

1931

*Present : Macdonell C.J. and Garvin S.P.J.*SIVASAMPOE *v.* CHELVARAYAN.

69—D. C. Jaffna, 18,579.

Execution—Decree for money—Seizure of decree against plaintiff—Application by plaintiff to execute decree—Civil Procedure Code, s. 234.

Where a decree has been seized, process in execution of that decree is available only to the person seizing it. The original judgment-creditor cannot take out execution under it.

APPEAL from an order of the District Judge of Jaffna. The plaintiff obtained a decree against the defendant on May 29, 1926, for a sum of Rs. 4,900. The plaintiff took out writ on August 29, 1926, and realized a sum of Rs. 510. On January 18, 1929, the decree in favour of the plaintiff was seized by an order issued from the District

Court of Colombo. On August 6, 1930, the plaintiff applied for and obtained a warrant of arrest against the defendant. The defendant applied for his release on the ground that the plaintiff had no right to take out execution after the seizure of the decree and also that he had saleable property.

Tiyagarajah, for defendant, appellant.

No appearance for respondent.

November 3, 1931. MACDONNELL C.J.—

It is quite clear from a further perusal of section 234 of the Civil Procedure Code, as interpreted by the case in *I. L. R. 24 Calcutta 778*, for which we are indebted to Mr. Croos Da Brera, that once a decree has been seized, process in execution of that decree is only available to the person seizing it and that the original judgment-creditor under the decree now seized cannot take out execution under it or avail himself of it. If that is so the warrant taken out by the plaintiff on August 6, 1930, must be set aside as having been irregularly issued and likewise the attachment of the defendant under that warrant. The warrant is set aside and the attachment is also set aside, and the appeal is allowed with costs.

GARVIN S.P.J.—I agree.

Appeal allowed.
