

## ORIGINAL CIVIL.

*Before Mr. Justice Russell.*

1907.

February 19.

DAHIBAI, PLAINTIFF, v. SOONDERJI DAMJI BY HIS GUARDIAN  
ad litem VELJI LAKHMICHAND, DEFENDANT.\*

*Solicitor's costs—Taxation—Work not ordinarily falling upon Solicitors—  
Work of meritorious character.*

K. was the Solicitor for the defendant in a suit brought to obtain probate of the will of one Damji Lakhmichand. The defence set up was that the will was a forgery. Being unable to procure the services of an expert, K., after special study for the purpose, himself carefully studied every letter of the alleged will and despite Counsel's opinion that he had no chance of succeeding, he eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs K. claimed extra payment for the additional and unusual work incurred by him.

*Held*, in review of taxation that K. was entitled to be separately remunerated for the special work done by him, as it was in fact a charge for work done which would not ordinarily fall upon a Solicitor in the preparation of the brief.

In Chambers.

The plaintiff brought this suit for probate of the alleged will of her husband Damji Lakhmichand.

The suit was tried by Batchelor, J., and dismissed with costs on the ground that the will which was a holograph will set up by the plaintiff and the three letters supporting the same were forged and that the plaintiff was privy to the forgery. The Court further ordered that "the plaintiff do pay to the defendant his costs of this suit when taxed and noted in the margin hereof and this Court doth further order that the defendant's attorney and client's costs when taxed and noted in the margin hereof be paid out of the estate of the said deceased by the receiver of the said estate." On the matter coming up for taxation before the Assistant Taxing Master Mr. Mody, the defendant's Solicitor Mr. Kanga claimed to be remunerated for special work done by him in qualifying himself as an expert in handwriting, no other expert's opinion being available. He alleged that he had been engaged for 128 hours on the special work of the study of the handwriting. He charged a lump sum of Rs. 6,000 for the

\* Suit No. 21 of 1904.

observations on the merits of the case. Out of this sum the Assistant Taxing Master allowed Rs. 2,200. Dissatisfied with this taxation Mr. Kanga carried before the Assistant Taxing Master written grounds of objection and applied for a review of the taxation. His main contention being that the sum of Rs. 6,000 charged by him was taken by the master for instructions for brief only, whereas the said sum included remuneration for the special work of an expert personally done by Mr. Kanga at his client's special instructions and not in his personal capacity as a Solicitor, and that the sum allowed was insignificant and did not by any means provide for the work done by him. Mr. Kanga further pointed out that the remuneration claimed by him for the study of the handwriting did not form part of instructions for brief and that for such instructions alone ordinarily the allowance would be of Rs. 2,400, and he mentioned the fact of the hearing having lasted twelve days as an element to be taken into account in arriving at this sum, and also that the larger value of the estate at stakes should be taken into account. For that part of the work he claimed only Rs. 2,160.

The Assistant Taxing Master gave the following judgment:—

The only item in the present application for review of taxation on which I have to record my decision is a discretionary item. Mr. Kanga thinks that the allowance of Rs. 2,200 for instructions for brief in this suit is inadequate and asks that it should be raised to Rs. 6,000.

According to Mr. Kanga the work done was heavy. He says in the first place that he was engaged 126 hours in doing the work of an expert. He had to compare the handwriting in a will which has been proved to have been forged and three forged letters with the handwriting of letters about 29 in number which have been admitted to be genuine. After the necessary comparison was made he had to write a report. For this part of the work he claims a sum of Rs. 3,840. This amount I do not hesitate to pronounce to be excessive.

The next part of Mr. Kanga's argument is that the suit lasted for 12 days and for each of those days he should be allowed Rs. 200 in addition to Rs. 25 per day already allowed to him for attendance in Court. Having claimed Rs. 3,840 for the work done and referred in the next preceding paragraph I fail to see what other important work he has done in this case, whether before or during the hearing of the suit, which would entitle him to an additional item of Rs. 225 per day.

