

WIJESINGHE v. PAULICKPULLE.

1894.

November 21.

C. R., Chilaw, 5,620.

*Appeal—Order of Commissioner of Court of Requests as to costs—Civil Procedure Code, s. 247.*

No appeal lies to the Supreme Court from an order of a Commissioner of a Court of Requests as to costs.

THE defendant, having obtained a decree for costs, sued out a writ of execution against the plaintiff, who pointed out certain land for seizure. Upon seizure one Abeyratne claimed it, but as the defendant (execution-creditor) failed to appear on the day appointed for the inquiry, the claim was upheld with costs. Thereafter the defendant moved for and obtained a notice on the plaintiff to show cause why the order upholding the claim with costs should not be rectified to the effect that the costs of the claimant be paid by the plaintiff. The Commissioner in due course directed that the order should be amended accordingly, and the plaintiff, who was the execution-debtor, was ordered to pay the costs of the claim inquiry.

The plaintiff appealed against this order.

H. A. Jayawardene, for the defendant, respondent, objected to the appeal being heard, as no appeal lay to the Supreme Court from an order of a Commissioner as to costs.

Senewiratne, for appellant.

24th November, 1894. WITHERS, J.—

I think that the objection taken is sound. The order as to costs arises out of the claim, which under section 247 of the Civil Procedure Code is not subject to appeal. Nor is it an order which can be called either a final judgment or one having the effect of a final judgment such as is contemplated by section 80 of The Courts Ordinance.

I cannot call to mind, nor can Mr. Seneviratne help me with a reference, to any case in which an appeal for costs only has been taken from an order by a Commissioner of a Court of Requests.

The appeal is dismissed with costs.

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