

1955

Present : Gratiaen J.

V. E. B. DE SILVA, *et al.*, Petitioners, and MERVYN FERNANDO, Respondent

S. C. 256—Application in revision in C. R. Panadure, 13,782

Court of Requests—Costs—Taxation as between party and party—Witnesses' expenses—Discretion of Court—Civil Procedure Code, Part 3 of Schedule II.

Under Part 3 of Schedule II of the Civil Procedure Code, a party who has been awarded costs in a decree in his favour in the Court of Requests is not entitled to claim a sum paid to a lawyer-witness to compensate him for the loss of his professional income while attending the Court in obedience to summons.

APPPLICATION to revise an order of the Court of Requests, Panadure.

Cecil de S. Wijeratne, for the plaintiffs petitioners.

Vernon Wijetunge, for the defendant respondent.

Cur. adv. vult.

January 24, 1955. GRATIAEN J.—

This application relates to a dispute concerning the taxation of costs as between party and party in an action in the Court of Requests of Panadure. The respondent, who had been awarded costs in a decree in his favour against the petitioner, claimed that sums amounting to Rs. 157.50 paid to two witnesses were permissible items in his bill of costs. The witnesses concerned were proctors, but had given evidence at the trial as private citizens, so that no question of payment of fees to expert witnesses arises for consideration.

Both witnesses resided within 4 miles of the precincts of the Court, so that they were liable to attend the Court on summons without prepayment or guarantee of travelling or other expenses. Nevertheless, the learned Commissioner allowed the retention in the taxed bill of costs of "batta" at the rate of Rs. 31.50 per day to each witness. He stated that it was customary in his Court to allow the payment of "batta" at this rate to lawyer-witnesses, and that he did not wish to interfere with "the usual practice".

The scale of costs as between party and party in actions in the Court of Requests is laid down in Part 3 of the Second Schedule of the Civil Procedure Code. "Witnesses' expenses" are no doubt payable "as the Commissioner may determine"; but in this case the payments do not purport to represent any "expenses" incurred by either witness, but were made apparently to compensate him to some extent for the loss of his professional income while attending the Court in obedience to the summons. That is not an expense which the unsuccessful party to a litigation can be compelled to meet. I therefore allow the application and disallow these items aggregating Rs. 157.50 from the respondent's bill of costs. The respondent must also pay to the petitioner the costs of this application and the costs of the relevant proceedings in the lower Court.

Application allowed.
