

time, and that the accused would not have had an opportunity of concealing the carcase more effectively had he wished to do so. But we have this fact, that the skin was found in the veld about 800 yards from the accused's hut, and the accused's hut was the nearest hut to the spot where it was found; that half of the carcase of the sheep, together with the head, was found hidden under a tub on the stoep of appellant's hut, and that seems to me sufficient to establish possession on his part. He must be taken to have been in possession. It was then open to him to give an explanation and satisfy the Court that he was ignorant of the presence of the meat on his stoep hidden under the tub. The evidence he gave, and that of the little boy, was not accepted by the magistrate, and knowing the habits of natives, and taking into consideration the improbability of a boy of fifteen years slaughtering a sheep and taking half the carcase to his house, without letting his father, sister, or anybody else, know about it, I am not surprised that the magistrate did not accept the explanation offered by the appellant.

The sentence is a severe one; but the legislature clearly intended that stock theft should be severely punished, and gave the magistrate far higher jurisdiction than he has in ordinary cases. He has jurisdiction, for a first offence, to impose twelve months' imprisonment and twenty-four lashes. Had the magistrate given six months' imprisonment and eight lashes, I do not think we should have interfered. The magistrate probably thought it better to give a longer term of imprisonment in view of this being a first conviction, and I have no doubt he made it twelve months in consideration of the fact that he has not given lashes, which he could have done under the law. Therefore, although it is a severe sentence, I do not think we should interfere with the magistrate's discretion.

[G. v. P.]

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GABASHANE v. KAPLAN.

1915. September 15. MASON, BRISTOWE and CURLEWIS, JJ.

*Costs.—Criminal cases.—Magistrate's court.—Taxation not necessary.*

There is no provision for taxing an attorney's bill of costs in a criminal case in a magistrate's court, and in the absence of any agreement, the attorney is entitled to recover a reasonable remuneration for his services.

*Yates v. Elliott* (10 E.D.C. 59) followed; *Layton v. Oehley* (1909, E.D.C. 101) not followed.

Appeal from a decision of the magistrate, Krugersdorp.

Respondent, an attorney, sued appellant for the sum of £37 13s. 2d., being (a) £37 0s. 8d. for fees and disbursements in connection with professional services rendered in defending appellant during a preparatory examination upon a charge of murder, and (b) 12s. 6d. for other disbursements on appellant's behalf. As regards the amount of £37 0s. 8d., appellant took the exception that as the respondent's bill of costs had not been taxed that amount could not be recovered. The magistrate overruled the exception and gave judgment in favour of respondent for £37 13s. 2d. with costs.

*B. de Korte*, for appellant.

*T. J. Roos*, for respondent.

MASON, J.: In this case the plaintiff, an attorney, sued the defendant for £37 13s. 2d., being costs in connection with the attorney's appearance in the magistrate's court upon a preliminary examination against the defendant for murder, and various items of service connected with the appearance and instructing counsel for the defence. The magistrate gave judgment for the sum as prayed. The whole question at issue is whether that judgment is wrong, on the ground that the bill was not taxed. It is claimed that the bill should be taxed, mainly on the authority of *Layton v. Oehley* (1909, E.D.C. 101), a decision of a single judge in the Eastern Districts' Court, where it was held that the costs in a criminal appeal were not recoverable by an attorney-at-law without a prior taxation. It is also contended that the contract between an attorney and his client, unless a lump sum is agreed on, is that the client shall only pay the taxed bill. Mr. *de Korte* has quite fairly admitted that Law No. 12 of 1899, of the Transvaal, does not apply to a case of this kind. We have, therefore, to deal with the question under the common law. It is admitted that there is no tariff of fees in criminal cases and no special provision for their taxation. One would think, on general principles, therefore, that the attorney stands just in the same position as any other person rendering services for which no specific contract price has been agreed upon, such as a doctor and other professional men who are in a similar position. There can be no question, of course, that in

all these cases it is sometimes difficult to arrive at an exact and fair amount; but it is not beyond the powers of the Court to decide questions of that kind. With reference to the decision in *Layton v. Oehley* (*supra*), that is, in my opinion, not reconcilable with a prior decision in the same Court, given by a full Court and not by a single judge. In the case of *Yates v. Elliott* (10 E.D.L. 59) there was an action on a bill of costs for work done for the defendant on a criminal charge before a police officer and afterwards before a magistrate. One of the objections was that it was untaxed. With reference to that the JUDGE-PRESIDENT, with whose judgment JONES and MAASDORP, JJ., concurred, said: "As to the supposed necessity for the taxation of this bill before action taken, it is disposed of by the cases quoted." I need only refer to one of those cases—*Manby v. Williams* (5 S.C., p. 183). That was also an action upon a bill of costs for attorney and client charges. In the magistrate's court objection was taken that it had not been taxed. The CHIEF JUSTICE, Sir Henry DE VILLIERS, said: "This appeal must be allowed. It is quite clear that there is no provision made for taxing the costs between attorney and client in the magistrate's court." And the matter was directed to go back to the magistrate on its merits. In the face of that decision, I think the magistrate's judgment was right, and this appeal must be dismissed with costs.

BRISTOWE, J.: I concur.

CURLEWIS, J.: I always understood that an attorney's bill of costs in a criminal case could not be taxed. I was under the impression that there had been a decision on the point, either in the late High Court or the present Court. It seems to be quite clear that, in the absence of an agreement between the client and the attorney as to what the remuneration shall be, the attorney is entitled to sue for a reasonable remuneration for his services. It is for the Court to decide, in the absence of an agreement, what the remuneration shall be.

Appellant's Attorney: *C. M. de Korte*; Respondent's Attorney: *A. Kantor*.

[A. D.]

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