

1958 Present: Weerasooriya, J., and K. D. de Silva, J.

SELLAMMAH, Appellant, and THE ATTORNEY-GENERAL,
Respondent

S. C. 643—D. C. Batticaloa, 1,491/Misc.

Crown Debtors Ordinance (Cap. 81)—Sequestration of property said to belong to judgment debtor—Claim made by third party—Procedure applicable to investigation thereof—Sections 2, 3, 8—Civil Procedure Code, ss. 244-247, 658, 659—Interpretation Ordinance (Cap. 2), s. 13.

Sections 658 and 659 of the Civil Procedure Code are applicable to the investigation of claims to property which has been sequestered under section 3 of the Crown Debtors Ordinance upon warrant issued after judgment.

APPEAL from a judgment of the District Court, Batticaloa.

H. W. Jayewardene, -Q.C., with *E. R. S. R. Coomaraswamy*, for the claimant-appellant.

A. C. Alles, Acting Solicitor-General, with *P. Naguleswaram*, Crown Counsel, for the plaintiff-respondent.

Cur. adv. vult.

August 26, 1958. WEERASOORIYA, J.—

The Attorney-General on behalf of the Crown sued one Sinnan Sitham-parapillai, the husband of the appellant, in the District Court of Batticaloa on two causes of action and obtained decree against him on the 28th July, 1955, for the payment of a sum of Rs. 36,785/83 together with interest and costs of suit.

Sithamparapillai (hereinafter referred to as the "judgment-debtor") had purchased from the Crown the exclusive privilege of selling fermented toddy by retail at two groups of taverns for the period 1st July, 1953, to the 30th June, 1954, and in terms of the two contracts entered into by him in pursuance of the purchase he became liable to pay to the Crown the rents due thereon in monthly instalments of Rs. 4,000 and Rs. 15,400 respectively. According to the plaint he paid the instalments for the months of July to November, 1953, on both contracts but defaulted in the

payment of the subsequent instalments, and the two causes of action arose from this default and from the consequential steps taken by the Crown under the toddy rent sale conditions applicable to the two contracts. That the judgment-debtor paid the two instalments for November, 1953, also appears from the receipts P3 and P4, both dated the 11th November, 1953.

As the decree obtained by the Crown remained unsatisfied steps were taken under section 2 of the Crown Debtors Ordinance (Cap. 81) for the seizure of six allotments of land said to be the property of the judgment-debtor. The seizure was followed by an information filed under section 3 on the 6th December, 1955, against the judgment-debtor, and upon that information the District Court issued under the same section a warrant to the Fiscal to sequester the said lands. The sequestration having been carried out, the appellant on the 30th January, 1956, laid claim to the lands as the person entitled thereto on deed of donation No. 668 dated the 20th December, 1953, from her father. This claim was reported by the Fiscal to the District Court which then proceeded to inquire into it.

At the inquiry the notary who attested deed No. 668 gave evidence for the appellant and produced it marked P2. He also produced an earlier deed No. 609 dated the 9th November, 1953, marked P1 and attested by him, on which the same six lands had been sold by the judgment-debtor to the father of the appellant for a sum of Rs. 20,000. P1 is impugned by the Crown as void under section 8 of the Crown Debtors Ordinance on the ground that it was fraudulently executed. According to the attestation in P1 the full consideration passed in the notary's presence, and this was confirmed by the notary when he gave evidence. Another witness who gave evidence for the appellant was Proctor Stephens, who is an official valuer for the National Housing Scheme, the State Mortgage Bank and the Agricultural and Credit Corporation. In his opinion the value of the lands at the date of the execution of P1 was about Rs. 22,000.

After inquiry the learned District Judge, in a judgment which is of very little assistance to this Court, made order dismissing the claim with costs "to abide a 247 action if any". He seems to have regarded the claim as one to which sections 244 to 247 of the Civil Procedure Code applied, and he held that as the claimant had not proved that she was in possession of the lands her claim must be dismissed. From that order the present appeal has been filed by her. We were informed by her Counsel that she has also filed a separate action under section 247 of the Civil Procedure Code which is pending.

