1948   *Present :* **Windham J.**

JAYEWARDENE, Applicant, *and* PERERA, Respondent.

ELECTION PETITION No. 18, KELANIYA—IN THE MATTER OF AN
APPLICATION IN REVISION OF COSTS TAXED BY THE
REGISTRAR, SUPREME COURT.

Election petition—Objection to petition—Referred to three Judges under section 48
Courts Ordinance—Objection overruled with costs—Taxation—Scale of costs—
Parliamentary Election Petition Rules—Rule 33 (1).

An objection to the petition was referred to a Bench of three Judges under
section 48 of the Courts Ordinance. The objection was overruled with costs.
It was contended that costs should be taxed in terms of the provisions of rule
33 (1) of the Parliamentary Election Rules, 1946.

Held, that when the matter was referred to a Bench of three Judges under
section 48 of the Courts Ordinance it ceased to be one to which the Parliamen-
tary Election Petition rules applied and that costs should be taxed according
to the principals applying to the taxation of costs in matters heard before
the Supreme Court.

APPLICATION in revision of costs taxed in respect of a matter concerning an Election Petition.

G. T. Samerawickreme, for respondent, applicant.—The application in respect of which the order for costs was made was one under rule 12 (3). The sub-section authorises the Judge to make an order for costs of hearing and deciding the application. Rule 33 provides the mode of taxation and recovery of costs ordered by an Election Court. The rule is in identical terms as rule 42 of the Election (Legislative Council) Petition Rules, 1923. A supplemental order as to costs in the case of *Rambukwelle v. de Silva* reported in 6 C. L. Rec. 128 shows that Bertram C. J. considered that under that rule costs should be taxed on the highest scale applicable to District Court proceedings. It is submitted therefore that the Registrar should be directed to tax the bill on the highest class of the scale applicable to a District Court action.

S. E. J. Fernando, for petitioner, respondent.—The Election Petition Rules have no application at all as the matter was referred under section 48 of the Courts Ordinance to a bench of three Judges. Costs should be taxed on the same principle as in other proceedings before the Supreme Court which are governed by the Courts Ordinance. There is no scale. Costs actually incurred, provided they are reasonable, should be allowed. In matters of this kind involving important civic rights parties are entitled to be well represented. See *Pelpola v. Goonesinghe*.[1] In any event where the rule says, " in the same manner as costs are taxed in a District Court " it does not mean on the same scale. If that was intended it would have been simple to have said so expressly.

G. T. Samerawickreme, in reply —Though the matter was referred to a Divisional Bench the application was one under rule 12 and the order for costs was made in terms of sub-section (3) of that rule. Article 78 (5) of the Ceylon (Parliamentary Elections) Order in Council enables a Judge of the Supreme Court to deal with interlocutory matters. Hence it was that the matter was referred to a Divisional Bench under the Courts Ordinance. It did not thereby cease to be an application under the Election Petition Rules.

February 20, 1948. WINDHAM J.—

This is an application to set aside an order of the Registrar of this Court, taxing costs to be paid by the applicant to the respondent-petitioner in respect of hearings upon an objection to the Election Petition concerning the question of the deposit of security, which was dismissed. The point originally came before His Lordship Mr. Justice Basnayake upon an application made under rule 33 of the Parliamentary Election Petition Rules, 1946. Then His Lordship, acting under section 48 of the Courts Ordinance, referred the matter for the determination of a bench of two or more Judges, and the matter was thereupon determined before a bench of three Judges of the Supreme Court.

The present application relates to the taxing of costs in the application before that bench. It is argued by the applicant that the costs should have been taxed on the basis of the highest scale set out in the 2nd schedule of the Civil Procedure Code, Part II, and this by virtue of the

[1] *(1939) 40 N. L. R. 415.*

provision of Rule 33 (1) of the Parliamentary Election Petition Rules, 1946. Rule 33 (1) states that " Costs shall be taxed by the Registrar upon the order by which the costs are payable, in the same manner as costs are taxed in a District Court, but subject to such express directions, either general or specific, as the Judge may give . . . . " Without deciding upon the exact meaning of the phrase " in the same manner " in Rule 33 (1), I am satisfied that that Rule does not apply to the determination of a point arising upon an interlocutory proceeding in an Election Petition, where that point has to be decided by a bench of two or more Judges of the Supreme Court. It seems to me that so soon as a reference has been made to such a bench under section 48 of the Courts Ordinance, the determination of the matter before such a bench ceases to be a matter to which the Parliamentary Election Petition Rules, 1946, apply and becomes a matter to be determined (so far as concerns costs) upon the principles applying to the taxation of costs in matters heard before the Supreme Court. In such matters there is no scale of costs laid down, and the taxation is left to the discretion of the Registrar ; and this will not be interfered with unless the Registrar has proceeded upon wrong considerations or principles, or has allowed extravagant costs needlessly incurred. For the reasons I have given, I hold that the learned Registrar did not proceed upon wrong considerations or principles ; and with regard to the question whether the costs allowed were extravagant, the costs allowed were in fact incurred and were not excessive, and furthermore the learned Registrar did cut down the original bill for costs submitted by the Respondent Petitioner from the sum of Rs. 4,192.50 to the sum of Rs. 3,418.75. For those reasons I hold this is not a matter in which this Court should interfere.

The application is accordingly dismissed with costs.

Application dismissed.