would be a fatal obstacle where the contents of the will and its due execution were satisfactorily proved. The present case differs, however, *toto caelo* from *Phibbs's* case in that in that case there was reliable evidence that there was a proper attestation clause duly signed by the witnesses and, further, that a letter written by the testator to his executor confirming the contents of the will was before the court.

I am satisfied that the learned trial judge was right in coming to the conclusion that the evidence adduced before him in this case was insufficient to establish the will propounded to his satisfaction and that the appeal ought to be dismissed.

DEANE, C.J. (G.C.) and WEBBER, C.J. (Sierra Leone) concurred.

Appeal dismissed.

YANNI v. BARLATT

West African Court of Appeal (Deane, C.J. (G.C.), Butler-Lloyd, J. (Nig.) and Macquarrie, J. (Sierra Leone)): October 10th, 1934

[1] **Civil Procedure — costs — taxation — costs incurred outside Sierra Leone — Supreme Court cannot order taxation of bill of costs for work done in foreign courts — consent of parties immaterial:** The Supreme Court of Sierra Leone has no jurisdiction to order taxation by its taxing master of a solicitor's costs for work done in the courts of the Gambia, and the consent of the parties cannot confer on the court a jurisdiction which it lacks (page 373, lines 15–19).

[2] **Civil Procedure — costs — taxation — Supreme Court cannot order bill of costs for work done in West African Court of Appeal sitting in Sierra Leone to be taxed according to law of the Gambia in which case tried in first instance — consent of parties immaterial:** The Supreme Court of Sierra Leone has no jurisdiction to order that a solicitor's costs for work done in the West African Court of Appeal sitting in Sierra Leone, on an appeal from the Gambia, should be taxed in accordance with the laws of the Gambia, and the consent of the parties cannot confer upon it the power to tax otherwise than in accordance with the laws of Sierra Leone (page 373, lines 19–24).

[3] **Courts — Supreme Court — jurisdiction — taxation of costs — Supreme Court cannot order bill of costs for work done in West African Court of Appeal sitting in Sierra Leone to be taxed according to law of the Gambia in which case tried in first instance — consent of parties immaterial:** See [2] above.

[4] **Courts — Supreme Court — jurisdiction — taxation of costs — Supreme Court cannot order taxation in Sierra Leone of bill of costs for work done in the Gambian courts though appeal subsequently heard by West**

African Court of Appeal sitting in Freetown — consent of parties immaterial: See [1] above.

[5] **Courts — West African Court of Appeal — costs — when appeal heard in different jurisdiction from that of first instance, costs on appeal not to be taxed according to law of first instance:** See [2] above.

[6] **Legal Profession — remuneration — costs — bill of costs for work done in foreign courts not to be taxed by Master of Sierra Leone Supreme Court — consent of parties immaterial:** See [1] above.

[7] **Legal Profession — remuneration — costs — bill of costs for work done in West African Court of Appeal sitting in Sierra Leone not to be taxed according to law of jurisdiction in which case tried in first instance:** See [2] above.

The respondent brought an action in the Supreme Court against the appellant to recover costs for professional services.

The respondent, a solicitor, rendered the appellant professional services in a case tried before the Supreme Court of the Gambia and later heard on appeal before the West African Court of Appeal in Sierra Leone. For these services the respondent sent the appellant two bills of costs. When these were not paid he brought the present proceedings against his client in the Supreme Court of Sierra Leone. The appellant affirmed that the bills of costs had not been taxed in the Gambia, and that application to tax them there had not been made. Thereupon the court ordered, with the consent of both parties, that the respondent's costs be referred to its taxing master, to be taxed by him according to the rules of the Supreme Court of the Gambia. Both parties duly appeared before the taxing master who issued certificates of taxation in respect of the two bills. The appellant, who objected to certain aspects of the assessment, applied for a review. The learned Chief Justice upheld one of the certificates, but varied the amount on the other one.

The appellant appealed to the West African Court of Appeal against the review. The respondent contended that there was no appeal from a review of taxation by the Chief Justice in chambers, as distinct from a judgment delivered in court upon the report of a referee, which would be subject to appeal.

The court further considered whether the Supreme Court of Sierra Leone had power to order the taxation in Sierra Leone of a bill of costs for work done in the courts of the Gambia, and whether the consent of the parties could confer such power. The parties both contended that the order of the Supreme Court was misleading in that it was intended to refer the bill of costs, not

necessarily to the taxing master, but to someone versed in the taxing laws of the Gambia who could assist the court in deciding the amount due to the respondent for his services: the fact that he happened to be the taxing master was incidental.

The court dismissed the appeal but set aside the order appealed from and ordered a retrial.

C.J. Kempson and *C.E. Wright* for the appellant;
Beoku-Betts for the respondent.

DEANE, C.J. (G.C.):

In this matter Mr. Betts for the respondent has taken a preliminary objection that no appeal lies.

The circumstances of the case must be shortly stated in order that his argument may be followed.

