Present: Fisher C.J. and Drieberg J.

1930

VELAN *v.* RATNASINGHAM.

254—D. C. Jaffna, 23,045.

Costs—Successful defendant deprived of costs—Principle applicable—Conduct of defendant—Discretion of Court.

A Court may be justified in refusing costs to a successful defendant, where the latter has done something wrongful in the course of the transaction of which the plaintiff complains.

APPEAL from an order of the District Judge of Jaffna.

H. V. Perera, for first to sixth, ninth, eleventh, and twelfth defendants, appellants.

Soertsz, for plaintiffs, respondents.

R. Ramachandra, for seventh, eighth, and tenth defendants, respondents.

February 10, 1930. FISHER C.J.—

In this case the appellants are members of a Village Committee and were defendants to an action in which the important question was whether a resolution passed by the Committee on July 23, 1927,

[1] *17 N. L. R. 103.*

1930

FISHER C.J.

Velan v. Ratnasingham

was bad. Certain other persons who pleaded that the resolution mentioned justified their doing what the plaintiff complained of were also defendants to the action, and judgment was entered in favour of the plaintiff's against them, the learned Judge holding that the resolution referred to was *ultra vires* and contrary to law. These defendants have not appealed. The action against the appellants was dismissed, on the ground of mis-joinder, without costs, the learned Judge saying: "I award no costs to first to twelfth defendants as it is clear that the conduct of village life and welfare is in their hands, and it is their duty to settle matters of this kind amicably—a duty in which in this instance they have signaly failed."

Against that order the appellants appealed, praying "that the judgment of the learned District Judge holding the said resolution as *ultra vires* be set aside with costs . . . ." The petition of appeal arises a number of questions which were decided against the defendants who have not appealed, and it is clear that the appellants sought an opportunity of showing that the judgment of the learned Judge against the other defendants is wrong. The appeal must, however, be treated solely as an appeal against the refusal to make an order for costs in their favour against the plaintiffs.

Apart from any statutory provisions it may I think be accepted as a cardinal rule that a successful party is *primâ facie* entitled to the costs of the proceedings which have ended in his favour, and section 211 of the Civil Procedure Code seems to recognize such a rule. The second paragraph of that section enacts: "Provided that if the Court directs that the costs of any application or action shall not follow the event, the Court shall state its reasons in writing."

The grounds on which a Court is justified in refusing an order for costs to a successful defendant seem to be those set out by Lord Justice Atkin in his judgment in *Ritter v. Godfrey*,[1] where he says: "In the case of a wholly successful defendant, in my opinion, the Judge must give the defendant his costs unless there is evidence that the defendant (1) brought about the litigation, or (2) has done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense, or (3) has done some wrongful act in the course of the transaction of which the plaintiff complains." That case was overruled by *Donald Campbell & Co. v. Pollak*,[2] but on a ground which does not impair the authority of the passage set out.

The question for us to consider, therefore, is whether in depriving the appellant of costs to which he was *prima facie* entitled the learned Judge exercised his discretion judicially. The whole of

[1] *(1920) 2 K. B., p. 60.*

[2] *(1927) A. C. 733.*

the merits have been considered and decided, as between the plaintiffs and the other defendants, in the Court below, and I do not think that the appellants, who were absolved from liability on a technical ground, can require this Court to reconsider the decision on the merits for the purpose of deciding the question before us. In the case of the *Metropolitan Asylum District Managers v. Hill*,[1] Lord Selborne said:- "The rule, subject to certain exceptions, is established, that an appeal is not to be allowed in respect of costs only; which means that when the merits of a question have been determined and when a Court has thought fit to give or refuse costs, in the exercise of its discretion, and in the absence of any settled principle upon the subject, the Courts of appeal must give so much credit to the exercise of that discretion as not to allow the merits, when they are no longer in controversy, to be again gone over with great expenditure, not only of money but also of judicial time, for the mere purpose of reviewing that discretion." That epxression of opinion seems to me to be in point here.

The test of whether discretion has been exercised judically or not depends, in my opinion, on whether it can be said that the learned Judge based his order on something which was foreign to the matter before him. The whole history of the origin of the dispute which led to this action was before the learned Judge. He took exception to the terms of the resolution which the appellants were instrumental in passing. He says in his judgment: "The resolution makes an invidious distinction and leaves a bad taste in the mouth," and he went on to point out how a resolution could have been framed to which no exception could have been taken. The record in the case shows that the appellants identified themselves with the other defendants in seeking to uphold the efficacy of the resolution, and their petition of appeal entirely emphasises that position. The gist of the learned Judge's judgment is that in a matter directly affecting and connected with the cause of action the defendants acted improperly and displayed a partiality which is inconsistent with their duty as members of a public body, and even had he been of opinion that the resolution was not *ultra vires* it is to be inferred that he would have held the same view of the appellant's conduct.

In my opinion it cannot be said that the Judge wrongly exercised his direction in declining to allow the judgment in favour of the appellant to carry costs against the plaintiff. The appeal must be dismissed with costs.

DRIEBERG J.—I agree.

Appeal dismissed.

[1] *5 App. Case, at p. 584.*