Upon a reconsideration of all the facts of the case I have come to the conclusion that the taxation should stand.

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Examining the taxation by the light of Rule 565 of the High Court Rules, under which I have taxed the item of instructions for brief, I find that after deducting out of pocket charges in his bill there is a net balance of Rs. 6,467-12-0 which goes to Mr. Kanga as the total remuneration for the whole work done in this suit. This amount is, in my opinion, amply sufficient. In coming to this conclusion I have considered the nature of the case, the difficulties involved, the value of the estate to which this suit refers and other circumstances. The senior Counsel whom Mr. Kanga instructed gets in all Rs. 3,195. Mr. Kanga gets more than double this amount. The junior gets Rs. 1,515. Mr. Kanga gets more than four times this latter amount. The total fees paid to both Counsel amount to Rs. 4,710, whereas on the whole Mr. Kanga gets Rs. 6,467-12-0.

Thus, considering the allowance in dispute from all points of view and having regard to all the work done, I think it is impossible to enhance the amount.

For all these reasons the taxation should stand and the application for review will be dismissed.

No order as to costs.

Mr. Kanga's firm then applied through Counsel to the Chamber Judge Mr. Justice Scott for a review of the taxation, and he after taking evidence delivered the following judgment:—

SCOTT, J.:—In this case Mr. Kanga, one of the Solicitors for the defendant in the suit, brought in his bill a charge of Rs. 6,000 for the preparation of brief, and of that only Rs. 2,200 has been allowed by the Taxing Master. And this matter is brought before me on review of the Taxing Master's decision.

The Taxing Master says that the allowance made by him is in his discretion, and in that respect I agree with him. It is a matter of discretion, and I have no intention of interfering in any way with the figures that the Taxing Master thought fit to allow.

It is, however, necessary I think as a matter of principle to make certain remarks which may be brought to the Taxing Master's notice.

It is apparent from the statement which has been made before me by Velji Lakhmichand the guardian of the minor defendant that the work for which Mr. Kanga says that he is entitled to the greater part of the remuneration which he claims for the preparation of the brief was work which would ordinarily not be done by a Solicitor and work which in fact the guardian of the

minor did try to get done by an expert in handwriting, and it was only after all efforts failed that he induced Mr. Kanga rather unwillingly to take up the arduous work in this case, and as is shown by the judgment very necessary work of comparing letter by letter the will with documents admittedly in the handwriting of the deceased, and I have no reason to doubt that Mr. Kanga was put to a great deal of labour which has proved of great benefit to his client.

It is pointed out to me by the Advocate General that the costs of an expert qualifying himself to give expert evidence in a case are allowed on taxation in England and I think that upon the analogy of such allowances the Taxing Master should take into consideration the amount of special work which was done by Mr. Kanga in this case and should make his allowance accordingly without being bound by the fact that it appears in the bill of costs as a part of a lump sum charged for the preparation of the brief, but taking into consideration that it is in fact a charge for work which would not ordinarily fall upon the solicitor in the preparation of the brief.

It is only necessary to add in this case that the Taxing Master appears according to what is stated before me to have misapprehended one of the arguments advanced before him and that Mr. Kanga does not seek to charge Rs. 200 a day for attendance in Court in addition to the charge which has been disallowed in the claim for instruction for brief.

With these remarks the bill may be referred back to the Taxing Master to be dealt with in view of my remarks.

If the Taxing Master on reconsideration alters the allowance in favour of Messrs. Kanga and Patell the costs of this review of taxation will be allowed. Counsel certified against the estate of the minor defendant.

If the Taxing Master does not alter his allowance the costs of this review will not be allowed.

