1948 *Present :* **Basnayake and Gratiaen JJ.**

SAMARASEKERA, Appellant, *and* SECRETARY, D. C., MATARA *et al.*, Respondents

S. C. 77—D. C. Matara, 16,227

Civil Procedure Code—Administration of estate—Appointment of Secretary of Court as administrator—Change of individual holding the office—Effect—Section 520.

Section 520 of the Civil Procedure Code contemplates the appointment, as administrator, of the Secretary of the Court and not of the individual holding the office. Letters of administration should therefore be addressed to the "Secretary of the Court" and a change of the individuals holding the office will not affect the appointment once made.

APPEAL from a judgment of the District Judge, Matara.

N. E. Weerasooria, K.C., with *A. V. Kulasingham*, and *Christie Seneviratne*, for the appellant.

H. V. Perera, K.C., with *M. H. A. Azeez*, for 1st respondent.

C. V. Ranawake, for 2nd respondent.

Cur. adv. vult.

April 12, 1949. BASNAYAKE J.—

On May 10, 1944, one Dona Angonona de Silva Karunanayake Hamine, the widow of Naotunnege *alias* Naurunege Don Andrayas de Silva, sued A. de S. Kanakeratne, the Secretary of the District Court, who had been appointed administrator of her late husband's estate, for the recovery of a sum of Rs. 7,400 which she had paid to one E. J. Buultjens in settlement of a mortgage debt incurred by her deceased husband. On December 1, 1944, decree absolute was entered giving the plaintiff judgment in the sum of Rs. 7,400 with interest and costs. On April 30, 1946, the proctor for the plaintiff appears to have represented to the court the fact that C. F. A. Palliyaguru, the officer who had succeeded Mr. Kanakeratne as Secretary of the District Court, refused to take notice of taxation of the bill of costs on the ground that he had not yet been appointed administrator. The following order was thereupon made on July 11, 1946 :—

> "The Secretary of this Court is now appointed official administrator in Testy 4075. Mr. A. P. Daluwatta for plaintiff moves that he be ordered to take notice of the bill and that the same may be taxed. Let him take notice and the chief clerk of the court tax the bill against the deceased's estate."

Thereafter in execution of the decree on November 19, 1946, certain lands belonging to the estate of the deceased were sold. On December 17, 1946, the present Secretary filed a petition, naming the plaintiff and one Sirineris

de Silva Samarasekera as respondents, in which he moved to have the sale in execution of the plaintiff's decree set aside on the following grounds :—

"(*a*) The Official Administrator against whom decree had been obtained in this case has since ceased to function and the 2nd respondent has not taken proper steps to have the petitioner substituted in room (*sic*) of the defendant Mr. A. de S. Kanakaratne the then Official Administrator.

"(*b*) No seizure of the property sold has been effected and published as required by the provisions of the Civil Procedure Code.

"(*c*) No proper publication of notices of sale have (*sic*) been effected as required by section 255 of the Civil Procedure Code and as a result of such non-publication these properties which are of the value of over Rs. 10,000 have been sold for a sum of Rs. 4,045. Substantial loss has therefore been caused to the heirs of the said Naotunnege *alias* Naurunnege Don Andrayas de Silva. An affidavit relating to the above-mentioned facts have (*sic*) already been filed by Randombage Babunappu de Silva who is an heir of the above-mentioned estate.

"(*d*) The 1st respondent fraudulently made it known to such members of the public as who (*sic*) were present on the occasion of the alleged sale that the sale was one among the heirs of the above-mentioned estate and that the members of the public were not entitled to offer any bids."

The learned District Judge held that there was a material irregularity in the conduct of the sale and that the proceedings were irregular as the present Secretary had not been substituted in the room of his predecessor who had ceased to hold office at the time of the sale.

Learned counsel for the appellant submitted that proceedings against the successor in office of Mr. Kanakeratne were bad as the secretary of a court is not a corporation sole. He also canvassed the finding of the Judge that there was a material irregularity in the conduct of the sale. Learned counsel has not satisfied us that the Judge's finding that there has been a material irregularity in the conduct of the sale is wrong, and the appeal must therefore fail.

As the question of the competence of the present secretary to act as administrator has been the subject of decision by the learned trial Judge, and as the matter has been argued before us, we wish to record our opinion thereon.

Section 520 of the Civil Procedure Code which empowers the court to appoint the secretary of the court as administrator reads :—

"Where there is no person fit and proper in the opinion of the court to be appointed administrator in manner in the last preceding section provided, or no such person is willing to be so appointed, and not in any other case, the court shall appoint the secretary of the court such administrator".

