

RANESINHE, Creditor and Appellant.

HENRY *et al.*, Claimants and Respondents.

1896.

March 3.

BONSER, C.J.

D. C., Gulle, 2,907 (A).

Revisionary power of Supreme Court—Civil Procedure Code, s. 755—Liability of execution-creditor for act of Fiscal—Necessity of surrender, before seizure, of property pointed out by the judgment-debtor—Civil Procedure Code, s. 226.

An order of a District Court, which is wrong *ex facie*, may be quashed by the Supreme Court in the exercise of its revisionary power, even though no appeal may lie against such order.

An execution-creditor who did not authorize the Fiscal to seize under his writ certain property, which upon seizure was rightly claimed by a third party, cannot be condemned to pay the costs of the claim proceeding.

A Fiscal is not entitled to seize property pointed out by the judgment-debtor until it has been surrendered to him.

THE facts of the case appear in the following judgment of the Chief Justice.

De Saram appeared for appellant, and *Alwis* for respondents.

3rd March, 1896. BONSER, C.J.—

This appeal should be dismissed, on the ground that no appeal lies from a claim order. But Mr. De Saram, who appeared for the creditor appellant, has asked us to take up the case in revision, following the precedent of a case recently decided by this Court (*D. C., Jaffna, No. 24,021, Civil Min. S. C., Oct. 10, 1895*). The ground on which he asks us to exercise our revisionary power is, that the District Judge has made an order condemning him in costs, which order, he urges, is, on the face of the proceedings, wrong.

1896. It appears that the judgment-creditor pointed out to the Fiscal
March 3. certain property, which he said belonged to the execution-debtor.
BOWMAN, C.J. The Fiscal, however, declined to seize this property, but seized an undivided share of a certain garden which the debtor pointed out to him as being his own property. Mr. Alwis's client, who claims to be the owner of that property, at once put in her claim. The claim was referred by the Fiscal to the Court under section 241 of the Civil Procedure Code, and at the hearing of the claim the creditor was there represented by his proctor; the debtor was there represented by his proctor; and the claimant was there represented by his proctor.

The creditor opened the inquiry by saying that he admitted the title of the claimant; that he never desired this property to be seized; and that it was against his wish that the property was seized. The learned District Judge thereupon made an order releasing the property, but ordered the execution-creditor to pay the costs of the proceedings on the ground that the Fiscal is the agent of the execution-creditor, and that a creditor is responsible for whatever the Fiscal does.

That is a proposition which cannot be maintained. Mr. Alwis did not seek to maintain it, and after the decision of this Court in the Jaffna case I do not see how he could do so.

Therefore, in the exercise of our revisionary power, we quash the order. There will be no costs to any party of this appeal.

I would add that Fiscals should note the words "and surrender to him" which follow the words "as may be pointed out" in section 226 of the Civil Procedure Code. A Fiscal is not entitled to seize property merely because it is pointed out "by the execution-debtor." Before it can be seized it must be "surrendered" by the debtor. What that means will depend on the nature of the property, but in every case it must mean something more than the debtor pointing out the property for seizure.
