

1955

*Present : Gratiaen, J., and Swan, J.*

WIMALA TUDOR, Appellant, and E. S. DASSANAYAKE, Respondent

*S. C. (Inty.) 5 of 1955—D. C. Ratnapura, 188 Sp.**Costs—Application for review of taxation—Proper procedure—Civil Procedure Code, s. 214.*

Where a party, who had been ordered to pay the costs of an inquiry and was dissatisfied with the taxation of costs, submitted a statement of objection to the Secretary of the Court who in turn submitted the document to the District

Judge, recommending that the matter should be fixed for inquiry under section 214 of the Civil Procedure Code—

*Held*, that the procedure was substantially in conformity with the provisions of Section 214 of the Civil Procedure Code.

**A**PPPEAL from an order of the District Court, Ratnapura.

*C. G. Weeramantry*, for the claimant-appellant.

*S. W. Jayasuriya*, with *U. P. Weerasinghe*, for the judgment-creditor respondent.

*Cur. adv. vult.*

November 3, 1955. GRATIAEN, J.—

The respondent to this appeal caused certain immovable property valued at Rs. 8,000 to be seized in execution of a money decree for Rs. 947/40 against his judgment debtor. The appellant claimed that the property belonged to him and was therefore not liable to seizure. His claim was rejected by the Court and he was ordered to pay the costs of the inquiry. The present dispute relates to the taxation of the respondent's bill of costs.

The Secretary of the Court taxed the bill of costs at Rs. 844/- on 8th March 1954. On 31st March 1954, however, the appellant's Proctor objected to the taxation on the ground that the bill had been wrongly taxed by reference to the value of the property and not (as it admittedly should have been) to the amount of the decree sought to be executed. The Proctor accordingly asked that the Court should review the taxation under section 214 of the Code. This statement of objection was forwarded by the Secretary to the District Judge with the following minute endorsed on it :

" Notice may be issued on the judgment creditor for 6.5.54.

Sgd : .....  
Secretary."

The matter came up for inquiry in due course. The learned Judge decided that the bill had been wrongly taxed under Class 5 of the second schedule Part I of the Civil Procedure Code, and upheld the objection that it should have been taxed under Class 3. Nevertheless, he refused to review the taxation because, in his opinion, the appellant had not adopted the correct procedure for having the matter referred to the Court under section 214.

It is correct to say that, when either party is dissatisfied with the Secretary's taxation, the Secretary himself, and not the litigant, is the proper person to refer the matter in dispute to the Court. *Mohamed v. Dean*<sup>1</sup>. The party is not, however, deprived of his right to claim a reference merely because he had not raised the objection in the first instance

<sup>1</sup> (1927) 8 Law Recorder 174.

before the bill was taxed by the Secretary. *Meenatchi v. Rengappa Pulle*<sup>1</sup>. It is sufficient if his objection is raised within a reasonable time after taxation. *Sapramadu v. Wijetunge*<sup>2</sup>.

The respondent's complaint is that the appellant (instead of requiring the Secretary to refer the matter in dispute to the Court), had directly invoked the jurisdiction of the Court under section 214. In my opinion, the correct procedure was substantially followed. The appellant's statement of objection, containing a formal application for a review of taxation, was in fact handed to the Secretary who in turn submitted the document to the District Judge, recommending that the matter should be fixed for inquiry under section 214. In *Mohamed v. Deen* (supra) by way of contrast, the procedure was quite irregular because the Judge purported *ex mero motu* to revise an order of taxation.

I would allow the appeal and order that the Secretary of the District Court be directed to tax the bill of costs according to the rates specified in Class 3 of the schedule. The respondent must pay to the appellant Rs. 21/- as costs in respect of the argument in the Court below, and Rs. 31/50 as costs of this appeal.

SWAN, J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1912) 15 N. L. R. 119.

<sup>2</sup> (1916) 3 C. W. R. 367.

