[IN THE PRIVY COUNCIL]

1962 *Present:* **Lord Radcliffe, Lord Denning, Lord Morris of Borth-y-Gest, Lord Guest, and Mr. L. M. D. de Silva**

CHELLAMMAH, Appellant, *and* VYRAVAN KANAPATHY and others, Respondents

Privy Council Appeal No. 1 of 1961

S. C. 111 Inty. of 1956—D. C. Jaffna, 605

Evidence of birth, death, marriage and identity—Bare assertions on pedigree matters—No evidence as to the sources from which they were derived—Evidence Ordinance, s. 32 (5)—Findings of fact of trial Judge—Scope of power of appellate Court to reverse them.

The matters in dispute were straightforward matters of fact about such things as birth, death, marriage and identity. But they related to incidents some of which, if they took place at all, took place beyond any reliable living memory.

Although registration of birth, death and marriage has been compulsory in Ceylon since the early years of the last century, the evidence in the present case, in which the parties were Tamils, did not suggest that the practice of registration was widely observed among the Tamils. Much of the evidence on both sides consisted of bare assertions as to relationships or other matters of pedigree of which the witness making the assertion could have had no personal knowledge. It was not possible to tell from the record of the evidence given in the District Court from what sources most of the relevant statements as to pedigree were derived. It may have been assumed or it may have been stated without being recorded that they were received from predecessors in the family or by some other form of family tradition. Neither the trial Court nor the Supreme Court rejected any part of the evidence tendered on the ground that it was not legally admissible under section 32 (5) of the Evidence Ordinance. Further, many of the names occurring in the pedigrees were common in the area, so that identifications that would otherwise seem to be straightforward became uncertain.

Held, that, under the foregoing considerations, the trial Judge's findings of fact should not be disturbed unless they were so far unmaintainable upon the whole conspectus of the evidence, oral and documentary, that they could not be supported.

APPEAL from a judgment of the Supreme Court.

Joseph Deane, for the appellant.

E. F. N. Gratiaen, Q.C., with *Walter Jayawardena*, for the respondents.

Cur. adv. vult.

2—R 10656—1,856 (7/63)

April 3, 1962. [*Delivered by* LORD RADCLIFFE]—

This is an appeal from a judgment and decree of the Supreme Court of Ceylon dated the 9th May 1958 which allowed the appeals of two groups of the respondents against a judgment of the District Court of Jaffna dated 28th March 1956. The subject of dispute is the succession to the estate of one Kanapathy Kanthar, who died intestate on 19th May 1938, and both the appellant, who is his administratrix de bonis non, and the respondents were or now represent claimants to share in the estate as his heirs.

Four of the present respondents were not represented before the Board. Of them one, the second, is the appellant's sister and is interested to obtain the same relief, and two, the eighth and ninth, did not appeal to the Supreme Court from the District Court judgment. The remainder fall into two groups, of whom one consists of the 14th, 15th, 16th, 23rd and 26th respondents and has been categorised as "the Maternal Group" and the others, categorised as "the Paternal Group", are the 1st, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 17th, 18th, 19th, 20th, 21st, 22nd, 24th and 25th respondents.

The appellant's claim is that she and her sister the 2nd respondent are entitled to share the intestate's estate equally between them. He was a Tamil, a member of the Nalawa community, and, as he died without issue, the relevant law made his estate divisible equally between the maternal and the paternal sides. This is not in dispute. Nor is it in dispute that his mother's parents had three other children whose names, though variously spelt, were Marian, Sinnavi, and Eliavy; or that the appellant and her sister are grand-daughters of the last named Eliavy. It is also common ground that their father and grandfather are dead and that between them they are entitled to what may be called the Eliavy share on the maternal side.

Marian died without descendants. The issue between the appellant and the Maternal group of respondents is whether Sinnavi too died without descendants who survived the intestate. Her case was that Sinnavi had had one child, Elizabeth, who had married in 1881 and died without issue: Sinnavi himself died, she said, in 1905. The Maternal group, on the other hand, did not accept that there was any child of Sinnavi called Elizabeth: according to them he had had four children, through whom they claimed to be entitled to the Sinnavi share. Thus the appellant and her sister would get one half and the Maternal group the other half of whatever came to the maternal side.

