

1931

*Present: Lyall Grant J.*PERERA *v.* ABDUL HAMID.

136—C. R. Matale, 1,067.

Contempt of Court—Disobedience to injunction—Power of Court of Requests to punish as for contempt—Civil Procedure Code, s. 663—The Courts Ordinance, s. 59.

The Court of Requests has power to punish disobedience to an injunction issued by it as for a contempt of Court.

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

Navaratnam (with him *N. E. Weerasooria*), for appellant.—Purporting to follow the ruling in *The King v. Samaraweera*¹ the Commissioner holds that he has no jurisdiction to punish an act of contempt committed *ex facie curiae*. In that case it was held that, where an act of contempt is not declared by any law to be an offence punishable by an inferior Court, then the Supreme Court alone had jurisdiction to punish. The power of the Supreme Court to punish the offence of contempt is defined by section 51 of the Courts Ordinance. This section further recognizes the power of inferior Courts to punish the offence of contempt, as declared by section 59. The latter section confers on inferior Courts the jurisdiction to punish not only acts of contempt committed in the presence of these Courts but also acts of contempt which are committed in the course of any proceeding in the said Courts, provided that such acts are declared by any law to be punishable as contempts of Court. The power of a Court of Requests to grant an injunction is recognized in section 87 of the Courts Ordinance and section 663 of the Code declares any disobedience to an injunction an offence, punishable by the Court granting the injunction. The Court, therefore, had jurisdiction to punish for contempt. The Judgments in *Annamalay Chetty v. Gunaratne*² make the legal position quite clear.

December 4, 1931. LYALL GRANT J.—

This is an appeal from an order made by the Court of Requests of Matale in the course of proceedings in that Court. The plaintiff sued the defendant for the recovery of Rs. 36 arrears of rent and also made various other claims against the defendant. At the same time the plaintiff moved for an injunction on the defendant restraining him from removing or selling the sewing machine and the furniture lying at No. 6. The

¹ 19 N. L. R. 493.

² 1 N. L. R. 49.

injunction was served upon the defendant-respondent on June 6. There can be no doubt, I think, as to the right or competence of the Court of Requests to grant such an injunction under the powers vested in it under section 87 of the Courts Ordinance. On June 10 the defendant-respondent removed from the premises an almirah and the sewing machine which had been specifically mentioned in the injunction. Thereupon the plaintiff served a notice on the defendant and three others to show cause why they should not be punished as for contempt of Court. The defendant-respondent and the other three persons appeared on July 28 in Court and stated that they had cause to show and inquiry was held on August 11. On that day the learned Commissioner discharged the defendant-respondent and the three others on the ground that the contempt was not committed in the presence of the Court and, therefore, the Court had no jurisdiction to punish them as for contempt of Court. From this order the plaintiff now appeals.

The plaintiff does not press the case as against the 2nd, 3rd, and 4th respondents inasmuch as they were not parties to the action and the injunction was directed against the 1st respondent, the defendant in that case. It is, however, argued that the learned Commissioner was mistaken in holding that he had no jurisdiction to commit the defendant in the action for contempt in respect of the injunction issued on him by the Court. The Commissioner relies upon a Full Bench decision reported in 19 *N. L. R.*, p. 493 (*The King v. Samaraweera*). It was there held that possession of land by a receiver appointed by a District Court is possession of the Court, and contumacious interference with the possession of the receiver is punishable as a contempt of Court. Such contemptuous interference *ex facie curiae* with the possession of the receiver is punishable by the Supreme Court only, and not by the District Court. This case was a Full Bench decision which restated the principles laid down by a Full Bench Court in the case of *Annamalay Chetty v. Guneratne (supra)*. In order to understand this decision it is, I think, necessary first to examine section 59 of the Courts Ordinance and the sections of the Civil Procedure Code which govern the power of the lower Courts in regard to contempt of Court and also in regard to the grant of injunctions. Section 59 of the Courts Ordinance gives special jurisdiction to Courts of Requests in respect of every offence of contempt of Court committed in the presence of the Court itself that is not disputed. The section further gives power to Courts of Requests to punish all offences which are committed in the course of any act or proceedings in the said Courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of Court. The principle upon which the Court proceeded in the cases to which I have just referred to was that there was no law for the time being to punish for contempt of Court the offences disclosed in those cases. The Court held that not merely should it be proved that an offence had been committed but it must be one which was declared by law to be so punishable. This contention was recognized in the judgment of Withers J., to which I have just referred. He referred to section 663 for the purpose of differentiating it from the case which came before him. This section provides that disobedience in respect of an injunction granted by Court may be enforced by the punishment of the offender as

for contempt of Court. In these circumstances and upon the facts disclosed in this case it seems too clear that the Magistrate has taken too low a view of the powers conferred on the Courts of Requests. The order must be set aside so far as it concerns the 1st respondent and the case will be remitted back to the lower Court for trial in due course. The appellant is entitled to his costs of this appeal.

Sent back.

