

Present : Bertram C.J. and Schneider J.

1922.

ADAPPA CHETTY *v.* KURERA.

24—*D. C. Negombo, 13,099.*

Costs—Four persons appearing by one proctor—Order for costs in their favour—Payment of costs to one of the four.

“ 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-creditors, payment to one of them is payment to all.” Circumstances may make this rule inapplicable. It would, however, be impossible to lay down the rule that where an order for costs is made in favour of several parties to an action who act in common, payment must be made to the person who is substantially the most active of the persons concerned ; nor would it be possible to lay down the rule that costs in such a case must be paid to the proctor who appears for all of them.

THE facts appear from the judgment.

Samarawickreme, for the appellant.

H. V. Perera, for the respondents.

¹ (1907) 11 N. L. B. 230.

1922. March 28, 1922. BERTRAM C.J.—

*Adappa
Chetty v.
Kurera*

In this case four respondents in certain proceedings, who were alleged to be under a common liability, signed a common proxy. They were successful in the proceedings, and an order for costs was made in their favour. The costs were, in fact, paid to two out of four, and the question is whether this payment was a discharge of the order to pay costs. The law on the subject is settled by a judgment of this Court in *Rodrigo v. Andris*.¹ The principle is fully discussed in the judgment of De Sampayo J. : “ 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-creditors, payment to one of them is payment to all.” It is quite true that the learned Judge goes on to add that circumstances may make the rule inapplicable ; and Mr. H. V. Perera in this case has sought to show that there were certain circumstances which took the case out of the rule. The circumstances on which he relies are that the second respondent was the most active respondent and himself incurred all the necessary expenses for the action, whereas the other respondents did nothing.

I do not think that these circumstances are sufficient to take the case out of the rule. The circumstances relied on for this purpose must be circumstances which distinguish the position of one of the parties from that of the others in a legal sense ; and, moreover, there must be circumstances which are brought to the notice of the person paying. It would be impossible to lay down the rule that, where an order for costs is made in favour of several parties to an action who act in common, payment must be made to the person who is substantially the most active of the persons concerned ; nor would it be possible to lay down the rule that costs in such a case must be paid to the proctor who appears for all of them. Mr. Perera says that his client suffers a hardship ; but any hardship he suffers is due to the fact that he chose to associate himself with the other respondents, and if he suffers in consequence he is himself to blame. In my opinion the appeal must be allowed, with costs, here and below.

SCHNEIDER J.—I agree.

Appeal allowed.

¹ (1917) 20 N. L. R. 20.