is liable for all such moneys as may be due in respect of the return-passages of any immigrants indentured thereon as stated in the pleadings. There will be no order as to interest as I am of opinion that it is imposed as interest by way of penalty and can only be recovered by suing for it in a personal action against the employer. The estate was not charged with that when it passed on sale to the Bank. There need be no inquiry before the registrar as to what sums were due as the sum shown to be owing by Moore, namely 36*l.*, may be taken as the amount, and if that sum, but without interest, be not paid within three months the estate is ordered to be sold.

Judgment for plaintiff.

[CIVIL JURISDICTION.]

June 8. 12.

AGENT-GENERAL OF IMMIGRATION *v.* BANK OF NEW ZEALAND.* (No. 1.)

Summons to review taxation of costs—Civil Procedure Rules, r. 37a—*Supreme Court Rules—Order LXV., r.* 1, 2—*Supreme Court Rules*, 1893.

No order for costs having been made at the trial of an action, and the plaintiff having taxed his costs in the usual way, the defendant took out a summons to review such taxation without giving the taxing-master the usual notice of objections,

Held, that such summons must be dismissed on the ground of irregularity, but that, as no order "awarding" costs had been made, the taxing-master had no authority to tax and this award must be set aside.

This was an application by summons on the part of the Bank of New Zealand asking for a review of taxation of the costs incurred in the recent action of *Agent-General of Immigration* v. *Moore and The Bank of New Zealand** wherein an order was made against the

* See last case. See next case.

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AGENT-GENERAL OF IMMIGRATION v. BANK OF NEW ZEALAND. (No. 1.)

Bank (the defendant Moore not appearing) declaring that the estate of Wainiaku, in the island of Taviuni, formerly the property of the defendant Moore, but now the property of the Bank, stood chargeable with a sum of 36*l.* for expenses incurred in connection with the return-passages of certain Polynesian labour indentured thereon, and decreeing that the said estate should be sold to defray those expenses unless they were paid within a certain time.

No order was made as to the costs of the trial and no application was made by either party with respect thereto. The plaintiff carried in his bill of costs to be taxed in the usual way, which was objected to on the part of the Bank as no order had been made for costs. The registrar, however, overruled this objection on the ground that nothing having been said as to them at the trial the costs followed the event, and he proceeded to tax the plaintiff's costs.

The defendant then took out a summons in chambers to review the registrar's taxation, which came before his Honour on 8th June.

Mr. Garrick in support of the summons.

The Attorney-General (Mr. Udal) showed cause against the summons to review, and took the preliminary objection that the summons was irregular and could not be sustained inasmuch as the proper course of practice had not been followed and the registrar served with written notice of the objections made to his taxation in conformity with the rules relating to the taxation of costs, and this not having been done his Honour had no jurisdiction to hear the summons.

His Honour, however, decided to hear the matter.

Mr. Garrick referred to rule 378 of the Procedure Rules and contended that under that rule the Court had complete discretion as to all costs, and that if none were awarded or ordered to be paid by either party, none could be taxed against such party, even although that other party was successful. He also referred to the note at the end of the Table of Fees contained in Schedule B to the Procedure Rules in support of his contention. He had also questioned certain items of the taxed costs, but now intimated that he did not intend to press those objections, but that his objection went to the principle of allowing any costs at all, they not having been "awarded" at the trial.

The Attorney-General, in opposing the summons, contended that the practice in Fiji was the same as it was in England in this respect, namely, that where nothing had been said at the trial as to the disposal of costs the costs followed the event unless otherwise ordered by the Court, and, in this case, no application had been made to deprive the successful plaintiff of his costs. He referred to Order 65, rule 2, of the English Procedure Rules, which provided that where issues in fact and law are raised the costs of the several issues respectively shall, unless otherwise ordered, follow the event, and contended that though that rule was merely declaratory of the previous practice, the new rule of practice which came into force in this Colony on the 1st January last enacting that where no other provision is made by the Rules of the Supreme Court of Fiji the procedure and practice for the time being of the Supreme Court of Judicature in England shall be in force, left no doubt as to what the practice was.