The District Judge accepted the appellant's version of the facts relative to Sinnavi's line and rejected that of the Maternal group. The Supreme Court reversed his finding on the facts and admitted this group to the share they claimed.

The Paternal group claimed to be entitled to one half of the estate as relatives of the intestate's father Kanapathy. Nothing material turns upon the various degrees of their alleged relationship, since the whole

issue between them and the appellant is whether this Kanapathy, who was admittedly the intestate's physical father, was ever the lawful husband of his mother. If he was not, it is not in dispute that there is no maintainable claim on the paternal side and the whole estate is divisible on the maternal side only.

On the issue of the intestate's legitimacy the District Judge declined to find for the Paternal group that there had ever been a marriage. The Supreme Court reversed his finding on this fact and held that they were entitled to be admitted as heirs of the intestate.

Any Court, whether of first instance or of appeal, is bound to have great difficulty in coming to a satisfactory conclusion upon a case such as the present. The matters in dispute are straightforward matters of fact about such things as birth, death, marriage and identity. But they relate to incidents some of which, if they took place at all, took place beyond any reliable living memory. For example, the intestate himself died in 1938 at the age of 71 : he was therefore born in 1867. His mother, assuming for the moment that the death certificate produced was that of his mother, died in 1915 at the age of 85 : she must have been born therefore in 1830. The critical event, her marrige with Kanapathy, would have had to take place some time before 1867.

Secondly, although registration of birth, death and marriage has been compulsory in Ceylon since the early years of the last century, the evidence in this case does not suggest that the practice of registration was widely observed, at any rate among the Tamils. It is to be said for the appellant that she did produce as part of her evidence a number of registration certificates relating or said by her to relate to family events supporting the pedigree which she set up. The respondents' evidence on the other hand was not supported by a single certificate except that of the death of the intestate himself, which was put in for the purposes of cross-examination. Much of the evidence on both sides consisted of bare assertions as to relationships or other matters of pedigree of which the witness making the assertion could have had no personal knowledge. Such evidence, though of course hearsay, is not inadmissible on questions of pedigree, but its admissibility is limited by prescribed conditions which for this purpose are laid down in section 32 (5) of the Evidence Ordinance. Under this sub-section statements as to the existence of any relationship, to be receivable, must be shown to have been made by someone who had special means of knowledge as to the relationship asserted.

It is not possible to tell from the record of the evidence given in the District Court from what source most of the relevant statements as to pedigree were derived. It may have been assumed or it may have been stated without being recorded that they were received from predecessors in the family or by some other form of family tradition. Since neither of the Courts in Ceylon has actually rejected any part of the evidence tendered on the ground that it was not legally admissible, their Lordships

think it right to assume that adequate proof was available in this sense: but it has to be recognised that it adds to the difficulty of an appellate Court, if it essays to weigh against each other conflicting parcels of evidence, that it has no positive information as to the sources from which several material assertions on pedigree matters were derived.

Lastly, it was accepted that many of the names that occur in these pedigrees occur frequently among the Tamil communities in the area. This circumstance throws an uncertainty into identifications that would otherwise seem to be straightforward. Even the contents of certificates derived from the registers are only an officially received form of hearsay and they are not in themselves capable of resolving the initial question whether the person referred to in the certificate was in fact the same person as the man or woman whose existence is relevant to the pedigree which it is sought to establish. As will be seen, there was more than one instance of disputed identification in the present case.

The foregoing considerations help to underline the special position of an appellate Court that is required to hear an appeal of this nature. Its duty is not to start a new independent inquiry as if there had never been a hearing by the District Judge and findings made by him upon it. Not only does it lack the personal presence of the witnesses but it lacks, despite a careful note of evidence by the judge, any full record of what they actually said. To some extent too it must lack his immediate knowledge of local conditions and local customs which, without even being expressed, may yet influence his assessment of a witness or his judgment as to the significance of an event or a circumstance. Moreover this was not one of those cases in which the difference between the relative positions of a Court of first instance and a Court of appeal was of no practical relevance: much turned upon the credibility of witnesses and the plausibility or otherwise of certain inferences. The function of an appeal Court therefore is to consider the matter without either denying to the first Court its special advantages or supposing that it can place itself in the same position by a mere study of the record. With these limitations in mind it has to decide whether the Judge's findings of fact, since no question of law is in dispute, are so far unmaintainable upon the whole conspectus of the evidence, oral and documentary, that they cannot be supported.

