
(1927) 02 BOM CK 0020
In the Bombay High Court

P.D. Shamdasani and Others

APPELLANT

Vs

Tata Industrial Bank Ltd.

RESPONDENT

Date of Decision : 22-02-1927

Acts Referred:

Citation : AIR 1927 Bom 529

Hon'ble Judges : Marten, C.J

Bench : Division Bench

Judgement

Marten, C.J.—We are here concerned with two items in two bills of costs, one of Messrs. Payne & Co., and the other of Messrs. Little & Co. Each of these items is for "Instructions for Brief at the trial." This arises under a judgment of Mr. Justice Pratt passed in the suit on December 14, 1923, when he dismissed the suit with costs and ordered that separate sets of costs as between defendant 1, the Tata Industrial Bank, and defendant 6, the Central Bank of India, Limited, be paid by the plaintiffs. Messrs. Little & Co. are the solicitors for the Tata Bank and Messrs-Payne & Co. for the Central Bank.

2. The suit itself was one brought in effect to set aside an agreement between the two companies by which the Central Bank acquired the shares of the Tata. Bank on the basis that one share in the Central Bank of Rs. 50 nominal and Sections 25 paid-up was to be given for every two Tata shares of Rs. 75 nominal and Rs. 22-8-0 paid-up. The plaintiffs contended that the resolutions approving of this sale were not properly passed and were invalid, as was also the resolution putting the vendor company into liquidation. They further alleged fraud on the part of the directors of the Tata. Bank, and amongst, other things they claimed in para. 7 of the plaint they there was a balance of about Rs. 50 lacs unaccounted for ; that there was a fraudulent concealment of the real facts ; and that if the valuation of the assets of both the banks were made on the same basis, it would be found that the intrinsic value of the shares of the Central Bank was much less than what it was represented to be. Further, by amendments of the plaint in paras. 7A and 7B, further allegations of fraud were made based on the assets of

the two banks.

3. It is here material to state shortly the dates. The meeting at which this agreement was confirmed was on July 19, 1923, and the confirmatory meeting was on August 6, 1923. On August 13, the plaintiffs first wrote a letter by their solicitors disputing the resolutions and the agreement. On or before August 18 the agreement was in effect adopted and acted on by the liquidators of the Tata Bank. Then, on August 29, the plaint was declared and presented. It appears that the defendant banks at once raised an objection, with the result that the plaint was amended and re-declared on August 31, on which date it was formally admitted. On September 6, a notice of motion for an interim injunction and a receiver of the assets of the bank was served on the defendants. That motion came before Mr. Justice Pratt on September 11, when he directed the suit to be expedited and heard on October 3. The written statements were put in on September 21 and 22.

4. Then, on October 3, the trial Court heard a summons for further discovery by the plaintiff. On October 8 that summons was dismissed, and the trial of the suit was adjourned to November 12. Then followed, I take it, the October vacation. On November 19 the plaintiffs asked for and obtained leave to amend their plaint. This was allowed on November 21. The trial then began and it lasted till November 29. Judgment was reserved and given on December 14. That judgment was appealed against, but the appeal was dismissed by Mr. Justice Shah and Mr. Justice Fawcett on July 21, 1924. Their judgments are over thirty-five typed pages in length. The plaintiffs appealed still further, namely to the Privy Council, and their appeal has not yet been disposed of by their Lordships.

5. As regards the general question of the nature of the suit: I entirely agree with the judgment of Mr. Justice Kemp and of the taxing master on this particular point. Large sums of money were involved, and indeed the judgment of Sir Norman Macleod refers to the assets concerned being some 200 lacs on the parts of the vendors and some 80 lacs on the part" of the purchasers. It was of vital importance to the banks that this agreement should not be upset in any way. It was of vital importance to the leading businessmen who were the directors of the banks that these charges of fraud should be proved to be as unfounded as they were odious. And having regard to the nature of the suit it was one which to my mind clearly involved a great deal of work by somebody in order that these banks might be armed at all points to meet the wide allegations made in the plaint.

