

(1869) 06 CAL CK 0053
In the Calcutta High Court

C.J. Wilkinson

APPELLANT

Vs

Abbas Sirkar and Another

RESPONDENT

Date of Decision : 18-06-1869

Acts Referred:

Citation : (1869) 06 CAL CK 0053

Judgement

Sir Barnes Peacock, Kt., C.J.—It appears to me that there is no doubt in this case. Mr. Wilkinson, as the Officiating Administrator-General, and executor of the will of the late Mr. Samuel Fenn, sued the defendants in the Small Cause Courts, for a bill of the testator, against the defendants, for business done as an attorney. The question submitted by the Judge of the Small Cause Court for the opinion of this Court is, "whether the suit can be maintained by the plaintiff in the presence of an admission "that the bill was not either delivered to and left with the defendant for "a reasonable time prior to action brought, and in the absence of evidence "that he had notice of a taxation which was going to be made between "himself and his attorney." The first question is whether a suit can be maintained by the executor of an attorney for business done as an attorney, without having previously delivered the bill to the defendant and left it with him for a reasonable time before bringing the action. It appears to me that there is nothing which requires him to do so, or prevents him from maintaining an action, until a bill has been delivered. Statute 3, James I, c. 7, has been referred to. That Statute, in the first portion of it, refers to attorneys of the Courts of Westminster, and although the general words "no attorney" are used in the subsequent portion of it, yet it has been held that the Statute does not extend to other attorneys in England than those at Westminster. In *Brickwood v. Fanshaw* Car. 147, it was held that the Statute did not extend to fees for prosecuting in inferior Courts in England, but only to suits in the Courts of Westminster Hall. I am of opinion that a Statute which applied only to the attorneys of the Courts of Westminster in England, and to business done in those Courts, did not become part of the law of this country when either the Mayor's Court or the Supreme Court was established. Although the English law generally was extended, it was

not every law which was extended; and certainly it appears to me that no law was extended, which was enacted simply with reference to a particular class of persons in England. If a law for example had enacted that no person should sell tea or tobacco or rice in England without a license, it is clear that such a law would not have been extended to India by virtue of the Charter establishing the Mayor's Court. But even if the Statute of James I did extend to attorneys of the Supreme Court, or to attorneys of the High Court, there is nothing in that Act which requires an executor of an attorney to deliver a signed bill. That Act requires the bill to be signed with the proper hand of the attorney. That is the thing to be delivered. It has been held that an executor of an attorney is not bound to deliver that thing before he can sue, and unless he is obliged to deliver that thing, I know no law which requires him to deliver anything else. Therefore, if he is not obliged to deliver a bill signed by the proper hand of the attorney (which would preclude him in most cases from suing at all), it appears to me that there is no law which requires him to deliver a bill at all. It has been held that the Statute 2 Geo. II, c. 23, section 23, which requires a bill subscribed by the proper hand of the attorney to be delivered, did not extend to the executor of an attorney; and it was also held, as I understand the case in *Blackel v. Crofts* Comb. 348, that it is not necessary for an executor to deliver a signed bill under the Statute of James.

2. The Statute of Victoria which requires a signed bill to be delivered by any executor, has not been extended to this country, and therefore does not apply to it. It has been said in argument that unless the executor be bound to deliver a bill, clients may be seriously injured by having unconscionable bills made out by attorneys, enforced against them after the attorneys' death by their executors; but that by no means follows. An executor could not recover the amount of his testator's bill merely by saying "here is such a bill entered in his books." If a bill has not been delivered and taken, it would be necessary to prove the items of the bill and the reasonableness of those items before the executor could recover and if the defendant pleaded when such an action was commenced against him, he might apply to the Court to order the bill to be taxed, and to stay the proceedings in the meantime, so really there is no injury likely to be sustained by a defendant, even though the Statutes of James and of Geo. II. do not extend to this country. The Judge does not ask us whether the bill taxed between attorney and client, in the absence of evidence that notice of taxation was given to the client, would justify the Court in awarding to the plaintiff without further evidence the full amount allowed upon taxation. The only question which is asked is the one which I have read. It appears to me that with reference to the question whether a suit can be maintained or not without delivery of the bill, the question whether the client had notice of the taxation is wholly immaterial. Our opinion to the effect which I have stated will be reported to the Judge of the Small Cause Court, and the defendant will pay all the costs of this reference.

Macpherson, J.

I concur.