

1944

Present: Jayetileke J.

THAMBIPILLAI, Appellant, and KANDIAH *et al.*, Respondents.

153—C. R. Jaffna, 15,544.

Movable property—Standing tobacco crop—Seizure in execution—Civil Procedure Code, s. 227.

A standing tobacco crop is movable property for purposes of seizure under the Civil Procedure Code.

A PPEAL from a judgment of the Commissioner of Requests, Jaffna.

N. Kumarasingham for the appellant.

H. W. Thambiah for the respondents.

Cur. adv. vult.

December 21, 1944. JAYETILEKE J.—

This is a simple case. In execution of a decree entered against the first and second defendants in action No. 7,922 of the District Court of Jaffna, the Fiscal seized a tobacco crop standing on a land called Nadunkanny, on May 8, 1943. He treated the crop as movable property and effected the seizure in the manner indicated in section 227 of the Civil Procedure code. On May 9, 1943, the first and second defendants and their son-in-law, the third defendant, reaped and removed the crop that was under seizure. The plaintiff thereupon instituted this action for the recovery of Rs. 250 as damages. The learned Commissioner dismissed the action on the ground that the evidence as to the seizure was conflicting. It seems to me that the judgment cannot be supported on this ground. The officer who effected the seizure has given very definite evidence as to what he did. In the absence of any evidence to the contrary there is no reason why his evidence should not be accepted. Counsel for the respondent sought to support the judgment on the ground that the

seizure was bad in law. He urged that a standing crop should be treated as immovable property for the purposes of seizure under the Civil Procedure Code and relied on the following decisions of the Indian Courts: *Jwala Dei v. Pirbha* ¹; *Maddya v. Yenkatta* ²; and *Sadu v. Sambha* ³. I do not think any guidance is to be found from these decisions which turned upon the definition of the expression "immovable property" in the General Clauses Acts of 1868 and 1887. The definition reads:—

"Immovable property shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

Counsel for the appellant invited my attention to the case of *Perera v. Perera* ⁴ in which it was held that an agreement in respect of a tobacco crop need not be notorially executed inasmuch as a tobacco crop is *fructus industriales*.

In the case of *Lee Hedges & Co. v. Saville* ⁵ it was pointed out that as regards contracts affecting crops and vegetation a distinction has to be drawn between *fructus naturales* and *fructus industriales*. The former expression applies to crops which draw their nourishment principally from the soil and the latter to crop produced by the manual labour of man in sowing and reaping, planting and gathering. Growing crops if *fructus naturales*, are part of the soil before severance and an agreement in respect of them is governed by section 2 of the Prevention of Frauds Ordinance (Cap. 57). Growing crops if *fructus industriales* are chattels and an agreement in respect of them is governed by the Sale of Goods Ordinance (Cap. 70). Tobacco is sown, cultivated and reaped annually. It is produced essentially by the labour of man and must be considered as *fructus industriales*. The seizure of the crop has, in my opinion, been properly made. I would accordingly set aside the judgment appealed from and send the case back for issues 4 and 5 to be decided. The appellant is entitled to the costs of appeal. All other costs will abide the final result.

Appeal allowed.

¹ I. L. R. 14 All. 35.

² I. L. R. 11 Mad. 193.

³ I. L. R. 6 Bom. 592.

⁴ 3 N. L. R. 56.

⁵ 8 S. C. C. 21.