

1922.

*Present : De Sampayo and Porter JJ.***FRASER v. VYTHIANATHAN et al.**

42—D. C. Colombo, 2,589.

Decree for costs only—Warrant of arrest in execution—Civil Procedure Code, s. 229.

A warrant of arrest may be issued in execution of a decree for costs only.

THE facts appear from the judgment.

Arulanandan (with him *S. Rajaratnam*), for appellant.—The defendant-appellant failed to pay costs, and was arrested on a warrant in execution. The other defendants were declared entitled to draw the money, and the Court decided that the appellant was not a trustee of the temple. That was a substantive decree against the seventh defendant-appellant. He was not liable to arrest.

Counsel referred to *Soysa v. Soysa*.¹

Jayawardene, K.C. (with him *Olagasegram*), for the respondents.

June 21, 1922. DE SAMPAYO J.—

This is an appeal from an order committing the seventh defendant to jail in default of payment of a sum due as costs. It appears that the Government Agent took proceedings for the acquisition of a portion of land belonging to some temple, and there was a contest for the compensation deposited in Court. The Government Agent made as defendants to the proceedings eight parties. The first defendant is acknowledged to be at least one of the trustees of the temple. The second, third, fourth, and fifth defendants claim to be co-trustees with the first defendant by appointment by the first defendant in the exercise of some power vested in him. The sixth and seventh defendants also claim to be trustees, but on the basis of an appointment by the congregation. The circumstances would indicate some dispute as to the status of these defendants as trustees. The seventh defendant as well as sixth defendant failed to establish their status to the satisfaction of the Court, and the result of the inquiry was that the first to the fifth defendants were declared entitled to the sum in Court, and the seventh defendant was condemned to pay the costs of the first to the fifth defendants. As he did not pay the amount of costs as taxed, warrant of arrest was issued, and the seventh defendant was arrested. When he was

¹ (1892) 2 O. L. R. 16.

brought to Court, it was contended on his behalf that for non-payment of costs he was not liable to be arrested. The same contention is maintained here in appeal. But it appears to me that under section 299 of the Civil Procedure Code it is only where a substantive decree is given against any defendant for the payment of money or delivery of any property that the costs, though awarded, cannot be taken into account in calculating the amount on which a man may be arrested. In this case there was no substantive decree against the seventh defendant. All that happened was that, he having failed to establish the status which he set up, the other defendants were declared entitled to the money in Court. There was no decree in that respect executable against the seventh defendant, so that all that could be executed against him was the decree for costs. In my opinion, under section 299 and on general principles, a decree for costs alone is a decree for money which may be executed by ordinary execution or by warrant of arrest. This is the view taken so long ago as 1892 in *Soysa v. Soysa*.¹ I think the District Judge was right, and this appeal should be dismissed, with costs.

PORTER J.—I agree.

Appeal dismissed.

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DR SAMPAYO
J.

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Vythianathan