

June 8, 1911

Present : Lascelles C.J. and Middleton J.

ABEYADEERA v. SOYSA *et al.*

75—D. C. Galle, 2,948.

Bill of costs—Taxation—Reasonable notice must be given to opposing proctor.

Before a bill of costs is taxed, the opposing proctor is entitled to have a fair and reasonable notice of taxation.

THE facts appear sufficiently from the judgment of the Chief Justice.

Bawa, for appellants.

Sampayo, K.C. (with him *A. St. V. Jayewardene*), for respondent.

June 8, 1911. LASCELLES C.J.—

In this case the difficulty that has occurred is owing to the fact that there are no rules regulating the procedure for the taxation of costs. The facts of the case are shortly as follows. The respondent's proctor had prepared a bill of costs for a very large sum, namely, Rs. 9,333·33. On December 2 he handed the original bill to the appellant's proctor, and asked him to take notice of taxation. The appellants' proctor asked for a copy of the bill in order that he might communicate with his clients, who lived in Colombo. He received a copy in the course of the same day, and it appears that the bill was taxed on that same day, without the appellants' proctor

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having had an opportunity of making his objections to the items in the bill. The present appeal is from a refusal of the District Judge to entertain an application for a review of taxation. In my opinion the appellants are clearly entitled to a review of taxation. If any rules had been framed with regard to the procedure on the taxation of the bill of costs, the first thing would be to provide that the opposing proctor should have a fair and reasonable notice of the taxation, in order to enable him to bring forward his objections at the proper time. Section 214 of the Civil Procedure Code is silent as to the details of the procedure, but I think we are justified in assuming that the opposing proctor is entitled to have a fair and reasonable notice of the taxation. Here it is obvious that he had not such a notice. The bill of costs was a very voluminous one, and from the fact that it has already been largely reduced on taxation, it is clear that it was open to a good deal of objection. It is utterly unreasonable to expect a proctor to undertake the examination of a bill of costs of this nature within a few hours. I think the appeal succeeds, and that the District Judge should be directed to hear the objections to the bill of costs, and I think that the appellants are entitled to the costs of this appeal.

MIDDLETON J.—

I agree. The practice that has prevailed is, to my mind, an extremely crude one, and it is remarkable that it seems to have worked so well and with little objection up to the present time. It seems to me that when a proctor desires to tax a bill of costs he serves a copy of it on the other proctor, who is then supposed to sign "Received notice," and to formulate on that bill his objections to it and hand it back to the secretary for taxation. Here the proctor was served with a copy of the bill, and only got it apparently on the same day the bill of costs was taxed, and had no reasonable opportunity whatever of formulating any objections. I think, therefore, that here the case is a very much stronger one than the case which came before us the other day from the District Court of Colombo. 39—D. C. Colombo, 27,522.

There is one other point that I should like to make an observation upon, that is, the District Judge has in his judgment referred to an unreported case, and has based his judgment on that case. We have not been referred to it, and we are not aware what the ruling of the Supreme Court there was. At first I thought it was a case reported in 3 *Browne*, but, at any rate, whatever may have been the ruling in that case which acted as a guide for the decision of the District Judge, it has not been relied upon by counsel for the respondent.

The appeal should be allowed with costs.

Appeal allowed.