

GEORGINA v. ENSOHAMY.

C.R., Galle, 692.

1903.

January 23.

Public holiday—Fiscal's sale held on—Ordinance No. 4 of 1886—Civil Procedure Code, s. 365.

Although section 365 of the Civil Procedure Code mentions only Sunday, Good Friday, and Christmas Day as days on which process in civil cases shall not be served or executed, its effect is not to render valid the execution of civil process on other public holidays declared *dies non* by section 4 of the Ordinance No. 4 of 1886.

A sale in execution held by the Fiscal on a public holiday is bad.

THE plaintiff obtained from the Court permission to bid for and purchase the property seized in execution of the judgment passed in her favour, but did not attend the sale held by the Fiscal on the 21st March, 1902, as the Governor had, since the fixing of the sale for that day, declared it to be a public holiday, for the observance of the Mohammedan festival called Hadji Perunal, under the Ordinance No. 4 of 1886.

The Fiscal, nevertheless, held the sale as advertised on the 21st March, 1902, and one Karunanayaka was declared the purchaser.

The plaintiff petitioned the Court for a cancellation of the sale on the ground of substantial injury arising from the sale being held on a public holiday.

The Commissioner (Mr. J. D. Mason) found as follows:—

“ The petitioner has proved that the Fiscal on a public holiday sold land seized under her writ worth Rs. 200 for Rs. 32. She has suffered substantial damage. I therefore direct the sale to be cancelled ”.

The purchaser appealed.

The case was argued on 14th October, 1902, and 20th January, 1903.

Sampayo appeared for the appellant.

H. Jaywardene, for plaintiff, respondent.

Cur. adv. vult.

23rd January, 1903. WENDT, J.—

The question in this case is whether an execution sale of land held on a public holiday is legally valid or liable to be set aside. After the sale had been fixed for the 21st March, 1902, and duly advertised, the Governor by Proclamation under the Holidays Ordinance, 1886, declared that day a “ public holiday ” in respect of the Mohammedan Hadji festival. Notwithstanding

1903. this, the Fiscal carried out the sale, and I understand the Commis-
 January 23 sioner to hold that the petitioner (the execution-creditor) suffered
 damage in consequence, the land worth Rs. 200 fetching only
 WENDT, J. Rs. 32.

The Fiscals' Ordinance, No. 4 of 1867, section 30, in laying down rules for the execution of process against person and property, declared that process in civil cases shall not be served or executed on a Sunday, Good Friday, or Christmas Day (rule 2). Nothing was said as to holidays. Then came the Holidays Ordinance, 1886, which, by section 4, made the Mohammedan Hadji festival and certain other scheduled days *dies non*, and directed that they be kept as holidays. (I suppose *dies non* is an elliptical form of the expression *dies non juridicus*, "not a court day".) These enactments came before this Court for interpretation in the case of *Appa Cutty v. Aysa Umma* (9 S. C. C. 121), which was a charge of resisting an arrest of the person in execution made upon the Hadji festival day. Clarence, J. held that, although the matter might perhaps have been made clearer, the intention of the Legislature must have been that the scheduled days should be days not available for service or execution of civil process, under section 30 of the Ordinance No. 4 of 1867. Clarence, J., refers to the Civil Procedure Code, which had not come into operation at the date material to his decision.

The Code, in section 365, re-enacts the old rule 2 verbatim. Although the statutory public holidays were then recognized, it does not mention them. It may be said that it was deemed unnecessary to repeat what the Holidays Ordinance had already effected. Then why mention some only of the scheduled days, viz., Sunday, Good Friday, and Christmas Day?

Whatever the reason may be, I do not see my way to holding that the Code, in effect, repealed the enactment in the Holidays Ordinance *quoad* all holidays but the three just mentioned. Therefore, following the opinion of Clarence, J., I hold that the sale now in question, being an execution of civil process equally with an arrest of the person, was invalid because carried out on a public holiday, and I dismiss the appeal with costs.
