

1907.  
December 20

Present: Mr. Justice Wood Renton.

GURUSAMPILLAI v. PALANIAPPA KANGANY *et al.*

*Ex parte* J. C. WIGGIN, Appellant.

C. R., Hatton, 6,358.

*Wages due to kangany—Attachment—Prohibitory notice—Debt due to estate—Set-off—Garnishee order—Rights of garnishor—Civil Procedure Code, ss. 229 (a) and 230.*

*Held by* WOOD RENTON J.—That the wages earned by a kangany which, by the custom of the estate, are being applied in payment of a debt due by the kangany to the estate, cannot be attached in execution at the instance of a third party.

A garnishee order does not operate as a transfer of the debt which will make the garnishor creditor of the garnishee, but merely creates a lien in favour of the garnishor, which is subject to all prior equitable rights.

THE plaintiff, having obtained judgment against the defendants for a sum of Rs. 81.82, issued a prohibitory notice under sub-section (a) of section 229 of the Civil Procedure Code on the appellant, the Superintendent of the estate, on which the first defendant was employed, prohibiting him from paying to the first defendant the head money due to him. The appellant thereupon moved to have the said notice withdrawn, on the ground that the first defendant was indebted to the estate, and that the money due to the first defendant was applied in discharge of the said debt. The motion was disallowed, and the Superintendent appealed.

A. St. V. Jayewardene, for the appellant.

Wadsworth, for the plaintiff, respondent.

*Cur. adv. vult.*

December 20, 1907. WOOD RENTON J.—

After careful consideration I have come to the conclusion that Mr. A. St. V. Jayewardene's argument for the appellant should prevail. The present case is clearly one of great interest and importance to the planting community and their kanganies, and indeed to the public as a whole. I propose, in the first place, to state shortly the material facts, and then to consider the law applicable to them on grounds of principle and in the light of such authorities as I have been able to find which have any bearing on the issue.

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It appears that the appellant, Mr. Wiggin, the Superintendent of Queenwood estate, Lindula, was served with a prohibitory notice under section 299 (a) of the Civil Procedure Code at the instance of a judgment-creditor of Palaniappa, a kangany in his employ, restraining him from making any payment to Palaniappa of money due to him by the estate by way of "pence money." On the day fixed in the prohibitory notice the appellant appeared under section 230 of the Code, and although the meagre journal entries throw little light on what actually transpired at the hearing, it would seem that he set up in substance the defence that Palaniappa was himself in debt to the estate to a much larger sum than any amount due by the estate to him at the date of the prohibitory notice, and that, by the custom of the estate, he was entitled to appropriate the wages then due to Palaniappa in part liquidation of that indebtedness. In spite of this plea the Commissioner of Requests has made an order under section 230 of the Civil Procedure Code attaching the wages which *ex concessis* would have been due to the kangany at the date of the prohibitory notice, but for the Superintendent's claim to a customary set-off. In my opinion the order appealed against is bad both on principle and on authority. 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, and that where, as here, the debtor of the judgment-debtor, could set up a claim of set-off against his own immediate creditor, he is not subject to the summary provisions in sections 229 and 230 of the Civil Procedure Code. In the present case the appellant alleges that by the custom of the estate, which would be binding contractually on his kangany, there was no debt due by the estate to the kangany at the date of the prohibitory notice. I think the appellant is equally entitled on principle to rely on that equitable defence when he is summoned by a prohibitory notice under section 229 of the Code before a Court of Requests. I have, so far, considered the question on grounds of principle alone. I have been unable to find any local decision which affords me any real help in regard to the construction of the sections above mentioned, but I think that the English cases which have been decided under the Rules of Court applicable to garnishee orders furnish strong corroboration of the soundness of the conclusion at which I have arrived. It was laid down as *obiter dictum* by Lord Justice James, in the case of *Ex parte Joselyne*,<sup>1</sup> that the effect of an

<sup>1</sup> (1878) 8 Ch. D. 327-330.

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order of attachment is to transfer the debt attached absolutely from the judgment-debtor to the judgment-creditor. In all the later cases, however, this dictum has been explained and distinguished to such an extent that it may fairly be said to have been disregarded. In the case of *Ex parte The Combined Weighing and Advertising Machine Company*,<sup>1</sup> it was held that a garnishee order does not operate as a transfer of the debt, which will make the garnishee creditor of the garnishee, and that its effect is merely to create in his favour a lien, which will be subject to all prior equitable rights. In the case of *Badeley v. Consolidated Bank*,<sup>2</sup> the Court of Appeal decided that, by virtue of a garnishee order, a creditor can only attach such property of the debtor as the debtor himself could deal with properly and without violation of the rights of others. In connection with the same point, I may refer to the case of *Ex parte Whitehouse*,<sup>3</sup> *Geisse v. Taylor*,<sup>4</sup> and *Norton v. Yates*.<sup>5</sup> It is quite true that all those cases deal with circumstances in which the rights of third parties were involved, but I think that the principle underlying them is equally applicable to the case of the garnishee himself, and that a debt whose payment into Court can be enforced under the summary provisions of the Civil Procedure Code must be a debt of which the judgment-debtor could himself have compelled payment if he had desired to do so. On this last point I refer to the case of *Chatterton v. Watney*.<sup>6</sup> It appears to me that the order appealed against should not have been made and I set it aside.

In view of the difficulty and the importance of the present case I have thought it right to deal with the facts and the law applicable to them in detail.

The appeal is allowed with costs.

*Appeal allowed.*

<sup>1</sup> (1890) 43 Ch. D. 99.

<sup>2</sup> (1888) 38 Ch. D. 238.

<sup>3</sup> (1886) 32 Ch. D. 512.

<sup>4</sup> (1905) 2 K. B. 658.

<sup>5</sup> (1906) 1 K. B. 112.

<sup>6</sup> (1881) 16 Ch. D. 379-383.