

1938

Present : Poyser S.P.J. and Wijeyewardene A.J.

POUNDS *et al.* v. GANEGAMA.

[IN REVISION.]

33—D. C. (Inty.) Matara, 11,735.

Costs—Bill of costs reduced by one-sixth—Costs of taxation—Civil Procedure Code, Schedule III.

Where the Registrar has struck off more than one-sixth of a bill of costs, a party is not entitled to the costs of taxation.

Where the argument of an appeal in the Supreme Court is continued over the day, there is no provision for the allowance of a further brief fee.

The fee allowed to junior Counsel will be half of the amount allowed to senior Counsel.

Adaikappa Chettiar v. Thos. Cook & Sons (35 N. L. R. 20) followed.

THIS was an application for revision of a bill of costs.

N. K. Choksy, for plaintiffs, petitioners.

Stanley de Zoysa, for defendants, respondent.

Cur. adv. vult.

October 31, 1938. POYSER S.P.J.—

This is an application for revision of costs in S. C. 33—D. C. (Inty.) Matara, No. 11,735. The first two items that are objected to which have been allowed, are sums of Rs. 2.25 and Rs. 18 which are admittedly costs of taxation. As the Registrar did strike off more than one-sixth of the appellant's bill of costs, these items should have been disallowed. In regard to the fee paid to senior Counsel the sum of Rs. 210 was claimed. The Registrar reduced this by Rs. 63. It is pointed out that the Code provides for a maximum fee of Rs. 105 and this is all that can be allowed. The Registrar apparently arrived at the sum of Rs. 147 by allowing fees prescribed for a retainer and a consultation. Such fees, however, were not set out in the bill of costs that was submitted and it was pointed out to us that it is at least open to doubt whether there was in fact a consultation between Counsel and the Proctors for the appellant. Further items which the Registrar has allowed are second fees to both senior and junior Counsel. It has been decided in the case of *Adaikappa Chettiar v. Thos. Cook & Sons*¹, that there is no provision for the allowance of a further brief fee where an argument is continued over the day. This case was first argued *ex parte* on May 26, the respondents not appearing. Judgment was reserved, and shortly afterwards the respondents got leave from the Court for the appeal to be re-listed in order that their argument might be placed before the Court. The second hearing was on June 2, and we are informed that Counsel for the appellant did not repeat his argument but the respondent's Counsel replied to what they considered was the substance of such argument. It would have been open to this Court, when the application to re-list the appeal was granted to have ordered that the costs of the first day should be paid to the appellant and that the costs of the two days should be treated as separate costs. No such order was, however, made; and, in the absence of such an order, there is no provision in the Civil Procedure Code allowing for the payment of a refresher. For these reasons, the sums of Rs. 147 and Rs. 94.50 will be struck out of the bill of costs, and further junior Counsel's fee for the first day will be reduced by Rs. 42, that is, the amount allowed will be half of that allowed in respect of senior Counsel, and as stated in the case above referred to, that is the general practice in this Court.

There were two further small items in the bill of costs objected to, but the objections were not pressed and it is unnecessary to deal with them.

The effect of this order is that the bill of costs is reduced to the sum of Rs. 181.75. The plaintiffs petitioners are entitled to the costs of the application.

WIJEYWARDENE J.—I agree.

Varied.