These principles are familiar and have often received judicial recognition. It is evident from the full and careful judgment of Sansoni J. in the Supreme Court that their bearing was very much present to the minds of the two learned Judges whose decree is now under appeal. Nevertheless, with great respect to their view, their Lordships have found it impossible to conclude that a correct application of those principles should have led to a reversal of the findings of the District Judge upon the two sets of claims which he disallowed.

To turn now to the claim of the Paternal group. This depended, as has been said, on the question whether the intestate's father Kanapathy had ever been married to his mother. It was agreed that the onus of

proving that there had been such a marriage lay upon the claimants. But before considering the effect of their evidence it is convenient to notice what the appellant herself had to say in this matter, because the District Judge evidently accepted her general account of the intestate's relationships.

Her father, Eliavy Arumugam, was the cousin and had been for many years a friend of the intestate, whom she called Kanthar and who will be hereinafter referred to by that name. Her father and Kanthar were cousins because his father and Kanthar's mother were brother and sister. The name of that sister and so of Kanthar's mother was Kathirinohi. The appellant herself had been brought up in Kanthar's house after her mother's death and had lived with him from the age of five or six years until her marriage in 1923, Kanthar providing her marriage dowry. She knew Katherinchi, and produced in evidence a copy of her death certificate, which recorded her as dying in 1915 at the age of 85 years.

Katherinchi, she said, was the widow of one Kaithar, and the certificate in question certainly describes the deceased as " Catherine, widow of Kaithar " and in addition states her parents to have been Canthar and Cathirasi, the undisputed names of Kanthar's mother's parents. The informant as to the death is stated to have been " Caithar Canthar ", son of the deceased and a resident of Karayoor (the home of Kanthar) and his signature is recorded as " K. Kanthar ". It was never explained why or how, if the informant was Kanapathy Kanthar, he came to be described in the register as Caithar Canthar, but this circumstance did not, in their Lordships' opinion, justify the Supreme Court's view that the certificate did not refer to Kanthar's mother at all. This makes too much of a possible or probable mistake.

The appellant and her father evidently remained in close touch with Kanthar until his death and they had looked after him while he was an inmate at Manipay Hospital, where he died. She denied that at any time during her residence at his house any of the claimant respondents had come to his house and associated themselves with him as his relations or that any of the Paternal group had attended his funeral. She contributed no information about Kanapathy, Kanthar's father, except to say under cross-examination that she had heard from Kathirinchi that Kanthar was a bastard and in re-examination that Kanapathy himself came from a place called Vaddukoddai.

The evidence tendered on the other side, on behalf of the Paternal group, falls under three heads. First, there was a set of four witnesses, of extremely advanced age, whose evidence, if fully accepted might or might not have been thought to prove that Kanapathy married Kanthar's mother. In fact none of it was accepted by the District Judge both because he thought the witnesses too closely connected with the proctor acting for this group, who had interested his father-in-law in financing the litigation of their claim, and because he found their evidence in itself

unsatisfactory and unreliable. Having regard to his view the Supreme Court placed no reliance on what they said: nor did Counsel appearing for the respondents on this appeal. This head of evidence must therefore be ignored, except for the information that it contributes that it was sought to support the Paternal group's case by the production of four entirely discredited witnesses, of whom two stated that they had been asked to give their evidence by one Vairavan Kanapathy, whose own evidence forms the second head.

According to this witness Kanapathy, the father of Kanthar, had married one Kannattai and had had Kanthar as his son by her. He said that he knew Kanthar, had visited him both at his home and at Manipay Hospital and had attended his funeral. He had seen Kannattai, he said, and knew that she died five or six years before Kanthar's own death.

Thirdly, there was a witness, Dr. Mills, whose evidence was treated by the Supreme Court as a major contribution to the proof of Kanthar's legitimacy and his father's marriage. In this they were taking a view as to the reliability of his evidence which was very different from that taken by the District Judge, who heard him, or that which appears possible to their Lordships, having regard to the content of his evidence as a whole and the opinion which the District Judge formed and expressed as to the most material part of it. It is necessary therefore to allude to it at a little length.

