Present: Bertram C.J. and Garvin and Jayewardene A.JJ. 1924.

RAN MENIKA *v.* DINGIRI BANDA.

63—D. C. Ratnapura, 3,661.

Decree for declaration of title and costs—Execution against the person for costs—Writ cannot issue against person before writ issues against property—Civil Procedure Code, ss. 353, 209, 298, and 299.

An order for payment of costs is enforcible by attachment of the person. The circumstance that the person in whose favour the order for costs was made is also the holder of a decree for declaration of title and ejectment does not affect his rights.

A writ of execution against person cannot issue, unless a writ against property had issued previously.

IN this case the judgment-creditor sued the judgment-debtor for declaration of title to a three-eighth share of a piece of land and damages.

The Supreme Court on appeal entered judgment declaring the judgment-creditor entitled to a one-eighth share of the lands in claim, and decreeing that the judgment-debtor be ejected therefrom and the judgment-creditor be put, placed, and quieted in possession thereof, and also that the judgment-debtor do pay to the judgment-creditor her taxed costs of this action in the District Court as well as in appeal.

The judgment-creditor's bill having been taxed at Rs. 752·84½, she made an application for writ which having been allowed, she thereafter issued notice on the judgment-debtor under section 219 of the Civil Procedure Code.

The judgment-debtor stated when examined: "I have no property whatever. All I had has been sold."

The judgment-creditor thereupon, without applying for writ against property, applied for and obtained a writ against the person of the judgment-debtor to recover the sum of Rs. 752·84½ due from him as costs.

The proctor for the judgment-debtor moved that the warrant of arrest issued against the defendant be cancelled, and that no proceedings be taken against the person of the defendant, in view of the fact that the decree against the defendant is not one in execution of which writ can issue against the person of the defendant. The learned Judge made order allowing the application.

The judgment-creditor appealed.

Soertsz (with him *Da Brera*), for the plaintiff, appellant.—The District Judge has refused a writ following *Soysa v. Soysa*.[1] This

[1] *(1892) 2 C. L. R. 15.*

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judgment is not sound. It is not based on a correct interpretation of the relevant sections of the Code. It would be most anamolous if a defendant, who is entitled to costs only of, say, Rs. 201, should be entitled to writ against the plaintiff's person, but that a plaintiff who gets both declaration of title to land and costs, say, Rs. 1,000, should not be entitled to writ against the defendant's person. Such results could not have been intended. An order for costs ought to be treated as a decree for money by virtue of the provisions of section 353 of the Civil Procedure Code, and execution against person can issue in the ordinary course as in all money decrees.

Jayasuriya, for the defendant, respondent.—Where there is a decree for some specific movable or immovable property, together with an order for costs, no writ against the person can issue, as there is no " sum awarded " exclusive of costs within the meaning of section 299 of the Civil Procedure Code. The Code does not seem to have intended to treat orders for costs as decrees for money for all purposes. Where costs are to be treated as money decrees, the Code makes express provision to that effect. See sections 209 and 635. Counsel cited *Soysa v. Soysa* (*supra*), *Pullenayagam v. Pullenayagam*,[1] and *Fraser v. Vytianathan*.[2]

No writ against property was issued in this case. No writ against person can issue before writ against property is issued. The mere fact that the respondent was examined under section 219, and that he declared that he had no property, is not a sufficient ground for issuing writ against the person of the defendant. Section 298 is a penal provision, and should be strictly construed (see *Costa v. Perera* [3] and *Nadar v. Nadar* [4]).

Soertsz, in reply.—The debtor stated in Court when examined under section 219 that he had no property. There was no use in issuing writ against property.

July 2, 1924. GARVIN A.J.—

This case, which was first heard by my Lord the Chief Justice and myself, was after argument reserved for a Bench of three Judges, as doubts had arisen as to the soundness of the ruling of this Court in the case of *Soysa v. Soysa* (*supra*).

The question for decision is, whether a person who has by a decree been declared entitled to immovable property and to eject the defendant therefrom can take the person of the defendant in execution in respects of the costs of action awarded him by the

[1] (*1892*) *2 C. L. R. 82.*
[2] (*1922*) *23 N. L. R. 488.*
[3] (*1913*) *17 N. L. R. 319.*
[4] (*1916*) *19 N. L. R. 268.*

Court. The propositions laid down in *Soysa v. Soysa* (*supra*) are as follows :—

(1) A plaintiff is entitled to take the defendant's person in execution only when the decree awards him a sum of money and that sum exceeds Rs. 200.

(2) When by a decree some other specific relief (such as a declaration of title or ejectment) is awarded, the decree-holder may not in enforcement of an award of costs which exceeds Rs. 200 take the person of the judgment-debtor in execution.

