

Present: Schneider J. and Maartensz A.J.

1927.

JALATPEDIGE ABADDA v. VEDADUREYALAGEY ABADDA.

1—D. C. Kurunegala, 11,574.

Buddhist Temporalities—Costs—Personal liability of trustee—Ordinance No. 8 of 1905, s. 30.

Section 30 of the Buddhist Temporalities Ordinance exempts a trustee from personal liability for costs only where he is sued under the name and style of trustee in respect of any act done *bona fide* under the powers vested in him under the Ordinance.

A PPEAL from a judgment of the District Judge of Kurunegala..

James Joseph, for plaintiff, appellant.

H. V. Perera, for defendant, respondent.

July 29, 1927. SCHNEIDER J.—

A question on the interpretation to be given to section 30 of the Buddhist Temporalities Ordinance, No. 8 of 1905, is raised by this appeal. The plaintiff in this action sued the defendants in this action in action No. 9,735 of the District Court of Kurunegala, describing himself as the trustee of the Medagama and Verella viharas. His action was dismissed with costs. There was no further direction with regard to these costs. In execution of that order for costs the present defendants obtained writ and seized certain property belonging to the plaintiff in this action. The plaintiff claimed the property seized. His claim was dismissed and he brought this present action, under the provisions of section 247 of the Civil Procedure Code. His contention was that the order for costs was not against him personally and that his personal property was not liable to be seized in execution of a writ for the payment of those costs. The learned District Judge held against the plaintiff upon this contention and dismissed his present action, also with costs, and he has appealed.

I think the learned District Judge was right in holding against the plaintiff. He refers to the case of *Maraliya v. Goonesekera*.¹ That case is useful as pointing to the well-recognized general principle that a person suing or being sued in an action, although he describes himself or be described as a trustee, is liable personally in costs. That principle is conceded by Mr. Joseph, who appeared for the

¹ (1921) 23 N. L. R. 261.

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plaintiff-appellant in this action; but he submitted that the effect of section 80 of the Buddhist Temporalities Ordinance was to exempt a trustee from personal liability in costs whether he be plaintiff or defendant. I am unable to uphold that contention. As I read that section the words "shall not be personally liable in costs" refer only to those cases where trustees appointed under the provisions of the Ordinance are sued under the name and style of trustees under the Ordinance, and I read the section as enacting that the trustees shall not be personally liable where they are being sued in respect of any act which they had done *bona fide* under any of the powers or authorities vested in them under the Ordinance. These powers are very large ones as will appear from the provisions of section 20 and the following sections.

In my opinion, the appeal must be dismissed with costs.

MAARTENSZ A.J.—I agree.

Appeal dismissed.