1927.

Present: Schneider J. and Maartensz A.J.

SORLENTINA *v.* DE KRETSER.

142—D. C. Colombo, 3,090.

Administration—Secretary appointed administrator—Sale of property by order of Court before issue of letters—Estate Duty Ordinance, No. 8 of 1919, s. 19 (4).

An administrator, to whom letters of administration have not been issued, has no authority to sell the property of the estate, even with the sanction of Court.

Where an order was made declaring the Secretary of the Court entitled to apply for letters of administration to an estate, the Commissioner of Stamps has no right to have a citation issued on the Secretary under section 32 of the Estate Duty Ordinance, until the latter has obtained letters of administration

APPLICATION to set aside a sale of land held in pursuance of an order of Court entered in testamentary proceedings. The Secretary of the Court applied for letters of administration on November 2, 1926. *Order nisi* was entered, and eventually on March 16, 1927, the order was made absolute. The only respondent to the application was the widow, the present petitioner, who by petition requested the Court to appoint the Secretary as administrator. On March 10, 1927, the Commissioner of Stamps by his letter addressed to the official administrator drew attention to his notice of assessment and threatened to take steps under section 32 of the Estate Duty Ordinance unless the money was paid within 14 days. On April 14, 1927, a citation was issued on the Secretary. On May 13, 1927, the official administrator moved to sell by public auction the premises in question. The motion was allowed and the property sold, whereupon the widow moved to set aside the sale.

F. A. Hayley, K.C. (with *M. C. Abeywardene*), for appellant.—All the proceedings in the case are of an extraordinary nature. No notice of sale was given to the widow. The conditions of sale are irregular, as no provision is made for confirmation or otherwise by Court of the sale. Section 19 of Ordinance No. 8 of 1918 makes some person liable for the payment of estate duty. The respondent was not liable as he was not an administrator. In any event the estate consisted of movables as well as immovables, and the former might have been sold for recovery of the estate duty. The respondent had no power to make the application for sale as administrator, as an administrator's status is dependent on his

having obtained letters of administration. In this case letters had not been granted up to the date of filing of the petition (see *1 Williams on Executors 314 and 1 Salkeld at p. 301*). The sale was a nullity, and the Court could not confirm a sale which was void.

Counsel also referred to *Krause v. Pathumma.* [1]

H. V. Perera, for respondent.—The District Court had jurisdiction to make an order for sale. The purchaser obtained the land at a sale in pursuance of an order of Court. The conditions of sale were approved by Court. A *bona fide* purchaser for value need only look to the order for sale.

The respondent has acted as administrator, and when letters are granted the doctrine of relation back will operate.

Respondent by inter-meddling with the estate became an executor *de son tort.*

The order absolute is sufficient authority for the respondent to have made the application for sale as administrator.

The appellant having taken up one attitude in the lower Court cannot take up an inconsistent attitude here.

The word jurisdiction must be construed broadly. The Court has jurisdiction to make a right order as well as a wrong order.

Counsel cited *Perera v. Lebbe,*[2] *Andirishamy v. Silva,*[3] *Hassem v. Silva,*[4] *Silva v. Salman,*[5] *Babun Appu v. Vaidasekera,*[6] *Fernando v. Soysa,*[7] and *Abdinkhan v. Alikhan.*[8]

F. A. Hayley, in reply.—Court has no jurisdiction to make an order to sell a third party's property. Under the Estate Duties Ordinance the Court itself can make an order for sale.

Counsel referred to *Hendrick v. Siriwardene.*[9]

October 17, 1927. SCHNEIDER, J.—

I would affirm the District Judge's order dismissing the appellant's application with costs. She cannot be heard to say that the *order nisi* declaring the Secretary entitled to letters of administration should not have been made adsolute without notice to her. It was at her instance, and upon her wish, that steps for the appointment of the Secretary as administrator had been taken. In my opinion the order for the sale of the properties on the application of the Secretary's proctor should not have been made, because at that time letters had not been issued to the Secretary and he, therefore, had no status to make that application. An administrator

[1] *5 N. L. R. 162.*
[2] *19 N. L. R. 308.*
[3] *18 N. L. R. 454.*
[4] *25 N. L. R. 314.*
[5] *19 N. L. R. 305.*
[6] *20 N. L. R. 62.*
[7] *21 N. L. R. 114.*
[8] *10 All. 166 (P.C.).*
[9] *5 N. L. R. 247 and 27 N. L. R. 269.*

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SCHNEIDER J.

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as the Judge rightly remarks, derives his authority from the letters issued to him. I am unable to accede to the argument advanced at the hearing of the appeal that the order absolute entitled the Secretary to make that application. That order, as the order itself shows, is simply a declaration that the Secretary is entitled to have letters issued to him. It does not clothe him with the powers of an administrator in any sense.

I am also of opinion that the Commissioner of Stamps had no authority to issue citation on the Secretary purporting to act under section 32 of the Estate Duty Ordinance, No. 8 of 1919. Such a citation can issue only upon a " person in default " of payment of estate duty. Before the Secretary could be said to be in default it must appear that he was under a legal obligation to pay the estate duty and had failed to pay when required to do so. He was under no such obligation because he was not an administrator. He cannot be regarded as " a person required to pay the estate duty " within the meaning of section 19. Those words, in sub-section (4), refer to the person to whom any property passes for any beneficial interest spoken of in sub-section (2). In this case that would mean the widow and her children who are the heirs of the deceased whose estate is being administered. The words " required to pay " mean required by the provisions of the Ordinances; not by a demand made by the Commissioner.

I would regard the conduct of the appellant in these proceedings as putting forward the Secretary as having her complete authority to deal with the estate for all the purposes of its administration. The payment of estate duty is one such purpose. It was not necessary to sell the two most valuable properties of the estate for the purpose of paying the estate duty. That payment could have been made by the sale of the small property indicated in the application for execution made by the Commissioner of Stamps. The estate duty amounted only to the small sum of Rs. 37.94. If the sale of the properties be now set aside I do not believe that the heirs of the estate will benefit. The mortgagee of the properties will bring actions immediately to realize his mortgages, and the cost of those actions will outweigh any benefit which the estate might derive by a resale of the properties. It appears to me that the widow is being badly advised by some scheming persons, and that her behaviour is likely to prejudice her as well as her children who are all of tender years.

The statement in writing submitted by the Secretary to the Judge, which is to be found filed at the end of the record, shows that some of the material allegations made in the appellants' petition and affidavit are not truthful or correct. She appears to have been aware of the sale of these properties some time before

the sale took place, to have endeavoured to raise money to avert the properties being sold, and to have failed to obtain the sum of money required for that purpose. I would, therefore, dismiss her appeal. The estate must bear the costs incurred by the Secretary in this proceeding.

I make no order as to the costs of the purchaser-respondent.

MAARTENSZ A.J.—I agree.

Appeal dismissed.