

ARITCHI CHETTY v. IBRAHIM NATCHIA.

1900.

November 29.

D. C., Puttalam, 1,322.

*Claim investigation—Duty of Fiscal—Civil Procedure Code, s. 241—Sale of property seized, notwithstanding reference of claim to the District Court—Delay in deciding the claim—Action for damages for illegal seizure—Prescription.*

When a property seized in execution is claimed, and the Fiscal refers such claim to the Court, it is his duty to stay his hand until it is decided by the Court whether the seizure is legal or not.

A claimed certain cocoanuts seized under B's writ. The Fiscal, after reporting the claim to the District Court, sold the nuts, being of a perishable nature, in March, 1895. The claim investigation was not determined in Court till November, 1898, in favour of the claimant. Immediately afterwards he raised an action for damages for the wrongful seizure and sale of his cocoanuts. *Held*, the action was prescribed under section 10 of Ordinance No. 22 of 1891.

ON the 4th March, 1895, at the instance of one Segu Mohideen, the judgment-creditor in D. C., Puttalam, 744, certain cocoanuts were seized by the Fiscal. The present plaintiff claimed them, and the claim was reported to the Court. As the property was of a perishable nature it was sold on the 12th of the same month, before the claim could be adjudicated on by the Court. The present plaintiff alleged that the Fiscal's report to the Court understated the quantity of the articles seized, and that the prices realized at the sale were much less than they were actually worth. For various reasons the claim was not decided till the 2nd November, 1898, when the District Judge made order that the claim to the

1900. property seized and sold be upheld with costs payable from the  
 November 29. estate of the deceased Segu Mohideen.

The present action was instituted on the 16th November, 1898, and the plaintiff claimed Rs. 1,600 as damages consequent upon the wrongful seizure and sale, and he further prayed that the amount be levied out of the estate of the deceased Segu Mohideen.

The defendant, who was the administratrix of Segu Mohideen, pleaded that, as the action was not brought within two years of the sale, which took place in March, 1895, it was prescribed. She admitted that her intestate pointed out for seizure a certain quantity of cocoanuts and copperah, which was of no greater value than Rs. 225.

The District Judge held as follows:—"The cause of action  
 " admittedly arose on the 12th March, 1895, that is, more than  
 " two years before action brought. This cause being damages  
 " caused to plaintiff by the tort of Segu Mohideen in wrongfully  
 " causing the plaintiff's property to be seized by the Fiscal as the  
 " property of his execution-creditor in District Court No. 744, the  
 " 10th section of Ordinance No. 22 of 1871 would *prima facie*  
 " apply, even if liability for a tort still remained after the death  
 " of the wrongdoer. As no objection on this latter point has been  
 " raised in the answer, I assume that the estate of Segu Mohideen  
 " is liable for this tort. The only question, therefore, is whether  
 " section 10 of Ordinance No. 22 of 1871 applies or not. Plaintiff's  
 " counsel has raised an ingenious argument to evade the application  
 " of this section. His proposition is as follows:—"Plaintiff, having  
 " preferred a claim to the property seized, could not during the  
 " pendency of the claim proceedings institute a regular action  
 " against Segu Mohideen, because it would have been met by  
 " the plea of *lis pendens*. Therefore the operation of section 10  
 " of the Prescription Ordinance was suspended, and the two years  
 " must be reckoned from the date of the decision of the claim,  
 " that is, from the 2nd November, 1898. Moreover, as to part  
 " of the property, subject of the present action, this action must  
 " be regarded as an action under section 247 of the Civil Procedure  
 " Code, because the plaintiff claimed more than the Fiscal reported  
 " as having seized."

"I think both branches of this proposition are untenable."

The District Judge dismissed the plaintiff's action with costs.

*H. Jayawardena*, for the plaintiff, appellants.

29th November, 1900. BONSER, C.J.—

This is rather an extraordinary case. The plaintiff was the owner of a quantity of movable property in the shape of