1944 *Present:* **de Kretser J.**

WIJESEKERA *v.* THE ASSISTANT GOVERNMENT AGENT, MATARA.

IN *re* AN APPLICATION TO REVISE A BILL OF COSTS—S.C. APPLICATION 415.

Costs—Taxation of costs in application for Writ of Mandamus—*Discretion of taxing officer—Costs actually incurred.*

The table of costs given in the schedule to the Civil Procedure Code does not apply to proceedings under section 42 of the Courts Ordinance.

In such proceedings the taxing officer should, as a rule, allow such costs as have been actually incurred unless they have been unreasonably or unnecessarily incurred.

THIS was an application to revise a bill of costs taxed by the Registrar of the Supreme Court.

T. S. Fernando, C.C., for petitioner.

Cyril E. S. Perera for respondent.

Cur adv. vult.

July 10, 1944. DE KRETSER J.—

The petitioner moves to have the Bill of Costs taxed by the Registrar of the Supreme Court reviewed. The items objected to are the costs allowed to senior and junior Counsel for brief fee and refreshers. It is admitted that if senior Counsel's fee is allowed, then junior Counsel's fee must also be allowed. Crown Counsel could only suggest a comparatively small reduction. In my opinion the amount is not excessive and the application must therefore be dismissed with costs, which I shall fix at Rs. 52.50.

Crown Counsel's main object was to question the principle on which the Registrar taxed the Bill, and to elicit an opinion from this Court as to how bills of this nature should be taxed. The only authority referred to was the case of *Pelpola v. Goonesinghe*[1]. Soertsz A.C.J. was in that case requested by the parties to fix the amount which he thought reasonable and he fixed the full amount paid to Counsel for reasons given by him then, which apply with even greater force to the present case in which important questions of law arose. Crown Counsel says the Registrar has taken this case as indicating that in every case the full amount paid to Counsel should be allowed and he contends that the Registrar should in the proper case cut down extravagant expenditure. Counsel agree that the taxing officer has a discretion.

Speaking for myself, I find it difficult to lay down any positive rules. Soertsz A.C.J. has indicated that one matter to be borne in mind by the taxing officer is the unusual nature of the proceedings and the importance of the issues involved. There being no rule laid down by law limiting expenses which a party may incur, it would *prima facie* be right to allow him all such costs as the taxing officer thinks have been really incurred. But undoubtedly this rule must be subject to qualification. A party

[1] *40 A. L. R. 415.*

cannot be allowed to incur such extravagant expenses as the taxing officer believes to have been needlessly incurred. There is also the fact to be borne in mind that the general policy of our law is not to allow a party whatever expenses he has incurred, but to keep such expenses within certain bounds. In ordinary civil cases the Legislature has devised a scheme of classes both for the purposes of stamping and of taxation. But this scheme does not apply to proceedings such as we are now concerned with.

In the Annual Practice for 1942 page 1523 I find it stated that the discretion of the taxing officer must be based upon proper materials, must be in fact exercised, and exercised fairly and reasonably. Taxation is a question of giving and taking, and, in reviewing, that excellent rule is not to be lost sight of. The Court will not vary the taxation except on very strong grounds unless it has been exercised on wrong principles or by reason of wrong considerations.

The conclusion of the matter seems to be that in proceedings such as these the costs actually incurred should be allowed unless they have been incurred unnecessarily or unreasonably. As stated before the application is refused with costs.

Application refused.