

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Middleton.

April 15, 1910

PERIYA CARPEN CHETTY v. MOHAMADU.

D. C., Kurunegala, 2,952.

Order to pay costs—Joint and several obligation—Civil Procedure Code,
s. 210.

It is the established practice to consider costs a joint and several debt. Where the respondents to an appeal (of whom there were five) were ordered to pay the costs of the appellants, the respondents were held to have been bound jointly and severally to pay the costs.

A PPEAL from an order of the District Judge of Kurunegala. The Supreme Court in appeal ordered that the respondents (of whom there were five) should pay to the appellants their taxed costs. One of the five respondents tendered a one-fifth portion of the costs and claimed a discharge. The learned District Judge held that the obligation to pay costs was a joint and several one.

H. A. Jayewardene, for the appellant.—Unless the order condemns the parties to pay the costs jointly and severally, each party is liable only for a *pro rata* share. Section 210 enacts that the order shall direct by whom the costs of each party are to be paid, and in what part or proportion. The order in question does not say in what part or proportion the costs have to be paid. Under the Roman-Dutch Law, when several persons are bound to pay something, each of them is liable only for his share of the whole debt. The legal effect of the present order is that each of the five respondents can be compelled to pay a fifth part of the costs. The case reported in *Morgan's Digest*, 203, does not apply, as that case was decided before the Civil Procedure Code came into force. Counsel also referred to *Ramanathan's Reports* (1843) 17; *Ramanathan's Reports* (1860) 54, and *Appendix*, 204.

A. St. V. Jayewardene, for the respondent.—We may infer from section 210, Civil Procedure Code, that where the Court does not say in what proportion the costs have to be paid, each is liable *in solido*. Counsel cited D. C., Galle, 4,856.¹

April 15, 1910. HUTCHINSON C.J.—

By the order of this Court made on September 2, 1909, it was ordered that the respondents should pay to the appellants their taxed costs of the appeal. There are five respondents. The

¹ *S. C. Min. Feb. 18, 1902.*

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question is whether each of the five is liable as between him and the appellants for all the costs, or whether he is only liable for one-fifth. Section 210 of the Civil Procedure Code enacts that an order shall direct by whom the costs of each party are to be paid, and whether in whole or in what part or proportion. In this case the Court did not give any direction as to the part or proportion in which the respondents were to be liable. It is contended, nevertheless, that the Court must be taken to have directed that each respondent shall only be liable for one-fifth of the costs. It is said that the rule of the Roman-Dutch Law is that when two or more persons are ordered to pay something, each of them is liable only for his share of the whole debt. But I find that it is recorded in *Morgan's Digest* at page 203 in the year 1837 that it is the established practice to consider costs as a joint and several debt. That seems to me to be a reasonable practice, and we have not been referred to any authority since 1837 opposed to it. I think that any Court which, since the Code came into force, made an order such as the one made in this case, ought to be considered to have had in view that established practice, and that an order such as this means what it says, that all persons who are ordered to pay are liable to pay, and that no one of them is discharged from his liability until the whole debt has been paid. I think, therefore, that the appeal should be dismissed with costs.

MIDDLETON J.—

I agree, and would only add that the ruling quoted from *Morgan's Digest* seems to have been followed by Chief Justice Bonser in his judgment in *Supreme Court Minutes, February 18, 1902* (257, D. C., Galle, 4,856), so that I think we have a modern decision to guide us following the ancient one referred to in *Morgan's Digest*.

Appeal dismissed.

