1953 *Present :* **Rose C.J. and Swan J.**

S. A. SUPPIAH, Appellant, *and* R. SIVARAJAH *et al.*, Respondents

S. C. (Inty.) 108–109—D. C. Nuwara Eliya, 2,995 and 2,996

Civil Procedure Code—Execution of money decree—Judgment-debtor's right in a pending action—Liability to seizure and sale—Section 218.

The right, title and interest of a person in a pending action can be seized and sold under section 218 of the Civil Procedure Code in execution of a decree entered against him.

APPEALS from two orders of the District Court, Nuwara Eliya.

E. B. Wikramanayake, Q.C., with *D. J. Tampoe*, for the appellant (1st defendant in 2,995 and 2nd defendant in 2,996).

P. Somatilakam, with *S. Sharvananda*, for both respondents.

Cur. adv. vult.

January 27, 1953. SWAN J.—

It was agreed that these two appeals should be consolidated. The 1st respondent is the execution-creditor in case No. 2,995 in which he had obtained judgment against the appellant and certain others for the recovery of Rs. 8,000 interest and costs. The 2nd respondent is the execution-creditor in case No. 2,996 in which he had obtained judgment against the appellant and certain others for the recovery of Rs. 1,845, interest and costs. On their respective writs the respondents seized the right, title and interest of the appellant in Case No. 3,181 D.C. Nuwara Eliya, in which the appellant sought to obtain a declaration against the persons he sued that he was entitled to a one-fourth share of the Tivoli Theatre with its plant and machinery, and asked for an accounting of his share of the profits. In

one case the seizure was made as though the property seized was movable, in the other on the basis that it was immovable. I am of the opinion that it was movable property ; but the mode of seizure is immaterial. The fact that it was seized as immovable property, which mode of seizure is the more elaborate, does not invalidate the seizure. It certainly does not affect the question at issue which is whether the property was liable to seizure. Mr. Wikramanayake also contended that the seizure was bad because it was a re-issue of the writs, and no notice was served on the appellant as required by Section 349 of the Civil Procedure Code. That point seems to have been abandoned in the lower Court. In any event I would follow the ruling in *Silva v. Kavanihamy* [1] and hold that failure to serve notice was only an irregularity that would not invalidate the seizure. The only substantial objection that the appellant could have taken would have been that on the previous levy the respondents had failed to exercise due diligence to procure complete satisfaction of their decrees. Such failure was not even suggested in the Court below or before us.

I shall now deal with the main point taken by Mr. Wikramanayake—Was the appellant's right, title and interest in D. C. 3,181 seizable ? Section 218 of the Civil Procedure Code states that the judgment-creditor " has the power to seize and sell, or realize in money all saleable property movable or immovable belonging to the judgment-debtor, or over which he has a disposing power which he may exercise for this own benefit, whether the same be held by or in the name of the judgment-debtor, or by another person in trust for him or on his behalf ".

The Section then proceeds to state what property is not liable to seizure or sale. The property seized in these cases does not come under any item of excepted property. But Mr. Wikramanayake contends that it is not liable to seizure and sale. The simple question is whether it is property over which the judgment-debtor has a disposing power. I would unhesitatingly answer that question in the affirmative.

Voet 18.4.9 (see Berwick pages 79 and 96) says that a right of action may be sold not only with the consent of the debtor but against his will and in spite of his resistance . . . . whether the right of action be absolute, or due at a future date, or suspended by a condition. In *Pless Pol v. de Soysa* [2] it was held that the right of a person in a pending action is assignable. I do not think anybody could challenge the proposition that what is assignable is also saleable. In *Powell v. Perera* [3] it was held that a party's rights in a pending action could be seized and sold against him. In that case it was sought to distinguish *Pless Pol v. de Soyza* [2] but Garvin J. brushed aside that contention remarking :— " That a debt is saleable within the meaning of section 218 of the Civil Procedure Code is beyond all question and I am unable to see that it ceases to be saleable immediately an action is instituted for its recovery."

I would dismiss the appeals with costs.

ROSE C.J.—I agree.

Appeals dismissed.

[1] *(1948) 50 N. L. R. 52.*
[2] *(1907) 10 N. L. R. 252.*
[3] *(1927) 9 C. L. Rec. 50.*