

1934

Present : Dalton J.

JAYAWEERA *v.* ABDUL CADER.

151—C. R. Colombo, 83,962.

Garnishee order—Denial of debt—Power of Court to hold inquiry—Civil Procedure Code, s. 230.

Where, upon the issue of a garnishee order under section 229 of the Civil Procedure Code, the garnishee disputes the debt, the Court has no power to hold an inquiry in order to determine whether the debt is due.

A PPEAL from an order of the Commissioner of Requests, Colombo.

H. V. Perera, for parties noticed, appellants.

Mackenzie Pereira, for plaintiff, respondent.

Cur. adv. vult.

May 24, 1934. DALTON J.—

The plaintiff obtained judgment against the defendant company for the sum of Rs. 128.86 and costs. On February 4, 1933, he applied for execution of the decree setting out that Rs. 90.20 had been paid on account of the claim, with costs to date, but that a balance of Rs. 38.66 still remained due. This application was allowed. The Deputy Fiscal thereupon on February 6 forwarded a written notice signed by him to six persons, whom I will call hereafter the garnishees, purporting to act under section 229 of the Civil Procedure Code, "prohibiting them from paying the judgment-debtor and the judgment-debtor from receiving any money due to the 'Ceylon Morning Leader' as contributories.. There is no record of any proceeding or affidavit by the plaintiff between February 4 and February 6, or at any date prior to the issue of this prohibitory notice alleging the six persons mentioned were in any way indebted to the defendant company. How the Deputy Fiscal came to act as he did further is not explained; no particulars of any alleged debt seized are set out in the prohibitory notice, as required by law (see section 229 of the Civil Procedure Code, and form No. 44), nor in fact is it stated that any alleged debt is due from the six persons to the defendant company. The most that the notice can be said to do is to prohibit the payment and receipt of any money that may be due. I gather the plaintiff was really at that stage trying to ascertain if any sum was due from the garnishees to the defendant company. That is not a purpose for which garnishee proceedings are provided, and the action of the plaintiff and of the Deputy Fiscal seems to have been quite irregular.

The next step by the plaintiff was a motion on February 14, 1933, again not supported by any affidavit, asking the Court to issue notices on the garnishees "to show cause, if any, why the money seized in their hands by the prohibitory notice" of February 6 should not be brought into Court. It was allowed by the Commissioner, but wrongly, in my opinion, as there was nothing to support it. The notices were duly served, and the journal entries show that affidavits were filed by three of the garnishees, two denying any sum was due by them to the defendant company, and the third alleging that whilst nothing was due by him to the company, the company was indebted to him for money advanced. The other garnishees seem to have taken no action except to prepare for the inquiry which was held by the Commissioner on March 23, 1933. Then for the first time are given particulars of the alleged debts due by the garnishees to the defendant company. Plaintiff's counsel in opening the inquiry states that Rs. 1,055 is still due by each of the six garnishees to the company. Even if there was any foundation for that statement, he does

not, however, explain why he takes these proceedings against six persons, each in respect of the sum of Rs. 1,055, in respect of a claim by plaintiff to be paid the sum of Rs. 38.66 only. The Commissioner then proceeds to determine whether this allegation is true, and after lengthy evidence and a very long judgment holds that four of the garnishees are indebted to the company in the sum of Rs. 1,000 each, one in the sum of Rs. 175, and one is not indebted to the company at all.

The garnishees appeal against this order. The first ground argued was that the Commissioner had no jurisdiction to hold any inquiry at all, under the provisions of the Civil Procedure Code, once the existence of the debt was disputed. He purported to hold the inquiry as to whether the debts were due or not, following what he held to be the decision in *Supramaniam Chetty v. Cave & Co.*¹

Section 230 of the Code states what the Court is to do if the garnishee does not dispute the debt due or claimed to be due from him, but it is silent as to what is to be done if the debt is disputed. There is no provision in the Code equivalent, for instance, to Order XLV., Rule 4 of the English Rules providing for the trial of the liability of the garnishee. There are, however, previous decisions of this Court, which have decided this question, so far as the provisions of the Code are concerned. In *Gurusamy Pillay v. Palaniappan*² in the course of his judgment allowing that appeal, Wood Renton J. states his opinion of the extent of the provisions of section 230 as follows :—

It is clear that the object of section 229 of the Civil Procedure Code is to facilitate the expeditious recovery of the property of a judgment-debtor. Among the property which may be so recovered the section, taken in conjunction with section 230, provides for the inclusion of debts due to the judgment-debtor as to whose existence there is no dispute. It appears to me on principle that these sections should be confined to cases in which the debtor would have had no defence, if he had been sued by his own creditor, the judgment-debtor.

Two years later in *Usoof v. Sinna Umma*³ Hutchinson C.J. also considered the construction of section 230. In that case one of the garnishees said the debt had been paid and that he had a receipt. The Commissioner ordered him to produce the receipt, held an inquiry, found the receipt was a forgery and the debt was still due, and ordered the garnishee to pay it. On appeal it was held *inter alia* that this proceeding was wrong, that once the debt was disputed, no order could be made under the provisions of section 230.

In the case relied upon by the Commissioner who held this inquiry, earlier decisions are referred to although not by name. Jayawardene A.J.

¹ 32 N. L. R. 25.

² 3 A. C. R. 15.

³ 3 Weerekoona's Reports 46.

states it has been held in various cases that where a debtor disputes the debt to the judgment-debtor, the Court has to stay its hand. A perusal of his judgment does not satisfy me that he differed in any way from those earlier decisions. In the case before him, however, he seems to have held there was no satisfactory proof the debtor did dispute the existence of the debt, and he accordingly directed that the case go back so that the Commissioner might follow the procedure under section 230 on the footing that the debt was not disputed. He gave the garnishee, however, another opportunity of disputing the claim. There are one or two sentences in the judgment which are not quite clear, but I do not think it goes further than this, to lay down that the Court must be satisfied before holding its hand that there is a *bona fide* dispute as to the existence of the debt or as to the liability of the debtor to pay it over to the judgment-debtor. If either of these conditions exists, then there is nothing in section 230 which authorizes the Court to inquire into the matter.

In addition to the affidavits from the garnishees to which I have referred, the proceedings show that the remaining garnishees took up the position that no money was due by them to the judgment-debtor. This they should have supported by affidavit, but there seems to have been no doubt as to the *bona fide* nature of the position they took up. In the circumstances therefore, following the authorities to which I have referred, since it was apparent that there was a *bona fide* dispute as to the existence of the debts, it had no power to hold any inquiry as it did.

In this event it is not necessary for me to consider the further ground of appeal, although I think respondent on this ground also would have some difficulty in upholding the decision of the Commissioner. Assuming that section 230 gives the Court power to hold an inquiry as to the existence of the debt, where its existence is disputed by the garnishee, it was urged that the amount of the alleged debts sought to be attached, Rs. 1,055 in the case of each of the six garnishees, is beyond the jurisdiction of the Court of Requests, as defined by section 77 of the Courts Ordinance, 1899. I might point out that in England, it seems, that a County Court has no power to deal with such a matter where the amount of the debt is beyond its ordinary jurisdiction. The High Court also has power to transfer to the County Court any such matter, where the amount of the debt sought to be attached, or for which execution is sought, does not exceed £100 (9 & 10 Geo. V. c. 73).

For the reasons I have given I would allow this appeal. The order of the Commissioner must be set aside and the application of the plaintiff must be dismissed. The garnishees are entitled to their costs here and below.

Appeal allowed.