

ORIGINAL CIVIL

Before Sir Lawrence Jenkins, R. C. I. E., Chief Justice, and
Mr. Justice Batchelor.

1909 *IN RE* THE COSTS AND EXPENSES OF MESSRS. CRAWFORD, BROWN & CO
January 9.

AND
IN RE BAI DOSSIBAI, WIDOW, AND OTHERS,

AND
IN RE JIWAJI FRAMJI MARKER AND OTHER.

BAI DOSSIBAI, WIDOW OF FRAMJI CAWASJI MARKER AND
ANOTHER, APPELLANTS, *v.* MESSRS. CRAWFORD, BROWN & CO.,
SOLICITORS, RESPONDENTS AND APPLICANTS. *

High Court Rules, Rule No. 544 (1) — Bill of costs — Order for taxation — Business not transacted in Court — Practice.

Rule 544 of the Rules of the High Court does not empower a Judge to make an order on an attorney's application for taxation of his bill of costs for business not transacted in Court, unless such order be by consent, and the Court has not any inherent power on which the jurisdiction can be vested.

Sayers v. Walond (2), followed.

This was an appeal from an order of Mr. Justice Davar made in Chambers.

The facts of the case appear sufficiently from the judgment of the lower Court.

DAVAR, J. :—On the 25th of July 1907 Messrs. Crawford, Brown & Co., Solicitors of this Court, obtained a summons calling upon the respondents to show cause why their bills of costs should not be lodged for taxation and be taxed by the Taxing Master of this Court. The respondents are some of them executors and trustees under the will of the late Mr. Framji Cawasji Marker and some of them trustees under two settlements known as the Charity and the Family Settlements made on the 29th of May 1888.

* Appeal No 1503.

(1) By order of the Chief Justice the following Rule was substituted for Rule No. 544 of the High Court Rules, 2nd edition, 1907, as Rule 544 (*vide Bombay Government Gazette* dated 4th February 1908, Part I, page 152) :—

The Taxing Officer shall tax the bills of costs on every side of the Court (except the Appellate Side) and in the Insolvent Court. All other bills of costs of attorneys shall also be taxed by him when he is directed to do so by a Judge's order.

(2) (1822) 1 Sim. & St. 97.

Some of the respondents did not appear when the matter was brought on for argument before me on the 12th instant. Mr. Runchordass appeared for the respondent, Kaikhosru Framji Marker, and supported the application for taxation of the bills referred to in Mr. Tenant's affidavit and enumerated in the list annexed to that affidavit and marked A. The respondent, Dinsha Framji Marker, appeared for himself and as a duly constituted attorney for his mother Dossibai and objected to any order being made against him and his mother for taxation of the applicants' bills. He first of all objected to the form of the summons and contended that Messrs. Crawford, Brown & Co. were not entitled to ask for taxations of several bills for costs incurred in several matters in one summons. His next ground of opposition was that some of the costs, claimed by Messrs. Crawford, Brown & Co., were cost unnecessarily incurred by some of the other respondents and the trust estates were not liable to pay the same.

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There is no substance in the first contention. In the matter of Messrs. *Wadia, Gandhi & Co. v. Purshotam*⁽¹⁾, I have held that the form of procedure by one summons under circumstances similar to the circumstances in these proceedings was perfectly proper. I think it is unnecessary to discuss this further beyond observing that all the respondents are closely connected being widow, sons and son-in-law of the deceased Framji Cawasji Marker, who died having made two settlements and a will prior to his death and all the respondents are either executors and trustees under the will or trustees under one or other of the settlements and that bills sought to be taxed are all in connection with either the will or the settlements.

The directions I propose to give to the Taxing Master will however obviate all difficulties, if any, really exist on the score of there being only one summons in respect of the seven bills sought to be taxed.

On the other point my mind was not free from doubt and I took time to consider the matter before passing my orders on the summons. Rule 544 provides that the Taxing Master, besides

(1) (1907) 32 Bom. 1.

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taxing bills of costs on every side of the Court, etc., "shall also tax all such attorney's bills of costs as he may be directed to tax by a Judge's order on consent of the parties, or on the application of any party chargeable with the bill". This rule gives a party chargeable with the bill power to apply to have his attorney's bill taxed but it makes no corresponding provision enabling the attorney to apply to have his bill taxed without the consent of the party chargeable therewith. If the rule was exhaustive it would be manifestly unfair to the attorneys. I could hardly conceive that the Court when framing the rule and providing a summary remedy in favour of a party would intend to deprive its own officers of the benefit of that summary procedure and leave them to recover their claims by a suit. I do not think the Rule is exhaustive. Apart from the rule the Court has, I think, inherent jurisdiction to make any order that seems to the Court reasonable and necessary in the interests of justice when one of its officers applies to the Court for an order for taxation of his costs due to him by his client. The English practice on this subject and other matters relating to solicitors is mainly governed by the Solicitors Act, 1843 (6 & 7 Vic. c. 73) and other later legislative enactments. See Annual Practice, 1907, p. 406 of Vol. II. That these enactments are not exhaustive and have not taken away from the Court its inherent jurisdiction in matters such as the one now before me appears clearly from the pronouncements of the Lord Chancellor, Lord Halsbury in the case of *Storer & Co. v. Johnson*⁽¹⁾, where he states as follows :—