6. I think if anybody would put himself in the position of, say, a junior counsel advising the bank on the allegations in paras. 7, 7A, 7B and 8 alone of the plaint, he would see at once that great care and a large amount of time and intelligence would be necessary before counsel could go into Court, confident that the necessary materials had been placed before them, and also that counsel understood the materials sufficiently well to explain them clearly to the Court. If in this respect I personally take a far more serious view of this case than Sir

Norman Macleod expressed in his judgment, I consider that I am at liberty to do so, seeing that we now have evidence before the Court which was not before Sir Norman. I refer to the evidence taken before the taxing master and also in the affidavit of Mr. Daji which Mr. Justice Kemp took. But that only takes us a portion of the way. It only shows that here there was an extremely important and serious case. The vital question to my mind is: Who did the work ? There is no question that a great deal of work must have been done in this long and bitterly contested case. But did counsel do the work, or did the solicitors do the work ? And as regards the latter, what evidence have we got as to the work that they actually did ?

7. Now to start with, it is unfortunate that in the original brief delivered, there are no observations at all. So we cannot check the solicitors' work there. It is unfortunate that unlike his senior partner Mr. Payne, Mr. Daji, the partner in the firm of Messrs. Payne & Co. actually attending to this matter, did not keep such a full record of the work as was advisable when it came to a question of giving evidence as to exactly what he had done in the matter. It is unfortunate that the charge for instructions was put in one lump sum, without really giving any summary showing under certain leading heads what the solicitors actually claimed to have done. Sir Norman has pointed this out in his judgment, and has cited *Slingsby v. Attorney-General* [1918] P. 236, where Lord Justice Swinfen Eady quotes a passage from Master King on Costs as follows (p. 240):

"A summary statement in the bill carried in for taxation of the details of the matters to which regard is to be had under this item...greatly facilitates the task of arriving at a proper allowance"...."The length of the documents perused (in cases in which perusal has not previously been charged), the names of the witnesses who have been attended, the places to which journeys have been made, with the time occupied in each, and the amount of the travelling expenses, should be stated.

8. It was I think this want of adequate information which has led to this ease coming on no less than six times before our Courts. The original taxation came eventually before Sir Norman Macleod and Mr. Justice Coyajee, and that Court sent the matter back to the taxing master for a review of his taxation. We have naturally read that judgment with great care, but substantially I would agree with Mr. Justice Kemp that the Courts here are not at variance on any question of principle. The difficulty to my mind is to find out the facts.

9. I will first deal with Messrs. Payne & Co.'s bill. When the matter came again before the taxing master, it might have been convenient, even then if he had asked for a summary of the nature which I have mentioned. He did not do so, but, on the other hand, Mr. Daji himself went into the box and gave evidence and also he was cross-examined by the plaintiff Mr. Shamdasani. To my mind the case did not require a very great deal of evidence beyond that which was already apparent to the taxing master. The pleadings, the notes of trial and the judgment, and the briefs and supplemental briefs would show that the solicitors

must have devoted a large amount of time and intelligence to put themselves in a position properly to instruct counsel in this case. And though, accordingly, one may criticize the evidence of Mr. Daji, and point out that he is not as specific in certain matters as he might have been, and no doubt would have been, if he had kept more written entries of his work, still it does represent in substance what the solicitor claims to have done. Speaking for myself, without attempting any definition, I would say that, under the practice of this Court, a solicitor is entitled to charge for instructions for brief for the work which he has done in order to put himself in a position to instruct counsel properly in the matter. This is, of course, subject to the deduction of items for which he has already separately charged and been adequately remunerated for, if that is the case, in the bill.

10. In particular, in the present case, I do not accept the contention of the plaintiff, that we are confined to the dates of either September 6 or September 11, for the Start of the solicitors' charges for instructions, and that they must necessarily terminate on October 2, when the first brief was delivered. I have already pointed out that the solicitors started active work in connexion with this plaint on August 30. I quite follow that, speaking generally, solicitors must not be allowed costs for work done prior to the date of the suit. But it is quite misleading to adopt some English dictum, and say that solicitors for the defence are not entitled to charge for work done prior to the service of the writ, seeing that we begin our proceedings in India by a plaint and not by a writ as is the case in England. Consequently, the argument that Mr. Shamdasani presented to us would lead to this absurdity : that because it was only on September 11 that the defendants waived service of the writ, therefore, no charges could be allowed to the solicitors prior to that date. Nor, on the other hand, do I consider that we are bound by certain observations of Sir Norman, which he made in reference to the dates of, September 6 and October 2, Because we have now before us matters which show that the solicitors or the defense in fact intervened actively in the suit on August 30.

