

prisoner for the offence of which he was originally found guilty, or for any other offence, in either case it has power to increase the punishment awarded by the inferior Court.

We confirm the sentence of the Magisterial Court but increase it by inflicting a fine of 5s. and we direct that the recognisances of the accused by estreated.

Sentence increased.

TYSER, C.J.
&
BERTRAM,
J.
POLICE
v.
NICOLA
MICHAEL

[TYSER, C.J.]

TYSER, C.J.
1908
April 1

IN THE MATTER OF AN ELECTION PETITION FOR THE
ELECTORAL DISTRICT OF NICOSIA AND KYRENIA.

BETWEEN

PASCAL CONSTANTINIDES, GEORGE CHACALLI, AND
ACHILLEA LIASSIDES, *Petitioners,*

AND

KYRILLOS PAPADOPOULLOS, METROPOLITAN BISHOP
OF KITION, THEOPHANES THEODOTOU AND ANTO-
NIOS THEODOTOU, *Respondents.*

COSTS—TAXATION—DUTY OF REGISTRAR—ADVOCATES' FEES—SUMMONSES TO
WITNESSES.

It is the duty of the Registrar on taxing a bill of costs, to satisfy himself:—

- (1) That the charge under each item is fair;
- (2) That the work charged for has been done, and that the disbursements claimed have been made, either from what appears on the face of the proceedings, or from other evidence;
- (3) That the services charged for on the disbursements made were necessary and that a charge ought to be made for them;
- (4) That any disbursement claimed has been made by or at the request of the party claiming it, express or implied, and that any work for which remuneration is claimed was performed under such conditions that the party is liable to pay for its performance.

Notwithstanding the provisions of rule 8 of the Rules of the 4th July, 1895 and Order XXIII, rule 2, the Registrar may call for proof of payment in any case in which in his opinion proof of payment is necessary for the proof of the claim.

Notwithstanding the provisions of Order XXIII, rule 6 (which directs that the proceedings on the taxation of a bill of costs shall be as nearly as may be the same as on the hearing of an action), it is not the duty of the Registrar on taxing a bill of costs to allow all items that are not disputed. He should satisfy himself that the amount claimed is fair whether an objection is raised or not.

In taxing advocates' fees, it is desirable that the Registrar in every case should require evidence of the terms on which the work was done.

Summonses requiring the attendance of witnesses should direct the witness to attend on the day of the trial and so from day to day until the action is tried.

It is the duty of the advocate on taking out the summons to see that it is drawn up in the proper form.

This was an application to review taxation.

TYSER, C.J. *Artemis, Chryssafinis and Neoptolemos Paschales* for the
 Petitioners.
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Theodotou, A. Kyriakides and Sevasty for the Respondents.

Judgment. TYSER, C.J.: This is an application to review the taxation by the Registrar of the bill of costs of the Petitioners, who were successful in the Election Petition.

In the case of the Limassol Petition it was decided that in the taxation of costs on an Election Petition the English law and regulations are to be applied in principle and as far as practicable. But that the Registrar in considering what amount to allow for costs may take into consideration the local circumstances and look at the Cyprus scale of costs to guide him although that scale does not bind him. (See 7 C.L.R., 65.)

I understand from the Registrar that the parties before him guided themselves during the taxation by the Rules of Court in Cyprus governing the taxation of costs but that the Petitioners sought originally to fix the amount of the costs by the English scale.

Before dealing with the particular questions in dispute in this matter I propose to consider the law regulating the taxation of costs in Cyprus, to see if there is any substantial difference between that law and the rules in force in England.

The rules which govern the taxation of costs under Cyprus law are very few and leave many things to the Registrar without any express provision to guide him.

The consequence is that a want of method in the drawing and presenting of bills of costs has sprung up, which has rendered taxation extremely difficult and has perhaps caused some misapprehension as to the true duty of the taxing officer.

