

1917.

Present : Wood Renton C.J. and De Sampayo J.

RODRIGO v. ANDRIS.

80—D. C. Galle, 14,055.

Costs—Decree for costs in favour of three persons—Payment of costs to two out of the three persons.

If a party on one side in an action is ordered to pay costs where the other side consists of several persons, the general rule is that the latter are jointly entitled to the costs, and payment to one of them is payment to all. But circumstances may make the rule inapplicable. Although a general order for costs is made without any apportionment, the question is one of fact as to who is entitled to receive them.

The mere production of a formal receipt by a party showing that he had paid the full costs to two out of three persons who had a decree for costs against him does not entitle him to have satisfaction of decree entered of record. He must prove payment. Otherwise the party who has granted receipt is entitled to recover a third share of the costs.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for plaintiff, appellant.

Zoysa, for defendant, respondent.

Cur. adv. vult.

September 25, 1917. DE SAMPAYO J.—

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This appeal raises an important point of practice. The plaintiff brought this action to vindicate title to a certain land against the defendants, who were alleged to be in unlawful possession. The defendants, appearing by Mr. Alwis, proctor, filed an answer denying plaintiff's claim, and setting up title in themselves to a share of the land. At the trial an advocate, instructed by Mr. Alwis, appeared for all the defendants and raised a legal objection, which prevailed, with the result that the plaintiff's action was dismissed, with costs. Mr. Alwis, on behalf of all the defendants, taxed a bill of costs, and applied for a writ of execution against the plaintiff. The plaintiff at the same time appeared and stated that he paid the costs in full to the first and second defendants, and produced a notarial discharge from them, and he therefore moved that satisfaction be entered of record. The District Judge refused this application, on the ground that payment to the first and second defendants alone did not release the plaintiff, and he allowed writ to issue for the full amount of the taxed costs. The plaintiff has appealed.

It is now well settled that a decree for costs against several persons constitutes a joint and several debt, which may be recovered from one or all of them. *Seddo v. Sitta*,¹ *Periya Carpan Chetty v. Mohamadu*.² The nature of the obligation in the converse case, where the decree for costs is in favour of several persons, is not equally clear. Under the Roman-Dutch law it appears that where an order for costs is made against several persons, each is liable for his *pro ratâ* share. See *Nathan's Common Law of South Africa*, vol. IV., p. 2202. Probably, under that law, one of several persons in whose favour an order for costs is made can likewise recover only his proportionate share. But the Roman-Dutch practice does not appear to have been adopted here. The learned Judges in the cases above cited refer to a long course of practice in Ceylon, and I have no doubt that this is referable to the English practice which in a matter of this kind has, I think rightly, been followed by our Courts. So far as reported decisions go, the District Judge's ruling in this case appears to be erroneous. In *Wattegama R. M. v. Pedro Perera*,³ Dias A.C.J. held generally that payment to one of several persons who have a decree for costs is payment to all, and Lawrie J. said that "each case must depend upon its peculiar circumstances, especially on the relation in which the judgment creditors stand to each other". There is, however, no essential difference of opinion between the learned Judges. If a party on one side in an action is ordered to pay costs where the other side consists of several persons, the general rule is that the latter are jointly entitled to the costs, and, as in the ordinary case of joint

¹ (1837) *Mor. Dig.* 203.

² (1910) 13 N. L. R. 97.

³ (1888) 1 C. L. R. 24.

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creditors, payment to one of them is payment to all. But circumstances may make the rule inapplicable, for as was said by Coleridge J. in *Sprowler v. Stoakes and Yeomans*:¹ " Because several persons are sued in the same action, they cannot necessarily be taken to row in the same boat; their interests may be different. " Although a general order for costs is made without any apportionment, the question is one of fact as to who is entitled to receive them. In the English case just referred to Stoakes and Yeomans were sued for use and occupation of a house. Each of them appeared in person, but neither of them having pleaded, judgment was signed against both. Subsequently the judgment was set aside, with costs, on the ground of irregularity, as no rule to plead had been entered. But it appeared that the judgment was set aside at the instance of Yeomans alone, while Stoakes appearing separately had unsuccessfully applied for time to plead, and it was held that payment of the costs to Stoakes did not discharge the plaintiff, though the judgment was set aside even as regards Stoakes. The whole reasoning in the case showed that, if the circumstances had been otherwise, the two defendants would have been joint creditors in respect of the costs due, and payment to one would have been payment to the other also. In the present case there are no exceptional circumstances which can alter the general rule. The defendants appeared together, made a joint defence, and succeeded in having the action dismissed on a point taken by counsel on behalf of them all. I therefore think the order of the District Judge cannot be supported on the specific ground on which it has been put. There remains, however, the question of the fact of payment. No inquiry has been made, nor any finding recorded, as to whether the plaintiff has in fact paid the amount of costs to the first and second defendants. He has no doubt produced a formal acknowledgment from them, but I think that, in order to affect the third defendant, there must be proof of an actual payment. In my opinion the case should go back for the determination of this question. If there has been such payment, the plaintiff will be entitled to have satisfaction of the decree entered of record. But otherwise I think that, as the first and second defendants must be taken to have been paid two-thirds of the costs, the third defendant should be allowed to issue execution for the recovery of the remaining third share for his benefit.

The order appealed from should, in my opinion, be set aside, and the case sent back for the purpose above indicated. The plaintiff is, I think, entitled to costs of this appeal and of the argument in the District Court.

WOOD RENTON C.J.—I agree.

Set aside.

¹ (1844) 13 L. J. Q. B. 230.