

1914.

Present : Lascelles C.J. and De Sampayo A.J.DAWBAREN *v.* RYOL.10—*D. C. Kandy, 21,101.*

Costs—Consultation fee—Conference between one advocate and proctor is not consultation.

The term "consultation" as used in the schedule III, to the Civil Procedure Code does not refer to a meeting of one advocate with a proctor.

A PPEAL from an order of the Acting District Judge of Kandy (P. E. Pieris, Esq.). The facts appear from the judgment.

Allan Drieberg, for the appellant.—The word "consultation" has gained a definite meaning in Ceylon, and is issued in practice to refer to the meeting of an advocate and a proctor for the purpose of discussing the points arising in a case. The District Judge was not justified in disallowing the consultation fees.

Hayley, for the respondent.—The term "consultation" is defined as the meeting of two or more counsel with the solicitor. The meeting of a solicitor and counsel is a conference. We could not give the term a new meaning in Ceylon.

Counsel referred to (1914) *Annual Practice* 1262; 10 *Probate Division* 243; *Ramanathan* 1843-55, 111.

Drieberg, in reply.—The case in *Ramanathan* is not in point.

Cur. adv. vult.

February 13, 1914. DE SAMPAYO A.J.—

This is an appeal from an order of the District Judge in review of the taxation of the defendant's bill of costs. The minor items objected to involve no matter of principle except perhaps item No. 18, with regard to which it is stated that the District Judge has not followed the rate per folio provided in the schedule to the Civil Procedure Code. But we do not know how many folios there were, and have no material for judging whether the reduction of the item No. 18 from Rs. 3.94 to Re. 1.94 is wrong. It is true that the District Judge has not given, as he ought to have, his reasons for striking out or reducing these minor items, but they involve very small sums, and, on the whole, I have no reason to think that he came to a wrong conclusion. The only matter of importance which we

need consider is that which relates to the question of consultation fees for counsel. There was only one advocate engaged on behalf of the defendant, and the District Judge has disallowed six items of Rs. 21 each included in the bill of costs as for consultation, on the ground that to constitute a consultation there must be at least two counsel, and that "consultation fees" have no reference to conferences between counsel and proctor. Here the District Judge is right as regards the technical meaning of the words. Under the English practice the term "consultation" signifies a meeting of two or more counsel with the solicitor, and "conference" is the proper term to signify a meeting between a counsel and the solicitor. There is no provision in the schedule of costs for a fee for the advocate for a "conference" properly so called. It is argued, however, that the term "consultation" is used in the schedule to the Civil Procedure Code in a large sense, and includes a meeting of even one advocate with the proctor, and reference is made to what is said to be understood thereby in ordinary in practice in Ceylon. Even if the practice were as stated, now that the question has been raised, we have to consider whether such a practice would be justified. In the old Rules and Orders the same expression occurs, and in *Ponna v. Kiri Ukkoova*¹ the Supreme Court disallowed an item for consultation, with the remark that "when an advocate is paid a fee for consultation, it is understood that there must be another advocate with whom to consult." That case, no doubt, was a peculiar one, as it concerned an advocate who had irregularly acted as a proctor and sought to tax his bill of costs, but the opinion of the Court on this point did not turn upon that circumstance. That opinion is in accordance with the English rule, and I cannot think that the Civil Procedure Code, which practically took over the heads of charges for an advocate from the old Rules and Orders, intended to use the expression "consultation fee" in an extended sense. With regard to the actual practice in our Courts at the present time, we thought it right to make some inquiry as to what is done in the District Court of Colombo, and the District Judge has been good enough to inform us that a consultation fee is only allowed to an advocate where there are two or more advocates. The practice then, at least in the chief District Court of the Island, is in accordance with the strict meaning of the expression, and should, I think, be generally followed.

In my opinion the appeal fails, and should be dismissed with costs.

LASCELLES C.J.—

I entirely agree. The term "consultation" as used in a schedule of costs is a technical expression, to which the correct legal significance should be given.

Appeal dismissed.

¹ *Ram. 1843-55, 111.*