

Present : Garvin and Driberg JJ.

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JINADASA *v.* WEERASINGHE.

20—*D. C. (Inty.) Matara, 3,418.*

*Injunction—Interim order—Application to discharge injunction—
Interlocutory order—Civil Procedure Code, ss. 377 and 666.*

Where an application is made to discharge an interim injunction issued at the instance of the plaintiff, the defendant should follow the procedure indicated in sections 377 and 666 of the Civil Procedure Code.

A PPEAL from an order of the District Judge of Matara, discharging an interim injunction granted by him.

Hayley, K.C. (with A. P. Jayasuriya), for plaintiff, appellant.

Keuneman, for defendant, respondent.

April 30, 1928. GARVIN J.—

This is an appeal from an order of the learned District Judge which amounts to the discharge of an interim injunction granted by him in a case where the injunction was asked for in the plaint filed in the action. When the injunction was served the defendant filed a petition and affidavit and moved that the injunction be

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discharged. Thus far he acted in accordance with the provisions of section 666, but instead of moving for an order *nisi* or an interlocutory order on those who represented the plaintiff, induced the Court to procure the attendance of the Proctor for the plaintiff in Court with a view to the immediate determination of the matter in dispute. The proctor protested against the procedure and pointed out that the provisions of section 666 and section 377 of the Civil Procedure Code should be complied with by the defendant. Despite this protest and subject to it, an argument took place, at the termination of which the learned District Judge made order suspending the injunction and appointing a date thereafter for inquiry into the matter. It seems to me that the submission made by the Proctor in the proceeding held in the District Court is perfectly right. The procedure to be followed by a person against whom an injunction has been issued and who desires to obtain the discharge of that injunction is clearly laid down in the sections referred to. Since this procedure has not been followed in this case, the appellant is entitled to the relief which he claims, and we accordingly direct that the order under appeal in so far as it relates both to the suspension of this injunction and the date fixed for inquiry be set aside. The plaintiff is entitled to retain the benefit of the interim injunction ordered in this case. Should the defendant desire to have this injunction discharged, he must follow the procedure indicated.

The appellant will have the costs of the appeal.

DRIEBERG J.—I agree.

Appeal allowed.