

*Present : Garvin and Dalton JJ.*

1929.

DOÑA ANA v. ANDRIS FERNANDO *et al.*

216—D. C. (Inty.) Kalutara, 1,116.

*Costs—Administration suit—Contest—Each party to bear his costs—Cost payable to Proctors out of the estate.*

Where in a testamentary case a contest arose between the administratrix and the heirs with regard to the regularity of the accounts filed and the Court, in making its order, directed that there should be no costs of the inquiry,—

*Held*, that the administratrix was entitled to have the costs due to the Proctor who appeared for her at the inquiry paid out of the estate.

**A** PPEAL from an order of the District Judge of Kalutara.

*Amaresekera*, for petitioner, appellant.

*Ranawake* (with *Molligoda*), for respondent.

February 8, 1929. GARVIN J.—

The record seems to indicate that the administratrix of this estate applied to the Court for an order authorizing the payment of Rs. 441 out of the funds to the credit of the estate to her Proctor. It would seem that at the filing of the intermediate accounts, and also when the final accounts were filed, certain heirs impeached the accounts in certain particulars. The costs referred to earlier were incurred by the administratrix in the course of these contests. Each of the contests terminated in an order in which the Court gave certain directions for the modification of the accounts and concluded in the case of the intermediate order with the following direction in regard to the contests: "there should be no costs of this inquiry." Similarly in regard to the contests which arose at the stage of the final account the Judge stated in regard to the costs: "I think there should be no order as to costs of this inquiry." The application of the administratrix in this matter was resisted upon the ground that these two orders were in effect a direction that the costs of these inquiries were to be paid by the administratrix personally. No such direction was given expressly, and it seems to me that the orders made by the two Judges in the two inquiries referred to bear the interpretation which they bear in any other case, namely, that neither of the parties was entitled to claim that these costs be paid by the opposite party. This left each of the parties to this contest

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to bear his own costs. The District Judge has made no further order, and there is no justification, in my opinion, for giving the orders he has made any interpretation other than the one I have referred to. I think therefore that the order of the learned District Judge disallowing the application of the administratrix upon the ground that she has been ordered to pay these costs personally must be reversed. The costs properly incurred on account of these contests and payable by law to the Proctor must be paid out of the estate. The appellant is also entitled to the costs of this appeal.

DALTON J.—I agree.

*Appeal allowed.*

