

[4 Mad. 420.]

APPELLATE CIVIL.

The 18th January 1882.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Srinivasa Ayyangar.....(Petitioner), Appellant  
and

Periatambi Nayakar and another.....(Judgment-debtors), Respondents.\*

Civil Procedure Code, Section 322-B†—Appeal from order disallowing claim,  
Nature of.

An appeal from the decision by which a disputed claim is settled under Section 322-B† of the Code of Civil Procedure, Act X of 1877, is cognizable as a miscellaneous appeal, i.e., an appeal from a decree not passed in a regular suit.

In execution of the decree in Suit No. 14 of 1876 in the District Court of Coimbatore which was transferred to the Collector under Section 326 of the Code of Civil Procedure, a reference to [421] the District Court was made by the Collector under Section 322-B† as to the claim of the petitioner against the respondents.

The District Judge disallowed the claim.

The petitioner appealed to the High Court against the order of the District Judge.

*Bhashyam Ayyangar* for the Petitioner.

The Government Pleader (Mr. *Shepherd*) for the Respondents.

Mr. *Shepherd* took a preliminary objection to the form of the appeal and contended that it ought to have been in the form of an appeal from a decree and stamped accordingly, and not with a 2-rupee stamp.

*Bhashyam Ayyangar* referred to the definition of decree and maintained that this was a question in execution of decree which arose after the decree was passed.

\* C. M. A. No. 701 of 1881 against the order of F. C. Carr-Gomm, District Judge of Coimbatore, dated 21st July 1881.

† [Sec. 322 :—Whenever the execution of a decree not being a decree directing the sale of

Powers of Collector as to execution of certain money-decrees so transferred.

immovable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector may either proceed as the Court would proceed under Section 305, or if he has reason to believe that the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such property, the Collector may (notwithstanding any order under Section 303, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge such debts with interest thereon according to the decree, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit.

\* \* \* \* \*  
(b) by mortgaging the whole or any part of such property : or  
\* \* \* \* \*

The **Judgment** of the Court (TURNER, C.J., and KINDERSLEY, J.) was delivered by

**Turner, C. J.**—A preliminary objection is taken that this appeal is not cognizable as a miscellaneous appeal, but should have been preferred as an ordinary appeal from a decree in a suit.

This is not a case in which a person of his own motion seeks to put his claim in suit. If he is unwilling to forego his claim, he must inform the Collector of it, and, if it is disputed, maintain it before the Judge or other competent tribunal.

The adjudication is required for the purpose of other proceedings in which the Collector is engaged. If the legislature had thought fit to compel a creditor whose claim was disputed, to prove his claim by regular suit, it would have expressed its intention in distinct terms; but this would have imposed a hardship on the creditor and other procedure has been provided.

The decision by which the dispute is settled is not termed by the Code a decree, but declared to have the force of, and be enforceable as, a decree. Under these circumstances, we consider that the appellant has pursued the proper course in presenting the appeal as a miscellaneous appeal, that is to say, not an appeal from a decree passed in a regular suit.

