

EPHRAIMS v. SILVA.

D. C., Galle, 3,854.

1903.

May 5-

*Civil Procedure Code, s. 337—Issue of writ of execution—Return of property—
Failure of creditor to examine debtor under s. 219—Second issue of writ.*

A judgment-creditor is not entitled to a second issue of writ of execution if on the first issue no property of the debtor has been found, and the creditor has failed to examine the debtor under section 219 and to apply for writ against his person.

THE plaintiff, on 21st February, 1896, obtained a decree for Rs. 240, with interest on a promissory note against the defendant. He issued writ against property on 30th June, 1896. The Fiscal made return on 5th August, 1896, that he had been unable to find any property belonging to the judgment-debtor. No further steps in execution were taken till 29th October, 1902, when the plaintiff in his affidavit averred that on the last occasion he used due diligence to obtain complete satisfaction of the amount due under the decree; that he did not issue writ again, as the defendant was not possessed of means; and that the defendant was now employed, and had since such employment acquired property. He applied for re-issue of the writ against property.

Notice of the application was served on the debtor, who appeared and contended that plaintiff had not used due diligence on the previous issue of the writ. He stated by affidavit that at the time of the previous issue of the writ he was possessed of

1903.
May 5.

property which had subsequently been sold in execution by another creditor. The plaintiff proved that the defendant had obtained employment in 1902, and had made him small payments on account in September, October, and November, 1902, but these payments had not been certified to the Court.

The District Judge (Mr. J. D. Mason), finding that the plaintiff had not on the first issue of the writ availed himself of either of the modes of obtaining satisfaction of the decree pointed out by the Supreme Court in *Palaniappa Chetty v. Gomes* (1 N. L. R. 356), refused to allow the re-issue of the writ.

The plaintiff appealed.

E. W. Jayawardene, for appellant.

H. A. Jayawardene, for respondent.

5th May, 1903. LAYARD, C.J.—

It appears to me that we are bound by the judgment of this Court in the case of *Palaniappa Chetty v. Gomes*, reported in 1 N. L. R. 357, and in view of that judgment the appellant is not entitled to re-issue his writ. The appeal must be dismissed with costs.

WENDT, J., agreed.
