

1960

Present : H. N. G. Fernando, J.

JAYASEKERA *et al.*, Appellants, and UVAIS, Respondent

S. C. 82—C. R. Colombo, 47168

*Execution of proprietary decree—Resistance thereto—Persons who may be punished—
Civil Procedure Code, ss. 325, 326.*

Section 326 of the Civil Procedure Code authorises a committal to jail of no other person than the actual resistor or obstructor whether he be the judgment-debtor or some other person instigated by him.

APPPEAL from an order of the Court of Requests, Colombo.

E. B. Wikramanayake, Q.C., with V. Thillainathan and V. Arulambalam,
for 1st to 3rd Respondents-Appellants.

G. T. Samerawickreme, for Plaintiff-Respondent.

² (1940) 67 *Lloyds Law Reports*.

January 22, 1960. H. N. G. FERNANDO, J.—

This is an appeal against an order dated 27th August 1957 by which the Commissioner of Requests directed that the three appellants be committed to jail for a period of 30 days under Section 326 of the Code. The learned Commissioner in the same order directed that a writ of possession should issue as against the three Respondents-Appellants and that the plaintiff be placed in possession. This further direction is not the subject of this appeal and will therefore be unaffected by my decision thereon.

The order committing the three appellants to jail was made without any inquiry being held and in the absence of the three appellants, presumably on the footing that the affidavits and journal entries and the Fiscal's report would be sufficient to authorise the making of an order under Section 326. I doubt whether such a procedure satisfies the requirements of the section which refers to the hearing of the matter on a petition or a complaint made under Section 325, but in the present case I do not have to decide that question. On the 10th of April 1957 the proctor for the plaintiff filed a petition referring to the entry of a decree in his favour and to the issue of a writ. Four persons were named respondents and the first three named are the three appellants. In paragraph 6 of the petition it was stated that the first, second and third respondents (and the appellants) were not there but that the 4th respondent obstructed the Fiscal Officer and in paragraph 7 it is stated that the obstruction of the 4th respondent was occasioned by the instigation by the first, second and third respondents. The affidavit attached to the petition also contains an allegation that the fourth respondent obstructed but that the first, second and third respondents were not there.

In my opinion the power conferred by Section 326 is to commit to jail the judgment debtor if he occasioned an obstruction of the fiscal or any other person who occasions the obstruction or resistance at the instigation of the judgment debtor. Considering that the section is a penal one I do not feel disposed to give to the word "occasioned" any greater importance other than that of "caused" or "done" or in other words the section only authorises a committal to jail of the actual resistor or obstructor whether he be the judgment debtor or some other person instigated by him. I therefore set aside that part of the order of 27th of August 1957 which directs that the three appellants be committed to jail. Appellants will be entitled to costs of this appeal.

Appeal allowed.