"I think it is quite clear that the Solicitors Act did not deprive the Court of the jurisdiction which they always possessed to do justice in the premises when dealing with one of their officers, and that they might therefore order that the costs should be taxed, although not in terms of the Solicitors Act . . . The moment it was taken out of the region of the Solicitors Act and brought within the general jurisdiction of the Court, then the Court could exercise its own jurisdiction in the way it might think fit."

(1) (1890) 15 App. Cas. 203 at p. 206.

In this matter Mr. Runchordass' client admits that he is one of the parties chargeable with the bill and he has expressed his willingness to be taken as making this application for the taxation of the applicants' bills if I came to the conclusion that Rule 544 precludes my making the order that is now applied for. I do not think this would help very much as his consent would only affect himself and could not bind the objecting parties.

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I think I have power to make the order asked for independently of Rule 544 and I accordingly make the summons absolute and direct that the applicants' bills mentioned in Mr. Tenant's affidavit of the 25th of July 1907 be lodged with the Taxing Master and that the Taxing Master do proceed to tax the same. In taxing these bills the Taxing Master is to have regard to the questions which of the respondents are responsible for which of the bills taxed by him or for how much under each particular bill. The Taxing Master will also take into consideration whether any of the costs were unnecessarily or wantonly incurred, and if so, he will apportion such costs personally against the party or parties incurring the same. He will state in his allocatur, what costs are payable out of the deceased's or the trust estates and what costs are to be payable personally by the respondents or any and which of them.

The applicants are entitled to their costs of this summons. It was necessitated by disputes amongst the respondents *inter se*. I direct that the applicants' costs of this summons to be paid in the first instance by the respondents. I reserve the question as to which of the respondents are liable to pay these costs as between themselves till after the bills are taxed. If the question is not amicably arranged between themselves I reserve liberty to any of the respondents to apply to me in Chambers after the bills have been taxed in the manner I have indicated above.

On appeal—

Inverarity (with him *Scott, Advocate-General*) for the appellant referred to Rule 544, High Court Rules; *Wadia, Gandhi and Co. v.*

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Purshotam⁽¹⁾, *Staniar v. Evans*⁽²⁾, *Luke v. South Kensington Hotel Company*⁽³⁾, *Wiggins v. Peppin*⁽⁴⁾ *In re Jones, a Solicitor*⁽⁵⁾, *Brown v. Burdett*⁽⁶⁾, *Farhall v. Farhall*⁽⁷⁾, *Sayers v. Walond*⁽⁸⁾.
Kirkpatrick, for the respondents.

JENKINS, C. J.:—We think the order under appeal is erroneous. Rule 544 of the Rules of the High Court of Bombay does not empower a Judge to make an order on an attorney's application for taxation of his bill of costs for business not transacted in Court, unless such order be by consent, and the Court has not, in our opinion, any inherent power on which the jurisdiction can be rested: *Sayers v. Walond*⁽⁸⁾.

The order, moreover, cannot be supported by reference to Rule 149 of the Supreme Court Rules, for, even if it be applicable, it provides for a procedure which has not been followed. We must, therefore, reverse the order with costs throughout.

Certify for Counsel.

Attorneys for the appellants:—*Messrs. Edgelow, Gulabchand, Wadia & Co.*

Attorneys for the respondents:—*Messrs. Crawford, Brown & Co.*

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| (1) (1907) 32 Bom. 1. | (5) (1887) 36 Ch. D. 105. |
| (2) (1886) 34 Ch. D. 470. | (6) (1888) 40 Ch. D. 244. |
| (3) (1879) 11 Ch. D. 121. | (7) (1871) L. R. 7 Ch. 123. |
| (4) (1837) 2 Beav. 403. | (8) (1822) 1 Sim. & St. 97. |

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.

1908
 February 26.

BALVANT RAMCHANDRA NATU AND OTHERS (ORIGINAL PLAINTIFFS),
 APPELLANTS, v. THE SECRETARY OF STATE FOR INDIA IN
 COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Judgment based upon an assumption or hypothesis subsequently ascertained to be erroneous—Re-opening the portion of the case affected by the error—Grant by Government of the revenue of a village as a unit of assessment—Cultivation by grantee of uncultivated or unassessed land—Grantee can do so and profit thereby.

The High Court on appeal delivered an interlocutory judgment remanding the case for a finding on a certain issue.

* First Appeal No. 163 of 1903.