1895.
June 19 and 21.

MAHAMADO *v.* IBRAHIM.

D. C., Galle, 2,398.

Injunction—Power of Supreme Court to grant it—Money paid under sanction of Court—Garnishee order under s. 230 of the Civil Procedure Code—Courts Ordinance, s. 22.

A held an assignment from B of a mortgage bond granted by I to B to secure payment by I to B of a certain sum of money. M, a creditor of B, obtained in an action brought by him a money decree against B, and had a summons under section 230 of the Civil Procedure Code served on I, calling on him to show cause why he should not pay M the sum which he owed M's debtor, B, on the bond. I, who had notice of the assignment in favour of A, showed no cause, and order was made that he should pay into Court the said sum. He failed to do so, and M thereupon obtained a writ against I, and had the property mortgaged by him to B seized and advertised for sale. A then moved the Court to have the writ recalled. The motion was disallowed, and A appealed. Pending the appeal he applied to the Supreme Court for an injunction to restrain the sale of the property seized under M's writ.

Held, that he was not entitled to it, as no irremediable injury was likely to result from the act sought to be restrained, A, in the circumstances, still having his right to recover from I the amount due to him on the assignment.

There is no inherent power in the Supreme Court to issue injunctions. Its jurisdiction to do so is restricted to the cases referred to in section 22 of The Courts Ordinance ; and the special circumstances in which such jurisdiction is to be exercised are (1) that irremediable mischief would ensue from the act sought to be restrained ; (2) that an action would lie for an injunction in some Court of original jurisdiction ; and (3) that the plaintiff is prevented by some substantial cause from applying to that Court.

It is a well established principle that the law will not compel a person to pay a sum of money a second time which he has paid already under the sancton of a Court of competent jurisdiction, but a person seeking to benefit by this principle must have done all that was incumbent on him to resist the payment.

THE facts of the case appear in the judgment.

Layard, A.-G., Dornhorst and *Wendt*, for applicant.

Cur. adv. vult.

21st June, 1895. BONSER, C.J.—

This is an application made *ex parte* by petition for an injunction to restrain the Fiscal of the Southern Province from selling certain immovable property which has been seized by him under a writ of execution in an action of *Mohammadu v. Ibrahim, No. 2,368,* District Court of Galle, and from further proceeding

with the said execution pending the decision of an appeal which has been lodged by the applicant.

As I was informed that no injunction had been granted by this Court for many years past, I reserved my decision in order that I might make further inquiry as to the practice of this Court in such matters. This Court has by its constitution no original jurisdiction in civil matters, but section 22 of The Courts Ordinance, 1889, which repeats the language of the Court Charter, provides that "the Supreme Court or any Judge thereof shall be "and is hereby authorized to grant and issue injunctions to pre-"vent any irremediable mischief which might ensure before the "party making application for such injunction could prevent the "same by bringing an action in any original Court."

It is to be observed that this is *primâ facie* a limited power, very different from that given by the Judicature Act of 1873 to the English Supreme Court of granting injunctions "in all cases "in which it shall appear to the Court just or expedient" to do so.

It was suggested by the Attorney-General that there is an inherent power in this Court to issue injunctions, but I am unable to agree with that suggestion, and in my opinion the jurisdiction of this Court is restricted to the cases referred to in section 22 of The Courts Ordinance. If such an inherent power existed, there would surely be some instances of its exercise to be found, but the practice of this Court lends no support to such a theory. I find that in 1859 in Baly's case, 3 *Lorenz 244*, the Full Court in delivering judgment stated that no injunction had been granted since 1837, and only cases could be found before that of which the reports were too meagre to ascertain on what principle they were granted. The injunction was refused in that case, and there is no instance to be found of one having been granted since that date, or even applied for.

It would appear, therefore, that the power of granting injunctions is a strictly limited one to be exercised only on special grounds, and in special circumstances, (1) where irremediable mischief would ensue from the act sought to be restrained; (2) an action would lie for an injunction in some court of original jurisdiction; and (3) the plaintiff is prevented by some substantial cause from applying to that court. The history of this case is briefly as follows:—

One Ismail brought an action in the Galle District Court against one Ibrahim and obtained a decree for Rs. 10,000. Under a writ of execution issued on that decree the Fiscal seized and sold certain property of Ibrahim and paid the proceeds of the sale, amounting to Rs. 3,901·76, into Court. An appeal was lodged

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against the decree, but pending that appeal the plaintiff Ismail was allowed to take the Rs. 3,901·76 out of Court on giving security for the repayment of the same whenever ordered.