The section specifies the circumstances in which the secretary of the court may be appointed administrator. It contemplates the appointment of the secretary of the court and not the individual holding the office of Secretary at the time of the appointment. The letters of administration

in form No. 87 should be addressed to the "secretary of the court", and not as in the instant case to the secretary by name. A change of the individuals holding the office will not in our view affect the appointment, once made.

It is clear from section 520 that the court had, in the instant case, no power to appoint Mr. Kanakeratne administrator in his capacity as an individual. It cannot therefore be said that the appointment attached to Mr. Kanakeratne, the individual who held the office at the time the order under section 520 was made. Once the secretary of the court is appointed administrator the duties of that office will have to be performed by the person for the time being filling the office of secretary in the same way as the other duties of the secretary. Ordinarily a person cannot be appointed an administrator without his consent. But in the case of an appointment under section 520 neither the court nor the secretary has a choice.

The contention of learned counsel would result in the curious situation of a person who has ceased to hold the office of secretary continuing in the office of administrator *qua* secretary of the court, for we can find no provision of the Code by which a change of administrator appointed under section 520 of the Civil Procedure Code can be effected on the sole ground that the individual holding the office of secretary at the time of appointment has been succeeded by another. It is well known that the holder of the office of secretary is in a service in which he is liable to be transferred and from which he may resign at his choice or be dismissed at the pleasure of the Crown. If learned counsel's submission were to prevail all these changes would not by themselves affect the appointment. Although section 521 of the Civil Procedure Code requires the court to take security for the due administration of the estate from even the secretary of the court, the prescribed form of security creates certain difficulties. Form No. 88, which is the form of bond prescribed by the Civil Procedure Code for use in the case of an administrator required to furnish security, reads as follows :

> "Know all men by these presents that we the administrator and . . . . and . . . . are held and firmly bound unto . . . . Secretary of the District Court of . . . . , the said . . . . in the sum of . . . . rupees and the said . . . . and . . . . in the sum of . . . . rupees each, to be paid to the said Secretary . . . ."

This form cannot in law be used by the administrator appointed under section 520 of the Code for if he does the secretary of the court will be contracting with himself. A person cannot in law contract with himself. Such a contract cannot be upheld even on the ground that it is a contract by the natural man with the *quasi* corporation sole. It has been held that a corporation sole cannot lease to the natural person because the same person cannot be both lessor and lessee [1]. Nor can such a contract be enforced for there has been no instance in the case books in which the natural man has sued the corporation sole or the corporation sole has sued the natural man [2].

[1] *Salter v. Grosvenor* (1724) 8 *Mod. 303, 304. Grant on Corporations, p. 935.*
[2] *Maitland, Essays, p. 102.*

Although the secretary of the court is not a corporation sole in the true sense of the term, having regard to the fact that the Civil Procedure Code provides for the appointment of the secretary of the court as administrator it may safely be assumed that the legislature intended that the secretary of the court should possess all such attributes of a corporation sole as are necessary for the proper discharge of his functions *qua* administrator. Such offices fall into the category of *quasi*-corporations sole. These are generally officers of the Crown, who for certain purposes are in the nature of a corporation sole. Such *quasi* corporations sole are familiar in our statute law, as for example the Attorney-General under the Civil Procedure Code and the Ceylon Savings Bank Ordinance, the Government Agent under the Land Acquisition Ordinance, and the Settlement Officer under the Land Settlement Ordinance.

We think we have sufficiently elaborated our view that the appointment of the secretary of the court as administrator under section 520 of the Civil Procedure Code is not an appointment of the individual holding the office of secretary but an appointment of the person for the time being holding the office of secretary and that in the instant case the secretary of the court has been rightly made a party to the proceedings to have the sale set aside.

The appeal is dismissed with costs.

GRATIAEN J.—I agree.

Appeal dismissed.

[COURT OF CRIMINAL APPEAL]

1949 *Present:* **Wijeyewardene C.J. (President), Canekeratne J. and Gunasekara J.**

THE KING *v.* SUGATHADASA *et al.*

S. C. 88—M. C. Colombo South, 13,792

Court of Criminal Appeal—Character of accused—Adverse newspaper report pending trial—Legal effect—Assigned Counsel—Right of accused to conduct his own defence.

The five accused-appellants were found guilty of murder. While their trial was pending a newspaper published a report that certain prisoners returning from Hulftsdorp had introduced explosives into the Welikada Prison and that they were parties to a conspiracy to break jail, using explosives for the purpose. A juryman reading the newspaper report would have concluded that the appellants were the persons referred to in the report. At least one member of the jury had read the report while the trial was pending and it was not unlikely that others too had read it before the verdict was returned.

Held, that, in the circumstances, a fresh trial should be ordered, as the case of the appellants could have been prejudiced by the newspaper report.

Held further, that an Advocate assigned by the Court has no authority to appear for an accused person when the latter wishes to conduct his own defence.