1899.
August 28.

EKANAYAKA *v.* APPU *et al.*

D. C., Tangalla, 465.

Administrator of intestate estate—When functus officio*—Sale by Fiscal in execution against administrator—Final account of administrator—Right of heirs to deal with assets of the estate.*

An administrator appointed by Court to administer the estate of a deceased person has power over every portion of his property within this Colony, and it endures for the life of the administrator or until the whole of the estate is administered.

The rendering of a final account, much less an account that is not final in fact, does not make him *functus officio*, without a judicial settlement or a formal discharge or removal from office.

When a creditor holds a judgment against the administrator, the assets of the testator cannot be held or disposed of by the heirs to their advantage or to his detriment.

PLAINTIFF in this case, claiming to be the owner of a field by virtue of a deed of sale made in his favour on the 16th November, 1896, by the Fiscal of Matara, who auctioned the land on the 10th May, 1890, under writ issued in case No. 33,520, C. R., Matara, wherein the defendant was the official administrator of one Tillekaratna who had died intestate in 1883 complained of ouster by first, second, and third defendants in June, 1896, and prayed for ejectment and declaration of title in his favour.

The defendants claimed the land as purchasers under the brothers and sisters of the said Tillekaratna.

It appeared that the estate of Tillekaratna was administered by the Secretary of the District Court; that in his final account filed in January, 1887, this land did not appear as one of the properties of the intestate on the supposition that it was subject to a *fidei commissum*; that that supposition was not well-founded, because the Supreme Court had decided in March, 1890, in case No. 35,584, D. C., Matara, that Tillekaratna took an absolute estate under the deed of gift; and that an application to revive judgment in C. R., Matara, 33,520, and to issue writ in 1888, was allowed, notwithstanding the objection of the administrator that as he had filed his final account he was *functus officio*.

The District Judge found that the seizure and sale to plaintiff of the land under writ No. 33,520 void, "because at the time of "the seizure the writ issued against a person that was not existing "and the land seized was the property of third and innocent "parties," viz., the defendants in the present case. He dismissed plaintiff's action and gave judgment for the defendants for the land.

Plaintiff appealed.

Dornhorst, for appellant.

Bawa, for respondent.

The Supreme Court set aside the decree of the Court below and gave judgment for plaintiff with costs, as follows :—

28th August, 1899. LAWRIE, A.C.J.—

The issue, whether the land in question was liable to be sold for the debts of Henry Dedrick Tillekaratna, must be answered in the affirmative. I do not understand that the District Judge thought otherwise. He dismissed the action on another ground. He held that the land could not be sold in May, 1890, under the writ against Mr. De Silva, official administrator of the estate of Henry Dedrick Tillekaratna, because the land had never been administered by the administrator as part of the estate, and at the date of the sale he had ceased to be administrator and the land had passed into other hands.

I understand that the official administrator had not included this land in inventory ; he was of the opinion that it was under a *fidei commissum*, and on the death of the intestate that it passed to the substitutes.

On the footing that he had fully administered the whole estate, he filed a final account in 1887. In February, 1890, it was decided by this Court (in appeal in D. C., Matara, 35,584) that the land was not subject to any *fidei commissum*, and shortly afterwards (in May, 1890) the land in claim was sold under a judgment obtained in 1883 against the administrator and was purchased by the plaintiff.

The 540th section of the Civil Procedure Code (in my opinion) does not enact new law ; it states the law then and now existing ; the power of the administrator, which is authenticated by the issue of probate, or is conveyed by the issue of a grant of administration, extends to every portion of the deceased person's property, movable and immovable, within this colony, and endures for the life of the executor or administrator or until the whole of the estate is administered, according as the death of the executor or administrator, or the completion of the administration, first occurs.

There is no virtue or magic in calling an account a final account if it be not in fact and law final. There was in the official administration of Henry Dedrick Tillekaratna's estate no final judicial settlement, nor any discharge, nor removal from office of the official administrator.

At the sale in May, 1890, he was still administrator vested in all the property of the deceased. Title to this land passed to the purchaser.

1898.
August 28.

LAWRIE, A.C.J.

The parties agreed to limit the issue to be tried to one of title. The defendants purchased in 1884; and the District Judge is of opinion that they remained in possession until the institution of this action in January, 1898; but, though the defendant pleaded prescription, the issue was framed, and on the only issue framed the plaintiff certainly must succeed.

I would set aside and give judgment for plaintiff with costs.

BROWNE, A.J.—

In execution of a writ against the official administrator of the estate of D. H. Dassanaike Tillekaratna, the land in question was auctioned by the Fiscal on the 10th May, 1890, when plaintiff was the highest bidder, and the Fiscal conveyed it to him on the 16th November, 1896.

It is stated to us that the judgment against the administrator was entered in 1883.

The defendants claimed under title derived by deeds from the heirs of the intestate executed in February and June, 1884, so far as any of the same filed of evidence shows. The heirs or those claiming under them had objected to the revival of the judgment against the administrator in 1888, but the execution of the writ was allowed.

The claim of title by the plaintiff is now resisted solely on the ground that (to quote the learned District Judge) in 1888 the Secretary (official administrator) was *functus officio*: that he should have been allowed to prove that fact in 1888; and that the plaintiff should have sued the heirs of the estate to recover any claim he had. I cannot see how this can be advanced in any wise whatever, if he had obtained (as would appear) decree against the administrator in 1883.

Nor do I know that an administrator *quâ* creditors of the estate ever becomes *functus officio*. Limitations of his liability to heirs or creditors by efflux of time or by judicial settlement, &c., may arise in his favour, and so, too, possibly like limitation of his rights against heirs or others in possession of the assets of the intestate; but so long as his original duty and liability have not been so terminated, they, in my judgment, are capable of being exercised in the fullest degree by or against him. And when a creditor holds a judgment against him still of full force, the assets of the testator cannot be held or disposed of by the heirs to his detriment and their advantage.

I would set aside the dismissal and enter judgment for plaintiff as prayed with costs.