

1938

Present: **Hearne J.**WILLIAM SINGHO *v.* A. G. A., MATARA.[APPLICATION FOR REVISION AND WRIT OF *Quo Warranto* No. 523 OF 1935.]

Execution—Property exempted from seizure—Implements of trade—Fishing boat—Civil Procedure Code, s. 218 (b).

In section 218 of the Civil Procedure Code regarding property of the judgment-debtor exempt from seizure or sale, the clause "as may in the opinion of the Court be necessary to enable him to earn his livelihood", qualifies both the words "tools, utensils and implements of trade or business" and the words "his (an agriculturist's) implements of husbandry".

THIS was an application for revision and for a writ of *quo warranto* on the Assistant Government Agent of Matara.

C. V. Ranawake in support for petitioner.

S. J. C. Schokman, C.C., for first respondent.

O. L. de Kretser, Jr., for second and third-respondents.

Cur. adv. vult.

October 12, 1938. HEARNE J.—

The application before me has been entitled "an application by way of *restitutio in integrum* or by way of revision and also under section 53 (4) of the Courts Ordinance".

It refers to a matter that took place some time ago and the responsibility for the delay in the application being listed before this Court is entirely that of the petitioner. I refer to this in view of the application made to me that, in the event of my taking a certain view of the law, time should be given to the petitioner to file a further affidavit.

An application was made to the Court by the petitioner which was dismissed and in December, 1936, a writ was issued to recover costs due to first respondent. The petitioner's boats and fishing tackle were seized on January 23, 1937, and sold to second and third respondents on January 30, 1937. The present application to revise the proceedings in execution was received in the Registry of this Court in September, 1937, and four days after its receipt the petitioner's Proctor was asked to send a copy of the petition and affidavit for service on the respondents. This request was not complied with till August, 1938, and in September, 1938, the respondents were noticed. The hearing of the application was fixed for October 7, 1938, and on October 4, 1938, an affidavit on behalf of the respondents was served upon Counsel for the petitioner. Another affidavit by the petitioner was handed to Counsel for the second and third respondents on October 7, a few minutes before he came to Court, and a copy was found in the office of the Attorney-General on October 7. It is not clear when or how it came to be there.

In my opinion the petitioner has had all the indulgence that could reasonably be accorded to him, and it would be manifestly unfair to leave the second and third respondents in further doubt as to whether the properties purchased by them in January, 1937, are in reality their properties. This application must be decided on the material now before me.

The case for the petitioner is that the properties in question (fishing boats and fishing nets) are saved from seizure by virtue of section 218 of the Civil Procedure Code. Section 218 (b) provides that the following shall not be liable to seizure and sale, namely:—

“Tools, utensils, and implements of trade or business, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the Court be necessary to enable him to earn his livelihood as such.”

In *de Silva v. Konamalai*¹, it was held that “a fishing boat is not an implement of trade within the meaning of section 218 of the Civil Procedure Code”. Had the Judges who decided that case considered the effect of certain decisions (*Lavell v. Hichings*² and *Smith v. Anderson*³) on a corresponding provision of English law which is, however, more limited in its terms, they might have taken a different view of section 218, Civil Procedure Code. But I propose to rest my decision on another ground. Section 218, Civil Procedure Code, does not in my opinion protect from seizure every fishing boat and every fishing net that a professional fisherman owns, but only such “as may in the opinion of the Court be necessary to enable him to earn his livelihood”. In the view I take of section 218, Civil Procedure Code, the clause I have quoted qualifies both the words, “tools, utensils, and implements of trade or business” and the words “his (an agriculturist’s) implements of husbandry, &c.” It would, I think, be straining the language of section 218 to hold that a fisherman who owns a fleet of 100 boats and who requires only ten for the purpose of earning his livelihood is protected in respect of each one of the 100 boats.

I am not satisfied on the material before me that the petitioner’s boats and fishing nets which were seized are necessary to enable him to earn his livelihood.

I dismiss the application with costs.

Application refused.

¹ (1928) 30 N. L. R. 128.
² (1905) 1 K. B. 480.

³ 50 L. J. Ch. 39 at p. 43; 11 Halsbury.
(Old Ed.) 139.