His Honour reserved his decision and on the 12th June delivered judgment.

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H. S. BERKELEY, C.J. The summons taken out by the defendant to review the taxation of the master of the bill of costs presented by the plaintiffs must be dismissed, for the defendant has not complied with the rules regulating the reviewal of taxations. He has come to me without first calling on the taxing-master to reconsider his order on objections written and filed. The case is not therefore ripe for reviewal by me and the summons must be dismissed; but as the practice respecting reviewal of taxation is not yet well established and as I think the master has taken a wrong view of the rights of the parties and as it is the desire of both parties to obtain without further cost an expression of opinion from me on the question of practice whether an omission to make an order for costs at the trial deprives the successful party of his costs, I will dismiss the summons without costs and proceed to consider the practice question raised which is as follows:—No order for costs having been made at the trial is the plaintiff as the successful party entitled to his costs against the defendant? For the plaintiff it is contended in the affirmative that under Order 65, rule 2, of the English rules of practice, incorporated, it is argued, with our practice by the Supreme Court Rules, 1893, costs "follow the event unless otherwise ordered," that there was no order depriving him of his costs and therefore they follow the event, that is to say, they go to him as the successful party. For the defendant, it is contended that Order 65, rule 2, is not in force here; that the English rules of practice are only in force when no provision is made by our own rules and that provision is made by rule 378 of the Supreme Court Rules. It is contended that inasmuch as under rule 378 the judge is empowered to "award and apportion" costs in each case it is necessary

for him in each case to make an award before costs can be claimed, that if at the trial nothing is said as to costs no "award" can be said to have been made and consequently no one party can be entitled to costs as against the other party to the suit. It seems to me that this contention of the defendant is right. Rule 378 is identical with a portion of Order 65, rule 1, from which it has been adopted. It is very similar in language and quite identical in so far as it gives a discretion over the costs to the presiding judge. But it differs from Order 65, rule 1, in its language in so far as it is more directory and in a sense it seems to me mandatory. After declaring the costs of the whole action to be in "the discretion of the Court," so far following Order 65, rule 1, it continues, "and the Court shall have full power to award and apportion costs," &c., so far differing altogether and widely from Order 65, rule 1, in which no such words appear. Now what is the effect of these words in the rule under which the Court is given a discretion as to costs? It seems to me that the effect is this; that where in the exercise of its discretion the Court thinks costs should be given it shall "award" them and if need be apportion them. I think that before costs can be claimed by either party against the other it is necessary to show that costs have been "awarded" by the Court. In the case under consideration no costs were asked for; none were awarded; and consequently none can be claimed by either party against the other. I do not think that Order 65, rule 2, can be taken as incorporated into our practice by the Supreme Court Rules, 1893, for these rules only bring the English rules into force where no provision is made by the Supreme Court Rules, and I am of opinion that Supreme Court Rule 378 provides for every case that

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can come before the Court. The words of the rule so far as material are:—

> The costs of the whole action and of every particular proceeding therein and of any proceedings before the Court shall be in the discretion of the Court and the Court shall have full power to award and apportion costs in any manner as it may deem proper.

I think the taxation by the master must be regarded as having been set aside on the ground that there was no authority to tax plaintiff's costs as against defendant, no costs having been awarded to plaintiff.

Order made accordingly.

July 12.

[CIVIL JURISDICTION.]

AGENT-GENERAL OF IMMIGRATION *v.* BANK OF NEW ZEALAND.* (No. 2.)

Costs—Civil Procedure Rules, r. 378*—Schedule B.*

The Court has power to award costs to a successful party upon an application being subsequently made for that purpose, although no application for such costs had been made to the judge at the trial.

The same counsel appeared as in the last case.

The facts and arguments sufficiently appear from the judgment:—

H. S. BERKELEY, C.J. This was a motion by the plaintiff, subsequent to the trial, for an order awarding him the general costs of the action.

The trial had taken place before me without a jury, on the 20th of May last, when judgment was given for the plaintiff.

No application was made at the trial for costs and in consequence no order was then made awarding costs.

Taking the view that costs followed the event unless otherwise ordered, the plaintiff as the successful party

* See last case.