

ABDAN v. DEEN.

C. R., Galle, 1,671.

1902.

May 13 & 15.

Arrest of person for debt—Materials for order of discharge on the ground of poverty—Civil Procedure Code, ss. 300 and 301—Poverty.

Under section 300 of the Civil Procedure Code, the mere non-possession of property by a debtor seized in execution is not a reason for releasing him as a person unable from poverty to pay the amount of the decree.

In view of the fact that the debtor borrowed the sum of Rs. 360 for carrying on his trade, and had Rs. 150 as dowry nine months before, it was his duty to account for them.

THE defendant being brought up on writ of execution authorizing the recovery of a sum of Rs. 271 decreed against him, the Commissioner (Mr. F. J. de Livera) examined him, when he deposed as follows:—

“ I am defendant in this case. I made the promissory note sued upon, for goods supplied, to enable me to carry on business, which I did in Kunjie Bawa Shaik Mohamado's boutique. I do not trade in that boutique now. My brother does not trade in that boutique now. I do not know who trades in that boutique now. I earn 25 or 30 cents a day. I married nine months ago. When I married I got Rs. 150 in cash. That money has gone. Jewellery mentioned in the *kadutam* I never got. My wife got one-sixth of Radagewatta, when I married, by deed. I can earn 40 or 50 cents a day as a cutter of gems. ”

The District Judge ordered as follows: “ Defendant is possessed of no property. I therefore decline to commit him. ”

Plaintiff appealed.

Bawa, for appellant.

Samarawickrama, for respondent.

Cur. adv. vult.

15th May, 1902. WENDT, J.—

On 20th July, 1900, defendant was condemned by the decree in this action to pay plaintiff a balance sum of Rs. 271.79 (with costs Rs. 25.25) for goods sold and money lent him in January, 1900, to the value of Rs. 360.60. The defendant had in March made two payments on account aggregating Rs. 88.81. Execution was issued, to which the Fiscal returned, on 2nd October, 1900, that he could find no property of the judgment-debtor. On 27th October the plaintiff issued execution against defendant's person.

1902. and he was duly arrested and produced in Court. The Court,
May 13 & 15. however, refused to commit him to prison, but discharged him
WENDT, J. on the ground that he was possessed of no property. Plaintiff
appeals.

The order of discharge was presumably made under section 300 of the Civil Procedure Code, which empowers the Court, if the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree, to make an order directing his release upon such terms, if any, as it thinks fit. Section 301, however, specifies certain matters which the Court, before making such order, may take into consideration, and among them " the debtor's refusal or neglect to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it. "

The debtor was examined, and deposed that he had incurred the debt in order to " carry on business. " When he ceased to do so, he did not say. He married nine months before (say, March, 1900) and got Rs. 150 in cash as dowry. "That money," he added simply, " has gone. " His wife got one-sixth share of Radagewatta on her *kadutam*, in which that property was valued at Rs. 750. Defendant also said he could earn 40 or 50 cents a day as a cutter of gems. Plaintiff was called as a witness and said defendant traded in Kunjie Bawa's boutique until he executed his writ, when defendant left it, and since then his brother-in-law Lay Deen traded in it. Defendant was now in possession of Radagewatta.

* In view of the facts that the debt was incurred for the purpose of defendant's boutique trade; that he got Rs. 150 in cash within two months afterwards which he does not account for; that his wife owns landed property of which he is in possession; and that he does not account for the proceeds sale of the goods, I think this is a case in which those facts ought to have been taken into consideration by the Court, and that the result of such consideration ought to have been a refusal to discharge the defendant from arrest. The mere non-possession of property at the time of arrest cannot be an absolute reason for releasing the debtor. Else a man might buy a quantity of valuable goods to-day, gift them to somebody or squander them to-morrow, and, when arrested next week, plead that he is " possessed of no property," and be entitled to his discharge. I feel sure that that is not what was intended by the term " poverty " in section 300.

I reverse the order of 28th December, 1900, and direct that the defendant be brought up and committed to prison. The appellant will have his costs in both Courts.