On April 18th the respondent, who is a solicitor of this court, sued out a writ against the appellant, who resides in Sierra Leone, for the recovery of the sum of £546.2s. 6d. which he alleged to be due to him by way of costs for professional services rendered in the case of *Yanni* v. *Horr* which was a matter tried before the Supreme Court of the Gambia, and later heard on appeal before the West African Court of Appeal in Sierra Leone. The respondent attached to his writ bills of costs which he alleged had been delivered to the appellant on February 15th, 1933.

When the matter came on for trial the appellant filed an affidavit in which he stated that the bills of costs had not been taxed in the Gambia nor had application to tax them in that Colony, so far as he knew, been made. Thereupon an order was made by consent of the parties, hereinafter referred to as the order of May 6th, 1933, in which it was ordered that "the plaintiff's [respondent's] bill of costs, charges and disbursements delivered to the defendant [appellant] on February 15th, 1933, for the recovery of which this action is brought, be referred to the Master" (of this court) "to be taxed according to the Rules of the Supreme Court of the Colony of the Gambia to the records of which court reference shall be made if necessary, and that the plaintiff [respondent] give credit at the time of taxation for all sums of money by him received from or on account of the defendant [appellant]. And it is further ordered that all further proceedings in the action be stayed pending the reference, and that the costs of this application be costs in the cause — liberty to apply."

Following on this order the parties appeared before the Master

who, after hearing them on the bills, issued certificates which read: "Taxed as between solicitor and client at the sum of £232.10s. 4d. which I hereby certify and allow this 15th day of December, 1933", and "Taxed as between solicitor and client at the sum of £211.16s. 0d. which I hereby certify and allow this 15th day of December, 1933."

Thereupon the appellant, being dissatisfied with the ruling of the Taxing Master as to certain objections taken by him on taxation, took out a summons for review by the Chief Justice under O.LVI, r.30 (36) of the local Supreme Court Rules (*cap.* 205). This summons was heard, and the learned Chief Justice delivered a ruling on December 28th, 1933 in which he upheld the Master's certificate on one bill but varied it as to the other; against his order this appeal is brought.

Now it is, I think, clear that the court would have no jurisdiction to order taxation by a Master of the Supreme Court of this Colony of a solicitor's bill for work done in the courts of the Gambia, nor could consent of the parties avail to confer on the court a jurisdiction which it lacks. Again, this court has no power, I think, to order that a solicitor's bill for work done in the courts of Sierra Leone in an appeal case should be taxed according to the laws of the Gambia, nor could the consent of the parties confer upon it power to tax otherwise than in accordance with the laws of this Colony. If therefore the order of May 6th, 1933 purported to do either or both of these things it was, in my opinion, a nullity.

Both parties, however, have submitted that, although the order on the face of it is an order to tax bills according to the laws of the Gambia, that is mere nomenclature, due to the fact that the work for which remuneration is sought was done by a solicitor, and that the order of May 6th, 1933 in effect operated to refer to a gentleman, who happened to be Master of the court incidentally, but who was versed in the taxing law of the Gambia, the bill of the respondent for his services, in order that he might assist the court with his views as to the reasonableness of the charges made and that the decision to be given eventually would be the decision of the judge as to the amount due to the respondent for his professional services. They in fact contend that by the order there was a reference made to the Master, although they differ as to the effect of the reference, Mr. Betts contending that the Master's report is final, while Mr. Wright submits that the judge would be in no way bound by it but would have power to accept or reject or

vary it as he thought fit — it is not in my opinion necessary to decide which of these conflicting views is right — since, however, we might be disposed to interpret the order in the sense for which counsel contend, and which perhaps they had in view when they consented to it, we cannot possibly do so in view of what has actually happened in this case. Not only is the order itself in terms an order to the Master to tax the two bills submitted, but the Master did in fact tax them and duly affix his certificate thereto that he allowed so much on each bill, and following on that the procedure when a bill has been taxed in these courts has been followed and the power of the learned Chief Justice to review the taxation invoked — while no report has ever been rendered to the court nor did the learned Chief Justice sit as a judge in court to deliver judgment, as he would have had he been acting on the report of a referee, but as Chief Justice in his chambers to review a taxation.

Mr. Betts further submits that in any case, there being no appeal from a review of taxation by the Chief Justice, this appeal cannot lie, since the order was not the order of a judge and so subject to appeal under the West African Court of Appeal Ordinance. Now his argument may be quite sound, and might no doubt have the effect for which he is now contending in an ordinary case when a bill has been properly taxed and reviewed; if, however, we were to accede to that view in this case and dismiss the appeal *simpliciter* the result would be that the order appealed against would stand, and the respondent would obtain the benefit of a taxation which the court had no power to order. The court would, in fact, be giving effect to an order which is a nullity since everything done in this case has been done under the order of May 6th, 1933 which, as we have seen, the court had no power to make. Under the circumstances, therefore, we think that the proper order to make is to dismiss the appeal, but to set aside the order appealed from and send the case back for a new trial.

The confusion has arisen through the consent order being so carelessly drawn as not to effect the intentions of the parties, and as this is due to the neglect of both sides equally we think each party should pay his own costs of this appeal and of the abortive proceedings in the court below.

BUTLER-LLOYD, J. (Nig.) and MACQUARRIE, J. (Sierra Leone) concurred.

Order accordingly.