

1895.
September 20.

PIERIS *et al.* v. FERNANDO.

D. C., Colombo, 6,580.

Contempt of court—Neglect to comply with order drawn up informally and made ultra vires.

In an action for the recovery of certain jewellery, it being found, after evidence of both parties had been heard, that the plaintiff owed a certain sum of money to the defendant, who was in possession of the jewellery, the District Judge, without entering a decree in favour of either party, recorded his opinion that "the most equitable course is to order the plaintiff to bring into Court the sum of Rs. 91 within fourteen days, and the defendant to bring into Court jewellery also within fourteen days, to abide the further order and decree of this Court." No formal order was drawn up—

Held, that this order was irregular and *ultra vires*, and that a disobedience of it by defendant did not justify his conviction as for a contempt of court.

THE facts of the case are sufficiently set forth in the judgment of the Chief Justice.

BONSER, C.J. 20th September, 1895. BONSER, C.J.—

In this case the appellant was charged with contempt of court and found guilty by Mr. Templer, Acting District Judge of Colombo, and sentenced to simple imprisonment for a term of six months, or until his contempt was purged by producing certain articles in Court. The contempt of which the appellant was found guilty was disobedience of the direction of the Court as to bringing certain articles into Court within fourteen days from the date of the direction.

The action was an action for the recovery of certain jewellery. At the conclusion of the trial, the Acting District Judge did not make any decree either in favour of plaintiff or defendant. He found that the plaintiff owed the defendant a sum of Rs. 91, and he stated that had this money been brought into Court by the plaintiff he would have had no difficulty in framing his judgment so as not to affect the legal rights of the parties. "This however," he proceeded, "has not been done; accordingly I think the most equitable course is to order the plaintiff to bring into

“ Court the sum of Rs. 91 within fourteen days, and the defendant
“to bring in the jewellery into Court also within fourteen days, to
“abide the further order and decree of this Court thereon
respectively.” No formal order was drawn up; but on the
defendant's neglect to comply with this order the Acting District
Judge, on his own motion, charged the defendant with contempt
of Court, and found him guilty and sentenced him as before
mentioned.

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BONGRA, C.J.

It appears to me that the order that was made was *ultra vires*. It was an order not asked for by plaintiff, and I do not understand how it came to be made. Of course in some cases, where a defendant admits the disputed property to be in his hands, the Court, in order to secure the preservation of the property, may order it to be brought into Court and kept *in medio* until the question as to who is entitled to it be determined; but in this case the trial had been held, the evidence of both parties had been heard, and the Judge was in a position to decide as to whether the claim of the plaintiff had been proved or not. If he thought that claim had been proved, he ought to have made a decree for the delivery of the property. If he thought that the plaintiff was indebted to the defendant, he might have made a cross decree in favour of the defendant. It seems to me that the order that was made was irregular, and that therefore the defendant ought not to have been sent to jail for disobedience of it.

A very serious question was raised in the course of the argument as to the effect of section 59 of Ordinance No. 1 of 1889 on the power of District Courts to deal with persons disobeying their orders, which, however, it is not necessary on the present occasion to decide.

WITHERS, J., agreed.

WITHERS, J.

