

shall from time to time agree on". The giving of notice by the plaintiff and the refusal of the defendants to vacate the premises appear to me to show that the partners are at variance with regard to the place of business.

I would allow the appeal and direct decree to be entered dismissing the plaintiff's action. The appellants will have costs here and in the Court below.

Appeal allowed.

1949 Present: Windham J. and Gratiaen J.

MANUFACTURERS LIFE INSURANCE CO. LTD., Appellant,
and COMMISSIONER OF INCOME TAX, Respondent

S. C. 425—IN THE MATTER OF AN APPLICATION UNDER SECTION 214
OF THE CIVIL PROCEDURE CODE TO REVIEW THE TAXED BILL
OF COSTS IN S. C. 578 (v)

Costs—Appeal on a case stated by Commissioner of Stamps—Taxation of costs in such appeal—Costs actually incurred—Civil Procedure Code, section 214—Section 31 of Stamp Ordinance as amended by Ordinance No. 47 of 1941.

The scale of costs prescribed by the Schedule to the Civil Procedure Code does not apply to an appeal on a case stated by the Commissioner of Stamps. In such case the Registrar ought to allow the full amount of fees actually paid to Counsel unless they are unreasonably extravagant or needlessly incurred.

THIS was an application to have a bill of costs, as taxed by the Registrar of the Supreme Court, reviewed.

S. J. Kadirgamar, for the applicant.

H. W. R. Weerasooriya, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 13, 1949. WINDHAM J.—

The petitioner applies to have his bill of costs, as taxed by the Registrar of the Supreme Court, reviewed. The bill of costs related to an appeal before the Supreme Court upon a case stated by the Commissioner of Stamps under section 31 of the Stamp Ordinance, as amended by the Stamp (Amendment) Ordinance, No. 47 of 1941. Subsections (3) and (4) of that Ordinance provide that the Commissioner, after considering an appellant's grounds of objection to any stamp adjudication, shall issue the appellant a stated case giving his reasons for the adjudication, which the appellant may transmit to the Supreme Court, which may thereupon determine the appeal. In the present case the Supreme Court determined the appeal in favour of the appellant, and it is his bill of costs in that appeal which is the subject of this petition. In taxing the bill of costs the learned Registrar allowed only Rs. 147 out of an item of

Rs. 2,152.50 for senior counsel's fees, and made similar reductions in respect of other counsel's consultation and attendance fees. All the costs claimed were costs actually incurred.

In taxing costs for counsel's fees so drastically, the learned Registrar was clearly acting on the assumption that the scale prescribed by Part IV of the Second Schedule to the Civil Procedure Code was applicable and that any claim in respect of fees in excess of those there laid down must be disallowed. The assumption that Part IV of the Second Schedule applied was, however, in my view an erroneous one. Part IV, which operates by virtue of section 213 of the Civil Procedure Code, applies to appeals heard in the Supreme Court only when the appeals are from the Court of Requests or from the District Court or from the Supreme Court itself. An appeal on a case stated by the Commissioner of Stamps falls under none of these heads. In this connection I would add that in my view the words—"The Registrar may allow any charges or fees not specially provided for, as he shall deem reasonable, on special application being made, subject to an appeal to the court"—which appear at the end of Part IV of the Second Schedule, cannot be held to extend to any costs incurred in an appeal to which Part IV does not otherwise apply.

That being so, the Registrar was not fettered by the maximum scale prescribed by Part IV of the Second Schedule, which by common consent is today unreasonably low. The principle upon which a taxing officer ought to act in such a case has been suggested by Soeretsz, A.C.J. in *Pelpola v. Gonesinghe*¹ and by de Kretser J. in *Wijesekera v. Assistant Government Agent, Matara*² followed by me in *Jayewardene v. Pereira*³ and with respect I consider the principle to be a good and reasonable one. It is that the Registrar ought to allow the full amount of fees actually paid to counsel unless they are unreasonably extravagant and needlessly incurred. In deciding whether they are extravagant or needlessly incurred, the Registrar may take into consideration the nature of the action and its importance to the parties or to the general public.

Applying these principles to the present case, I do not consider the fees for which claim was made in the bill of costs, and which were in fact incurred, were incurred needlessly or were unreasonably extravagant. The appeal was a test case to ascertain whether certain life insurance policies issued by the appellants were dutiable as annuities under section 23A of the Stamp Duty Ordinance, as newly enacted in the Stamp Duty (Amendment) Ordinance, No. 47 of 1941. This question was clearly one the decision of which was in the interest not only of the appellants but of the public, and it justified the engagement of eminent counsel for that purpose.

I would accordingly review the taxation of the bill of costs by allowing all items of expenditure actually incurred, which will amount to the sum of Rs. 3,424. The appellant will have his costs of this application, which I fix at Rs. 105.

GRATIEN J.—I agree.

Application allowed.

¹ (1939) 50 N. L. R. 415.

² (1944) 45 N. L. R. 429.

³ (1948) 49 N. L. R. 131.