

RAMALINGAM v. KURUKAL.

1893.
October 10
and
November 7.

D. C., Jaffna, 24,021.

Costs in claim inquiry—Execution-creditor when not liable.

In an inquiry into a claim in execution it appeared that the judgment-creditor had neither pointed out to the Fiscal for seizure the land claimed, nor directed him to seize it, and that, although he attended the inquiry, he took no active part in it.

Held, that he was not liable in the costs of the claimant, although the latter was successful.

IN this case the Fiscal seized on a writ certain land pointed out for seizure by the judgment-debtor. A claim was preferred to it, and the same was, under section 241 of the Civil Procedure Code, reported by the Fiscal to the District Court. The judgment-creditor took no part in the inquiry held by the Court. The District Judge directed the release of the property from the seizure, and condemned the judgment-creditor in the claimant's costs. The judgment-creditor appealed from the part of the order condemning him in costs. The case came on before BONSER, C.J., and WITHERS, J., on the 10th October, 1893; and

their Lordships held that no appeal lay from the part of the order as to costs,* but being of opinion that the judgment-creditor should not, in the circumstances, have been condemned in costs, ordered that the case be remitted to the District Judge with directions to him to make any remarks regarding it that he might think proper, and, with notice to all parties, to send the case up again to be dealt with in revision. The case was so dealt with on the 7th November, 1895, when the following judgment was delivered.

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WITHERS, J.—

It is very clear that the order made by the learned Judge in this claim inquiry cannot stand.

The District Judge has condemned the judgment-creditor to pay the costs of the investigation.

But as far as we were able to see, the judgment-creditor was no party to the proceedings, and it is proved that it was not he who pointed out the land seized to the Fiscal, nor was it he who directed the Fiscal to seize it. Though he attended the investigation he took no active part therein either on the side of the judgment-debtor or on that of the claimant.

He has therefore done nothing which renders him liable to be saddled with the costs.

The order is consequently quashed.

BROWNE, J., agreed.

* See Vol. I., p. 355.