(3) A "decree" for costs only may be enforced by seizure of the plaintiff's person.

These propositions, it was thought, followed necessarily from a consideration of section 299 of the Civil Procedure Code and certain other sections of that Code referred to in the judgment of Burnside C.J., who, in the course of his judgment, observes—

> "What the remedy is for costs upon such decrees (*i.e.*, decrees for specific relief other than a sum of money)—and there must be some remedy—I am not called on to decide in this case."

The concession in favour of a "decree" for costs only was apparently made for the reason that the learned Judge thought that section 209 declared that an order for costs only was a decree for money. But that section only declares it to be a decree for money "within the provisions of section 194 as to payment by instalments" and not for every purpose of the Code. This section does not afford a sufficient foundation for the proposition that an order for costs only is "a decree for money" and enforceable as such.

If the law as stated in *Soysa v. Soysa* (*supra*) be correct, then in the numerous actions which eventuate in other than money decrees a successful plaintiff is not only debarred from taking the person of the defendant in execution for his costs which often amount to several times two hundred rupees, but is presumably without any remedy at all in respect of an award of costs made in his favour.

On the other hand, in every case in which an action is dismissed with costs, the defendant may, if his costs exceed Rs. 200, claim to to be the holder of a decree for money, and proceed to enforce it, if need be, by attachment of the plaintiff's person.

I must respectfully dissent from the view that a correct reading of the Civil Procedure Code leads to any such anomalies or distinctions. In the interpretation of a Code it is of importance to bear in mind the particular meanings which are assigned by the interpretation clause to the words and expressions used in that Code. "Decree" as used in the Civil Procedure Code means

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"the formal expression of an adjudication upon any right claimed or defence set up in a Civil Court when such adjudication so far as regards the Court expressing it decides the action or appeal." In its correct significance, therefore, a decree is the formal expression of the Court's adjudication on the right claimed or the defence set up. It has no concern with costs which a Court may or may not order, though for purposes of convenience an order for costs when made is recorded as a further order—not decree—on the same paper as the decree, *vide* form No. 41.

Out of this practice has grown the somewhat loose user of expressions such as "costs decreed," "decree for costs only," "decree for substantive relief and costs," "the part of the decree which relates to costs," which in their turn give rise to the misconception that the Civil Procedure Code contemplates "decrees for costs" or "decrees for substantive relief and costs."

Having defined a "decree" the Court proceeds in section 217 to classify decrees, with reference to the nature of the relief which a Court may grant under the following heads :—

(*a*) To pay money ;
(*b*) To deliver movable property ;
(*c*) To yield up possession of immovable property ;
(*d*) To grant, convey, or otherwise pass from himself any rights to, or interest in, any property ;
(*e*) To do any act not falling under any one of the foregoing heads ;

or it may enjoin that person—

(*f*) Not to do a specified act, or to abstain from specified conduct or behaviour ;

or it may without affording any substantive relief or remedy—

(*g*) Declare a right or status.

It then lays down a separate procedure to be followed in the enforcement of each of the several classes of decrees. Neither in the classification of decrees, nor in the 50 odd sections which relate to their enforcement, is there any warrant for the notion that costs are a part of the decree, or that the word decree is used in any sense other than that which is assigned to it in the interpretation clause.

In the procedure prescribed for the enforcement of a decree to pay money there are two stages : First, the seizure and sale of the debtor's property in pursuance of a writ of execution in that behalf issued to the Fiscal ; and second, where the debt remains unsatisfied, the attachment of the person of the debtor.

As has already been observed a special and separate procedure is prescribed by the Code for each class of decrees. So that it is correct to say that the procedure for the attachment of the person

of the judgment-debtor is by the Code limited to the case of decrees to pay money.

This brings one to section 299 of the Code, which is the foundation for the decision in *Soysa v. Soysa* (*supra*). The material words in that section are—

> ". . . . No warrant for the arrest of a judgment-debtor shall, except as in this section otherwise provided, issue in execution of a decree wherein the sum awarded, inclusive of interest, if any, up to the date of the decree, but exclusive of any further interest and of costs, shall not amount to two hundred rupees or upwards."

The meaning of the section is plain and unambiguous. It prohibits the issue of attachment against the person of the judgment-debtor unless the decree itself awards a sum of Rs. 200 exclusive of interest after date of decree, and expressly forbids such further interest or the amount of any costs awarded being added to the amount decreed for the purpose of bringing the total up to Rs. 200 or more.

