

1904.
January 12.

Re Estate of BOPEGAMAGE PRANSAPPU of Kumbalwela, deceased

D. C., Galle, 3,371.

APPU GUNATILEKE, Administrator, Petitioner.

LEISE JAYAWARDANE, Respondent and Petitioner in Appeal.

Civil Procedure Code, s. 717—Widow of intestate keeping back property from administrator—Order on widow to pay into Court moneys of estate in her hands—Proper decree to be made—Delay of person cited to bring money into Court—Contempt of Court.

Where a person retains possession of a sum of money belonging to an estate vested in an administrator by letters issued to him by the District Court, it is not a proper order to require the person cited to pay the money into Court.

The proper course is to enter a simple decree requiring him to deliver possession of the money to the administrator petitioning for the same.

The person cited must be allowed a reasonable time to give security for the payment of the money.

It is contempt of Court on the part of vicious intruders to set at naught the provisions of the law requiring administrators to carry out duly the administration of estates.

THIS was an appeal against an order purporting to be made under section 717 of the Civil Procedure Code committing the appellant (the widow of the intestate) to prison as for a contempt of Court for the period of six months, or until she complies with the terms of a decree dated 9th March, 1903, whereby she was ordered to bring into Court Rs. 308 received by her out of the proceeds sale of the intestate's movable property. The facts of the case are set forth in the judgment of Wendt, J.

Bawa, for appellant.

H. Jayawardene, for petitioner, respondent.

Cur. adv. vult.

12th January, 1904. WENDT, J.—

The proceedings before us were taken under chapter 54 of the Code, and began with a petition of the administrator supported by affidavit under section 712, alleging that all the inventorized property of the intestate, consisting of money and movables, was in the possession of the appellant (the widow of the intestate) and of one Karunanaiké. The Court on 24th September, 1902, directed

a citation to issue to the persons named in the petition, and the citation accordingly issued on 3rd December, accompanied by the order required by section 713. Neither the citation nor the order very closely follows the forms prescribed by the Code, but in substance they contain all that is necessary. On 19th December the widow appeared, and is recorded to have stated that "she had no property belonging to the estate, and that her husband had no money at the time of his death." The matter was adjourned to 22nd December, when the widow was examined on oath. As a result of her admissions, the Court ordered her to produce in Court on 22nd January, 1903, a sum of Rs. 300, being the moiety received by her out of the proceeds sale of some of the intestate's movable property. The matter was further adjourned to the 29th January, on which date the second respondent, Karuna Naiké, also appeared and was examined on oath. As a result of his admissions he was ordered to pay into Court Rs. 152.41, and with this order he complied. The widow filed affidavit pleading inability to pay the Rs. 300 into Court. She was directed to serve this affidavit on the administrator, and the parties were heard upon it on 3rd March, 1903, and the Court reserved its order. On 9th March the Court declared itself not satisfied with the petitioner's allegations as to the other property, but proceeding on the widow's admission found that she had received Rs. 308 out of the proceeds sale of the furniture, and that her plea that she had made use of the money for her own expenses could not be accepted. It therefore directed that a decree be entered against the widow requiring her to pay into Court Rs. 308, or to find two sureties to pay this amount on or before 9th April, 1903, and condemning the respondents to pay the administrator's costs.

This decree was not such as section 716 contemplates. That section requires a simple and direct decree requiring the person cited to deliver possession of the money or other property to the petitioner, not to pay it into Court. It is true the section mentions the giving of security for the payment of the money or delivery of the property, but that is a matter antecedent to the decree. The decree can only be entered if the person cited fails to give that security. Accordingly it was pointed out by this Court in the case of *Fernando v. Fernando* (D. C., Negombo, 605), decided on 12th August, 1903, that before passing the decree the Court must allow the person cited a reasonable time for the giving of the security, and proceed to the next step only if default is made in doing so. See also the case of *Saravanamuttu v. Vallipillai* (D. C., Trincomalee, 194, Civ. Min., 29th October, 1903). The widow, however, did not appeal against the decree and in the absence of

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1904. such appeal I am not prepared to say that it is so irregular as to
January 12. be incapable of enforcement under section 717, either because it
 WENDT, J. gave the widow the option of finding security instead of paying
 money, or because it directed the payment of the money into Court
 instead of to the petitioner. The appellant failed either to pay
 the money or to find the security.

On the 5th May, 1903, the Court issued a notice requiring the widow to show cause why she should not be attached. She appeared by Counsel on 26th May, and submitted that she had not been guilty of any defiance or wilful disobedience to the order of Court, but that not having the money, which she had paid away, and being a poor woman, she could not bring it into Court. She admitted at the same time her liability to account for the money to the administrator. The Court, however, held—and I think properly held—that these were matters which ought to have been put before the Court as cause against the making of the decree, and that indeed they had been considered by the Court and declared insufficient. No order as for a contempt was, however, made, because the proper procedure, such as the issue of summons, &c., had not been observed, but the Court expressed its opinion that the respondent had committed a contempt and ought to be dealt with accordingly. Nothing was done towards this end until September. The widow thus had another opportunity of complying with the decree or of taking steps to have it set aside by proper proceedings. She did nothing. In October she appeared in answer to a fresh summons as for contempt of Court and repeated her former explanation. The District Judge found that the widow was the daughter of wealthy parents and was living comfortably with them, that she had not even asked her father to give security for her for the payment of the comparatively small sum of Rs. 308. In his opinion she was wilfully resisting the efforts of the administrator to recover the money due to the estate. He held further—and I think he ought to be supported in so holding—that, if the provisions of the law requiring administration of estates to be carried out in a legal manner by the responsible administrators are not to be set at nought, it is necessary that vicious intromitters should be checked and shown the liabilities they incur by intermeddling without authority.

I think the order appealed from should be affirmed.

I would call the attention of the District Judge to the fact that the record has been sent up to this Court without being paged or furnished with the usual index.

LAYARD, C.J.—I agree.