Dr. Mills was the doctor at Manipay Hospital who had attended Kanthar in his last illness. He had known him very well before his death but disclaimed any personal knowledge of his relations or his relationships. He had known him " only as a man ". He was called by the Paternal group because about three months after Kanthar's death he had written (on the 20th August 1938) a letter to an enquirer, Nadarajah, Postmaster at Changanai, the village where this group had their home. The letter was produced. Its purpose, as the opening showed, was " to put in a nut shell all what happened at the Hospital " at the time of Kanthar's death. It stated that there had been great anxiety on the part of one Ayadurai, an illegitimate son of Kanthar, and the appellant's father, Arumugam, to get Kanthar to make a will bequeathing all his property to either of them. It then went on to recount Ayadurai's unsuccessful attempts to get this done and to state that Dr. Mills himself had tried to persuade Kanthar to do this for Ayadurai on the day before his death, " but he refused and said that he is not going to write to this people, but there are other heirs at Changanai, namely Vairavan and Sinnavan ". These are the names of two of the Paternal group, Vairavan being the witness referred to above.

When cross-examined, Dr. Mills explained that the origin of his letter was that Nadarajah's letter to him was brought to the hospital by " 3 or 4 Palla people " (apparently members of the Paternal group). He then stated in succession that he had not known these people before; that he

did not know Vairavan and Sinnavan; that they had told him that they were close relatives of Kanthar (it was not made clear whether this information had been given when they brought Nadarajah's letter or on some earlier visit before the death); that he found out the names of only Vairavan and Sinnavan; that "actually the man who died told me the names of these two persons stating that they were his heirs"; that he did not find out the names of Vairavan and Sinnavan from them; that they had visited Kanthar at the hospital, and that he, Dr. Mills, had asked them their names, saying "Who are you?"; that "the man who died" did not tell him the relationship of Vairavan and Sinnavan to him.

Faced with this succession of confused and contradictory statements given by a man then aged 77 about a brief incident at a busy hospital some eighteen years before, it is not surprising that the District Judge refused to accept Dr. Mills's letter as reliable evidence that Kanthar on his deathbed had recognised the respondents Vairavan and Sinnavan as his heirs. He thought that Dr. Mills was mistaken when he said that Kanthar had given him these names as his heirs, though he acquitted Dr. Mills of giving any evidence that was intentionally false. He made the comment, which seems cogent to their Lordships, that it must have been difficult for Dr. Mills even three months after the event to recollect all that happened at an incident in which, after all, he had no personal interest: indeed it is inherently difficult to believe that these two names, which are common names, lodged in Dr. Mills's mind in the way that he said they did. The letter, as the District Judge pointed out, is not so expressed as to state that the information about Vairavan and Sinnavan came from Kanthar; it is put forward as Dr. Mills's own information and it must be remembered that at one stage of his cross-examination he stated that they had themselves told him that they were close relatives. Finally, the District Judge was evidently impressed by the fact that Dr. Mills's evidence in chief contained no reference to Kanthar's alleged statement, except so far as it might be inferred from the contents of the letter, since he notes against the statement made under cross-examination that "the man who died" actually told him these names as those of his heirs "(the witness volunteers)".

In their Lordships' opinion the District Judge's finding that Dr. Mills's recollection is not reliable upon this point cannot be rejected or qualified by an appellate Court. The Supreme Court, on the other hand, treated the statement attributed to Kanthar as of "the greatest significance" and held that the District Judge had not a sufficient reason for refusing to act on this piece of evidence, since, they said, Dr. Mills was confident that he had a clear recollection of all that happened at the hospital. Having regard to the account of his evidence that has been given above, their Lordships think that the District Judge was fully entitled to treat Dr. Mills's confidence on this point as misplaced. The only other reason given by the Supreme Court for their decision to uphold Dr. Mills's evidence against the District Judge's finding was that they read the

relevant sentence of the former's letter as attributing his information to Kanthar, whereas the District Judge had construed it as offered ostensibly on Dr. Mills's own authority and had made the natural comment that the doctor had admitted having no personal knowledge as to Kanthar's family. In their Lordships' view the sense of the letter is in favour of the District Judge's reading; but it is at best ambiguous and there is nothing in his interpretation of it which can disqualify his general finding that Dr. Mills's evidence and part of the contents of the letter " are the result of a mistake ".

