not a criminal procedure, but is a procedure of a civil nature, and that it is designed for the purpose of assisting the execution by removing a contumacious judgment-debtor out of the way”.

Mr. Nadarajah, for the appellant, strongly contended that the words of section 326 admit of an interpretation different from that of Sir Anton Bertram, but I see no reason for not following the judgment I have just referred to.

I would, therefore, dismiss both the appeals, but would direct that the appellants in S. C. No. 174 do pay the costs of the respondents to that appeal.

Appeals dismissed.

¹ (1918) 1 C. L. Rec. 54.

² (1916) 2 C. W. R. 54.

³ (1917) 4 C. W. R. 371.