

(1906) 05 CAL CK 0020
In the Calcutta High Court
In Re: Thakur Dasse Dassee

Date of Decision : 17-05-1906

Acts Referred:

Citation : (1906) ILR (Cal) 827

Hon'ble Judges : Sale, J

Bench : Single Bench

Judgement

Sale, J.—I think that the Taxing Officer was quite right in holding that the fee of 30 gold mohurs paid to counsel in a motion for the discharge of guardians of an infant was unusual and excessive and was not prima facie allowable on taxation for payment either out of the estate or by the clients, who were the guardians of the infant. The order disallowing the costs as against the clients was not however absolute; but the attorney was required to show that he had written instructions from his clients to pay this excessive fee or to produce before the Taxing Officer a written authority to pass the fee for payment as against himself. The order, under which the taxation in question was made, directed the costs of the guardians in the motion to be taxed as between attorney and client and to be paid out of the estate of Troylockho Nath Biswas then in the hands of the Administrator-General.

2. Notice to the clients was given to appear on the taxation, but they did not appear; but exception was taken to the fee in question as excessive by the Taxing Officer, who only allowed 10 gold mohurs as against the estate and disallowed the remainder even as against the clients, unless written authority for the payment was forthcoming from the clients.

3. It is contended by the attorney that it is unprecedented to disallow as against an attorney a fee actually paid to counsel. The answer is that instances of excessive and extravagant fees paid to counsel in motions on the Original Side of the Court have hitherto been of the rarest occurrence, and the fact therefore that fees actually paid to counsel have not been challenged on taxation as between attorney and client has no important bearing on the present occasion. Moreover the fact that the clients did not appear to challenge the payment in answer to the

notice to appear on the taxation is of little consequence and was rightly disregarded by the Taxing Officer.

4. The process known as taxation of attorney's bills is little understood by clients. Moreover they would suppose that their interests would be sufficient protected by the Taxing Officer, if not by their own attorneys, and the clients would not be, and I believe are not as a rule, separately represented, except on the rare occasions when disputes have arisen between attorney and clients and the attorney has been discharged from further acting for the client.

5. It is the duty of the Taxing Officer as representing the Court to intervene on taxation for the protection of clients in the matter of excessive or unusual charges, whether the client appears or does not appear on the notice given to him to attend the taxation and whether he takes express objection or does not to such payments. If the Taxing Officer is satisfied that the client clearly understood that the payment, either wholly or in part, would not be allowed out of the estate and that he would be personally responsible for the payment of the whole fee or for so much of it as was not allowed out of the estate, the charge, though excessive, may be allowed as against the client, as expressly authorized by him.

6. I have consulted my learned colleagues sitting on the Original Side of the Court, Harington and Bodilly, JJ., and we are all of opinion that it should be distinctly understood in the profession that under no circumstances will excessive or extravagant fees be allowed as against estates in the hands of the Court or which are represented by guardians or trustees or executors and managed by them for the benefit of infants or other beneficiaries, and that such fees will only be allowed as against the clients themselves when there is the clearest evidence that they understood what the amount was, for which they might be held personally responsible and that the fee was excessive in amount and would on no account be passed for payment in its entirety out of the estates in their hands.

7. We agree with the Taxing Officer that as a general rule clients should not be chargeable for such excessive and extravagant fees, unless upon their own written authority given expressly for the payment of such fees, and that it should be clearly understood that the usual warrant of attorney signed by a client does not authorize the attorney to pay excessive or unusual fees to counsel, and that attorneys paying such fees except upon the written authority or consent of their clients run the gravest risk of having these payments disallowed as against their clients on taxation. Whether it is possible to make this practice a rule of Court must be postponed for future consideration. In the meantime there must be no doubt as to the practice, which the Court will strictly enforce, as to the taxation of charges of this character.

8. In the present case, the attorney claims that his clients were made to understand the amount of the fee proposed to be paid to counsel, and that such fee would not in all probability be allowed as against the estate, and that in that event, the clients would themselves be personally liable for the amount. The

Taxing Officer points out that no evidence of this character was adduced before him in the first instance, and tint, if such evidence had been forthcoming, it is possible he would have called on the clients for any answer they might be disposed to make.

9. Having regard to the somewhat unusual circumstances under which the payment in question was made and the order on taxation disallowing it was passed, I think it would be fair and reasonable to give the attorney another opportunity for satisfying the Taxing Officer that the fee in question was paid with the express authority of his clients, and with full knowledge on their part that the fee or a part of it was likely to be disallowed as against the estate, and that they would be held personally liable for such portion of the amount as big be disallowed as against the estate. The Taxing Officer will be at liberty to give special notice of this enquiry to the attorney's clients, and to hear any evidence they may wish, to give.

10. The matter will go back to the Taxing Officer for this purpose.