I first propose to consider what are the functions and duties of the taxing officer.

In every case the Registrar when taxing a bill of costs must see that the charge under each item in the bill is fair and reasonable.

To tax a bill of costs is to deal seriatim with each item by way of allowance or disallowance.

There is a scale of costs in respect of certain proceedings and matters, which is set out in the schedule to the Rules of the 4th July, 1895.

In taxing matters within that schedule the Registrar must see that the charge does not exceed the amount allowed by the schedule. Where the schedule gives a definite sum a person entitled to make the charge is generally, subject to any order of the Court, entitled to that sum.

Where a discretion is left to the taxing officer, and in all matters outside the schedule, he must see that the charge is fair and reasonable.

The Registrar also has to be satisfied that the payments and work in respect of which costs are claimed have been made and performed.

In considering what evidence is required by the Registrar for this purpose, it is convenient to divide the costs into two classes: (1) costs in respect of work shewn to be done on the face of the proceedings, and (2) extra expenses incurred beyond such costs.

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The Registrar should tax the costs upon a view of the proceedings, but if there be extra expenses incurred, which do not appear upon the face of the proceedings, such as witnesses expenses, fees to advocates other than the advocate on the record, attendances, court fees, etc., an affidavit should be made for these extra costs otherwise the Registrar will not be warranted in allowing them (Archbold, 14th Edition, p. 695).

In Cyprus the schedule of costs provided in the Rules of Court of 4th July, 1895, is divided into two parts called A. and B.

It is provided by rule 8 of the Rules of the 4th July, 1895, that it is not necessary to produce proof of payment of sums in respect of matters in part A. of the schedule.

It is provided by rule 2 of the Rules of 27th July, 1898, that the Registrar may require proof of payment of sums in respect of matters most of which are specified in part B.

It is not clear to me why this distinction is made or what is the meaning of these rules.

They do not deal with necessity of claimant proving that he is entitled to make his claim.

With a few exceptions the matters specified in part A. of the schedule, are made up of work shewn to be done on the face of the proceedings, the matters in schedule B. are all extra expenses which do not appear on the face of the proceedings.

With regard to claims on account of service, travelling expenses and cost of maintenance of any witness, the preparation of a plan or model, or the translation or copying of any document by rule 2 of the Rules of 27th July, 1898, the Registrar may call on the party to prove payment. I do not think there is anything in either of these rules which prevents the Registrar from calling for proof of payment in any case in which in his opinion it is necessary to entitle the claimant to put forward a claim.

The rules do not in any way deal with the necessity of the claimant having to prove his claim.

In matters not appearing on the face of the proceedings the Registrar should require proof by affidavit or otherwise that the work has been done. In some cases as in claims for witnesses he should require proof that payment has been made.

Besides ascertaining that the payment has been made and that the work has been done and fixing the amount to be recovered for it, the Registrar has also to decide whether the work was necessary and ought to be charged for.

“When it appears on the face of the proceedings or by evidence that the business in respect of which the costs are claimed, has been done, it is the duty of the Registrar to enquire whether the business was required to be done, and to protect the client from any charge in respect of unnecessary proceedings, and it is his duty to look into any pleading, evidence and other proceedings

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and disallow such costs thereof, or any part as he shall find to be improper, unnecessary or vexatious or to contain unnecessary matter, or to be of unnecessary length or caused by misconduct or negligence." (Daniel's Chan. Practice, p. 1031.)

Sometimes the Registrar when taxing may have to decide the question whether the party to the action on whose behalf the claim is made, has paid or incurred a liability for the amount claimed in respect of the matter for which the claim is made.

For example, the right of a party, in party and party taxation to recover expenses for professional services is limited by the amount of his obligation to the advocate whom he employs. *Haji Michael v. Georgiades* (1905) 7 C.L.R., 25.

If it is proved that the advocate agreed to make no charge for the work the taxing officer would disallow any amount claimed for such work.

