

M. A. ISAAC PERERA v. S. BABA APPU.

D. C., Kurunegala, 1,148.

1898.
January 17.

*Jurisdiction of Courts of Requests to issue mandates of sequestration—
Civil Procedure Code, ss. 653, 801—Ordinance No. 12 of 1895—
Decree for damages sequestrable under chapter XLVII.*

The 801st section of the Civil Procedure Code declares that the general provisions of that Code should apply to Courts of Requests in all respects, whenever they are not inconsistent with the special rules in chapter LXVI.

There is nothing in that chapter which appears to be inconsistent with the 47th chapter, of which sections 653 is a part; and a Court of Requests may order a mandate of sequestration before judgment where a case arises under that section.

WITHERS, J.—A decree for damages in an action to recover immovable property is a debt which comes within the class of property which can be sequestered under chapter XLVII. of the Civil Procedure Code.

THE appellant sued plaintiff in C. R., Kurunegala, 4,316, and, before judgment, obtained a mandate of sequestration directing the Fiscal to sequester the judgment entered in the

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present action in plaintiff's favour. The Fiscal issued prohibitory notices, which were duly served on plaintiff and defendant in this action. In the meantime plaintiff gave defendant a receipt for the full amount of the decree, and defendant moved to have the payment recorded as certified under section 349 of the Code in the present suit. Appellant opposed the motion. The Acting District Judge (Mr. C. M. Fernando) holding that a Court of Requests had no jurisdiction to issue a mandate of sequestration, and that the mandate issued in C. R. 4,314 was *ultra vires* and of no avail, allowed defendant's motion.

In appeal—

Sampayo, for appellant.

Dornhorst, for defendant, respondent.

17th January, 1898. LAWRIE, A.C.J.—

The question raised by the order under appeal is whether a Court of Requests has jurisdiction to issue a mandate of sequestration under 653 of the Civil Procedure Code. The 801st section declares that the general provisions of the Civil Code should apply to Courts of Requests in all respects, whenever they are not inconsistent with the special rules in chapter LXVI.

There is nothing in that chapter which appears to me to be inconsistent with the 47th chapter, of which section 653 is a part. I am therefore of opinion that the defendant is not entitled to have the payment made by him to the plaintiff certified under section 349.

WITHERS, J.—

The question we were asked to decide was, whether a Judge of a Court of Requests may order a mandate of sequestration before judgment where a case arises under section 653 of the Civil Procedure Code. I think our answer should be in the affirmative. The jurisdiction of Courts of Requests has been extended by the Ordinance No. 12 of 1895.

The powers commensurate with its extended jurisdiction should be given to it, unless there is anything in The Courts Ordinance or in the Civil Procedure Code which prevents that being done. As to the latter Code, it is enacted in the 801st section that the special rules in part 10, as to procedure in Courts of Requests, shall be taken as limiting and controlling the general provisions hereinbefore contained, but so far only as any such provisions are either expressly or impliedly applicable to such Courts; that such

general provisions shall apply to Courts of Requests in all respects whenever they are not inconsistent with the special rules in this chapter contained. But where there is any inconsistency, the special rules contained in this chapter shall apply.

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WITNESS, J.

Like my brother, I am unable to find anything in the special rules inconsistent with the powers conferred on a Judge under section 653. Now, in cases of debt or damage over Rs. 200 the Legislature has thought it right to empower the Courts to assist a party plaintiff in recovering a claim against a defendant, who has been fraudulently alienating his property with intent to avoid payment of the debt or damage, or who has with such intent quitted the Island leaving therein property belonging to him.

In chapter IX. of The Courts Ordinance the Legislature thought fit to allow Courts of Requests to grant an injunction restraining a defendant from doing acts which would hinder or prevent the plaintiff from recovering a just claim. If a Court of Requests can grant injunctions in aid of its jurisdiction, why should it not grant mandates of sequestration? The plaintiff who has a just claim for Rs. 300 is placed in this awkward predicament. He cannot go into a Court of Requests (which is the proper Court) if the defendant is either about to fraudulently alienate his property or about to quit the Island with intent to defraud him, and if he goes into a District Court he may be disentitled to any costs whatever (section 74 of The Courts Ordinance).

The next question we have to decide is, whether a decree for damages in an action to recover immovable property was a debt so as to come within the class of property which can be sequestered under chapter XLVII. of the Civil Procedure Code. I have always understood that a judgment that A should recover against B a sum of money as debt, damages, and costs of suit creates a debt of record by B to A. The respondent's debt was seized and sequestered in the way provided by the Code: he was directed not to pay that debt to the plaintiff or any one until further orders. He does so or says he has done so, and gets a receipt from the plaintiff in the case. I think the certificate should be refused him as long as this stop order is in force. I would therefore set aside the judgment of the Court below.