If Dr. Mills's testimony cannot be accorded any significance, the evidence of a marriage between Kanapathy and Kanthar's mother comes down to nothing but the oral evidence of Vairavan Kanapathy which the District Judge dismissed as of little account. The Supreme Court thought that, in view of the statement they were prepared to attribute to Kanthar in reliance upon Dr. Mills, Vairavan's evidence was entitled to greater consideration and credit than the Judge accorded to it. As has been said, this is to build upon an insubstantial foundation; but in any event their Lordships have been unable to see any sufficient reason for thus increasing its importance. This witness produced no registration certificates in support of his statements as to family relationships, nor did he depose to anything that could be called evidence of repute of a marriage between Kanapathy and Kanthar's mother. The substance of his testimony is contained in the following passage from his evidence in chief " Velan's son was Kanapathy, who married Kannattai. My father told me that Kanapathy and Kannattai lived at Koddady. Kanapathy and Kannattai had a son called Kanthar who was a physician ".

He may have got the statement about the marriage from his father, though he does not say so. Later on, he said that his father told him that Kanapathy and Kannattai had an only child Kanthar. None of this is evidence of repute or conduct. There were several inconsistencies and inaccuracies in the sum of his evidence, on any view, and the District Judge had to set his assertion of a marriage, the only sustainable evidence produced by the Paternal group, against the conflicting evidence of the appellant, of another witness, Anthony, and of certain documents. It seems quite impossible to upset his findings on the ground that Vairavan Kanapathy, who said that he first knew Kanthar when he himself was 40 or 42 years of age, was necessarily more credit-worthy on these matters than the appellant, who had lived for many years in Kanthar's house and knew his mother personally.

The evidence never reconciled the story put forward by the Paternal group that Kanthar's mother was called Kannattai and married Kanapathy with the story put forward by the appellant that she was called Katherinchi and married Kaithar. In support of the latter version there was (1) the appellant's own evidence, (2) the evidence of a witness called by her, Anthony, who had known Kanthar for many years, (3) the death certificate of " Catherine, widow of Caithar ", and (4) a mortgage bond of the year 1906 produced by the appellant in which " Catherinchi, widow

of Kayiththan " and Kanapathy Kanthar had joined to advance money on mortgage. Anthony, a retired school teacher, of whom the District Judge said " He created a favourable impression and I would accept his evidence ", said positively that he had known and spoken to Kanthar's mother, that she was known as Katherinchi, that she had married Kaithar and that she " lived with another man called Kanapathy ".

In the face of all this evidence and the District Judge's acceptance of Anthony as reliable, their Lordships cannot follow the Supreme Court in holding that the death certificate of " Catherine, widow of Caithar " did not refer to Kanthar's mother and that she was not the " Catherinchi, widow of Kayiththan " who joined with Kanthar in the mortgage deed. The probabilities seem to be in favour of the District Judge's finding and there is certainly nothing concrete enough to enable it to be rejected. The only possible bridge to connect Katherinchi and Kannattai as the same person is the statement recorded in Kanthar's death certificate that his mother was " Kanthar Kannathai " but, as it was never proved from whom this information came, no particular conclusion can be based on this one circumstance.

For the reasons which they have given above their Lordships think that they are bound to hold that the District Judge was fully entitled to decide on a review of the evidence that the Paternal group had failed to prove that Kanapathy was married to Kanthar's mother, whatever her name; and that it is not open to an appellate Court, on any second review of the evidence, to reverse his decision. Consequently the Supreme Court's judgment in favour of the heirship of the Paternal group must be reversed.

It is necessary now to turn to the claim of the Maternal group. The elements of the dispute are much the same as those just noticed: two quite different stories were put forward as to events in the life of a particular person, in this case Sinnavi, and the Court had to decide between them with such assistance as it could obtain from certificates, documentary references, inferences as to probability and its own assessment of the respective reliability of the witnesses. Here, however, the two stories have, in effect, no point of contact and the District Judge was left with a bare choice between one version of the facts and the other.

Both sides agreed that Sinnavi was a brother of Kanthar's mother whom their Lordships now refer to as Katherinchi without further qualification. According to the Maternal group he had married a woman called Sinnachchi and had had four children by her, Valli, Kannattai, Mutty and Kandiah through whom this group of respondents derived their heirship. Sinnavi, they said, was and died a Hindu.

