

## Re Estate of JAYAWARDENA.

D. C., Matara, 1,187.

1899.

February 23.  
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*Civil Procedure Code, ss. 538 and 718—Executor's valuation of property inventorized—Power of Court to order valuation by a third party—Expenses of such valuation—Remedy for undervaluation.*

Section 718 of the Civil Procedure Code does not empower a District Judge to direct an executor, who has filed an inventory with a valuation of his testator's property, to get a third person to make an inventory and valuation; nor to require him to deposit in Court a sum of money to pay such officer's fees.

If the Court suspects undervaluation by the executor, the Stamp Ordinance (No. 3 of 1890, sections 26, 29) provides a remedy.

THE facts pertinent to this appeal from an *ex parte* order appear in the following judgment of the Chief Justice.

*Wendt*, for the executrix, appellant.

23rd February, 1899. BONSER, C.J.—

This is an appeal by an executrix who has proved her husband's will, and has, as required by section 538 of the Civil Procedure Code, filed an inventory of her testator's property, with a valuation of the same, verified by herself by affirmation. The District Judge was apparently not satisfied that her valuation was correct. He suspected that the estate was undervalued. No grounds for that suspicion are recorded by him. He merely remarks that the inventory is insufficient, but he does not say in what respects it is insufficient, and he requires a further valuation to be made by a Mr. Erskine. He proposes to make that order under section 718 of the Civil Procedure Code, which provides that where an inventory has not been filed, or where the inventory filed is insufficient, the Court may, of its own motion, make an order for the filing of an inventory or a further inventory, as the case may be. That section does not empower the District Judge to make an order directing the executrix to get a third person to make an inventory or valuation of property. The form of verification of inventory and valuation as given in the Code runs thus:—"I have made a careful estimate and valuation of the said property, the particulars of which are set forth and contained in the said inventory, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite." That shows quite clearly that the inventory is to be made by the executrix and not by a third person.

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I should have mentioned that, on the 19th January, the Court made an order requiring the executrix to deposit a sum of Rs. 100 in Court for Mr. Erskine's expenses. The Court had no power to make such order.

If the property was undervalued by the executrix, the Stamp Ordinance makes provision for that case.

LAWRIE, J.—

I agree. I do not say that if a Court, for reasons given, distrusts the correctness of the inventory and the valuation required by section 538, it ought not to reject the inventory and call on the executor or administrator to file an amended inventory and valuation.

A Court, of course, is not obliged to accept an inventory, even though verified, which *ex facie* is incorrect and insufficient, or which the Court has reason to believe is untrue.

WITHERS, J., agreed.

