

Present: Loos A.J.

WEERASOORIYA v. ANGO NONA.

262—C. R. Galle, 11,105.

Proctor's costs—Taxation of bill—A month's notice—Party—Civil Procedure Code, ss. 214 and 215.

The word "party" in section 215, Civil Procedure Code, means the actual party to the action, and will not include his executor or administrator.

THE facts are set out in the judgment.

Keuneman, for plaintiff, appellant.—Section 214 of the Civil Procedure Code provides for the taxation of bills of costs between "party and party" or between "proctor and client," and section 215 makes it imperative on the proctor to deliver unto the party charged therewith a bill of such fees a month before commencing an action for the recovery of any fees. Thus, the word "party" in section 215 refers solely to a party to the action, and not to the executor or administrator of such party or to any third person from whom the proctor may be entitled to recover the costs. It is only the actual party to the action that must be given a month's notice. The English procedure on this point is similar. *6 and 7 Vict., ch. 73, section 37*. It has been held under this section that the defence of "no signed bill delivered" is available only to the actual client, and not to a third person who has agreed to pay costs. *Greening v. Reeder*.¹ Counsel cited also *26 Hals., pp. 774-780*.

Peri Sundaram (with him *R. L. Pereira*), for defendant, respondent. "Party to be charged therewith" in section 215, Civil Procedure Code, would include the administrator, who is liable to pay the proctor's fees. Even if it could be construed that the "client" in section 214 is the party to the case, the legal *persona* of the deceased client vests in the administrator, and he is therefore entitled to a month's notice. Section 215 provides that the bill of such fees should be delivered unto the party charged therewith, or left with him at his dwelling house or last known place of abode. This is done in order to give the heir or administrator interested in the estate of the deceased an opportunity of objecting to any items in the bill.

Cur. adv. vult.

1919.

December 19, 1919. Loos A.J.—

*Weerasooriya
v. Anjo Nona*

This is an action by the plaintiff, who was the proctor of the defendant's deceased husband in the action No. 10,362 of the District Court of Galle, for the recovery of a balance sum of money due to him as costs in that action by the defendant's husband.

The defendant has obtained letters of administration to the estate of her deceased husband.

The learned Commissioner has found in favour of the plaintiff on all the issues framed, except the following one, viz. :—

Can the plaintiff maintain this action without complying with the provisions of section 215 of the Civil Procedure Code?

The plaintiff appeals against his finding on that issue.

Section 215 provides that " no proctor shall commence or maintain any action for the recovery of any fees, charges, or disbursements at law until the expiration of one month or more after he shall have delivered unto the party charged therewith, or left with him at his dwelling house or last known place of abode, a bill of such fees, charges, and disbursements subscribed by such proctor . . . "

It is admitted that no such bill was delivered to the defendant's deceased husband by the plaintiff or to the defendant, who is the administratrix of his estate.

It was contended on behalf of the defendant that the words " unto the party charged therewith " refer, not merely to a party to the action, but to any person from whom it is sought to recover the costs, and the learned Commissioner has upheld that contention.

The plaintiff contends, however, that it is clear from the provisions of section 214 of the Code that the word " party " used in section 215 refers solely to a party to the action, and that a third person is not entitled to a delivery of the bill of costs before the institution by the proctor of an action for the recovery of costs due to him by a party to the action. It seems to me that the word " party " in section 215 must be taken to mean a party to the action.

If the intention of the Legislature had been that any one from whom the proctor sought to recover his costs was entitled to receive the bill of costs, the word " person " would probably have been used in section 215 instead of the word " party, " especially in view of the fact that section 214 indicates the interpretation to be placed on the word " party. "

I have the less hesitation in coming to that opinion in view of the finding in *Greening v. Reeder*¹ that the defence of " no signed bill delivered " is available only to the actual client, and not to a third person who has agreed to pay the costs.

¹ 40 W. R. 623.

At the same time I think the plaintiff would have acted more discreetly if he had delivered the bill to the defendant before instituting this action.

It does not appear that the plaintiff's bill for the amount claimed has been taxed by the officer of the Court, and I think the proper order to make in this case is to set aside the finding of the learned Commissioner on the issue referred to, and order the plaintiff to have his bill taxed after notice to the defendant, and that judgment should then be entered for the plaintiff for the amount at which the bill is taxed.

I make no order as to costs.

Set aside.

1919.

Loos A.J.

*Weerasooriya
v. Anjo Nona*