

[Chan. Cham.]

RE S. &amp; M., SOLICITORS.

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ation, citing *Dan. Prac.* (4th ed.) p. 109-11, *Re Waugh*, 15 Beav. 508, *Pearse v. Cole*, 16 Jur., 214. He also read affidavits to show that the bills of costs had been hurriedly prepared for the convenience of the clients in forming an estimate of their amount with a view to a settlement; and had not been delivered in a formal way for taxation, but an express reservation had been made of a right to deliver other and more complete bills in the event of a taxation. He therefore contended that this was a qualified delivery which did not bind a solicitor, and which it was competent for him to make.

*Hamilton* for the petitioners. As to the objection with regard to the want of next friend, it is only necessary to have one to secure costs, and this necessity could not arise when there are moneys of the clients in the solicitor's hands: *Re Curran* 2 Ch. Cham. 305. Furthermore, since 35 Vict., c. 16 (Ont.), no next friend is required (secs. 1 & 9), and so the Referee had held in *McAllister v. Tim'in*. (A report of this case is to be found in the *Daily Mail* of 29th May and 15th June, 1872.) It was not competent for solicitors to deliver bills not intended for taxation. On this point he cited *Re Pender*, 8 Beav. 299; *Re Chambers*, 31 Beav. 177; *Re Carven*, 8 Beav. 436; *Re Andrews*, 17 Beav. 510; *Re Whalley*, 20 Beav. 576; and *Re Crawford and Crombie*, 2 Ch. Cham. 13.

*Spencer* in reply. No objection had at the time been made by the clients to receive the bills conditionally. No solicitor could venture to let his client have an approximate bill if he was to be bound by any delivery.

THE CHANCELLOR.—I said at the close of the argument that I thought the first objection must prevail. The rule is that when husband and wife join in any pleading or proceeding the husband is considered to be *dominus litis*, and the wife is not bound; so if in this case there were a taxation upon this petition it would be nominally at the instance of two married women, together with their husbands and others; but it would not prevent the married women having another taxation. The Act of last session does not appear to me to touch that question. It enables a married woman in certain cases to sue alone. In this case the petitioner joins husbands and wives as having a joint interest. As a fact the married women are not suing alone. I cannot assume that this is a case in which they can do so. I am asked by petitioner to strike out the name of the husband. The interests of the parties are not so before me that I can say that the husbands are not properly and necessarily joined, and I certainly ought not to do what is asked upon this appeal.

Upon the second point, I said that it is a matter of policy to bind solicitors by bills that they deliver. The bill delivered is subject to taxation, and the solicitor is not at liberty to withdraw it, or to substitute another bill for it, at any rate after an order for taxation, without leave of the Court, which is only granted upon special grounds. It is contended that here there was no absolute delivery of a bill, but that a bill of items was sent to the clients with an express reservation that if not accepted, and if a taxation were desired by the

clients, the solicitors reserved to themselves the right to make out and deliver their bill (a reason for this is given in the affidavit of Mr. McDonald). The question is, whether it is competent to a solicitor to reserve such a right upon the delivery of a bill. There are some reasons against it. If he can do so in one case he can do so in all; and of course if one solicitor can do this all may do it, and thus the rule that a solicitor is bound by his bill delivered might be virtually abrogated. On the other hand, it is convenient sometimes that a solicitor should be at liberty to deliver what may be called an approximate bill. His client may desire to be informed approximately of how he and his solicitor stand, and the solicitor might deliver it with an intimation that if paid without taxation he is content to receive the amount, but if taxation were desired he would deliver another and a fuller bill. I think this is open to some serious objections. It operates to discourage taxation—the solicitor offers a premium to his client to abstain from the exercise of that right. It is asking the client to decide blindfold, for in ninety-nine cases out of a hundred the client cannot know whether the bill is correct or not. It places his client in a certainly difficult position. He is asked to pay a demand, of the justice of which he can know little or nothing, upon pain of having the demand increased if it is not paid; and the client, rather than run such a risk, may be induced to pay a bill which is really more than he ought to pay. As a matter of policy ought not a solicitor to be prevented from placing his client in such a position? It may be considered that the client should refuse to receive a bill thus conditionally delivered; but a client is seldom aware of his rights; and the rules in relation to the delivery and taxation of bills between solicitor and client are framed mainly for the protection of the latter. The observations of Lord Langdale, in *Re Pender*, 8 Beav. 304-5, are not inapposite in the case before me. A solicitor had delivered bills not signed by the solicitor, so that he was not in a position to sue for their recovery; and the client having obtained an order for their taxation, the solicitor moved to set it aside, on the ground that it was not within the Solicitor's Act, 6 & 7 Vic. The Master of the Rolls held the bills within the Act, and that these observations (p. 304): "But if a bill delivered without being signed is not taxable, the solicitor may charge what he pleases with impunity: he may in the first instance deliver a bill not signed to an amount far beyond what he is entitled to, and take his chance of obtaining payment without taxation, in which case he will in most cases succeed; but if he should fail, which may possibly happen, and his bill, according to the hypothesis, is not to be taxed, he will say, as has been said, 'It was not delivered with a view either to an action or to taxation, but for the purpose of amicable discussion and arrangement.' He will then deliver a signed bill for what is justly due to him, excluding the gross overcharges in the bill delivered but not signed, and so escape paying the cost of taxation. In this supposed case his attempt has failed, but it has cost him little or nothing, and, by obtaining payment of other bills not signed or taxed, he may console himself for the disappointment in