

Present : Lascelles C.J. and Middleton J.

July 20, 1911

## NUGARA v. PALANIAPPA CHETTY.

103—D. C. Colombo, 29,242.

*Executors and administrators are personally liable for costs as against opposing parties to actions—Civil Procedure Code, s. 474.*

An executor or administrator who is on the record as plaintiff or defendant is liable personally for costs in the same way as any other person. The question whether he is entitled ultimately to recover the amount of the costs which he is ordered to pay from the estate is a totally different matter. As between the parties to the action, an executor or administrator is individually responsible for the costs which he is ordered to pay.

**T**HE facts appear in the judgment.

*Van Langenberg*, for the appellant.—Under the English law an administrator who is a defendant would be personally liable in costs, unless the Court makes an order to the contrary. An express order of Court would be necessary to make the estate liable. Section 474 of the Civil Procedure Code suggests that the rule in Ceylon is different. If the rule here be the same as the English rule, there is no necessity for specially enacting that an executor and administrator would in actions brought by him be liable to pay the successful defendant's costs, unless the Court makes an order to the contrary. The section makes special provision for an administrator who is plaintiff; it makes no provision for an administrator who is a defendant. The reason for the distinction is probably the fact that an administrator when defendant is forced into Court. The administrator is an officer of Court, and is different from an ordinary defendant. Counsel cited *Naidehamy v. Silva*,<sup>1</sup> *Edirishamy v. De Silva*,<sup>2</sup> *In re Rupesinghe*.<sup>3</sup>

*Bawa*, for the respondent.—The law of administration is the English law. See *Edirishamy v. De Silva*;<sup>2</sup> Civil Procedure Code, section 4; *Morgan's Digest*, p. 71; 121—D. C. Batticaloa, 404.<sup>4</sup> Section 474 might have been inserted in the Code as a warning to executors to prevent them from embarking on litigation rashly.

July 20, 1911. LASCELLES C.J.—

This is an appeal from an order made by the District Judge of Colombo. on an application by the second defendant for the recall

<sup>1</sup>(1896) 2 N. L. R. 289.

<sup>2</sup>(1896) 2 N. L. R. 242.

<sup>3</sup>7 S. O. C. 109.

<sup>4</sup>S. C. Min., Feb. 28, 1908.

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of the writ issued and the release of the property seized, on the ground that he is not personally liable for the costs, but only in his capacity as administrator of the estate of Jansz. The learned District Judge has refused the application of the second defendant, and from the order of the District Judge the present appeal is now brought. Now, the only section in the Civil Procedure Code which relates to the liability of trustees and executors to pay personally any costs awarded against them is section 474. That section deals only with the case of actions brought by executors or administrators, and it enacts that, unless the Court otherwise orders, the trustee or administrator is liable to pay the costs to the defendant in case judgment is entered for the defendant. It is argued from the fact that the section only refers to the case where an executor or administrator is the plaintiff ; that a different rule applies in a case where a trustee or executor is the defendant. I cannot agree to this rule. I think the probable reason of the enactment of section 474 is to be sought in the necessity for some special warning against trustees and executors embarking in rash actions. It is a well-settled principle that the English law of executors and administrators is applicable where there is no local law in force, and the rule which in such cases is in force in England is beyond all doubt. It may be found clearly stated in *Daniel's Chancery Practice*, p. 1175, and in *Williams on Executors*, p. 1667.

An executor or administrator who is on the record as plaintiff or defendant is liable personally for costs in the same way as any other person. The question whether he is entitled ultimately to recover the amount of the costs which he is ordered to pay from the estate is a totally different matter. As between the parties to the action, an executor or administrator is individually responsible for the costs which he is ordered to pay. I think that the order of the District Judge is correct in its result, and I would dismiss the appeal with costs.

MIDDLETON J.—

I agree, and have nothing to add.

*Appeal dismissed.*

