KIRI BANDA *v.* ASSEN.

1895.
October 29.

D. C., Kandy, 8,006.

Claim to property seized in execution—Action under s. 247 of the Civil Procedure Code—Ex parte order—Right of execution-creditor to open up investigation.

On a claim by defendant to property seized in execution the District Judge made order that the property be released from seizure. Three years after, the execution-creditor had the same property seized again for the same debt. Defendant repeated his claim, and the same was again upheld.

Held, that it was not competent to the execution-creditor to bring an action under section 247 within fourteen days of the order at the second inquiry, but that such action should have been brought within fourteen days of the order at the first inquiry.

Where an inquiry into a claim in execution is held, and order made thereon in the absence of the execution-creditor, it is open to him to apply to the Court to vacate such order and re-open the investigation.

THE facts of the case sufficiently appear in the judgments of their Lordships.

Dornhorst, for appellant.

Senaviratne, for respondent.

29th October, 1895. BONSER, C.J.—

In this case the plaintiff has brought an action under section 247 of the Civil Procedure Code to have certain property declared liable to be sold in execution of a decree in his favour. It appears that the property was seized so far back as 1891 for this

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same debt, and a claim was then made by this defendant, which was investigated, and in that investigation an order was made on the 3rd April, 1891, releasing the property from seizure. The plaintiff did nothing upon that, but in 1894, three years afterwards, he seized the property again for the same debt. A claim was again made by the defendant, again investigated, and allowed. Within fourteen days from that last order he commenced this action. The District Judge has held he ought to have brought his action within fourteen days of the former order of the 3rd April, 1891. There is no suggestion that there was any change of ownership of the land in the interval, but the plaintiff says that he did not get notice of the first investigation, and that the order for the removal of the seizure was made behind his back. The District Judge held that if that were so—which, however, is not proved—his proper course was to apply to the Court which held the investigation to re-open that investigation. I think that the District Judge was right, and that that was the proper course for the plaintiff to have taken. Therefore this appeal will be dismissed.

WITHERS, J.—

I think so, too. In the second inquiry it would seem that the District Judge refused to carry out the sale and seizure of the property because there was a subsisting order of his Court releasing the premises from seizure under the plaintiff's writ for execution of the same judgment, and there was nothing to show that circumstances had arisen which could justify the property again being seized in disregard of that judgment. If the prior order was made *ex parte*, the plaintiff's course was to apply to the Court to vacate it.