There appears to be a good deal of work done in Cyprus by advocates on special terms made with their clients.

In my opinion it would be well in every case for the Registrar to require evidence as to the terms on which the work was done.

It might be given by affidavit or by oral evidence.

I will now consider the manner in which the bills of costs should be dealt with by the Registrar and the procedure to be adopted to enable him to decide the above matters.

Notice is to be given to the other parties interested of the day fixed for taxation. Rules of 27th July, 1898, Order XXIII, rule 5.

It is the practice I am informed to serve a copy of the bill of costs. A copy of any affidavits to be used in support of any charges in the bill should also be served on the opposite party.

As to the proceedings on taxation rule 6 of Order XXIII of the Rules of Court of the 27th July, 1898, directs that the proceedings on the taxation of a bill of costs shall as nearly as may be the same as on the hearing of an action.

It is difficult to say what this rule means. It cannot mean that, if the party liable to pay the costs does not appear and oppose, that the Registrar is to give his allocatur for the whole claim.

It cannot mean that the taxation is to be regarded as an action tried before the Registrar by the parties interested.

I am informed that it is not the practice on the taxation of bills of costs to proceed as though the Registrar were trying an action.

In all cases the Registrar institutes the enquiries, which I have indicated as being his duty in the early part of this judgment, and satisfies himself that each item claimed is properly put forward and that the amount asked is fair, whether or no there is opposition made by any other party to the claim advanced.

By the rule the proceedings on taxation are only to be the same as those on the hearing of an action *as nearly as may be*.

The rule does not relieve the Registrar from any duty which as taxing officer he has to perform.

To sum up the above remarks the law regulating the taxation of costs in Cyprus requires:—

1. That the Registrar shall see that the charge under each item is fair;

2. He must be satisfied that the work charged for has been done and that the disbursements claimed have been made either from what appears on the face of the proceedings or from other evidence.
3. The Registrar also must decide whether the services charged for or the disbursements made were necessary and whether a charge ought to be made for them.
4. The Registrar must further be satisfied that any disbursement claimed has been made *by or at the request of the party* claiming it, express or implied, and that any work for which remuneration is claimed was performed under such conditions that *the party is liable to pay* for its performance.

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The Cyprus law as to taxation does not differ in any material respect from the law which governs taxation in England, and the fact that the Registrar in taxing this bill has followed the Cyprus procedure has had no material effect in the result.

I will proceed therefore to consider the points raised on the application before me to review the taxation of the costs in this petition.

Objections were made on behalf of the parties to taxation of items which may be divided into three classes:—

- (1) The disallowance of certain preliminary expenses—such as payments to certain persons employed in getting up the case.
- (2) Expenses at the trial—such as advocates' fees, witnesses and costs of advocates' clerk looking after witnesses.
- (3) The disallowance of certain expenses alleged to have been incurred after the trial was also objected to.

As to the first class of cases it appears that claims are included for the reimbursement of certain payments alleged to have been made but no receipts were produced before the Registrar and no proof given by affidavit or witness that such payments were made.

For example:—There was a claim in the following form:—

	£	s.	cp.
From 7th to 13th November, 1906, carriage hire of N. Paschales for Kyrenia and other villages...	3	4	2
Loss of time of N. Paschales for the above days ...	7	0	0
Loss of time of M. Chacalli for the above days ...	7	0	0

No receipts for any payments for carriage hire were given. No evidence tendered as to where these gentlemen went or on what business they went or at whose request they went or on what terms.

If I were taxing the bill item by item I should require proof of all these things.

Mr. M. Chacalli might have been acting as a volunteer and have been influenced solely by party zeal. In that case he would have no claim on the Petitioners and the Petitioners could not claim his expenses from the Respondents.

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It has however been agreed between the parties that I should follow the precedent in *Hill v. Peel*, L.R., 5 C.P., 172, and allow a gross sum up to and including instructions for brief—that is to say, the first 31 items in the bill and the 33rd and 47th items excepting such items as are mentioned hereafter.