11. So, too, as regards the instructions at the other end of the case, viz., between October 2 and November 29 : speaking for myself, I am unable to accept the contention that instructions to counsel must cease on the day that briefs are delivered. We at the bar are quite familiar with this : that after briefs are delivered one may raise many questions to the solicitors on points which require elucidation, more especially if the case is one where counsel has the brief at the last moment, and where it is not a cash where there has been ample time for counsel to advise and be prepared on all points. In this connexion it must be remembered that in Bombay junior counsel have not charge of the case prior to the trial as they usually would have in London, They do not for instance advise on evidence. Most of the preliminary work is therefore done by solicitors. As regards the present case I draw particular attention to the manner in which it was hurried on, An order on September 11, for trial on October 3, in a case, of this magnitude leaves very little time for the solicitors and parties to prepare the pleadings and actual defence. In fact the written statements were not put in till

September 22, and then began summonses for further discovery. As I have already pointed out, even that was not sufficient because the plaintiff asked for and obtained leave to amend his plaint so, late as November 19. It will be further borne in mind that, according to the defendants, the plaintiff's were acting with ulterior motives, and that, in particular, the defendants objected to the plaintiffs obtaining by means of any discovery a sort of roving inspection of the whole of the books of the banks.

12. Our own rules must also be borne in mind in this respect. Our table of fees at p, 397 provides that the following item is discretionary, viz.

Instructions for brief (including perusing papers" and examining witnesses) whether on final disposal at first hearing, settlement of issues, final trial, or on motion :

13. That bears out, I think, the practice which, I understand, prevails in this Court, viz., that the taxing master has to consider all the work done by the solicitors up to the termination of the trial. Then Rule 522 provides that:

In dealing with fees or allowances, which are discretionary, the taxing officer, in exercise of such discretion, shall take into consideration the other fees and allowances to the attorney and counsel, if any, in respect of the work to which any such allowance applies, the nature or importance of the suit or matter, the amount involved, the interest of the "parties, the fund or persons to bear the costs, the general conduct and cost of the proceeding and all other circumstances.

14. On the other hand, Rule 521(i) provides that:

No costs are to be allowed on taxation which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party or which appear to the taxing officer to have been incurred through over-caution, negligence, or merely at the desire of the party.

15. It has been contended before us amongst a mass of objections that this was a non-witness action, despite the fact that there was evidence called at the trial. In this connexion we think the plaintiffs are clearly wrong. A question has arisen as to what proofs the defendants actually obtained, and no doubt, in this connexion, they might have made their evidence a good deal clearer than it is. But taking the evidence that was actually given at the trial, we can see that Mr. Pochkbanawala, the Manager of the Central Bank, was called, and that he was called not by the defendants but by the plaintiffs. One can readily, therefore, understand the correctness of the defendants' statement that they were prepared with Mr. Pochkhanawala's evidence on their own account, and that he had in fact furnished a proof to them. Whether that proof was furnished a day before he actually gave evidence or earlier seems to me of small importance. There was also, so we are told, a proof taken of Mr. Captain, who, in point of fact, was not called. Then there was another witness, a director, Sir Phiroze

Sethna, who was called. That apparently was at the last moment, and it does not appear that previously any proof of his was taken. On the other hand we can see that in a case of this nature, the defendants must have been prepared to meet the charges of fraud that were made, and to put the parties involved into the box, should the course of the trial show that these charges were seriously pressed. The taxing master has found that some evidence was obtained, and I think that that finding is correct, although, as I have already stated, the defendants could have made their case on this point a great deal clearer than they have in fact done.

