

The facts of the matter relative to defendant's bill of costs are that the defendant called upon the plaintiff, a peregrinus, to furnish security for costs. After service of a notice in terms of Rule 47(1), plaintiff's attorney requested that the matter be held in abeyance until Legal Aid was granted. Correspondence followed between the parties wherein the form of security was discussed; the conditions of the bond of

This is a review of taxation in terms of Rule 48 of the Uniform Rules of Court and arises consequent upon the disallowance by the taxing master of certain items in the defendant's bill of costs after an order was granted in favour of the defendant that the costs of an application that the plaintiff furnish security for costs be paid by plaintiff.

JENNIFER J.

REVIEW OF TAXATION

1984/10/25/2001

SOUTH AFRICAN TRANSFER SERVICES Defendant

NOT RECORDED
 GENERALIST

SIMHO JACOBS

Plaintiff

In the matter between:

(SOUTH AFRICAN TRANSFER SERVICES)

1.5.1985

1.5.1985
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The defendant contends that Rule of Court 47(1) makes it a pre-requisite to an application to compel security that a party seeking security for costs must first deliver a notice as envisaged by Rule 47(1) demanding security for costs and only thereafter, in the event of default on the part of the party served with such notice, can the party demanding security proceed to make an application to Court. Thus, contends the defendant, the notice in terms of Rule 47(1)

Plaintiff was then advised that unless security was furnished by 31st August 1984 an application to compel the furnishing of the security fixed would be made on 3rd September 1984 and this the taxing master regarded as the demand preceding the application and thus forming part of the costs of the application. Thereafter all items in the bill of costs were allowed on taxation save for correspondence between the parties concerning a dispute which the parties sought to settle, as to consolidation with a related matter.

security; consolidation of a related matter; and, finally, should the plaintiff fail to comply with certain terms. Eventually plaintiff requested that security be argued before the registrar. Plaintiff's attorney failed to appear before the registrar on the appointed date and security was fixed by the registrar in the sum of R2 000,00. All the items in the defendant's bill of costs relating to the foregoing were disallowed by the taxing master.

of necessity become a part and parcel of the litigation to court. It is further submitted that the disallowed items in the bill of costs relate to communications from and to plaintiff's attorney in response to the notice in terms of Rule 47(1), and that they relate directly to the application subsequently brought in as much as plaintiff sought to avoid any duty to furnish security for costs and to avoid any application being brought to compel the furnishing of such security. It is further submitted that in respect of the costs incurred after delivery of the Rule 47(1) notice that these arose directly as a result of communications received from plaintiff's attorneys by defendant's attorneys and that inasmuch that these costs were initiated by the plaintiff and not by the defendant, the plaintiff should be held liable therefor. The taxing master in his report has stated inter alia as follows:

"A party entitled and desiring to demand security for costs from another shall deliver a notice in terms of Rule 47(1) setting forth the grounds upon which such security is claimed, and the amount demanded. Thereafter, if the amount of security only is contested the registrar shall, in terms of Rule 47(2) determine the amount to be given.

Should the plaintiff, for example, be a peregrinus and the defendant accordingly be entitled to security and should the plaintiff be successful in his claim against the defendant, then the defendant cannot tax a bill of costs against the plaintiff for his costs incurred in relation to his demand under Rule 47(1), the appearance

the registrar and part of the security and correspondance betw in the parties about the security, because the taxing master has no authority to tax such costs in the absence of an order for costs against plaintiff.

The taxing master cannot usurp the functions of the Court and grant costs; he can only tax it. The fact that one party initiates costs and should be held liable therefor and further that the adversary should be entitled to recover such costs as between party and party, is no authority for the taxing master to tax such costs because his jurisdiction extends to such cases only where there is an order to pay costs or the liability arises out of an agreement to pay costs - Blasum v Taxing Master 1947(1) SA 721.

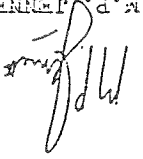
Under the principles of party and party costs - see paragraph 30 of "Law of Attorneys' Costs and Taxation thereof" by Jacobs and Ehlers - the taxing master shall allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice - Rule 70(3) and paragraph 31 of Jacobs and Ehlers.

Accordingly, costs incurred in connection with something incidental or collateral to the litigation and not as a direct or necessary step therein, are not party and party costs - Wouton and another vs Martine 1968(4) SA 738 (T) at 744 C - E; Mboda v A A Mutual Insurance Association Ltd 1978(4) SA 546 (SE); Harvey v Mackenzie 1978 (3) SA 803 (C)

The above statement of the taxing master in my opinion sums the position up admirably. The notice in terms of Rule 47(1), whilst it may well form part of the party and party costs in

JUDGE OF THE SUPREME COURT

M. P. JENNINGS



In the result the review is dismissed.

Master as indeed was in fact done by him.

party and party costs should be disallowed by the taxing

of security and, unless incorporated by the Court into

incidental costs to the application to compel the furnishing

at best for defendant, in the nature of collateral and

items disallowed in the defendant's bill of costs other than,

to compel the furnishing of security nor are any of the other

the main action, is not in any part of the application