

1926.

Present : Dalton J.

NANAYAKARA *v.* SULAIMAN.

128—C. R. Colombo, 27,573.

Execution—Irregularity of writ—Technical objection—Civil Procedure Code, s. 347.

Where a claimant to property seized in execution objected to the regularity of the proceedings on the ground that no notice of the application for writ had been given to the judgment-debtor in terms of section 347 of the Civil Procedure Code.

Held, that as no injustice was done to the claimant, the execution proceedings were not irregular. In execution proceedings the Court will look at the substance of the transaction and will not be disposed to set aside an execution upon merely technical grounds, when the execution has been found to be substantially right.

A PPEAL from a judgment of the Commissioner of Requests.

N. E. Weerasuriya, for appellant.

James Joseph, for respondent.

August 12, 1926. DALTON J.—

The appellant, plaintiff in this action, claimed certain articles seized by the respondent, defendant, who had obtained judgment in case No. 9,842 of the Court of Requests against one Hussaine. The writ was issued on June 1, 1925, more than one year from the date of the decree. The appellant had preferred his claim to the articles seized as the property of one Quadir Khan, his employer, who was said to be absent in India, and set up that the articles when seized were in his possession. The Commissioner has, however,

rejected his evidence, accepting that led on behalf of the defendant-respondent, as to possession and the identity of the property. I see no reason to interfere with his findings on the facts.

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Appellant however urges that the writ upon which execution proceeded is bad, in view of the fact that more than one year elapsed between the date of the decree and the application for its execution (section 347 of the Civil Procedure Code), the petition not being served on the judgment-debtor. The Commissioner was of opinion that Hussaine, the judgment-debtor, designedly waived the right to take this objection in case No. 9,842, for in any case it could only have been of temporary benefit to him. He accordingly held that it was not open to the present appellant to take this objection. It is quite clear, from the terms of the appellant's petition, under section 328 of the Code setting out the grounds upon which he disputes the rights of the decree-holder to the articles seized that he urged that the writ was bad in law, and therefore the Commissioner was entitled to deal with that objection. I am unable to agree with the argument advanced by Mr. Joseph on this point. It is equally clear, in my opinion, accepting the conclusions of the Commissioner on the facts, that the objection is a technical one, and that no injustice whatsoever has been done to the appellant. As observed by the Privy Council in *Bissesar Lall Sahoo v. Maharajah Luckmessur Singh*¹ in execution proceedings, the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon merely technical grounds, when the execution has been found to be substantially right.

For this reason I would uphold the decision of the Commissioner upon the legal point, on the assumption that the appellant was entitled to take the objection.

The appeal therefore fails, and must be dismissed with costs.

Appeal dismissed.

¹ 6 *Indian Appeals* 233.