1896.
August 6 and 11.

In the Matter of the Estate and Effects of DON CORNELIS WARNASURIYA.

D. C., Mátara, 1,105.

Irregular proceedings—Acquiescence of parties—Power of Court to determine issues agreed upon by parties—Effect of decision of Court thereon.

On a petition being presented to the District Court for an order directing the Fiscal or some competent headman to take charge of the movable property of the estate of a deceased person to prevent the same being tampered with or removed, an order was issued to the Fiscal to take charge of certain movable property said to belong to the said estate, and to hold it subject to the order of the Court, and the Fiscal took charge of such property and made his return to that effect. Four persons appeared as the owners of the property sequestered, and asked the Court time to state their claims, so that their rights might be inquired into. This was allowed. The petitioner was thereafter appointed administrator of the estate of the deceased, and the Fiscal was directed to sell the property sequestered, and deposit the proceeds in Court to abide the result of an inquiry. On the day fixed for the inquiry the administrator and the claimants appeared and agreed on the issue, whether the money in Court belonged to the estate of the deceased or to the claimants:

Held, that the proceedings were irregular, and the petition, when presented, should have been promptly dismissed, but as the claimants had waived all irregularity and co-operated with the petitioner, and invited the Court to determine to which party the money belonged, it was competent to the Court to do so, and its decision would be binding on the parties.

THE facts of the case appear in the judgment.

Dornhorst, for appellant.

Peiris, for respondent.

Cur. adv. vult.

11th August, 1896. WITHERS, J.—

On the 15th November, 1895, the applicant for letters to administer the estate of Don Cornelis Warnasuriya, Patabendi Arachchi, late of Kotagoda, deceased, petitioned the Court for an order directing the Fiscal or some competent headman to take charge of the movable property of the deceased's estate to prevent the same being tampered with or removed.

In the alternative the petitioner asked for the Court's authority to take charge of the movable effects before granting of letters. This petition was aimed at two persons named in the petition, of whom it was alleged that though they had no claim, right, title, or interest in the estate of the deceased, they had entered into some house and would not permit the petitioner to enter into it,

and the petitioner alleged that he apprehended that those two persons would make away with the movable property, jewellery, money, and documents belonging to the estate of the deceased. This petition was not entitled in any matter or in any Ordinance, and should have been promptly refused.

It is a novel kind of *quia timet* petition in a testamentary matter. Perhaps the person who launched it was moving blindly for letters *ad colligenda* under the 546th section of the Code ; but whatever the object, the result attained has been delay and expense. There is not a line in the petition which would bring it within the scope of the 712th and following sections of the Civil Procedure Code.

The petitioner, however, succeeded in obtaining an order from the Court directed to the Fiscal to take charge of the movable property and hold it subject to the orders of the Court. Accordingly the Fiscal took charge of certain movables and made his return to that effect.

Part of the assets so sequestered consisted of live stock, and as the Fiscal's charges for maintaining the live stock were likely to be heavy, the applicant applied for leave to take charge of the property on giving security. This request might have been allowed, but the applicant was told to wait until he was appointed administrator.

Four persons came forward to claim the property sequestered by the Fiscal, and instead of asking the Court to dissolve the order and dismiss the petition, they asked for time to state their claims so that their rights might be inquired into and determined. This was allowed, and shortly after they applied to the Court for an order to have what they claimed and delivered to them on their giving sufficient security to produce them before the Court whensoever required.

Instead of allowing this reasonable application the Judge intimated that if the parties could not agree as to who should have charge of the property it must be left with the Fiscal until the claims were decided. At this stage of the proceedings the present District Judge took up the inquiry ; not long afterwards the applicant was appointed administrator. While the opposing parties were contending for the possession of the movables in dispute, the Fiscal, it seems, was directed to sell them and to deposit the proceeds in Court to abide the result of the inquiry.

The administrator and the claimants appeared before the Court on the day fixed for the inquiry, and the parties were agreed on the issue to be tried, which was, Does this money belong to the estate to be administered, or does it belong to the claimants ?

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No sooner was that issue settled than the District Judge intimated that the trial of the matter would be idle, and that his judgment would not bind the parties owing to the irregularity of the proceedings.

Thereupon the District Judge made the order appealed from. He dismissed the petitioner's application above referred to, and directed the money to be handed to the respondents. He dismissed the petition because he thought it a bad one, and the proceedings had upon it irregular from first to last. He gave the claimants the money because they had put in an affidavit that they owned the property which this money represented. He dealt with the matter as if he had been proceeding under section 712, &c., of the Code. That is a proceeding by an executor or administrator to discover property which ought to be included in the estate to be administered, and is aimed at the persons in whose possession or under whose control the property to be discovered is. If any such person cited to attend at the time and place appointed for an inquiry into the matter of a petition under section 712 puts in an affidavit that he is the absolute owner of the property to be discovered, or is entitled to the possession of it by virtue of any lien or special property, the proceedings instituted by the petitioner shall be dismissed.

The District Judge finding that the present claimants had put in an affidavit of the kind, treated these proceedings as coming under chapter 54 and dismissed the proceedings accordingly. But the proceedings did not originate under this chapter or under any chapter known to the law. The claimants, however, waived all this irregularity and co-operated with the petitioner, and invited the Court to determine in these proceedings to which party the money belongs. The District Judge's Court is of course competent to try the question if the District Judge has jurisdiction to try the question and the parties invite him to try it.

I do not see why his order should not be binding. His order will not of course bind third parties. It will bind the claimants, and it will bind the estate which the administrator represents.

Surely it is better to try the question once and for all now, than to have it possibly made the subject of a separate litigation.

I propose to set the order aside and remit the record back for the District Judge to try and determine the issue which the parties agreed upon. Order accordingly.