

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wendt.

1908.
April 16.

LETCHIMANEN CHETTY *v.* ABDUL RAHIMAN.

Ex parte MUTTUSAMY PILLAI, Appellant.

D. C., Colombo, 24,694.

Sequestration of goods by one creditor—Application to sell by another creditor—Rights of party sequestering the goods—Civil Procedure Code, ss. 653 and 660.

Where goods belonging to a debtor are sequestered under a mandate of sequestration issued under section 653 of the Civil Procedure Code, any other judgment-creditor of the debtor, who has obtained judgment before or after such sequestration, is entitled to have the said goods sold in execution of his decree.

A PPEAL from a judgment of the Acting District Judge of Colombo (F. R. Dias, Esq.) refusing to order the sale by the Fiscal of certain goods.

Bawa (with him *H. A. Jayewardene*), for the applicant, appellant.

Sampayo, K.C. (with him *F. M. de Saram*), for the plaintiff, respondent.

Van Langenberg, for the defendant.

Cur adv. vult.

1908. April 16, 1908. HUTCHINSON C.J.—
April 16.

This is an appeal by Muttusamy Pillai, judgment-creditor in action 24,798 in the District Court of Colombo, in which the defendant is the same as in this action, against an order of the District Court in this action made on August 12, 1907, refusing to order a sale of the defendant's goods under writ of execution in action 24,798.

The plaintiff in this action obtained a mandaté of sequestration of the goods under section 653 of the Civil Procedure Code, under which the Deputy Fiscal of Kalutara seized the goods on March 16, 1907. On June 6, 1907, an agreement was made between the plaintiff and the defendant in this action and a claimant to the goods by which the defendant and the claimant sold and transferred the goods to the plaintiff, and the plaintiff agreed to a dismissal of his action. This Court has held, however, that the sale and transfer were void as against the present appellant (judgment-creditor in action 24,798). This action has not yet been dismissed in pursuance of the agreement, and the goods are still in the hands of the Deputy Fiscal under the sequestration.

The appellant issued writ of execution under his decree in No. 24,798, and instructed the Deputy Fiscal to seize the goods under the writ. The Deputy Fiscal having refused to sell the goods because of the sequestration, the appellant applied to the District Court for an order for sale, which was refused, and this is an appeal from the refusal.

Section 660 enacts that sequestration before judgment shall not affect the rights, existing prior to the sequestration, of persons not parties to the action, nor bar any person holding a decree against the defendant from applying for a sale of the property under sequestration in execution of the decree. The respondent contended, and the District Judge held, that the "decree" there referred to only means a decree existing at the date of the sequestration. Under section 653 sequestration may be obtained where the plaintiff satisfies the Judge that he has a sufficient cause of action against the defendant, and that he has no adequate security, and that the defendant is fraudulently alienating his property with intent to avoid payment of the plaintiff's claim, or that he has with such intent quitted the Island; and the Fiscal is to detain or secure the property to abide the further order of the Court. There seems to be no other enactment as to the effect of a sequestration. The marginal note to section 660, "effect of sequestration on prior rights," is not conclusive. The inference which I draw from sections 653 and 660 is that the object was not to alter the position of the plaintiff with reference to third parties, nor to give him any priority which he would not otherwise have over them, but only to

protect him against the fraud of the defendant. In my opinion the appellant is entitled to the order for which he asks, and the order appealed from should be set aside and an order made for the sale. 1908.
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C.J.

WENDT J.—

I am of the same opinion. A preliminary objection to the hearing of the appeal was taken by Mr. Van Langenberg for the defendant, on the ground that plaintiff must be held to his agreement to withdraw this action. The agreement between plaintiff and defendant, however, cannot prejudice the appellant, who had seized the goods (or, which amounts to the same thing, required the Fiscal, who had the goods in his custody, to seize them) before the date of the alleged agreement. We, therefore, decided to hear the appeal.

As to the construction of section 660 of the Code, the effect of upholding plaintiff's contention would be to give him a greater privilege than he would have enjoyed if he had seized the goods on a final decree against the defendant. In that case he would have no preference, but would, under section 352 of the Code, be obliged to share the proceeds with all other decree-holders who had applied for execution prior to the realization of those proceeds, that is to say, irrespective of whether their decrees bore date earlier or later than plaintiff's seizure. There is nothing in chapter XLVII. which, in my opinion, contemplates such a preferential right. The object of the sequestration, as of the "attachment before judgment" of the Indian procedure, is merely to prevent defendant's dealing with the property so as to defeat his creditors' rights, and to secure that it shall be forthcoming when required by the Court. The expression "any person holding a decree" is used in section 660 as the equivalent of "any decree-holder." Had the Legislature intended to confer the special privilege, amounting to a primary mortgage, now contended for, it would, I think, have added after the word "decree" the phrase previously used to qualify the rights of persons not parties to the action, viz., "prior to the sequestration." The decisions in India on section 489 of the Indian Code, which is exactly the same as our section 660, are against the preference claimed by plaintiff, and the enactments in the two Codes are sufficiently alike to entitle those decisions to weight on the questions of construction.

I therefore agree that the appeal should be allowed with costs in both Courts.

Appeal allowed.
