

1914.

*Present : Pereira J. and De Sampayo A.J.*

## SIDEMBRAM CHETTY v. JAYAWARDENE.

135—D. C. Colombo, 32,019.

*Civil Procedure Code, s. 337—" Judgment-debtor "—Request to stay execution by one of several judgment-debtors.*

The expression " judgment-debtor " in section 337 of the Civil Procedure Code, in cases in which there are several persons answering to that description, means all such persons collectively; and, therefore, in any such case a request to stay execution, in order to bring it within the purview of that section, must be a request made by all the debtors.

**T**HE facts are set out in the judgment.

*Bawa, K.C., and Samarawickrema, for second defendant, appellant.*

*'Loos, for plaintiff, respondent.*

*Cur. adv. vult.*

December 18, 1914. PEREIRA J.—

This is an appeal by the second defendant from an order of the District Judge allowing a fourth application for execution made by the plaintiff. The third application for execution was made and allowed so far back as March 7, 1913. On the order on that application a writ was taken out by the plaintiff on March 13, 1913. As regards this writ, what the agent of the plaintiff's firm says in his affidavit is as follows: " On March 13, 1913, writ was issued for the balance, and the second defendant's property was seized and advertised for sale, but the sale was stayed at the first defendant's request, and on his promise to pay and settle the plaintiff's claim." Of course, the plaintiff's agent might have sworn to anything without fear of contradiction by the first defendant, because the first defendant is now dead. He died some seven months after the alleged request. I should like to pause here to observe that, although the statement in the affidavit referred to is that the execution of the writ was stayed at the first defendant's request, in the application for writ made by the plaintiff for the fourth time it is calmly stated that the sale was stayed " at the defendant's request," conveying of course the idea that the sale was stayed at the request of both the defendants. That is a misleading statement.

Now, under section 337 of the Civil Procedure Code, a second or subsequent application to execute a decree is not to be allowed except under one of two conditions, that is to say, unless the Court is satisfied that on the last preceding application due diligence was

used by the creditor to procure complete satisfaction of the decree, or that execution was stayed by the decree-holder at the request of the judgment-debtor. In the present case a writ was taken out, some property of the second defendant was seized and advertised for sale, and the sale was stayed by the plaintiff. These facts standing by themselves show rather a lack of due diligence on the part of the plaintiff in procuring complete satisfaction of the decree on the application on which the writ referred to above was taken out. The first alternative mentioned above has, therefore, no application to this case, and the District Judge's finding that the decree-holder "did exercise due diligence" is altogether beside the question involved in this case. The plaintiff has not relied on the first alternative mentioned above, but he has sought shelter behind the second, namely, that the execution was stayed at the request of the judgment-debtor. Now, both under section 3 (23) of the Interpretation Ordinance, 1901, and in terms of the ordinary methods of interpretation of Legislative Acts, the expression "judgment-debtor" in section 337 of the Civil Procedure Code, in cases in which there are several persons answering to that description, means all such persons collectively. Unless, therefore, in the present case both the debtors requested a stay of execution, the case is not covered by the second alternative mentioned in section 337. When A and B were defendants in a case, and when on a writ issued in it A's property was seized, and further execution stayed at the request of A, it was surely far from the intention of the Legislature that B should be deemed to be bound by that proceeding. But in the present case the learned District Judge holds that the second defendant by his conduct ratified the request of the first defendant. Assuming that the first defendant did make such a request as that mentioned by the plaintiff's agent in his affidavit, as to which we have only the plaintiff's agent's word, and no contradiction, because the only person who would have been capable of contradicting is dead, and assuming also that that request amounted to a request to stay execution altogether for the time being, there is, in my opinion, no evidence worth the name of conduct on the part of the second defendant that is tantamount to ratification of the request. I think that the order appealed from, so far as it affects the appellant, should be set aside with costs.

DE SAMPAYO A.J.—I agree.

*Set aside.*

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PEBEIRA J.

*Sidembram  
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