

Present : Wood Renton C.J. and Shaw J.

1915.

COSTA *et al.* v. SILVA *et al.*,

77 and 78—D. C. Colombo, 35,701.

*Appeal to the Privy Council—Security for costs.*

Where plaintiffs' action against several defendants was dismissed and they applied for leave to appeal to the Privy Council, they were ordered to give security for costs for all respondents in the sum of Rs. 3,000.

"The language of rule 3 (a) does not support the view that the costs of several respondents should be separately secured."

THE facts appear from the order.

*Drieberg*, for plaintiffs, appellants.

*F. M. de Saram*, for the first, second, and third defendants, respondents.

*B. F. de Silva*, for fourth and fifth defendants, respondents.—Rule 3 (a) of Schedule I. speaks of costs of "respondent." If there are several respondents there should be separate sets of costs.

Under rule 5 the Supreme Court has power to order adequate security. The sum of three thousand rupees is given where there is one respondent. The sum is clearly inadequate where there are several respondents. Counsel referred to *Dinga v. Sinda et al.*<sup>1</sup>

*Allan Drieberg*, for the plaintiffs, appellants.—Three thousand rupees is the maximum amount which can be fixed by Court as security for costs. Rule 3 (a) says, "in a sum not exceeding three thousand rupees."

*Bawa, K. C.*, *amicus curie*, referred to 168—D. C. Colombo, 31,832.

*Cur. adv. vult.*

June 14, 1915. WOOD RENTON C.J.—

This is an application by the plaintiffs in Nos. 77 and 78—D. C. (Final) Colombo, 35,701, for conditional leave to appeal to the Privy Council from the judgment delivered by this Court on May 10 dismissing their action with costs. The judgment of this Court is a final one within the meaning of rule 1 (a) of the rules scheduled to the Appeals to the Privy Council Ordinance, 1909. (No. 31 of 1909), and the matter in dispute is over the appealable value. Counsel for the fourth and fifth defendants-respondents moves, however, that they

<sup>1</sup> (1912) 15 N. L. R. 136.

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should be allowed security for their costs, independent of the security required for the costs of the first, second, and third defendants. Counsel for the plaintiffs objects, and I think that his objection is entitled to succeed. Rule 3 (a) of the scheduled rules provides for security for the prosecution of the appeal and the payment of the costs of "respondents," and fixes the maximum amount of security at Rs. 3,000. The language of the rule does not support the view that the costs of several respondents should be separately secured. The plaintiffs sued all the respondents in one and the same action. The first and second defendants filed one answer; the third and fourth defendants filed separate answers; they appeared by separate proctors and counsel in the District Court and at the hearing of this appeal, and there were distinct petitions of appeal. But they were all in the same interest, and apart from the difficulty arising under rule 1 (a) of the scheduled rules, it would be unreasonable that they should have separate security for costs. If the contention now put forward on behalf of the respondents were sound, a plaintiff appealing to the Privy Council from a decision of this Court in a heavy partition case might well be called upon to give independent security for the costs of a score of different respondents. We ought not, I think, to give a ruling which could render such a result possible, unless we are constrained to do so by judicial authority. On the argument before us, Mr. Bawa, Solicitor-General, kindly called our attention, as *amicus curiæ*, to the fact that this very point had been raised in another case (No. 168—D. C. Colombo (Final), 31,882), in which two defendants-respondents to the appeal appeared by separate proctors and counsel, and in which security for only one respondent was allowed. I have referred to the minute of the Supreme Court of January 26, 1913, and have ascertained that that was so. "It was contended," said Sir Alfred Lascelles, "by the respondents that the (maximum limit) is applicable separately to the costs of each respondent, and that the appellant should be ordered to give security separately, in an amount not exceeding Rs. 3,000, for the costs of each respondent. On the other hand, the appellants contended that the maximum amount of Rs. 3,000 is intended to cover the costs of both respondents. Now in this case there is really but one appeal. As regards matter of evidence and the admission which the defendants are said to have made, it is true that there is some difference between their cases. But in substance their cases are one and the same."

These observations are directly applicable to the present case, and dispose of the point before us. But I may add that the practice of the Court of Appeal in England would seem to be that where there are several respondents to an unsuccessful appeal in the same interest only one set of costs is allowed against the appellant, and the Privy Council acts on the same principle (see *Lyall v. Jardin*,<sup>1</sup>

<sup>1</sup> (1870) *Moore's P. C. N. S.* 123.

*Ram Lal v. Saiyed Mehde Hussain, 1 and Harbin v. Masterman 2).* 1915.  
 These two authorities are, of course, not connected with security for respondents' costs of appeal, but they embody a principle of WOOD RENTON C.J. which we may well take account by way of analogy. In my Costs v. Silva opinion, conditional leave to appeal should be granted on the usual terms, namely, that one appellant should give good and sufficient security for the prosecution of the appeal, and costs of the respondents to the amount of Rs. 3,000. The appellants are entitled to the costs of this application.

SHAW J. I entirely agree.

