

1938

Present: Maartensz and Moseley JJ.

GUNAWARDENE *v.* JAYAWARDENE.

14—D. C. Matara, 3,890.

*Administration—Application by creditor to add debt to inventory—
No power in Court—Civil Procedure Code, s. 718.*

Section 718 of the Civil Procedure Code does not confer on the District Court power to order a debt to be added to the list of liabilities or to the inventory of the intestate filed by the administrator.

A PPEAL from an order of the District Judge of Matara.

H. V. Perera, K.C. (with him N. E. Weerasooria), for fifth respondent, appellant.

N. Nadarajah, for petitioner, respondent.

Cur adv. vult.

April 12, 1938. MAARTENSZ J.—

Carolus Henry Gunawardene (hereafter referred to as the administrator) applied for and was granted letters of administration to administer the estate of his father, D. C. Samarasinghe Gunawardene, deceased.

The other heirs of the deceased were the administrator's sisters, the first to the fifth respondents to the petition for letters of administration. The administrator in his petition and affidavit averred that the deceased left property within the jurisdiction of the Court of the nature and value shown in the schedule annexed to the petition.

This schedule sets out not only the assets but also the debts due by the estate.

The Order Nisi declaring the administrator's status was made absolute on November 1, 1935, and he filed his oath of office and bond for the due administration of the estate on December 3, 1935.

On December 9, 1935, W. P. P. W. Jayawardene, through Mr. Buultjens his proctor, filed an affidavit in which he affirmed that a sum of Rs. 920 was due to him from the deceased and that "it is necessary that the said debt be included in the list of liabilities of the . . . estate".

On January 22, 1936, Mr. Buultjens filed a minute of consent from the administrator and three of the other heirs, the first, third, and fourth respondents to the inclusion of the debt and moved for notices on the second and fifth respondents. They objected to the inclusion of the debt.

At the inquiry held on May 4, 1937, only the fifth respondent's appearance is recorded.

The District Judge held that the debt was due and directed the administrator to include in the inventory the sum of Rs. 920 with legal interest from November 1, 1934, as a debt due by the deceased to the petitioner Weligama Palliyeguruge Peter Wijesekere Jayawardene and ordered the fifth respondent to pay the petitioner (Jayawardene) the costs of inquiry.

The fifth respondent appeals from this order. I do not think it can be supported. Jayawardene's affidavit is described by the District Judge as an application under section 718 of the Civil Procedure Code and I presume he found jurisdiction to make the order he did in the same section.

Now the object of section 718 is to compel an executor or administrator to file the inventory and account. The affidavit of Jayawardene was however filed for the purpose of having the list of liabilities of the estate amended by the addition of a debt of Rs. 920 and not for the purpose of proving (I quote from section 718) that the "administrator has failed to file in Court the inventory and valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the time prescribed therefor". The affidavit was therefore not an application under section 718; nor does section 718 confer on a District Court jurisdiction to order a debt to be added to the list of liabilities or to the inventory.

Section 538 provides for the filing of "an inventory of the deceased ~~person's property and effects~~" which has to be verified by an affidavit in the form 92 given in the schedule to the Code. It is clear from the words

which I have italicized and the form of affidavit that, whatever the practice may be, a list of liabilities of a deceased has no place in an inventory of his estate.

The application to amend the list of liabilities in the schedule of properties filed with the administrator's petition for letters of administration cannot therefore be treated as an application under section 718 and the section did not confer jurisdiction on the District Judge to hold an inquiry and make the order appealed from. It is accordingly set aside.

The petitioner-respondent (Weligama Palliyeguruge Peter Wijesekere Jayawardene) will pay the appellant's costs.

MOSELEY J.—I agree.

Appeal allowed.

