

ANNAMALAY CHETTY v. GUNERATNE.

*D. C., Negombo, 751.*

*Civil Procedure Code, s. 219—Order of Court upon judgment-debtor for attendance and examination—Disobedience of order—Liability of debtor to be punished for contempt of Court under chapter XVII. of the Code.*

Disobedience by a judgment-debtor of an order made under section 219 of the Civil Procedure Code to attend court for examination is not punishable as a contempt of Court under chapter XVII. of the Code.

THE defendant in this action, having received notice of an order made by the District Court of Negombo under section 219 of the Civil Procedure Code, requiring his attendance on a certain day for the purpose of being examined touching his means of satisfying the decree entered against him in the case, failed to comply with that order, and the plaintiff's Proctor moved that the Court do deal with him for contempt of Court under sections 137 and 141 of the Code.

The Court allowed summons against him, and on appearing he was called upon to show cause why he should not be punished for contempt of Court in that he failed to comply with its order requiring his attendance on a certain date. The defendant pleaded sudden illness which overtook him on his way to the Court and prevented his attendance.

The District Judge disbelieved this excuse, and found the defendant guilty of contempt of Court.

The defendant appealed.

*Dornhorst*, for appellant.

31st January, 1895. WITHERS, J.—

We are of opinion that this order cannot be supported.

In the first place, we are of opinion that an order under section 219 of the Civil Procedure Code cannot be made to relate back to the provisions under chapter 17. So far as this matter is concerned, chapter 17 refers to the attendance of witnesses and parties summoned to attend and give evidence in the cause. By the time we reach section 219 the cause is over, but, to assist in the execution of a judgment, a debtor may be ordered to appear and disclose any debts owing to him which may be reached in execution.

Now, it is noticeable that there is no provision in the Civil Procedure Code for punishing a judgment-debtor who does not appear in obedience to an order under section 219. Similar cases have been expressly provided for in other parts of the Code. Take for instance section 663, section 717, section 718, where disobedience

of an injunction or a certain decree or order of the kind mentioned in those sections may be enforced by the punishment of the offender as for a contempt of Court. The civil Court's jurisdiction to deal with offences of contempt is limited to the provisions of section 59 of the Courts Ordinance, No. 1 of 1889, and to special provisions in the Civil Procedure Code. Section 59 enacts that a District Court may take cognizance of offences of contempt of Court committed in the presence of the Court itself, and of all offences which are committed in the course of any act or proceeding in the said Court, and which are declared by any law for the time being in force to be punishable as contempts of Court.

Now, as we observed before, disobedience of an order by a judgment-debtor of this kind is not made punishable as a contempt of Court. If an offence has been committed, recourse must be had to the Penal Code, assuming the judgment-debtor's conduct to be contrary to the penal provisions of that Code. The appeal succeeds. The conviction is set aside, and the accused is acquitted.

BROWNE, J.—

I agree, and wish to add, as a suggestion for consideration in future cases, whether the provisions of section 219 should be enforced in the first instance, as was done here, before issue of writ, without special grounds being made for the Court to allow it; for if the writ were presented, the debtor might pay it, and there would be no need for the time of the Court to be occupied in the inquiry and the debtor to be put to the expense of attending. As District Judge, I required in a like case (3,934, D. C., Colombo) that plaintiff should make inquiry of the debtor living in Nuwara Eliya of what property he was possessed, ere he should be allowed to put the defendant to the cost of attendance.

LAWRIE, A.C.J.—

I concur.

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