16. It was also objected that the solicitors already knew all about the facts because they had been acting in what, in effect, was an amalgamation between the two banks. But it is quite one thing to be acting as a solicitor for the amalgamation, and to draw some of the documents on instructions given to you by the gentlemen who have the financial details at their fingers' ends. It is quite another thing to consider that agreement and all its financial details from the points of view in which they were attacked in the present case, including, in particular, the charges of fraud. Speaking generally, the draftsman of the amalgamation documents would not be concerned with the actual figures arrived at between the financial gentlemen concerned. He would only be primarily concerned to see that the agreement he drafted properly represented the agreement between the parties. But for the purposes of his present trial, he would have to master these figures and be prepared to meet arguments founded on them. Moreover, Mr. Daji shows that, as regards at any rate many of the documents, they came to him for the first time for the purposes of this suit. Nor can I accept Mr. Shamdasani's argument that at the most the solicitors were entitled to a perusal fee for reading these documents. To my mind they were also entitled to be paid for their brains and intelligence in piecing those documents together, along with the other facts of the case, in order to put counsel in a proper position to meet these bitter attacks of the plaintiffs.

17. There are a large number of other objections raised by Mr. Shamdasani in his extremely lengthy speeches. I do not propose to deal with all of them. I can only say that to the best of our ability we have carefully weighed every thing that he has said. In the result we think that there was sufficient material before the taxing master, in the case of Messrs. Payne & Co., to justify him in arriving at the conclusion which he did. In other words there were before him proper materials on which he could arrive at what was a fair fee to charge for instructions for briefs. That being so, the amount that he has actually allowed cannot, in my opinion, be regarded as so excessive, or excessive at all, as would justify this Court in setting aside the discretion which he has thus exercised. I am strongly fortified in this conclusion by the fact that Mr. Justice Kemp, who himself was a taxing officer and in addition is the author of *Kemp on Costs*, has expressed his own opinion in clear and emphatic terms that, not only was that sum not excessive, but that, if the taxation had been left to him, he would have been disposed to have allowed even a larger sum than that which the taxing master in

fact, allowed.

18. Another circumstance which points to the correctness of that conclusion is that the plaintiff himself, in his original objections, would appear to have considered that, at any rate, Rs. 1,333 ought to be allowed for instructions. I refer to pp. 6 and 7 of the paper-book in appeal No. 51 of 1925, where he says:

Counsel's fees in the whole of the suit under the rules would come to Rs. 1,500 at the most. In the circumstances the instructions fee for the brief should be only Rs. 1,000 which, with 33 per cent would come to at about Rs. 1,330. Therefore Rs. 2,000 must needs be disallowed or made attorney and client if there has been extraordinary exertion on behalf of their clients.

19. The taxing master here has allowed Rs. 2000 instead of the Rs. 3,000 which he had previously allowed, and the Rs. 5,00.0 which was originally claimed, In the result, therefore, so far as regards Messrs. Payne & Co.'s bill, I would dismiss the appeal against the taxation.

20. Turning next to the appeal of Messrs Little & Co., that unfortunately stands on a different footing. With all respect to Mr. Framji, who is an attorney and an assistant to that firm, their senior partner, Mr. Acworth, was no doubt the principal person in the firm who attended to the bank's affairs. We all knew Mr, Acworth as one of the ablest and most respected men in his profession I have not the smallest doubt that when all the facts are in evidence, it will be found that the Tata Bank, in this serious case, naturally relied very largely on his assistance. But unfortunately the firm have not obtained any affidavit from Mr. Acworth, although his address in England is perfectly well known, and his evidence could no doubt have been obtained in, say, some six weeks or so.

21. Then, as regards Mr. Framji, it is most unfortunate that by a slip of his counsel, Mr. Desai, he actually was never called before the taxing master, although we are told that counsel had Mr. Framji's proof before him. What, we understand, happened is that Mr. Desai only made a statement to the taxing master. Having regard to the observations which Sir Norman had already made on appeal, it is difficult to understand how that course came to be taken. I confess that I have some sympathy with the taxing master inasmuch as, when he had leading counsel before him he might reasonably expect not to be misled into adopting an erroneous method of trying the case. It may be that the parties did not keep the two bills distinctly in mind, and that they considered that Mr. Daji's evidence would also cover Messrs, Little & Co.'s bill. I quite follow that up to a certain point that would be so, viz. as to the importance of the suit and to some degree as to the interviews between the solicitors and so on. But Mr, Daji did not, and could not, specifically depose to all the work which Messrs. Little & Co, actually did in this particular suit. Accordingly, the taxing master, in effect when he arrived at his decision on Messrs. Little & Co.'s bill, had very little evidence before him other than that which was before Sir Norman Macleod.

