

without jurisdiction. It is true no objection on the ground of want of jurisdiction was raised before the District Court but the petitioner before us is not precluded from urging that ground. Consent cannot give jurisdiction where the law does not confer it on a Court. The result is that the rule must be made absolute and the Subordinate Judge's decree restored but without costs here and in the District Court, as the petitioner allowed the appeal to be heard without objection.

1909.

NARAYAN  
RAYJI  
v.  
GANGARAM  
RATANCHAND.

*Rule made absolute.*

R. R.

### ORIGINAL CIVIL.

*Before Mr. Justice Russell.*

*In re* MADHAVJI, KAMDAR AND CHHOTUBHAI AND DADA  
MAHOMED AND OTHERS.

1903.

*December 11.*

*Petition—Taxing Master—High Court Rules, Rule 544\*—Solicitors' retainer denied—Taxation of costs.*

An attorney can obtain an order in taxation of his costs although he knows that his client disputes the retainer as to the whole bill.

*In re Jones*(1) followed.

The facts of this case appear sufficiently in the Judgment.  
*Raikes*, for the applicants.

Our application is made under the amended rule 544 of the High Court Rules, the latter part of which is in point. Our application is merely for an order to tax our bills and the order asked for, when made, will not affect the question of liability of the clients. When the bills are taxed and the amount of costs ascertained we shall have to proceed under Rule 866 of the High Court Rules and take out a summons against the clients and at the hearing of such summons the clients will have an opportunity to be heard on the question of their liability. They have no

\* High Court Rules (2nd Edition), Rule 544 runs as follows:—

“544. 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.”

(1) (1887) 36 Ch. D. 105.

1908.

MADHAVJI,  
KAMDAR  
AND  
CHHOTUBHAI,  
*In re.*

right to oppose this application and the order asked for should be made as of course. See *In re Jones*<sup>(1)</sup>, *Re Flower*<sup>(2)</sup> and notes on the subject in Volume II, Annual Practice 1909.

*Strangman*, for the opponents.

RUSSELL, J.:—This was a petition *in re* certain costs of Madhavji & Co.

Messrs. Madhavji, Kamdar and Chhotubhai presented a petition for an order that the Taxing Master do tax bills of costs of petitioners with reference to the matters referred to in the petition.

The opponents *inter alia* deny their retainer of the petitioners.

The petition is presented under the new Rule 544 which was passed to give effect to the decision of Davar, J., in *Bai Dossibai v. Crawford, Brown & Co.*<sup>(3)</sup>. The rule runs as follows:—

“544. 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.”

It will be observed that this rule is imperative, and it has been held that an attorney can obtain an order in taxation of his costs although he knows that his client disputes the retainer as to the whole bill: *In re Jones*<sup>(1)</sup>.

Where the retainer is disputed, it appears clear that payment of the amount due to the attorney can be enforced by an action only: see Solicitors' Act, 1843, s. 43; and *In re Debenham & Walker*,<sup>(4)</sup> and *Re Harcourt*<sup>(5)</sup>.

Now it is obvious that before an attorney files his suit, it is essential that the amount he claims be ascertained, and it appears to me desirable both from the point of view of the attorney and the client that that should be done. Until taxation, the sum certain cannot be known.

Again it is competent for the client to dispute the retainer before the Taxing Master with reference to each and every item

<sup>(1)</sup> (1837) 36 Ch. D. 105.

<sup>(2)</sup> (1872) 19 W. R. 578.

<sup>(3)</sup> (1908) 32 Bom. 428.

<sup>(4)</sup> [1895] 2 Ch. 430.

<sup>(5)</sup> (1887) 32 Sol. J. 92.

of the bill: *In re Jones*<sup>(1)</sup>. Assuming that the clients do so in this case, it may be they will be satisfied with the result of the taxation, in which case it is possible that a suit by the attorney will not be necessary.

I, therefore, make an order in the terms of the prayer of the petition. But it is to be hoped that the Taxing Master will scrutinize with great care the correspondence that has been produced before me in this matter, the greater bulk of which, in my opinion, is wholly unnecessary.

The costs of this application are reserved and will abide the result of the taxation or the subsequent suit.

Attorneys for the applicants: Messrs. *Madhavji, Kamdar and Chhotubhai*.

Attorneys for opponents: Messrs. *Dinsha and Dharamsey*.

B. N. L.

(1) (1887) 36 Ch. D. 105.

## APPELLATE CIVIL.

*Before the Honourable Mr. Justice Chandavarkar, Acting Chief Justice, and Mr. Justice Hexton.*

KALGAVDA TAVANAPPA PATIL (ORIGINAL DEFENDANT 1), APPELLANT, v. SOMAPPA TAMANGAVDA PATIL AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

1909.

June 15.

*Hindu law—Adoption—Adoption of a married man having a son—The son's gotra and rights of inheritance in the family of his birth.*

When a married Hindu having a son, is given in adoption, the son does not like his father lose the *gotra* and rights of inheritance in the family of his birth and does not acquire the *gotra* and a right of succession to the property of the family into which his father is adopted.

In the absence of any special custom, Jains are governed by the ordinary Hindu law.

FIRST appeal against the decision of V. V. Phadke, First Class Subordinate Judge of Belgaum, in original Suit No. 379 of 1906.

Suit to recover possession of vatan property.

The property in suit belonged to one Annappagavda. He had a son Tavnappa, defendant 2, and two step-brothers, Somappa-

\* First Appeal No. 41 of 1908.