

1929.

*Present:* Dalton and Maartensz JJ.

JAYAWARDENE v. KARUNARATNE.

83—*D. C. Negombo, 2,366.*

*Costs—Taxation of bill—Fee for junior advocate—Scale of fee payable in District Court—Civil Procedure Code, Schedule III.*

The fee that may be taxed as having been paid to a junior advocate in the District Court is not limited to the brief fee.

Where the trial lasted only one day, a fee for a second consultation cannot be allowed.

**A**PPEAL from an order of the District Judge of Negombo.

*Croos da Brera*, for appellant.

July 29, 1929. MAARTENSZ J.—

This is an appeal from an order of the District Judge of Negombo made under section 214 of the Civil Procedure Code regarding certain items of the defendant's bill of costs which were disallowed by the taxing officer and referred to the Court for decision.

Three advocates were engaged in the case, but at different times, so that the fees of only two advocates have been charged for at the same time.

The learned District Judge has on a construction of note 3 appended to the " Scale of Fees to be paid to Advocates in the District Courts " set out in the Civil Procedure Code confirmed the taxing officer's disallowance of the fees charged for a junior advocate except the brief fee.

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The scale sets out the fees to be paid to advocates as " retainer " for " advising action, defence, or appeal," for " settling pleadings, &c.," as " consultation fee," for " opposing special motions " and as " brief fee."

The third note at the foot of the table runs as follows:—" The brief fee of a Junior Advocate, where two Advocates are engaged, will be half of the Senior Advocate's brief fee."

The learned District Judge is of opinion that the effect of this note is to limit a junior advocate to a brief fee only.

I am unable to agree with this opinion.

It appears to be merely intended to limit a junior advocate's brief fee to half the senior advocate's brief fee, no distinction being made between a junior and senior advocate's fees in respect to the other items set out in the scale.

The District Judge observes that the principle of allowing a junior advocate only a brief fee is in accordance with the practice in his Court since its inception. But it is not in accordance with the practice followed in the District Courts of Colombo and Kandy, where we were informed by the District Judges of those Courts that it is not the practice to limit a junior advocate to a brief fee only.

The practice followed in those Courts confirms my opinion as to the meaning of the third note.

I am therefore of opinion that the fees of the junior advocate which were struck off by the taxing officer should have been allowed.

Another item disallowed was the charge made for a second consultation. Considering the nature of the case and that the trial lasted only one day I am of opinion that the charge was rightly disallowed.

In the result I set aside the order of the learned District Judge disallowing the charges made on account of (1) Mr. Yogaratnam's fees for advising defence, advising appeal, and settling petition of appeal, (2) Mr. P. S. P. Jayetilleke's fees for advising defence and settling answer. The District Judge allowed one of the fees paid for advising defence, but the judgment does not state which advocate's fee was allowed.

Mr. R. F. P. Jayetilleke has given a receipt for Rs. 157.50, which includes the amount paid to him as a retaining fee, and I am of opinion the fee was properly included in the bill of costs and I set aside the order of the District Judge disallowing the charge.

*Set aside.*