1953 *Present :* **Gratiaen J. and Gunasekara J.**

A. KARUPPANNAN *et al.*, Appellants, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 371 and 1,003—Indian and Pakistani Residents' Applications for Registration, Nos. C 816 and N 68

Costs—Supreme Court—Inherent jurisdiction to award costs—Courts Ordinance (Cap. 6),s. 19 (b)—Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, s. 15.

Subject to such statutory limitations as may be prescribed in particular instances, the Supreme Court possesses inherent power to award costs when exercising either its original or appellate jurisdiction. Therefore, when disposing of appeals filed under section 15 of the Indian and Pakistani Residents (Citizenship) Act, the Supreme Court is not precluded from making an appropriate order as to costs.

APPEALS under section 15 of the Indian and Pakistani Residents (Citizenship) Act. They were reserved under section 48 of the Courts Ordinance for the decision of a Bench of two Judges in regard to a question of costs.

N. K. Choksy, Q.C., with *C. Shanmuganayagam*, *H. Rodrigo* and *Miss J. Somasunderam*, for the appellants.

M. Tiruchelvam, Crown Counsel, with *V. Tennekoon* and *J. W. Subasinghe*, Crown Counsel, for the respondent.

Cur. adv. vult.

May 15, 1953. The Court pronounced the following order :—

These appeals came up before us, upon a reference by Swan J., for a decision as to whether the Supreme Court, when exercising its appellate jurisdiction under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, has power to award costs.

Section 19 (*b*) of the Courts Ordinance vests the Supreme Court with an appellate jurisdiction which is limited to the correction of errors made by the " original Courts ", that is to say, District Courts, Courts of Requests and Magistrates' Courts. This jurisdiction has been enlarged from time to time by later legislation, of which the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, is an example. Many of these enactments, including the particular Act under consideration, do not expressly authorise the Court to award costs.

2——J. N. B 27309—1,592 (6/53)

Apart from its criminal jurisdiction conferred by section 19 (*a*) of the Courts Ordinance, the Supreme Court possesses an original jurisdiction in certain other respects—for example, it is empowered to grant injunctions under section 20, to issue writs in the nature of *mandamus*, *quo warranto*, *certiorari*, *procedendo* and *prohibition*, and to order the transfer of judicial proceedings from one Court to another (section 42). In none of these cases has the Supreme Court been granted express authority by the legislature to make appropriate orders as to costs, except to the limited extent whereby it is empowered to impose terms and conditions as to payment of costs when it makes an order for the transfer of proceedings.

Notwithstanding the absence of express statutory provision, the power of the Supreme Court to award costs when exercising either its original jurisdiction or its appellate jurisdiction (under the Courts Ordinance and also under later legislative enactments) has always been assumed; indeed it has never been challenged until the present appeals came up for argument. We conceive, therefore, that the uninterrupted exercise of this power cannot logically be explained except on the basis that the Supreme Court possesses an inherent jurisdiction in respect of costs subject to such statutory limitations as may be prescribed in particular instances.

Mr. Tiruchelvam reminds us, and we agree, that the Supreme Court is a creature of statute, and that its jurisdiction in respect of any form of legal proceedings requires a statutory origin. But we do not subscribe to the suggested corollary that the Supreme Court cannot possess jurisdiction, independent of statute, to award costs in appropriate cases. The decision of a Collective Bench of three Judges in *re a Member for the Local Board of Jaffna* [1] is specially instructive on this point. At that time, the Courts Ordinance did not empower the Supreme Court, as it now does, to issue mandates in the nature of *quo warranto*. The Court ruled that it had "no power either inherent in it or impliedly given to it by statute" to issue such a writ. The application was accordingly refused, *but with costs*. This authority furnishes cogent proof that the inherent jurisdiction for which Mr. Choksy now contends was recognised nearly half a century ago. Indeed, it is a jurisdiction which the respondent himself has, until very recently, invoked whenever he was the successful party in appeals under the Act, and to which he has submitted without complaint when his rulings were set aside as being contrary to law.