Accordingly on 27th February, 1894, Ismail gave a mortgage bond to the secretary of the Court binding himself to pay the amount into Court whenever ordered, and hypothecating the land, the sale of which is now sought to be restrained, as security for such payment. The appeal was successful and the decree reversed by the Supreme Court. Following on that reversal an order was made by the Galle Court on the 24th July, 1894, ordering the plaintiff Ismail to pay the Rs. 3,901·76 into Court within one month. This order has never been obeyed. On the 7th August, 1894, Ibrahim assigned this sum and the right to recover it to the applicant, and notice of the assignment was given to Ismail, and on the 29th May, 1895, the security bond was assigned by the secretary of the Court to the applicant.

In the meantime judgment had been recovered against Ibrahim by one Mohammadu in the Galle Court in the action No. 2,398, for Rs. 11,194, and the Fiscal on the 26th February, 1895, proceeded to seize the said sum of Rs. 3,901·76 on the footing of its being a debt due by Ismail to Ibrahim by issuing a notice to Ismail under section 229 of the Civil Procedure Code, and on the 29th March, 1895, Mohammadu took out a summons under section 230 of the Civil Procedure Code calling on Ismail to show cause why he should not pay the Rs. 3,901·76 to Mohammadu. On that summons an order was made on Ismail to pay the money into Court within the following month of April. Ismail failing to obey this order, Mohammadu obtained a writ of execution against Ismail, and under the writ the Fiscal seized on the 18th May the hypothecated land. On the 11th June the applicant made an application in action 2,398, to which he was no party, to have the writ recalled, and the various orders made in that suit set aside for irregularity. This application was refused on 13th June. Against that refusal he has lodged an appeal. It is pending that appeal that he seeks an injunction. The land is advertised for sale on the 21st June, and this application was made on the 19th June.

The first point on which the applicant has to satisfy the Court is that irremediable mischief will be the necessary, or at all events the highly probable, result of the sale being allowed to proceed. That he endeavours to make out in some such way as this. He says that if this land is sold under this writ of execution he will lose the benefit of his hypothecation and be without remedy. His hypothecation will, he says, be gone, although of course the Fiscal

will only sell subject and without prejudice to it, because the satisfaction of Mohammadu's claim by the proceeds of the sale will be equivalent to payment by Ismail under compulsion of law of the debt of Rs. 3,901·76. So that Ismail cannot be made to pay it over again, and the case of *Rumbold v. Robertson, 47 L. J. C. 294* was cited. No authority is needed to establish the proposition that the law will never compel a person to pay a sum of money a second time which he has paid already under the sanction of a Court of competent jurisdiction.

But the person seeking to benefit by this principle must have done all that was incumbent on him to resist the payment. He must have been really compelled by law to make the payment, which cannot be said of him when by his default he allows an order to be made against him which ought not to have been made.

In the present case Ismail, at the time when he was called upon to show cause why he should not pay the Rs. 3,901·76 to Mohammadu instead of to Ibrahim, had notice of the assignment of the debt by Ibrahim to the applicant, and knew that Ibrahim was no longer the owner of the debt. Had he stated that to the Court when he was called on to show cause, the order to pay to Mohammadu would not have been made.

It is almost the indentical case put by the Court of Exchequer Chamber in *Wood v. Winn, L. R., 2 Q. B. 82:* "This case, "therefore, shows that if the present defendants [*i.e.*, Ismail] "had notice of the fresh deed [*i.e.*, the assignment of the debt] "at the time or after the *ex parte* order of attachment [*i.e.*, the "notice issued by the Fiscal under section 229] was served upon "them, and before the time for showing cause, they would have had "good cause to show, and the order for payment could not have "been made, and we think that there can be no doubt that in that "case the proper course to take would be to show cause, and if the "garnishee [*i.e.*, Ismail] were to pay instead of showing cause "the assignee [*i.e.*, the applicant] could recover against him."

The principle of that case would, in my opinion, apply where, as here, the garnishee, instead of paying the money to avoid execution, allows the writ to be executed. In neither case can he be properly said to have paid under compulsion of law. It is his own fault for not showing cause when he had good cause to show.

And even were it otherwise, the case cited does not show, nor does any other case so far as I know, that the applicant will be precluded from recovering the money from Mohammadu if he receives it without having a title to it. The cases show that the garnishee is protected if he acts properly from having to pay over again, but not that the person who ought not to have received the

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money is entitled to keep it. And I read section 352 of the Civil Procedure Code as being to the same effect.

The plaintiff has therefore failed to satisfy me that he will suffer any serious damage if the sale is allowed to proceed, much less such irremediable damage as would justify the interference of this Court.

This is sufficient to dispose of this application, but I doubt whether the applicant is in a position to prove the existence of the other two conditions which I have pointed out as being necessary to justify the granting of an injunction.

Moreover, the delay from the 12th June, when his application was dismissed, to the 19th, when his application was made, has not been satisfactorily explained.

The application is refused.