

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wood Renton.

Oct. 21, 1910

ABDUL RAHIMAN v. ABUBAKER LEBBE.

D. C., Kalutara, 4,207.

Costs of unsuccessful claim—Claimed as damages in an action under s. 247, Civil Procedure Code.

An unsuccessful claimant who brings an action under section 217, Civil Procedure Code, is not entitled to recover, by way of damages, the costs incurred by him in the claim inquiry, though he succeeds in establishing his title to the property seized.

*Sinnatamby Vanniah v. Veemanadan*¹ followed.

WOOD RENTON J. —If the point had not been concluded by authority, I should have thought that there was much to be said in favour of a decision in a contrary sense.

THE facts material to this report are set out in the judgment of the Chief Justice.

A. St. V. Jayewardene, for the defendant, appellant.

Bawa (with him S. Obeyesekere), for the plaintiff, respondent.

Cur. adv. vult.

October 21, 1910. HUTCHINSON C.J.—

This is the defendant's appeal against a decree declaring the plaintiff to be the owner of a house and that it should be released from seizure, and awarding to the plaintiff Rs. 50 as compensation for its seizure. The house was seized by the defendant under a writ of execution in another action against Colonda M. Maimunachi: the present plaintiff made an unsuccessful claim to it, and then brought this action under section 247 of the Code.

His Lordship then proceeded to discuss the points urged at the argument not material to this report, and continued:—

The remaining question is whether the plaintiff is entitled to damages for loss which he sustained by the wrongful seizure of the house in execution. I think that he is not. The damages which he claims seem to be, according to his evidence, the fees which he paid to his lawyers to get the writ stayed: the costs of making and supporting his claim, in fact. In *Sinnatamby Vanniah v. Veemanadan*¹ the Court refused to allow the successful plaintiff, by way of damages,

¹ (1901) 2 Br. 226.

Oct. 21, 1910 the costs of an unsuccessful claim which he had made. We are bound to follow that decision, and I cannot distinguish this case from that.

HUTCHINSON
C.J.

Abdul
Rahiman v.
Abubaker
Lebbe

The decree should be amended by omitting the order for payment of Rs. 50 compensation; in other respects it should be affirmed. No order as to costs of the appeal.

WOOD RENTON J.—

His Lordship discussed the other points urged at the argument, and then continued:—

On the question of damages, I think that we are bound by the case of *Sinnatamby Vanniah v. Veemanadan*,¹ which is a decision of two Judges, to hold that damages intended, as in the present case, to reimburse a successful claimant in an action under section 247 for the costs incurred by him in the claim inquiry cannot be awarded. I would desire to add, however, that if the point had not been concluded by authority, I should have thought that there was much to be said in favour of a decision in a contrary sense. I can see no reason in principle why a successful claimant in an action under section 247 should not recover his costs at the claim inquiry in the form of damages. Section 248 of the Civil Procedure Code, in providing that any person bringing an action for the establishment of a groundless claim "shall, in addition to his liability to pay costs and damages," be liable to a fine not exceeding Rs. 50, seems to contemplate that damages could be recovered against the unsuccessful claimant, and I should think that such damages would necessarily include the expenses to which the execution-creditor had been put at the claim inquiry. If an unsuccessful claimant is liable to damages of that character, a successful claimant ought, I think, to be entitled to recover them.

I agree to the formal order proposed by His Lordship the Chief Justice.

Varied.

¹ (1901) 2 Br. 226.