

1930

*Present : Jayewardene A.J.*SUPRAMANIAM CHETTY v. CAVE
& CO.

74—C. R. Colombo, 47,865.

Garnishee order—Prohibitory notice—Debt disputed—Evidence of Garnishee—Power of Court—Civil Procedure Code, ss. 229 and 230.

Where a garnishee on whom a prohibitory notice had been issued under section 229 of the Civil Procedure Code denies the debt, the Court has power to examine him regarding the truth of the statement that the debt was not due.

APPEAL from an order of the Commissioner of Requests, Colombo.

Rajapakse, for appellant.*Navaratnam*, for respondent.

July 10, 1930. JAYEWARDENE A.J.—

This is an exceedingly small matter and should have been settled in the Court of Requests without any trouble. The plaintiff sued the defendants and obtained decree against the second defendant, and in execution caused the Fiscal to issue a prohibitory notice under section 229 of the Code on Messrs. Cave and Co., prohibiting them from paying any debt due to the second defendant. Thereafter the plaintiff moved, under section 230, that the manager of Messrs. Cave and Co. be summoned by the Court to show cause why he should not pay to the plaintiff any debt due by them to the judgment-debtor. The manager appeared and counsel for him stated that the party noticed had no money of the defendant's, and the Court then proceeded to write a lengthy judgment discussing the law and refusing to hold an inquiry, *i.e.*, to examine the debtor's debtor under section 230.

It has been held in various cases that where a debtor disputes the debt of the judgment-debtor, the Court has to stay its hand. There are two requisites before the Court refuses to proceed : first, there must be a debt in existence, and secondly, that debt must be disputed. This appears very clearly from the reported cases.

In this case Messrs. Cave and Co. denied the existence of a debt. His counsel has stated so, but the plaintiff wishes to examine the manager of Messrs. Cave and Co. on the point. I cannot see why the Court cannot proceed. In my opinion section 230 gives the Court ample power.

It is argued for the respondent that the prohibitory notice was not issued on proper material, that the judgment-debtor should have been examined under section 219 and made to disclose the debts that were due to him, or in any event there should have been an affidavit on the point. As a matter of fact a prohibitory notice has been issued, and this debtor is now before the Court on this notice issued by the Court under section 230. In the first place I think these objections are too late, and in the second place these objections as far as I can see were not raised in the Court of Requests, and in the third place I cannot see any substance in them.

I think the order of the Judge must be set aside and the case must be sent back to the Court of Requests so that the Commissioner may follow the procedure under section 230 on the footing that the debt is not disputed. It is open to Messrs. Cave and Co. to prove that there never was a debt due.

I allow the appeal with costs in both Courts.

Appeal allowed.