

1895.
June 21, 25.

CANDEPERUMAL *v.* SINNATAI *et al.*
ISMA LEBBE MARIKAR, Claimant and Appellant.

D. C., Batticaloa, 24,176, Interlocutory.

Bill of costs—Taxation—Civil Procedure Code, s. 214—Claim proceedings under s. 241—Determination of class.

The class of a claim proceeding under section 241 of the Civil Procedure Code is determined either by the value of the property claimed or the amount of the decree, whichever is the less, and the bill of costs of such proceeding should be taxed according to the class so determined.

Per BROWNE, J.—A Court has power under sections 244–246 of the Civil Procedure Code to make order as to payment of costs.

Adamjee v. Cadar Lebbe, D. C., Colombo, No. 98,031 (1 C. L. R. 66), distinguished.

THE facts of the case sufficiently appear in the judgment of their Lordships.

Dornhorst, with Bawa, for claimant appellant.

Sampayo, for respondent.

Cur. adv. vult.

25th June, 1895. BONSER, C.J.—

This is an appeal from the decision of Mr. Roosmalecocq, Acting District Judge of Batticaloa, as to the taxation of a bill of costs.

The Fiscal, in executing a writ of execution to enforce a decree for the payment of money made in an action of *Kaderamen Cander Permal v. Vaatipody Summattai, No. 24,176*, in the District Court of Batticaloa, seized a piece of land, which he reported to be of the value of Rs. 100.

The appellant claimed the land as his property, and the Fiscal, as required by section 241 of the Civil Procedure Code, reported the claim to the Court.

The appellant thereupon made an application in writing, intituled in the said action, for a day to be fixed for inquiry into his claim, and that the sale by the Fiscal might be stayed pending that inquiry. The Court upon that application made an order staying the sale, and proceeded to investigate the claim in the presence of the execution-creditor and the claimant in a summary way as provided by section 242 of the Civil Procedure Code, and after hearing the evidence called by the appellant and the execution-creditor, disallowed the claim, and ordered the appellant to pay the costs of the inquiry.

The Secretary of the District Court taxed the costs of the execution-creditor under class I. in schedule III. of the Civil Procedure Code, on the ground that the value of the land was under Rs. 200. 1895.
BONSER, C.J.

The Acting District Judge, on being referred to, ordered the taxation to be made under class IV., on the ground that the action in which the decree sought to be enforced was obtained was an action in class IV.

The appellant contends that the Acting District Judge was wrong, and that the Secretary was right. There appears to be no decision of this Court on this point, and, although it is stated that the practice of the Batticaloa Court has always been to tax the costs of these incidental proceedings on the same scale as the costs of the original action, it has been the practice in the Colombo District court, at all events in recent years, to tax them as costs in an independent action.

Section 214 of the Code provides that bills of costs are to be taxed according to the rates specified in schedule III. of the Code. That schedule divides actions into five classes for the purpose of taxation of costs according as "the cause of action, title to land " or property, value of estate, or subject-matter of the action " is above or below certain specified amounts. In other words, the scale of taxation is to be determined by the amount at stake between the parties. If we apply that rule to this case, what is the amount at stake in this proceeding? It is clearly not the same as the cause of action in the original action.

The claimant is no party to that action. It is true that section 241 provides that the Court is to have power over him "as if he "were a party to the action," in which would be included the power to make him pay costs in a proper case; but it does not say that he is to be treated in all respects as a party to the action. He cannot dispute the validity or amount of the decree. The only question in the claim proceeding is, whether or not the property is liable to be seized in execution.

The object of the execution-creditor is to have the property which is seized declared liable to him to the amount of the decree. Where the amount of the decree exceeds the value of the property, the execution-creditor cannot succeed to a greater extent than the value of the property. Where the value of the property exceeds the amount of the decree, the execution-creditor cannot succeed to a greater extent than the amount of the decree. The measure, then, of the value of the subject-matter of such a proceeding as this will be the value of the property or the amount of the decree, whichever is the less.

1895. If the rule be as contended by the respondent, it would lead to
 BROWNE, A.J. this anomalous result, that a man whose property is attached by
 an execution-creditor is to have the valuation of his proceedings
 to protect his rights determined, not by the value of his property,
 but by a quite irrelevant consideration, viz., the value of the
 original cause of action, with which he has nothing whatever to
 do. So that, if in the execution of a money decree for Rs. 10,000 a
 house were seized, belonging to the judgment-debtor, in which
 was a chair or table worth Rs. 10 belonging to a third person,
 that person, if he wished to assert his right to that property, must
 run the risk of having the costs taxed against him on the highest
 scale, if his claim is disallowed.

The order of the Acting District Judge must be reversed, but,
 having regard to the fact that he followed the established practice
 of his Court, without costs.

BROWNE, A.J.—

I agree that the order appealed from should be set aside, and
 the Secretary's taxation of the costs of this claim inquiry be
 upheld.

It was questioned in argument whether, when section 244 of the
 Civil Procedure Code mentioned only an order as to payment of
 Fiscal's fees and charges, the Court had power under sections
 244-246 to make order as to payment of costs. I hold that it has
 the power under section 209, but as that section applies only to
 costs proper, there was need of this additional power to provide
 for the payment of these other expenses.

It was also urged for the respondent that the order should be
 sustained for the reasons given in the decisions reported in *I C. L.*
R. 66, whereby a like order was made as to taxation of costs
 incurred in claims in concurrence. But (1) these were decisions
 under the old procedure, when as yet claims were investigated by
 the Fiscal ere the Civil Procedure Code made them to be deter-
 mined by the Court, and the Stamp Ordinance No. 3 of 1890
 prescribed the Re. 1 stamp on a Fiscal's claim for such purpose ;
 and (2) such claim and investigation is not necessarily "made and
 "entitled as an application in the action," which was the reason
 for these decisions.

In India such an application when entertained has to be
 numbered and registered as a suit (*O'Kinealy, section 279*). Our
 Code has not so directed ; indeed, it says the investigation shall
 be "in a summary manner," and so it might at first be regarded
 as if it were made in the original action. But when it is
 remembered how complete in itself the inquiry is when held by

the Court of the district wherein the property is situated which has not the original record before it, but only the claim with its own nominal stamp, the report and the proceeding thereon, it will be seen, it stands apart altogether from the original action, not only as regards its subject and issues, but as a matter of procedure; so, too, when the Court of the writ holds such a separate inquiry as in these very proceedings. In either case the only data in the proceedings on which the class can be determined and the bill taxed is the value of the subject of claim. The contingency that the Fiscal would seize property of value exceeding the amount to be recovered under the writ I would regard as generally improbable. Were it to occur, I agree that the class for taxation of claim costs should not, as a rule, be greater than that of the original action.

1896.
BROWNE, A.J.

