

1932

Present : Lyall Grant J.

SAIBO v. PEIRIS.

160—*C. R. Matale, 1,162.*

*Seizure of debt—Notice on debtor—Objection that debt is not liable to seizure
—Civil Procedure Code, ss. 229 (a), 230.*

It is not open to a person, on whom notice has been served under section 230 of the Civil Procedure Code to bring into Court a debt seized under section 229 (a), to contend that the debt is not liable to seizure.

1 De G. F. & J. 270—45 E. R. page 362.

A PPEAL from an order of the Commissioner of Requests, Matale.

D. S. Jayawickreme, for appellant.

Navaratnam, for respondent.

February 2, 1932. LYALL GRANT J.—

The plaintiff brought an action for goods sold and delivered against the defendant, who is a school teacher. Judgment was entered by consent, payable by instalments. Execution of the decree was allowed at a later date and writ was issued.

In connection with the execution proceedings a prohibitory notice was served upon the Manager of the Christ Church Vernacular School, the Rev. Mr. W. Peiris, prohibiting him from paying to the defendant the salary due for the month of September, 1931. The case appears to have proceeded under section 229 of the Code, and under section 230 the plaintiff moved for a notice on the Rev. Mr. Peiris to show cause why he should not remit to Court the money seized under the writ of execution. The Rev. Mr. Peiris appeared in answer to this notice and said he had cause to show as he submitted that the salary of a vernacular school teacher comes under section 218 (h) as it is paid wholly by Government.

A date was given to consider this objection. After argument, at which the judgment-debtor does not appear to have been represented, the learned Commissioner made this order: "It appears to me that the submission of the respondent is correct and that the salary of defendant should be reckoned as being that of a public servant, and consequently not liable to seizure. I direct that the seizure be withdrawn".

An examination of section 230 of the Code points to the inference that the only cause which a debtor, prohibited under clause (a) of section 229, is allowed to show against remitting money to Court is that he is not indebted. Here, there is no doubt that the respondent Mr. Peiris was indebted to the judgment-debtor and although the objection was not taken, it seems to me that it was not in his mouth to raise the objection that the money in his hands was money which could be seized for the debt or not. That was a point which could be raised by the judgment-debtor in a question between him and the creditor, but not by the third party respondent. The practical difficulty of the course adopted is that the debtor, the person chiefly interested in the matter, was not before the lower Court and is not before this Court, and if one were to decide upon the question, which rightly concerns him as to whether his salary is liable to seizure or not, one would have to do so in his absence. I do not think it was open to the Court to decide the question in the absence of the judgment-debtor. The proper order in my opinion ought to have been that the Rev. Mr. Peiris should remit to Court the money seized under the writ of execution: that would leave it open to the defendant to make any application which he wished.

The order of the Commissioner will therefore be set aside and the respondent will be directed to remit to Court the money which was seized under the writ of execution. The respondent must pay the costs of this appeal and also the costs of the proceedings in the lower Court from and including October 21, 1931.

Set aside.