22. On review this difficulty was appreciated by Mr. Justice Kemp, and he very

properly if I may say so, directed particulars to be brought in on affidavit. Mr. Framji accordingly made an affidavit But most unfortunately, to my mind, cross-examination on that affidavit was refused. With all respect to the learned Judge I look upon that point as so vital that the appellant is rightly entitled to complain of it. This was not a case necessarily to be tried merely on affidavit evidence. The appellant was entitled to cross-examine in order to obtain if he could, admissions from his opponents. Accordingly, after giving all consideration to the discretionary nature of the Judge's power under the rule to allow cross-examination, I think that the appellant should have been given that opportunity. We are, therefore, in this dilemma to which I personally see no adequate answer. The taxing master had no adequate evidence before him : he had not even the affidavit of Mr. Framji. And as regards the learned Judge, he had the affidavit of Mr. Framji but there was no cross-examination.

23. Accordingly, in my judgment, this particular taxation will have to go back. In his final address Mr. Shamdasani asked us to deal with the matter here, and not expose him to the delay and expense of a further hearing. Up to a point I entirely sympathize with him. But, if he still requires to cross-examine Mr. Framji, as he in fact insists on doing, then, if we were to decide the case without that cross-examination, we should be committing the very error which, I think, was committed in the Court below.

24. In sending back the taxation, then, I would state, for the information of the taxing master, that I do not accept one argument of the appellant, viz., that you must have priced items for each detail in the instructions for brief. Their very nature prevents a detailed priced item for everything that goes up to make that particular charge. But what I do say is that one is entitled to have certain summarized headings, which go to show what work it actually was that the solicitors did. Accordingly it is not sufficient, as Sir Norman pointed out, to say:

This was a heavy suit; it took many days ; we paid so many gold mohurs to counsel ; therefore you must presume that we did all this work and are entitled to so many thousand rupees.

25. As regards the officer to hear the re-taxation, I do not think it fair on the assistant taxing master Mr. Gellott to send this case back to him again. However impartial a Judge or an officer may be, it is most difficult, if not impossible to rehear a question of fact for the third time, when one has already come to a clear and definite conclusion on that question which here is one as to value. I would, therefore, send the case to the senior taxing master is Mr. Wadia, subject to an objection that Mr. Shamdasani has raised that the latter is a shareholder in the Central Bank. That latter matter can be considered later, but, subject to that, taxation will go back for a review by him. If Mr. Wadia is not available some other officer can be appointed for that purpose by the Chief Justice. It follows from what I have said that the order of Mr. Justice Kemp so far as regards Messrs. Little & Co. should be set-aside.

Blackwell, J.

26. I agree. Having regard to the importance of the case I desire to add a few remarks.

27. It has been contended by the appellants in this case that, when this matter was remitted to the taxing officer by the appellate Court, the discretion of the taxing officer was entirely limited by certain specific directions conveyed to him by the appellate court. In pursuance of that contention the appellant has submitted to us that no work other than that done between September 6 and October 2 could properly be looked at by the taxing officer. I have carefully considered the judgment that was given by the appellate Court in this matter, and I do not think that there was any intention whatever to limit the discretion of the taxing officer in the way suggested. I think the intention was to draw the attention of the taxing officer to the sort of questions to which he must direct his mind, inasmuch as the taxing officer had apparently taxed the bill only by some rough-and-ready method pursued by the clerks in his office.

28. It is no doubt true that Sir Norman Macleod, in his judgment, said:

There is the date of the service of the summons when the attorneys first had notice of the suit, which seems to have been September 6. Briefs were delivered on October 2. So the work charged for preparing the briefs must have been done between those dates.

29. That no doubt lent some colour to the contention put forward. But reading the judgment as a whole, I think that those remarks merely meant this : that upon the materials then before the appellate Court, it seemed that the work must have been done between those dates. I do not gather from those observations that, if it had been made plain to the taxing officer that a great deal of necessary work was done either from an earlier date or down to a later date he was in any way to be precluded, from taking that work into consideration.

30. It was further contended by the appellant that the taxing officer was precluded by the appellate Court from going into the question of the importance of the suit. If one reads the judgment carefully, as I have done, I think precisely the opposite conclusion is to be deduced from it, because Sir Norman Macleod himself drew attention towards the end of his judgment to the necessity of taxing officer having regard to the actual work done and the actual time taken by the attorneys in preparing the briefs and the importance of the suit. I think, therefore, that the appellate Court was merely indicating to the taxing officer the sort of questions to which he should direct his mind.

