

Present : Bertram C.J. and Schneider J.

1924.

SUBRAMANIAM CHETTY v. NAIDU.

Application for *restitutio in integrum* in D. C. Colombo, 12,037.

*Warrant of attorney to confess judgment—Application for restitution—  
Fraud—Civil Procedure Code, s. 31.*

Proceedings by way of *restitutio in integrum* will not be entertained to set aside a judgment given in pursuance of a warrant of attorney to confess judgment, except in the case of fraud or a fundamental departure from the terms of section 31 of the Civil Procedure Code.

If a creditor acts unlawfully upon a warrant of attorney to confess judgment, he does so at his peril, and it is open to the person damnified to proceed against such creditor in an appropriate action.

**A**N application by way of *restitutio in integrum* to set aside a judgment entered in pursuance of a power of attorney to confess judgment on two grounds, viz., first, that in the judgment which was recovered on a mortgage bond it was not intended to include money advanced on a promissory note; and second, that the attorney to whom the warrant was issued consented to an order for sale at once, and waived the requirements of section 201 of the Civil Procedure that a date should be fixed and an opportunity given for redemption up to that date.

Keuneman, in support.

Driberg, K.C., with *Peri Sunderam*, contra.

1924. August 4, 1924. BERTRAM C.J.—

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There is a growing tendency to appeal to this Court and to invoke the special procedure of *restitutio in integrum* by persons against whom judgments have been entered up in pursuance of their own warrants of attorney. This is an encroachment which, in my opinion, should be definitely resisted. This special procedure was never intended to allow applications of this sort to be made.

In the present case the judgment-debtor challenges the proceedings on two grounds; judgment was recovered on the mortgage bond, and he contends, in the first place, that it was never intended that money advanced on a promissory note payable on demand should be recoverable under the bond. The second point is that the attorney to whom the warrant of attorney was issued consented to an order for sale at once, and waived the requirements of section 201 of the Civil Procedure Code that a date should be fixed and an opportunity afforded for redemption up to that date.

With regard to the first of these points, in our opinion it is quite unsubstantial. We do not think that it was a condition precedent of the right to recover on the bond that the money had been advanced on a promissory note, and that that promissory note was only payable on a fixed date.

With regard to the second of these points, it may very well be that the attorney in this case did what he ought not to have done; and it may very well be that the person who gave him the warrant of attorney has some remedy against him. But it is intolerable that on this procedure of this special nature we should be asked to entertain complaints with regard to defects in accounts or imperfections in the proceedings of the attorney, but more so, as the Code itself, by virtue of Form No. 12 in the schedule, expressly empowers the person who obtains judgments in this manner to obtain from the attorney a release in respect of defects and imperfections which shall be binding upon the judgment-debtor. Further, when an application has been made to us on this special procedure alleging definite grounds for relief, we cannot allow an applicant to go outside the grounds specified, and to raise large and important points which require careful consideration and argument, and of which those who came to justify the judgment ought to have definite notice. Thus, in this case Mr. Keuneman seeks to raise a further point that judgment can only be entered up on a warrant of attorney of this nature for an ascertained sum actually stated in the warrant of attorney. I express no opinion on this point. I do not think that it can be raised on the present application. The object of warrants of attorney is to preclude such disputes as have been raised in this case from arising. Warrants of attorney are intended to tie the hands of debtors, and if debtors take the risk of giving these documents, they must consent to their hands being tied.

We should be frustrating a procedure authorized by law if we allowed parties, who give these documents, to raise any dispute by the simple process of an application of this character. Warrants of attorney, no doubt, must be strictly construed, and if a creditor unlawfully acts upon a warrant of attorney, or upon a faulty warrant of attorney, he does so at his peril. But that is a matter which must be pursued in other proceedings. If an application was made to us on the ground of some gross definite fraud, and a *primâ facie* case of such fraud was established, no doubt we could grant relief. It may very well, too, be that we could grant relief if it were shown that in the warrant of attorney in question there was some fundamental departure from the terms of the Code, so that the proceedings could not be considered as being taken in pursuance of section 31 at all. Such a question may be considered when it arises; but with regard to the present application, in my opinion, it should be dismissed with costs.

SCHNEIDER J.—I agree.

*Application refused.*

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BERTRAM  
C.J.

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