Present: Mr. Justice Wood Renton and Mr. Justice Grenier. *June 13,1910*

PASSE *v.* ALVARES.

D. C., Colombo, 22,792.

Seizure of a decree—Claim under s. 241, Civil Procedure Code.

No claim under section 241 of the Civil Procedure Code can be made where a judgment-creditor seizes a decree in favour of the judgment-debtor.

THE facts of this case are set out in the following judgment of the learned District Judge of Colombo (H. A. Loos, Esq.):—

The execution-creditor has seized a sum of money sufficient to satisfy the amount of his writ out of the money due to the judgment-debtors in a decree entered in action No. 15,231 of the Court of Requests of Colombo.

The claimant is the incumbent of the Church of Our Lady of Good Death, and claims the property seized as that belonging to the church.

The action No. 15,231 of the Court of Requests of Colombo was instituted by certain persons who, purporting to be trustees of the church, had leased it to the defendant in that case to recover the rent due under the lease.

Judgment was entered in their favour, and the execution-creditor in this case has seized so much of the amount due to the plaintiffs—in the Court of Requests case No. 15,231, as will be sufficient to satisfy his writ, which is for the recovery of the costs due to him—the plaintiff's action having been dismissed.

The plaintiffs in this case are the same persons who were the plaintiffs in the Court of Requests case. In this case they sued the defendant, purporting to be trustees of the Church of Our Lady of Good Death, for the recovery of Rs. 1,082, for a declaration that they are entitled as such trustees to the possession of certain property, and for damages.

It was held that the plaintiffs were not trustees of the church in question in terms of the Ordinance No. 5 of 1864, and that they were therefore not entitled to sue the defendant in this action, and their action was dismissed with costs.

Now, in the Court of Requests action No. 15,231 the plaintiffs recovered judgment on behalf of the church, and admittedly the amount when paid will belong not to the plaintiffs personally, but to the church in question.

In this case the costs are payable by the plaintiffs personally—there is no liability on the part of the church in question to pay those costs—in view of the finding in this case that the plaintiffs are not the only constituted trustees of that church.

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It seems to me, therefore, that the amount of the judgment in the Court of Requests case cannot in any way be seizable in satisfaction of the decree in this case. It has, I have stated, been held that the church in question has not been brought within the operation of the Ordinance No. 5 of 1864, so that there are no trustees to prefer a claim, and in my opinion the incumbent of the church, in the absence of any other person, is entitled to make the present claim.

A preliminary objection was taken by the execution-creditor's proctor, that what has been seized is a chose in action, and that section 241 of the Code does not warrant a claim where a chose of action has been seized.

There does not appear to me to be any substance in the objection; in this case what has been seized is a part of an earmarked amount, due by the defendant in the Court of Requests action No. 15,231, and which is now in the possession of that defendant, on behalf of the church, of which the claimant is the incumbent.

The claim is upheld with costs.

The judgment-creditor (Passe) appealed against the order of the District Judge.

Sampayo, K.C., for the appellant.

Seneviratna (with him *Samarakoddy*), for the respondent.

Cur. adv. vult.

July 13, 1910. GRENIER J.—

The facts are fully stated in the judgment of the District Judge. It appears that the appellant was sued in action No. 22,792 of the District Court of Colombo by three persons, who described themselves as the trustees of the Church of Our Lady of Good Death, to be declared entitled to certain premises situated in the Pettah of Colombo. The action was dismissed, and the plaintiffs therein were ordered to pay to the appellant his costs, which were taxed at Rs. 742.24. Subsequently the three persons I have referred to sued one T. Charles Perera Patnasekera in action No. 15,231 of the Court of Requests of Colombo, and obtained judgment against him for the sum of Rs. 214.26, with interest and costs. In execution of this decree for costs, the decree in the action No. 15,231 was seized in terms of section 229 of the Civil Procedure Code. The respondent, who alleged that he was the incumbent of the said Church of Our Lady of Good Death, claimed the amount due under the decree, and his claim, after investigation, was upheld. The appellant has appealed on the ground that section 241 and the subsequent sections of the Civil Procedure Code were not applicable to the seizure of a decree, and that they were intended to apply to the seizure of chattels only. In my opinion this contention is entitled to succeed. The phraseology employed in sections 241 to 252 clearly shows that they were intended to apply to chattels only, that is, to movable property that the Fiscal can touch, so to speak,

and lay his hands on. The heading above these sections is " Claims to property seized," and section 241 makes special mention of " movable or immovable property." The heading above sections 227 to 240 is " Mode of seizure," and section 227 says " if the property sought to be seized and sold, &c., is movable property in the possession of the judgment-debtor other than the property mentioned in the first proviso to section 218, the seizure shall be manual." According to section 234, which applies specifically to decrees and the mode of seizure, if the property is a decree for money passed in favour of the judgment-debtor, as in this case, the seizure shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree. No distinction is apparently made in section 236 between " movable property," the seizure of which is necessarily manual, and property which cannot in the nature of things be so seized. Now section 241 places movable and immovable property on the same footing so far as claims to them and their investigations are concerned. Looking, however, to the provisions of section 234, it is difficult to hold that there can be any claim or investigation in regard to a decree as there is in regard to chattels, for this section says that the seizure shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree. How can there be in these circumstances any claim and investigation under section 241 and the succeeding sections, or how can it be said that the claimant is in possession of the decree that is the subject of seizure? The term " possession " may well be applied to movable property, the seizure of which as directed in section 218 is manual; but it certainly has no meaning when it is used with reference to a decree of Court. In my opinion the decree should not have been seized under section 229, as was wrongly done, because that section does not refer to the seizure of decrees at all, but to debts not secured by a negotiable instrument, to shares in the capital of any public company or corporation, and to any other movable property not in the possession of the judgment-debtor, except property deposited in or in the custody of any Court, or in the custody of a public officer. This section prescribes the mode in which the sequestration or seizure shall be made. When we turn to section 234 we find that special provision is made for the seizure of a money decree in favour of the judgment-debtor; so that it is clear that the seizure in the present case should not have been made under the provisions of section 229, but that it should have been made under those of 234. However that may be, I think there can be no doubt that sections 241 and the following sections contemplate claims to movable property in the sense that the seizure of it is necessarily manual, and not to decrees of Court, for which, as I have already pointed out, special provision is made in section 234.

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I may add that in my experience on the Bench of the District Court of Colombo I have never had a case where the subject of claim and investigation has been a decree of Court. Claim inquiries have been directed to tangible movable property (and immovable property), and this is the first time that a claim of the present nature has been brought under my notice. I would set aside the order of the District Judge dated February 28, 1910, and allow this appeal with costs, dismissing t e respondent's claim.

WOOD RENTON J.—I concur.

Appeal allowed.