31. Now, the matter having been remitted by the appellate Court to the taxing officer, I must say that I think it was very unfortunate that the taxing officer did not require the attorneys to prepare their bill, giving full particulars of the work done under the heading "Instructions for Brief." The learned Chief Justice has already drawn attention to the remarks of Lord Justice Swinfen Eady in *Slingsby*

v, Attorney General [1918] P. 236, where that learned Justice drew attention to what Master King, a great authority on costs thought ought to be included in a summary statement relating to "Instructions for Brief." In that case the Court of appeal sent the bill back to the taxing master giving him directions to call upon the solicitor to bring in a bill showing in detail the items for the work claimed to have been done in respect of which a lump sum was to be charged under the heading "Instructions for Brief." I think that course ought to be pursued for those reasons, It enables the opposite party to see in detail the items under the various headings for work alleged to have been done and it enables him at once to say what he admits must have been done and what he proposes to challenge and at the same time enable the taxing master himself to determine whether he should call upon the attorneys to justify the particular items of work which may appear to be unjustified. Farther it enables the opposite party to ask the taxing master to call upon the other side, if need be, to submit himself to cross-examination in regard to any particular item. In other words, it makes the matter plain from the trouble which is likely to arise where no such details are given.

32. I desire also to say that I think that it is extremely unfortunate that the attorneys in this case did not keep details of their attendances. The taxing officer in his judgment upon the objections himself drew attention to the absence of attendances and interviews, and pointed out how embarrassing it" was in connexion with the taxation of bills. I think that it is the duty of attorneys to keep a strict record of all attendances and interviews for which they propose to make a charge, whether they propose to charge for them separately, or whether they propose to put them forward under the general heading of "Instructions for Brief." I think in this particular case, if by reason of their omissions to keep such a record, they have been awarded less, and will perhaps be awarded less, than otherwise they would have been entitled to receive, they only have themselves to thank.

33. In this connexion it is important to bear in mind that according to the practice of this Court, and according to the table of fees at p. 397 of the High Court Rules, the heading "instructions for Brief" is intended to cover all work necessarily done by solicitors in order to enable them to instruct counsel from the start of the suit to the end. Moreover, the learned Chief Justice drew attention to Rules 522 and 521, Sub-clause (i), and I do not intend to refer to them again in detail. But bearing in mind that the charges permitted under the head of "Instructions for Brief" are discretionary, and that they are intended to remunerate the solicitors from the beginning to the end a part from such charges as may be separately allowed, it does not seem to me absolutely incumbent on attorneys that they should keep strict detailed entries in regard to all interviews and attendances which they propose to put forward and ask to be remunerated for under the heading "Instructions for Brief." In this case one observes that solicitors in fact did keep diaries for which they claim to be remunerated under the general heading "Instructions for Brief" in respect of a number of matters which they attempted to charge for separately, and which were either disallowed

in to or only allowed in part, That affords some evidence to which the taxing officer can direct his mind.

34. Coming now to the two bills, and taking first Messrs. Payne & Co.'s bill : I ask myself whether there were sufficient materials before the taxing master to enable him to tax that bill, and to say what in his judgment on the materials before him was a proper allowance. Having regard to the evidence which was given by Mr. Daji, I am clearly of opinion that the taxing officer had sufficient materials to tax the bill. It is quite true that Mr. Daji said frankly, as one might expect, that he had not kept a detailed record of all attendances and interviews. But, no doubt, the taxing officer made allowances for that, and indeed he has drawn attention to the very point in his judgment. I assume that in taxing the bill the taxing officer has made no allowance for interviews and attendances which cannot be spoken to sufficiently definitely by Mr. Daji. But Mr. Daji in his evidence gives particulars of the vast amount of work, which, it is perfectly obvious from a perusal of the documents in the case, he must have done.