The section is explicit in itself, and being one of a series of sections concerned with the enforcement of decrees to pay money, it is beyond question that its provisions have no application to decrees falling under any of the other heads of the classification made in section 217, and cannot therefore refer to a decree declaring a plaintiff entitled to land. It appears to have been assumed in *Soysa v. Soysa* (*supra*) that this concludes the question. But does it? It leaves the whole question of the enforcement of a Court's award of costs undecided. This matter of costs is wholly independent of decrees and the enforcement thereof. A Court derives its power to award costs from section 209 of the Code, which runs as follows :—

> "When disposing of any application or action under this Ordinance, whether of regular or of summary procedure, the Court may, unless elsewhere in this Ordinance otherwise directed, give to either party the costs of such application or action, or may reserve the consideration of such costs for any future stage of the proceedings; any order for the payment of costs only is a decree for money within the provisions of section 194 as to payment by instalments."

It is by virtue of the power thereby conferred that a Court makes an order as to costs. Such an order is not a decree, and finds no place either in the classification of decrees or in the procedure prescribed for the enforcement of decrees. It is frequently embodied in the same paper as the decree by way of a further and

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additional order. An order for costs only is to be deemed a decree for money, but only for the purpose of section 194 as to payment by instalments.

How is such an order to be enforced? Is there no remedy at all? The answer is to be found in section 353 of the Code—

> "Every order made by a Court, in any action or proceeding between parties, for payment of money not being a fine, shall have the effect of a decree for the payment of money, and on default of payment according to its terms shall be enforceable upon the application of the party at whose instance it was made in like manner as a decree for money."

An order for costs is undoubtedly an order for payment of money. It is not a decree for the payment of money, but has the effect of a decree for payment of money and is enforceable "in like manner as a decree for money."

The procedure for the enforcement of a decree for money noticed earlier in this judgment entitles the holder of such a decree to writ against property, and should that fail in its purpose to proceed, subject to the limitations prescribed in sections 298 and 299, to attach the person of the judgment-debtor.

An order for payment of costs is similarly enforceable. It follows, therefore, that a person in whose favour an award for costs has been made may, if those costs amount to or exceed Rs. 200, proceed to the attachment of the person of the party against whom the award is made. The circumstance that such a person is also the holder of a decree for specific relief other than the payment of money is immaterial and cannot affect the matter. The enforcement of the decree depends on the class of the decree and the procedure prescribed by the Code for the execution of such decrees; an order for costs is enforceable in the same manner as a decree for money.

A consideration of all the material provisions of the Code leads me to the following conclusions :—

A.—An order for costs is not a decree except when it is—

(*a*) An order for costs only which is deemed to be a decree for the purposes of section 194 as to payment by instalments.

(*b*) An order for costs made upon the dismissal of an action for want of jurisdiction which a Court is empowered to make and which is specially declared to be a decree for the payment of money within Chapter XX. of the Code (*vide* section 635).

B.—A decree for money may be enforced by attachment, subject to the exceptions and limitations prescribed by the Code, when the sum awarded computed up to the date of the award amounts to or exceeds Rs. 200.

C.—An order for costs is enforceable in like manner as a decree for money, and where the amount of costs payable estimated up to the date of the order amounts to or exceeds Rs. 200, attachment of the person may similarly be obtained.

D.—In the result a person who obtains a decree for money as well as an order for his costs may issue attachment against the person of the defendant—

(*a*) If the sum awarded by the decree amounts to or exceeds Rs. 200 ; or

(*b*) If the costs awarded amount to or exceed Rs. 200. But he may not attach the person of the defendant if the amount decreed and the amount of costs awarded each fall below Rs. 200 but together amount to or exceed that limit.

E.—A decree for substantive relief other than the payment of money is enforceable in the manner prescribed for the enforcement of decrees of the class to which it belongs. When the holder of such a decree has also been awarded his costs, he may proceed to enforce the order for his costs in the manner prescribed for the enforcement of decrees for money, and if the costs awarded amount to or exceed Rs. 200, he may, subject always to the limitations imposed by the Code, proceed to the attachment of the person of the judgment-debtor.

The learned judges who decided the case of *Soysa v. Soysa* (*supra*) appear to have been in error in supposing that the Code had provided no procedure for the enforcement of an order for costs made in favour of a person who has obtained a decree for specific relief other than the payment of money. In my view of the law, the appellant would have been entitled to succeed. But learned counsel for the respondent sought to maintain the order of the District Judge upon a ground other than that upon which it was based.

In this case an application for a writ of execution against the property of the judgment-debtor had been applied for and allowed. But no writ was actually issued to the Fiscal. The judgment-creditor moved to examine the defendant under section 219 of the Code. In the course of that examination the defendant stated that he had no property at all. Thereupon, and specifying that as the ground of his application, the judgment-creditor, who is the appellant, moved for attachment of the person of the defendant.

