RAMALINGAM *v.* RAGUNATHA KURUKKAL. SAMBANTAR, Claimant.

1895. *October 10.*

D. C., Jaffna, 24,021.

Appeal—Costs in claim inquiry—s. 241 of the Civil Procedure Code—Revision.

When in an investigation, under section 241 of the Civil Procedure Code, into a claim in execution the Court awards costs to the successful party, the order as to costs is not an appealable one.

Semble, per Curiam.—Where, in the case of a claim to land seized in execution, the execution-creditor had not pointed out the land for seizure, or taken any steps in the matter, before the seizure or after it, which might be held to be a ratification of the act of the Fiscal, and had taken no part in the proceedings at the inquiry, he ought not, if the claim is upheld, to be condemned in the claimant's costs.

THE facts of the case sufficiently appear in the judgment of BONSER, C.J.

Bawa, for plaintiff, appellant.

10th October, 1895. BONSER, C.J.—

In this case the appellant was a judgment-creditor. He got an execution against his debtor. The debtor, when the Fiscal went to execute the writ, pointed out property as his, which belonged to a third person who claimed the property, and the Fiscal reported the matter to the Court. The Court held a summary inquiry into the claim under section 241 after citing the judgment-creditor, the Fiscal, the judgment-debtor, and claimant to attend. The judgment-creditor attended, but, so far as we can see from the record, took no part whatever in the proceedings. He does not appear to have called any witnesses. The District Judge allowed the claim, but held that the judgment-creditor should pay the costs of the investigation. Against that order the judgment-creditor has appealed. It has been held that an order made under section 244 is not an appealable order, but that the remedy is under section 247, and if the order, either admitting or disallowing the claim, is not an appealable order, I fail to see how any part of that order is appealable, as, for instance, the part dealing with the costs. Therefore, in my opinion, the appeal does not lie. If it be the fact that the appellant neither pointed out the land, nor took any steps in the matter, before the seizure or after the seizure, which might be held to be a ratification of the acts of the Fiscal, and if on the inquiry he took no part in the

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proceedings, I am of opinion that he ought not to be made to pay the costs. Therefore, the proper course will be to exercise our powers of revision, and to send the record back to the District Judge in order that he may make any remarks regarding it that he may think proper to make, and that notice be given to all the parties who were present at that inquiry, including the Fiscal and execution-debtor, that we propose to take the matter up in revision.

WITHERS, J.—I agree.

Assuming that the Court is competent to make order as to costs in these claim inquiries, that must be included in the formal order drawn up by the Court at the conclusion of the inquiry; for an order, like a decree, should state by what parties, and in what proportion, costs are to be paid.

That being so, as it has been held that no appeal can be taken from an order under this chapter, it is plain that no appeal can be taken from that part of it which awards costs.

As it appears from the presentation of the case to us, that the execution-creditor should not be made liable to pay costs of the claim, the order should be brought up in revision after notice to the Judge and the other parties concerned.