

1933

Present: Dalton A.C.J. and Koch A.J.

WEERASEKERE v. PEIRIS.

169—D. C. (Inty.) Colombo, 34,065.

Costs—Taxation of bill—Omission of item—Application to tax supplementary bill—Correction of mistake—Civil Procedure Code, s. 189.

Where in a bill of costs presented for taxation an item was accidentally omitted, application may be made to Court to correct the mistake and for an order on the taxing officer to tax a supplementary bill.

**T** HIS was an application to revise the taxation of a supplementary bill of costs.

*Gratiaen*, for defendant, petitioner.

*Choksy* (with him *D. W. Fernando*), for plaintiff, respondent.

August 21, 1933. DALTON A.C.J.—

This application by the defendant arises out of the taxation of a supplementary bill of costs in a partition action, and is made to this Court under the provisions of section 214 of the Civil Procedure Code. The case had gone in appeal to the Privy Council, plaintiff being successful there. He was allowed costs, and costs also incidental to his application for leave to appeal. The plaintiff presented a bill to the Registrar for taxation in respect of these latter costs, and this bill was taxed on April 10th last in the sum of Rs. 444. That amount was paid by defendant. Thereafter, on April 26, plaintiff's proctor submitted a supplementary bill in respect of an item of costs which was incidental to his application for leave to appeal, which item had been inadvertently omitted from the first bill. This supplementary bill was taxed in the sum of Rs. 341.35 on May 25. It is now objected by defendant that plaintiff was precluded by his first bill, duly taxed, from making any further claim for costs, and that the taxing officer had no power to tax the supplementary bill, since he had concluded his duty in the matter after taxing the first bill.

Plaintiff has satisfactorily explained how the item came to be omitted from the first bill. The item represented the amount paid to the Registrar for typewritten copies of the proceedings to be sent to England for the purpose of the appeal to the Privy Council, under the provisions of rule 8 (a) of the Order regulating the procedure under the Appeals (Privy Council) Ordinance, 1909 (Supreme Court Handbook, p. 105). This sum was paid to the Registrar by the plaintiff personally, and was not entered in his proctor's books, in the plaintiff's ledger account. Consequently, when the proctor made up the original bill from the ledger account, the item was accidentally omitted. Mr. Gratiaen fully accepts the proctor's explanation as to how the omission occurred and concedes that the amount, if inserted in the original bill, would have to be paid by defendant, but he argues that plaintiff is bound by the amount of the original taxed bill.

There is authority, in my opinion, covering such a case as this in the authority cited by Mr. Choksy. In *Chessum & Sons v. Gordon*<sup>1</sup> judgment was entered for the plaintiffs for an amount found to be due by a referee, with costs to be taxed. The costs were taxed, the taxing master's certificate was given, and the defendant paid to the plaintiffs the amount of the judgment and the taxed costs. Subsequently the plaintiffs discovered that the amount of the fees of the referee had been omitted from the bill of costs carried in for taxation. Plaintiffs then took out a summons before the Judge at Chambers asking that, notwithstanding the certificate of taxation of the plaintiff's costs in the action, the defendant should be ordered to pay to the plaintiffs the sum of £160. 11s. 8d.

<sup>1</sup> (1901) 1 Q. B. 694.

paid to the special referee as his fees, or such amount as might be allowed as a proper payment, on the ground that such item was by error not included amongst the payments made by the plaintiffs in their bill of costs lodged for taxation. Order XXVIII., r. 11, provides that "clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission may at any time be corrected by the Court or a Judge on motion or summons without an appeal". Day J. made an order referring the fees to the taxing master for taxation, and for amendment of his certificate if necessary, on the ground that there had been a mistake in not including the referee's fees. The defendant appealed against this order.

On the appeal, the argument addressed to the Court was similar to the argument addressed to us, in that it was argued that the original taxation was conclusive of the matter, for it proceeded upon a bill of costs lodged by the plaintiffs and the taxation was correct. There was further no slip or omission in the certificate of taxation, which carried out the taxing officer's intention.

The Master of the Rolls pointed out that there was no doubt that according to the justice of the case the plaintiffs ought to be paid the sum later claimed, or whatever might be allowed on taxation, adding it was satisfactory no technical rule stood in the way of the Court to make an order to that effect. He held the omission of the item of £160. 11s. 8d. from the bill of costs carried in for taxation was "an accidental slip or omission" within the meaning of the rule and the error in the judgment can therefore be corrected "at any time". The error may be corrected even after the judgment has been drawn up and entered.

The provisions of Order XXVIII., r. 11, are very similar to the provisions of section 189 of the Civil Procedure Code, as amended by Ordinance No. 26 of 1930, the amendment being probably based upon the rule and making use of exactly the same terms. There is no doubt that the error in the bill originally presented for taxation was due to "an accidental slip or omission" which has been fully explained.

Applying the authority cited and bringing the matter within the provisions of section 189 of the Code, the plaintiff should first have applied to the Court to correct the mistake, and should not have asked the taxing officer to tax a supplementary bill. It is however highly probable the Court would have referred the item to the taxing officer for taxation, and thereafter have amended the order accordingly. Defendant further cannot complain that the wrong procedure was adopted, since he received notice of taxation of the plaintiff's supplementary bill, was not present, and raised no objection thereto. He cannot say he has not received notice of the proposed amendment.

Mr. Gratiaen referred to other authorities which lay down the general rule on taxation, that under the Solicitors Act, 1843, a solicitor must abide by his bill as delivered. This rule however is subject to various qualifications and apparently does not apply to a bill carried in for taxation between parties. (*Annual Practice, 1933, p. 2279*).

For the reasons I have given, the appeal must be dismissed, no prejudice having been caused to the defendant by the adoption of the wrong

procedure. The amendment in the original taxation will now be made to regularize the position by the addition of the sum of the item omitted in accordance with the taxation of May 25.

The appeal is dismissed with costs.

Koch A.J.—I agree.

*Appeal dismissed.*