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This was granted, but upon a motion by the defendant's proctor the warrant was recalled on the authority of the ruling in *Soysa v. Soysa* (*supra*).

It is contended that the Court had no power to issue attachment against the person of the defendant, inasmuch as writ against property was never issued. Counsel relies on the language of section 298, which he contends requires as a condition precedent to the issue of attachment that a writ of execution against property shall have issued to the Fiscal.

Section 298 runs as follows :—

"If the Fiscal return to the writ of execution that he is unable to find any property of the judgment-debtor, movable or immovable, or if before the return to the writ of execution is made the Court is satisfied on the application of the judgment-creditor made by petition, to which the judgment-debtor need not be named respondent, that the judgment-debtor—

(*a*) . . . . . .

(*b*) . . . . . .

(*c*) . . . . . .

(*d*) . . . . . .

the Court may issue a warrant for the arrest of the judgment-debtor, but in no case whatever shall the Court issue a warrant . . . .

The words of the section appear to me to support the contention. It is argued, however, that "before the return to the writ of execution," marks a point of time at any time before which a Court is satisfied of any of the matters specified in heads (*a*), (*b*), (*c*), or (*d*) may issue attachment. I cannot assent to the argument that a Court may issue attachment even though a writ has never issued.

The stage before which a Court may be so satisfied is the stage before return is made to the writ, and this seems necessarily to connote that a writ has been issued. There can never be a return by the Fiscal to a writ which has not been issued. The provisions of the Code relating to the arrest of the person of a judgment-debtor are in their nature penal, and should be strictly construed (*vide Costa v. Perera* (*supra*)). A judgment-debtor may, of course, proceed by petition to satisfy the Court of all or any of the matters specified in clauses (*a*), (*b*), (*c*), and (*d*) immediately after the writ has issued to the Fiscal, and it may seem somewhat futile to have to wait till the writ is so issued. But in a matter affecting the liberty of the subject, even a mere formality must be complied with so long as it is required by the law.

No writ of execution against his property was issued in this case, and no attachment of the defendant's person could therefore issue (*vide Nadar v. Nadar* (*supra*)).

The appeal must be dismissed with costs.

BERTRAM C.J.—I agree.

JAYEWARDENE A.J.—

I have had the advantage of reading the judgment of my learned brother Garvin A.J., and I entirely agree with his reasoning and the conclusions reached.

In *Soysa v. Soysa* (*supra*), Burnside C.J. stated in the form of propositions the rules regulating the issue of warrants against the person of parties directed to pay costs. One of his propositions was that "a plaintiff obtaining a specific decree in respect of movable or immovable property with costs can never issue execution against the person whatever the costs may be, because the decree is not one for money, but for some substantive relief together with costs, and execution could not go for costs alone because there is no sum awarded exclusive of costs."

This proposition was based on the words of section 299 which deals with the issue of writs against persons in action for debt or damages. This section (299) is one with a history locally. It does not appear in the Indian Civil Procedure Code, from which most of the other sections dealing with execution have been borrowed. It was first enacted as section 164 of the Insolvency Ordinance, and ran thus—

> "That from and after the commencement of this Ordinance, no person shall be arrested in mesne process or taken or charged in any execution upon any judgment obtained in any Court of this Colony in any action for the recovery of any debt contracted subsequently to the time when this Ordinance comes into operation, wherein the sum claimed or recovered shall not exceed the sum of ten pounds, exclusive of interest and of the costs recovered by such judgment."

Section 164 was repealed by Ordinance No. 24 of 1884 and re-enacted with an alteration in section 5 thus—

> "From and after the passing of this Ordinance, no person shall be arrested on mesne process, where the sum claimed shall not exceed Rs. 100, and no person shall be taken or charged in execution upon any judgment obtained in any Court of this Colony in any action for the recovery of any debt contracted subsequently to the passing of the principal Ordinance (No. 7 of 1853) aforesaid, wherein the sum recovered shall not exceed the sum of Rs. 100, exclusive of interest and of the costs recovered by such judgment."

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When the Code was enacted this section was embodied in the main provisions of section 299 with the alteration that the interest up to the date of the decree should be regarded as part of the sum awarded. According to the provisions of this section historically considered, a defendant is not entitled to a writ against the person of the plaintiff for costs.

The issue of a writ by a defendant for costs can only be justified under section 353 of the Civil Procedure Code. Section 299 must, in my opinion, be confined to cases where the claim is for a debt or damages. The Code makes no express provision for the issue of writs against the person for costs where the Court makes a specific decree for movable and immovable property and also allows costs. In such cases the order for costs has been left to be dealt with under the general sections 209 and 353. For a Code is intended to be exhaustive on any point dealt with by it.

Appeal dismissed.