The matter was referred back to the Assistant Taxing Master who gave the following judgment:—

In this case there was a review of taxation by the Judge in Chambers. The item of instructions was Rs. 6,000. The item allowed was Rs. 2,200. That was

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inadequate and hence the application to the Chamber Judge for a review. The judgment of review is on the record. The important part of the judgment of Mr. Justice Scott is paragraph 5. Upon this part of the judgment the first question is "Is it a fact that the remuneration allowed to Mr. Kanga for the amount of special work done by him appears as a part of a lump sum charged for the preparation of the brief." The answer is to be found in Mr. Kanga's own bill. I see various items separately charged and various lump sums amounting to Rs. 400 separately allowed in all, as between attorney and client. Mr. Kanga knows this perfectly well. He instructed Mr. Davar and Mr. Davar told me how Mr. Kanga qualified himself, namely that Mr. Davar lent Mr. Kanga two books on forgery which Mr. Kanga read. Mr. Davar argued this on 27th April 1906 and Mr. Kanga was present. On that argument Rs. 500 were expressly allowed to Mr. Kanga for qualifying himself. Mr. Patell, who had originally taxed the bill, had allowed Rs. 1,700 only. I allowed Rs. 500 more on Mr. Davar's explanation. Mr. Kanga knows this very well.

The facts are certain :—

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| (1) Rs. 500 were allowed party and party   | } for special work. |
| (2) Rs. 400 as between attorney and client |                     |

It is very surprising that Mr. Kanga should have argued before a Chamber Judge as if special work had been ignored. He drew my attention to the item of Rs. 90 saying that it was charged by mistake. He is responsible for his bill. Out of Rs. 90 Rs. 75 were allowed as between attorney and client.

It cannot be said that the special work had not been taken into consideration in respect of this allowance. It was argued in Chambers that nothing had been allowed for special work. The object seems to be clear. It is a well-known rule that the Chamber Judge does not interfere with a discretionary item. I suppose therefore that this argument was urged with a view to cause such interference. It is very surprising that this argument was urged because remuneration for special work is to be found in the bill itself.

The second point is that the Chamber Judge in paragraph 6 of his judgment says (reads the paragraph) I will say what Mr. Kanga argued. His contention was that in cases like this Rs. 200 were allowed per day. I do not say in my judgment that Mr. Kanga wanted Rs. 200 a day for attendance.

I thought Rs. 2,200 allowed was the proper amount.

As regards Mr. Kanga's argument on the question of practice I never heard of any practice governing discretionary charges. There is no fixed rule. If such practice was in existence, would not Messrs. Little and Company's clerk, who is the most competent bill clerk I came across, have charged Rs. 2,400. Messrs. Little and Company had a greater right to do so because their bill was taxed between attorney and client, and Messrs. Little and Company were apparently satisfied with Rs. 1,300 allowed to them. Whereas Messrs. Little and Company's remuneration comes to Rs. 4,000, that of Messrs. Kanga and

Patell amounts to Rs. 6,000, making a difference of Rs. 2,000, which Mr. Kanga gets more and which is quite sufficient. Mr. Kanga did special work and therefore he gets Rs. 6,000.

Mr. Kanga argued that there was no difference in taxation between attorney and client. It is a rudimentary principle of the law of costs that there is a vast difference between the two. Mr. Kanga referred to Mr. Oliver. Mr. Oliver is here. The sooner Mr. Kanga disabuses his mind the better.

The facts are that some items of special work are separately charged and separately allowed. Another item of Rs. 500 was specially allowed. I had not ignored the special work as was argued before the Chamber Judge, and the Chamber Judge has acted very wisely in referring the matter back to the Taxing Master. He knew very well that he was dealing with an *ex parte* application.

It was Mr. Kanga's bounden duty to serve the copy of judgment on me. Still Mr. Kanga goes elsewhere. No doubt the master who taxed the bill was meant to reconsider the same. Mr. Kanga would have used better discretion if he had argued the matter before me. It is to be regretted that he did not do so.

No case is made out for my reconsideration. I say that what I have allowed is liberal. Mr. Kanga gets Rs. 2,200—party and party Rs. 300—attorney and client Rs. 500 for attending in Court, making together Rs. 3,000, and in a case like this the amount is quite sufficient.