The Petitioners claim under this head £192 6s. The Registrar has allowed £87 17s. In my opinion this is approximately a fair sum to be allowed as costs for the expenses incurred before trial.

I allow as a lump sum for such expenses the sum of £90.

As to the expenses at the trial the following items require consideration:—

	£	s.
28.—Stamps for subpoenas to witnesses	17	0
29.—Fee for preparing 340 summonses to witnesses ...	17	0
32.—Attendance of clerk looking after witnesses during trial	5	5
34.—Retaining fees, K.A., and fees for case	84	0
35.—To leader in Court	234	0
36.—To two juniors in Court (58 attendances) ...	355	0
37.—Witnesses expenses as per list marked C. ...	35	7
38.—Serving subpoenas to witnesses as per list marked C.	12	13

In the first place I wish to point out that some of the items as stated in the bill are not sufficiently definite to enable me to tax the costs.

For example, the item “to leader in Court.” How am I to ascertain whether there is any one entitled to claim this amount from the Petitioners.

The item should be to A.B. for attending Court on hearing of the petition.

The same remark applies to item 36.

With regard to items 34, 35 and 36, I required further evidence.

I also required a statement as to the names of the advocates in respect of whose services the claims 35 and 36 were made and the amount claimed for each advocate.

Ordinarily a bill of costs cannot be amended without an order of the Court, but as this case is somewhat peculiar I directed this supplementary statement to be put in.* It must not however be regarded as a precedent.

As to items numbered 28 and 29, viz.:—

Stamps for subpoenas to witnesses	£17
Fee for preparing 340 summonses to witnesses ...	£17

It appears that these summonses were many of them prepared during the trial and that the greater number of them arose owing to the necessity of having to summons the witnesses more than once, sometimes as often as three or four times.

* A new statement dated the 24th March, 1908, was filed and was as follows:—

	£	s.
Item 35.—12 attendances of Mr. Rees-Davies in Court	50	10
46 attendances of Mr. Artemis in Court	184	0
Item 36.—58 attendances of Mr. N. Paschales in Court	177	0
58 attendances of Mr. N. S. Chryssafinis in Court	177	0

I have looked into the reason why this was necessary and find that it was caused by the advocate using the form of summons given in form K. in the schedule of the Rules of 1886. I cannot find any rule or law making the use of this form compulsory.

In my opinion it is not a proper form to use when there is a prospect of the case not being finished in a day or if there is any chance that the witness may be required after the day mentioned in the summons.

The form of summons given in form K. runs as follows:—

“This is to command you to attend at this Court at o’clock on day the day of 190 and give evidence on behalf of the Plaintiff.”

It is evident that if a witness attends on the day mentioned in the summons he can go away and the extra expense of a new summons and the costs of a fresh journey will have to be incurred to bring him up to give evidence.

A summons should be in the following terms:—

“This is to command you to attend at this Court on day the day of 190 before o’clock in the noon and so from day to day until the above action is tried to give evidence on behalf of the Plaintiff (or Defendant as the case may be).”

With a summons in this form the witness could not go away without the leave of the Court, and if the Court gave him leave to go, the leave could be conditional on his returning at a fixed time and the expense of a fresh summons would be saved.

It is the duty of the advocate to see that the summons is in proper form. I am doubtful whether I ought not to disallow these items so far as they are caused by repeated summonses to the same witness on this ground. As however I find that the advocates have followed the usual practice I have determined not to do so.

Item 32.—Attendance of clerk looking after witnesses during trial £5 5s.

This item was I think rightly disallowed. It is not usual to charge it here nor is it a charge which would be allowed in England

As to all the charges subsequent to the trial I cannot see that the Registrar has gone wrong in any question of principle.

It is merely a question of his discretion. I see no reason and no reason has been shown me why I should interfere in any of these matters.

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