

VELLIAPPA v. PEIRIS *et al.*

1897.

August 19.

D. C., Colombo, 9,640.

Judgment-debtor—Discharge from custody—Application under s. 306 of the Civil Procedure Code—Civil Procedure Code, ss. 307 and 311.

Where a judgment-debtor undergoing imprisonment in execution of a decree applies for his discharge from custody under section 306 of the Civil Procedure Code, on the ground that he has no property which can be sold in execution of the decree, he must make oath as to non-commission by him of the acts specified in sub-sections (b) and (c) of section 311.

IN this case the respondent, who was undergoing imprisonment in execution of a decree, applied to the Court under section 306 of the Civil Procedure Code for his discharge. With his petition he filed an affidavit, which complied with the requirements of section 307, but he omitted to state in it that he had not committed the acts mentioned in sub-sections (b) and (c) of section 311. At the hearing of the petition he was not questioned either by the Court or counsel for either party as to the non-commission of these acts. The Court allow his application and ordered his discharge. In appeal by the execution-creditor—

Sampayo, for appellant.

19th August, 1897. WITHERS, J.—

I think the District Judge has made his order of discharge on insufficient material. The person discharged was in custody as a judgment-debtor, whose person was seized in execution of a judgment held by the plaintiff. He was committed in due course to jail, and after being some little time in custody he petitioned the Court under section 306 of the Civil Procedure Code to be discharged, on the ground that he had no property which could be sold in execution of the decree. He ought to swear that since the institution of the action he has not, with intent to defraud his judgment-creditor, concealed, transferred, or removed any part of his property, and further that he has not committed any act of bad faith regarding the matter of his petition. The Court has to be satisfied of those two existing state of facts, and the Judge would expect and require a person, though they are negative state of facts, to swear to their non-existence. I think in this case the Judge ought to cause the debtor to be brought before him and

1897. ask him to state on oath that he has not done either of the things
August 19. mentioned in sub-sections (b) and (c) of section 311 of the Civil
WITHERS, J. Procedure Code. If the Court is still satisfied that the debtor should
be released the order will stand, if not, the order must be set aside
and the man remitted to custody.

BROWNE, A.J., agreed.