The taxation will therefore stand.

Against this judgment Mr. Kanga appealed.

*Lowndes* for the appellant.

RUSSELL, J.:—In the matter of this taxation in suit No. 21 of 1904, I have gone through the papers with the utmost care that I could and I have heard Mr. Mody yesterday and also heard the excellent argument of Mr. Lowndes on the subject of this taxation.

It has been urged before me in the first place that looking at Mr. Justice Scott's order which said that if the Taxing Master increased the costs of Mr. Kanga, Mr. Kanga should have his costs, if he did not do so Mr. Kanga should lose his costs, I have no power to go into the question of the review. Again I must say I regret that the case could not have gone before Mr. Justice Scott again so that he might have dealt with it as he was originally seized of it and he made the original order but as

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that is impossible now it is useless to say anything more about it.

It seems to me that looking at Mr. Justice Scott's judgment, it is clear that he intended to lay down a principle to be followed by the Taxing Master. I refer to the passage in his judgment where he says "It is pointed out to me by the Advocate General that the costs of an expert qualifying himself to give expert evidence in a case are allowed on taxing in England and I think that upon the analogy of such allowances the Taxing Master should take into consideration the amount of special work which was done by Mr. Kanga in this case and should make his allowance accordingly without being bound by the fact that it appears in the bill of costs as a part of a lump sum charged for the preparation of the brief, but taking into consideration that it is in fact a charge for work which would not ordinarily fall upon the solicitor in the preparation of the brief."

This is the principle on which Mr. Justice Scott wished the taxation to be gone into. After that order was made Mr. Mody said that he had gone into the question of the special work done by Mr. Kanga and had allowed for it. Now I think that it is extremely unfortunate that in the bill of costs the allowance for the special work done by Mr. Kanga was lumped together with the instructions for the brief, and I must say that in future it would be better if solicitors whenever they do some special work would separate it from the ordinary work of the instructions for the brief. It appears to me that Mr. Mody has not given due weight to those remarks of Mr. Justice Scot because he dealt with the question of instructions for the brief as including this special work done, and the further question of principle is involved in the case, which is of a very great importance to my mind, and that is I could not ascertain from Mr. Mody whether he had followed the directions in the original decree which allowed Mr. Kanga attorney and client costs. It is no question of the words "as between" "or between" at all. Mr. Kanga should be allowed attorney and client costs.

Now looking at the affidavit of Mr. Kanga the work that he did was of a very meritorious character indeed; and he stuck to

his opinion as to the forgery apparently in spite of the opinion of two eminent Counsel, who said that Mr. Kanga had no leg to stand upon or something to that effect.

In my opinion therefore I am entitled to review the taxation.

It is sufficiently proved to my mind that for the period of 128 hours Mr. Kanga was studying the handwriting of the deceased men in such a way as to make himself thoroughly acquainted with the handwriting, and as he told me himself he was examining every single letter of the alphabet in the forged will and the three letters with every single letter in the 29 genuine letters. It appears to me from that this was special work which Mr. Kanga was entitled to be remunerated for.

Therefore in my opinion Mr. Kanga is entitled to 128 hours for preparing himself as to the question of forgery of this will.

Then with regard to the amount at the end of Mr. Lowndes' argument I was inclined to fix a somewhat large sum. But I have considered the matter and I have carefully gone into the bill of costs, and I have considered all the arguments and I think I should be justified if I allowed Mr. Kanga Rs. 5 per hour for 128 hours.

I ought to point out lastly that it is material to observe that this estate is an estate of a considerable value, and the next friend of the minor on whom the onus of proving the forgery lay, is perfectly willing to pay the extra sum that the Court thinks reasonable for Mr. Kanga to demand.

The costs of Mr. Kanga before Mr. Justice Scott and before me and before the Taxing Master throughout to be allowed to him.

*Counsel certified.*

B. N. L.

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