35. It was contended by the appellant that the solicitors knew, before these proceedings were started, the contents of material documents which had to be gone into. The answer is this : that they had not directed their attention in perusing those documents to the charges that were subsequently brought against the respective banks ; and however familiar they might have been originally with the contents of these documents, once these proceedings were started, it was absolutely incumbent upon them to consider the documents afresh from every aspect in the light of the serious charges made against the banks. And that is precisely what Mr. Daji said he did. He was cross-examined at great length by the appellant, and under these circumstances, it seems to me that the taxing officer had before him the further matters, which, as Lord Justice Swinfen Eady in *Slingsby v. Attorney General* [1918] P. 236, quoting from Master King on Costs, said, should appear in a summary statement. Further, Mr. Daji gives particulars of the interviews he had with counsel and also with the directors of the bank and other persons whose evidence it may have been desirable for the bank to call. It has been contended that the bank called no evidence. That is not, in my judgment, the point. The point is what work has to be done with a view to calling evidence if it should become necessary at the hearing. It seems to me that Mr. Daji has made perfectly plain the vast amount of work that was done by him with a view to meet the very serious charges that had been framed in the plaint, and particularly in the amended paras. 7 A and 7 B.

36. I, therefore, entirely agree with the learned Chief Justice that the taxing officer himself, had ample materials before him for taxing the bill as he did. When the matter came before Mr. Kemp, he went even further, and he called for affidavit evidence. The oral evidence was supplemented by affidavit evidence. There was no need for cross-examination there before Mr. Justice Kemp because there had been cross-examination before the taxing officer. I, therefore, agree with the learned Chief Justice that, so far as Payne & Co.'s bill is concerned, this

appeal should be dismissed.

37. With regard to Little & Co.'s bill : I am of opinion that there was no sufficient material either before the taxing officer or, in the absence of cross-examination by the appellant, before the learned Judge.

38. All that the taxing officer had was a statement of counsel, and this, in my judgment, was quite insufficient.

39. I am reminded by the learned Chief Justice that, when the matter was before the learned Judge, he stated that the taxing officer took evidence as to the work done. That appears towards the bottom of p. 43 of the appeal paper-book and again at the top of p. 44 where he says:

The taxing officer can always satisfy himself by taking evidence as he did in this case.

40. Now with great deference to the learned Judge, I think he was there clearly under a misapprehension as regards Messrs. Little & Co.'s bill as to what was done before the taxing officer, because it is admitted that there was no evidence. The matter, to my mind, is of great importance when one looks at the very inadequate particulars that were given by Messrs. Little & Co. to the taxing officer, viz.,

Instructions for brief on behalf of the first defendant for hearing and final disposal including perusal of papers and other documents handed to us.

41. Now under those circumstances, I think the appellant was put in a position of grave difficulty. There were no particulars which he could challenge ; there was no oral evidence; and therefore he was not in a position to ask the solicitors questions with a view, if possible, to gaining admissions from them that certain - work was either in fact not done or was not necessary. Indeed the Advocate-General, in the course of the hearing of this appeal, agreed that in the absence of evidence before the taxing master the appeal, relating to Little & Co.'s bill ought to be remitted. It is quite true that Mr. Justice Kemp endeavoured to supply any deficiency there may have been by calling for affidavit evidence. But unfortunately, as the learned Chief Justice has pointed out, he did not allow the appellant to cross-examine Framji, the deponent to affidavit. In the circumstances, I think the learned Judge ought to have allowed him to cross-examine. If he had done so, then I think the matter could have been dealt with upon the same footing as Messrs. Payne & Co.'s bill. As, however, he did not allow cross-examination, I feel that there is no other course open but to remit this bill to the taxing officer as proposed by the learned Chief Justice.

42. Lest there might be any misapprehension in the future, I desire to say that I understand that the appellant did not desire to raise before us any question "with regard to the charges allowed by the taxing officer in regard to the motion. He did not question the allowance of Rs. 75 in each case, and made no point before us on that part of the case.

Marten, C.J.

43. Having heard arguments on the question of costs, we think the proper order is to direct that the appellants should pay the costs of Messrs Payne & Co. of this appeal, and that Messrs. Little & Co. should pay the plaintiff's costs of this appeal, There is only one appeal book, and the same counsel appear for Messrs. Payne & Co. and for Messrs. Little & Co. though on separate briefs. The taxing master will accordingly have to see what respective costs ought fairly to be allowed or paid under these circumstances. The same order as regards the costs in the Court below.