1915.

Present : Wood Renton C.J. and De Sampayo A.J.

MOHIDEEN *v.* THE PROPRIETORS OF THE KELLIE GROUP

148—C. R. Gampola, 1,501.

Seizure of movables—Action in the Court of Requests under s. 247 of the Civil Procedure Code by judgment-creditor—Does an appeal lie against a finding of fact without the leave of the Court?

In an action in the Court of Requests, under section 247, that certain movable properties seized in execution are liable, to be seized and sold under the plaintiff's writ, there is no appeal against a finding of fact without the leave of the Court.

THE facts appear from the judgment.

F. J. de Saram, for plaintiff, appellant.

Bartholomeusz, for defendants, respondents.

Cur. adv. vult.

June 30, 1915. WOOD RENTON C.J.—

When this case came up before me last week, counsel for the plaintiff-appellant claimed that, as the action was one under section 247 of the Civil Procedure Code, he was entitled, without leave, to argue the appeal on the facts as well as on the law, inasmuch as this Court had held in 118—C. R. Matara, 8,050,[1] that such an action as this is not a "demand" within the meaning of section 12 of the Courts of Requests Ordinance, 1895 (No. 12 of 1895). Mr. E. W. Jayewardene, as *amicus curiæ*, called my attention to section 77 of the Courts Ordinance, as re-enacted by section 4 of Ordinance No. 12 of 1895, and pointed out that, if the argument of the plaintiff's counsel was sound, the Court of Requests would have no jurisdiction to entertain actions under section 247 at all. Counsel for the defendants adopted that point as his own, and I thought it desirable to put the case down for argument before two Judges.

[1] *S. C. Mins., June 11, 1915.*

We have now had the advantage of hearing counsel on both sides of the question. I cannot believe that the Legislature intended to exclude actions under section 247 from the jurisdiction of Courts of Requests and there is nothing in the word "demand" itself which compels us to hold that it has done so in fact. The *cursus curiæ* is entirely against any such interpretation of the law.

In my opinion the present appeal cannot be argued on the facts. It must be sent down for argument before me on the law.

DE SAMPAYO A.J.—

This is an action under section 247 of the Civil Procedure Code by the execution creditor against the claimant, for the purpose of having it declared that certain movable property seized in execution belongs to the execution debtor and is liable to be seized and sold under the plaintiff's writ. The question has arisen whether in the absence of leave of Court an appeal lies from the findings of fact. Section 13, sub-section (i), of the Ordinance No. 12 of 1895 enacts that in such circumstances there shall be no appeal "in any action for debt, damage, or demand." In 118—C. R. Matara, 8,050,[1] which came before me sitting alone, I held that the provision did not apply to a claim under section 247 of the Civil Procedure Code for declaration of title to movable property, and over-ruled an objection to the appeal in that case. By reason of the fact that section 4 of the Ordinance No. 12 of 1895 is omitted in the print of the Ordinance in the 1907 edition of the Ordinances, and is instead embodied in the Courts Ordinance as section 77, I failed to notice that section, and to consider the effect of it on the construction of section 13, sub-section (i). There, too, the expression "action for debt, damage, or demand" occurs, and if the word "demand" there be not held to include a declaration of title to movable property, there would be no provision whatever conferring jurisdiction on the Court of Requests in such cases. It cannot reasonably be assumed that that was the intention of the Legislature, though I confess the language of the Enactment is unhappy. The uniform practice of the Courts, which in this connection affords a good rule of interpretation, has been to allow actions in the Court of Requests for declaration of title to movable property as coming under the head of "demand." That being so, the same meaning must be attached to the word "demand" in section 13, sub-section (1), of the Ordinance. Having re-considered the point in this case, I think my ruling in the Matara case above referred to is erroneous, and I agree that the appeal, so far as the facts are concerned, cannot be entertained.

[1] *S. C. Min., June 11, 1915.*