The appellant however deposed in her evidence that Sinnavi had been converted to Christianity and on baptism had taken the name Ghanapiragasam. She produced a baptismal certificate dated 20th January 1860, taken from the register of St. Mary's Church at Kayts, in which the convert, Ghanapiragasam, is given the age of 25 and is stated to have had a father Kanthan and a mother Kathirasy. These were admittedly the names of Sinnavi's parents, but, as has been said, such names were common amongst these communities. She said further that Ghanapiragasam married one Innesam and had one child Elizabeth, producing a baptismal certificate in support. Elizabeth, she said, was born in 1863 and was married in 1881 to one Pavilu Averan, but died without children. She produced Elizabeth's marriage certificate.

This evidence the District Judge had to set against that of the only oral witness called on behalf of the Maternal group, Vairavy Chelliah, the 28th respondent on the record. Vairavy gave evidence in support of the pedigree set up by his group, but his means of knowledge are undisclosed or unrecorded. He produced no birth or marriage or death certificates supporting the pedigree nor, when cross-examined on this, did he say whether he had made any search for such certificates. He knew nothing of any alleged conversion of Sinnavi and stated that he died a Hindu. He said that he knew Kanthar himself well and often visited his house. Kanthar, he said, was a Hindu, not a Roman Catholic.

The only other point of any importance contributed by this witness was the production of a set of documents dealing with transfers of some land or shares of land at Vannarponai West in the Jaffna District, called Palluvilithodam, in which the various interests and transmissions of interest recorded are entirely consistent with the pedigree set up by the Maternal group, once the initial assumption is made that the " Kandar Sinnavy " referred to as transferee in the first of the deeds (of 20th June 1904) was the same person as the Sinnavi who is now in question. But there was nothing to prove this essential identification and, without that, the pedigree is itself no more than an analysis of what can be extracted from the documents about the wife and descendants of this Kandar Sinnavy.

The District Judge said of this witness " the 28th respondent did not impress me favourably as a witness ". The Supreme Court on the other hand treated his evidence as " of considerable weight ". Their Lordships can see nothing in the record which would entitle an appellate Court to attribute to his statements a reliability which the judge of first instance withheld from them and in those circumstances the District Judge's preference for the appellant's version of Sinnavi's pedigree, which he evidently accepted, must prevail, unless there is some countervailing consideration strong enough to make it possible to displace it.

The appellant did not, of course, know her facts from personal knowledge ; but it is inconsistent to deny to her the benefit of some family tradition derived from being brought up in Kanthar's house while attributing family tradition to other witnesses who showed, to say the least, no better sources for their knowledge. She did, after all, know where to look for the various certificates she produced and what to look for and some information imparted to her must have started her on her search.

It is true that Sinnavi's death certificate, which she produced, describes him as " Canthar Sinnavi " without reference to the Christian name Ghaniprasagam which she said that he had adopted. But his alleged baptism was in 1860 and his death in 1905 and it is impossible to make any sound deduction from this without knowing more about the intervening years of his life.

What is known is that Sinnavi died in the house of Kanthar at Karayoor. This is not disputed. The District Judge thought that this fact supported the appellant's story that he died without leaving descendants. He did not think that he would have died at Karayoor in Kanthar's house if he had had descendants living at Koddady, as was suggested by the Maternal group. The weight of an inference of this kind is very much a matter for someone familiar with the customs and manners of the locality : so is the Judge's other inference that Kanthar would not have settled the appellant's marriage dowry in the form that he did, with reversion to her father, Eliavy Arumugam, on failure of her issue, if he had believed himself to possess other heirs. The Supreme Court said that they were not satisfied that there was any weight in these inferences, but, in the absence of any reason advanced for ignoring them, their Lordships think that the District Judge was well entitled to throw them into the balance when considering the two conflicting accounts that were before him.

For the reasons given above they are of opinion that the District Judge's finding that the claim of the Maternal group ought to be rejected should not have been interfered with, since there was no adequate ground for coming to a different conclusion.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed ; the judgment and decree of the Supreme Court dated 9th May 1958 reversed ; and the judgment of the District Court dated 28th March 1956 restored, the contesting respondents paying to the appellant her costs of the Supreme Court hearing.

The respondents represented on this appeal must pay the appellant's costs of it.

Appeal allowed.