

1903.
December 4.

NARAYAN CHETTY v. JUSEY SILVA.

D. C., Negombo, 4,533.

Notice on defendant under s. 219 of the Civil Procedure Code—Surrender of certain lands to be sold in satisfaction of decree—Subsequent notice to produce title deeds of lands surrendered—Warrant of arrest on non-appearance.

Per WENDT, J.—Though an order made under section 219 of the Civil Procedure Code for a judgment debtor's attendance before the Court cannot, if disregarded, be enforced as upon a contempt of Court, yet, as the Court has an inherent right to summon a party before it, if that summons be disregarded without lawful excuse, it may enforce obedience by warrant.

THE facts of this case are set out in the judgment of
Wendt. J.

Bawa, for appellant.

Cur. adv. vult.

4th December, 1903. WENDT, J.—

This is an appeal by the defendant in the action against an order dated 1st October last, directing the issue of a warrant for his arrest. Proceedings had been in progress for executing the decree which the plaintiff had obtained against the defendant, and on the 21st July the defendant by his proctor filed affidavit and surrendered certain lands to be sold in execution in satisfaction of the decree.

On the 17th August the plaintiff's proctor procured the issue of a notice on the defendant, requiring him to produce his title deeds to the lands referred to in his affidavit.

The notice itself is to be found on page 133 of the record, and it required the defendant to appear before the Court and produce the title deeds.

The notice was duly served on the 11th September, but when the matter was called on the 6th October neither the defendant nor his

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proctor appeared, and the Court decided the issue of a warrant of arrest. No motion was made thereafter to explain the defendant's non-appearance or to vacate the order, but on the 14th October defendant's proctor presented a petition of appeal, in which the ground of appeal is that the order was irregular and contrary to law, apparently in view of the matter which the petition goes on to state, namely, that the defendant having surrendered property no writ could issue against his person until the lands so surrendered should have been discussed. I understand from this that the proctor thought his client was to be arrested in execution against his person, whereas what the Court ordered on the 6th October was merely a process to enforce the defendant's attendance before the Court. The defendant's counsel before us has, however, urged that the Court had no power to issue such a process, because (he said) the proceeding was in effect one under section 219 for examination of the debtor as to his property, and this Court had held, in a case reported in *1 N. L. R.*, 49, that an order for a debtor's attendance if disregarded could not be enforced as upon a contempt of Court.

As I have already stated, all the Court sought to effect was the appearance of the debtor, and I am of opinion that the order ought to, and may be, supported without in any way violating the principle laid down in the authority cited that the judgment-debtor noticed under section 219 cannot be punished for a contempt of Court. The Court has an inherent right to summon a party before it, and, if that summons be disregarded without lawful excuse, to enforce obedience by warrant. Whether, when attendance has been secured, the defaulter can be further punished as for a contempt for disobeying the original mandate of the Court, is a matter which is not now before us.

I would add that the defendant's proctor ought, at the very least in courtesy to the Court, to have explained the non-appearance either of himself or of his client, and given the Court an opportunity, if so advised, to recall the order for the warrant before he presented an appeal to this Court.

The appeal must be dismissed with costs.

MIDDLETON, J.—

I am of the same opinion. I think also that this order might be supported by the terms of sections 137 and 141 of the Civil Procedure Code without coming into contact with the decision of the Full Court in the case reported in *1 N. L. R.* 49.

The appellant in this case had the remedy in his own hands; he had only to produce the title deeds to the Court, and a warrant need not have issued.

The appeal is dismissed with costs.