One of the questions that arise in the appeal is the procedure applicable to the investigation of claims to property which has been sequestered under section 3 of the Crown Debtors Ordinance. Learned Counsel for the appellant submitted that the procedure governing the case is that laid down in sections 658 and 659 of the Civil Procedure Code. For this submission he relied on *The Government Agent, Southern Province v. Kalupahana*¹.

¹ (1923) 25 N. L. R. 13.

Section 3 of the Crown Debtors Ordinance provides that any further proceedings taken consequent on the issue of a warrant of sequestration "shall be according to such general rules of practice as now are or hereafter may be framed by the Judges of the Supreme Court". In *The Government Agent, Southern Province v. Kalupahana (supra)* Jayewardene, J., stated that there were in operation at the date of the enactment of the Crown Debtors Ordinance, No. 14 of 1843, (which was its original short title) certain general rules and orders framed by the Judges of the Supreme Court which were subsequently superseded by the Civil Procedure Code. He therefore held that sections 658 and 659 of the Civil Procedure Code applied to claims made to property sequestered under section 3 of the Crown Debtors Ordinance. I take it that he came to this conclusion on the basis that sections 658 and 659 of the Civil Procedure Code are the provisions corresponding to such of the rules and orders relating to sequestration of property which had been revoked by the Civil Procedure Code. See also section 13 of the Interpretation Ordinance.

Sections 658 and 659 occur in a chapter of the Civil Procedure Code entitled "OF ARREST AND SEQUESTRATION BEFORE JUDGMENT". Section 658 refers to claims to property sequestered before judgment, while section 659 provides that if upon an investigation into such a claim the Court is satisfied that the property sequestered was not the property of the defendant it shall pass an order releasing such property from seizure. Neither Counsel for the appellant nor the Acting Solicitor-General was able to refer us to any provisions in the Civil Procedure Code specially providing for sequestration of property after judgment. Apparently there are no such provisions.

It would seem that under section 3 of the Crown Debtors Ordinance a warrant of sequestration may issue before as well as after judgment. The learned Acting Solicitor-General contended that in *The Government Agent, Southern Province, v. Kalupahana (supra)* the warrant of sequestration had issued before judgment and that, therefore, sections 658 and 659 were rightly held to be applicable to the investigation of the claim to the property sequestered. But inasmuch as in the present case the warrant of sequestration issued after judgment, he submitted that the provisions applicable to the investigation of the appellant's claim are sections 244 to 247 of the Code (which deal with claims to property seized in execution of a money decree) and not sections 658 and 659. Apart, however, from stressing that in the present case the sequestration took place after judgment he was unable to formulate any principle on which the distinction he seeks to draw as to the procedure to be followed can be based.

In *The Attorney-General v. De Croos*² too the sequestration took place after judgment but the particular point under consideration did not arise for decision. If, as is common ground, sections 658 and 659 of the Civil Procedure Code apply to the investigation of claims to property sequestered before judgment under section 3 of the Crown Debtors Ordinance, I do not see why the investigation of claims to property sequestered after

² (1925) 26 N. L. R. 451.

Judgment should not be governed by the same provisions. I hold, therefore, that sections 658 and 659 apply to the present case. No doubt, section 658 requires that a claim preferred to the property sequestered shall be investigated in the manner provided for the investigation of claims to property seized in execution of a decree for money, but even so the applicability of section 659 is in no wise affected. Section 659 clearly casts a duty on the Court to investigate the question of title. The evidence led at the inquiry on behalf of the appellant establishes that far from P1 having been executed in fraud of the Crown it was a bona fide transfer for valuable consideration practically the entirety of which was utilised by the judgment-debtor to pay the instalments of rent for November, 1953, then due to the Crown. This much was freely conceded by the learned Acting Solicitor-General. The question of title under section 659 of the Civil Procedure Code must, therefore, be decided in favour of the appellant and her claim upheld. I accordingly set aside the order appealed from and direct that the property claimed be released from sequestration. The appellant will be entitled to her costs in both Courts.

DE SILVA, J.—I agree.

Appeal allowed.