Reference has been made to certain authorities which explain the jurisdiction of the English Courts to award costs. There appears to be no rule of universal application. In the Courts of common law, for instance, the power to award costs does not exist apart from statute—*London County Council v. Churchwardens and Overseers of West Ham* [2]; whereas the Court of Chancery had assumed that power from its commencement without the aid of the legislature. *Encyclopaedia of the Laws of England* (2nd Edn.) vol. 4 p. 65. The House of Lords is also

[1] *(1907) 1 A. C. R. 128.* [2] *(1902) 2 Q. B. 173.*

vested with an inherent jurisdiction, independent of statute, to award costs. *Guardians of Westham Union v. Churchwardens, &c. of Bethnal Green* [1], where Lord Herschell said :

> " Costs have been awarded for upwards of two centuries. I see no foundation on which the power to order their payment can rest except the inherent authority of this Court as the ultimate Court of appeal."

Lord MacNaghten agreed, and observed that :

> " The House of Lords, as the highest Court of appeal, *has and necessarily must have* an inherent jurisdiction as regards costs."

The origin of the jurisdiction of the Supreme Court of Ceylon in respect of costs must now be examined. It is declared by section 7 of the Courts Ordinance to be " the only superior Court of record " in this country ; in the generality of cases, and for most practical purposes, it is the ultimate Court of appeal. The unchallenged assumption of the power which it has exercised in the past to award costs in cases whenever it was not expressly precluded by statute from doing so in particular instances may legitimately be traced, as in the case of the House of Lords, to an inherent jurisdiction vested in it. The unbroken line of precedents which have been brought to our notice is by itself sufficient proof that the jurisdiction does exist, and even if it be " difficult to maintain it upon a nice foundation " we are content to say, as Lord Hardwicke did in *Burford (Corporation of) v. Lenthall* [2], that we " ought to be bound by those precedents, *especially as it is in aid of justice* ". The practice has been observed and recognised without interruption since the Court was first established, and there is no justification whatsoever for disturbing the *cursus curiae* now.—*Migneault v. Malo* [3].

The respondent claims the protection of the English rule of practice under which " the Crown neither pays nor receives costs ". The foundation of that rule was, apparently, that " the Crown cannot be made to pay costs because what it is doing is due to its prerogative ; the Crown will not receive costs because it is beneath the dignity of the Crown to receive them ". The rule has never, as far as we are aware, been invoked in Ceylon, and in any event it has no bearing on the present issue. Although the respondent is a servant of the Crown, he stands in the position of any other litigant when he comes before us as a " public official charged with the performance of a duty imposed by statute ". *R. v. Commissioners for Special Purposes of Income Tax ; ex parte Dr. Barnardo's Homes* [4]. Lord Darling expressed his disapproval in that case of the technique of persons who " rely upon the prerogative of the Crown in order to escape paying costs, but have been content to forget their dignity occasionally when it was a question of receiving them ".

The final submission made on behalf of the respondent is that he was not a necessary party to either of these appeals (*a*) because his position is equivalent to that of a judge against whose order an appeal has been

[1] *(1896) A. C. 477.*
[2] *2 Atk. 551 (=26 E. R. 731)*
[3] *(1872) L. R. 4 P. C. 123.*
[4] *(1920) 1 K. B. 27.*

preferred, and (*b*) because in these particular cases it was not he but the Assistant Commissioner who made the orders which Swan J. has set aside. We disagree. He was a proper party to each appeal because the relief prayed for was a direction that he should register the appellant as a citizen of Ceylon in compliance with the statutory duty imposed on him by the provisions of the Act ; it was necessary and desirable therefore that he should have been given an opportunity of showing cause against the proposed order, and he did in fact enter an appearance in this Court for that very purpose. The second part of the argument is but a quibble. Although the erroneous decisions under appeal were made by the Assistant Commissioner, the respondent has completely identified himself with them by his conduct in resisting the appeals, and Swan J. has in each case issued against the respondent himself a direction which must be obeyed.

We hold that this Court, in disposing of appeals filed under section 15 of the Act, is not precluded from exercising its inherent jurisdiction to make an appropriate order as to costs. Let the record now be returned to Swan J. in order that he may make such orders as to costs upon Mr. Choksy 's applications as he thinks fit. We further direct that the respondent must in any event pay to the appellants their costs of the argument before us.

Application for costs allowed.