Ketchum, and paid or satisfied by him; and affidavits are filed with a view of shewing that the charges for drawing deeds and leases and other instruments are extravagant and should be reduced in amount.

In rendering his Bills of Costs Mr. Jones has not confined himself strictly to the order of the Chief Justice, for that applies only to Bills of Costs "for fees and disbursements in his professional business," but having included various items not connected with such business the master has exercised his judgment on all that was submitted, and has given his allocatur, as if the whole were for professional services.

The Statute 2 Geo. II. cap. 23, sec. 23, provides that a Bill delivered may, upon application, the party charged, to *the Court in which the business*, or the greater part thereof in, amount or value, shall have been transacted, and *upon submission* to *pay the whole sum* that upon taxation *shall be allowed*, be referred for taxation to the proper officer, although no action or suit shall be then depending; and if upon due notice either party shall not attend, the officer may proceed *ex parte;* payment of the sum allowed to be a discharge, and in default may be enforced by attachment or other proceedings; and, independently of the powers given by this Statute, it is said in the case of *Wilson* v. *Gutteridge*, 4 D. & R. 736, that the Courts have an inherent jurisdiction at Common Law to tax the Bills of Attorneys, practising in them; and this doctrine is sustained to some extent, though certainly not conclusively by the case *Watson* v. *Paston*, 2 Tyr. 406, 2 C. & J. 370, 1 Dowl. 556 but in the case of *Dayley* v. *Kentish*, 2 B. & Ad. 411, Tenteden in delivering the judgment of the Court, on an application to tax the Bill of an Attorney against an ordinary client, the Bill containing no taxable item, said, "We have referred to the other judges on this case, and no much doubt is entertained on the point that we cannot send the Bill to be taxed.

Then in the case of *Weymouth* v. *Wright* (1836), 3 Scott, 764, C. J. Tindal referring to the case of *Dayley* v. *Kentish*, says, "The result of the conference of the Judges on that case was that they almost unanimously concluded that the Courts had no authority independently of the Statute to direct the taxation of Attorney's Bills, unless under special circumstances as when the Attorney has been guilty of fraud."

In the case *ex parte King* 3 N. & M. 437 (1834), an application was made to refer Bills of Costs for Taxation, which related to business done by an Attorney in effecting mortgages on property, and which contained a charge "for preparing and engrossing a Warrant of Attorney as a collateral security." It was argued that this was a taxable item, and being included in the same account with other items not taxable that the whole became subject to taxation. *Littledale, J.*, said, "The Court has no *general* power to order a Bill to be taxed, and this had been frequently decided."

In another case *ex parte* Bowliss' Trustees (1835), an application was made to refer to the Prothonotary for taxation an Attorney's Bill for preparing a settlement and certain conveyances. The Bill contained charges for searches and disbursements at the Warrant of Attorney office, and it was contended that the item rendered the Bill taxable, Lord C. J. Tindal, in delivering judgment, said, "In every case of conveyancing there must be searches for judgments and incumbrances, and it seems to me that charges for such searches were not intended by the Legislature to be included in the terms 'fees, charges, and disbursements *at law* or *in equity*.' *Wilson* v. *Gutteridge* has been expressly overruled on several occasions. I cannot hold that the mere going to the Warrant of Attorney's office, and then making searches is a *proceeding in a suit*. Consequently I think we have no authority to interfere."

In re Lord Cardross, 5 M. & W. 544, it was decided that an application by a client for the delivery of an Attorney's Bill of Costs, containing *taxable* items, must be made in a Court in which *some* of the business was done. And Parke, B., in delivering judgment, says, that the Courts have by construction limited the qualification imposed by the Statute 2 Geo. II. cap. 23, and now hold that if any of the business were done in the Court to which the client applies it will suffice. But he says, in reference to the case of Lord Cardross, "there is no business done in this Court," and from this it must be inferred that in his opinion Bills must be for business done in Court, in order to entitle the Court to refer them for taxation under the Statute. In that case the rule laid down In re Aitken, 4 B. & Al. 47, was recognised as correct—that the Court will interfere to compel an Attorney to do that which in justice he ought to do, when the employment is so connected with his professional character as to afford a presumption that his character formed the ground of his employment by the client.

Though the Court will thus interfere from its Common Law jurisdiction to compel an Attorney to do what is right, the weight of the most recent authorities I think establishes satisfactorily that the Bill or Account of an Attorney will not be ordered to be referred to the master for taxation unless it contain some taxable items, and that an Attorney may recover for services rendered in any matters not so taxable, without rendering a Bill a month previous to the commencement of an action. And it appears to me that the power to refer an Attorney's Bill for taxation, till the passing of the Provincial Statute 16 Vic. cap. 175, sec. 20, must have been derived entirely from the Act 2 Geo. II. cap. 23, sec. 23, which relates only *to business done in Court*. Our Statute is similar in its provisions to the 2 Geo. II. cap. 23. It restrains, except under special circumstances, any action from being brought until the expiration of one month after the delivery of an Attorney's Bill for fees, *charges*, or *disbursements*, and it provides that upon the application of the party chargeable with such Bill within such month any Judge of the Superior Courts of Law or Equity, or any Judge of a County Court may refer *such* Bill, and the demand of an Attorney to be *taxed and settled* by the proper officer of *any* of the Courts in which *any* of the *business charged for in* such Bill may have been done; but no such reference can be made after a verdict shall have been obtained or Writ of Enquiry executed, except under special circumstances to be proved to the satisfaction of the Court or Judge to whom the application for such reference shall be made. The 23rd section provides that the payment of any Attorney's Bill shall in no case preclude the Court or a Judge from referring such Bill for taxation, if the special circumstances of the case appear to enjoin it upon such terms as shall seem right, provided the application for such reference be made within twelve months *after payment*.

From this latter provision it appears to be the necessary inference that the Court or Judge cannot direct a reference to be made when twelve calendar months have elapsed after the payment of a Bill of Costs, however special the circumstances, and if so then the reference of a Bill of Costs in the suit of *Ketchum* v. *Duffy*, which appears to have been paid and settled upwards of twelve months, and the taxation under such reference must be irregular.

With respect to that Bill and its taxation there are several affidavits filed on the one side stating that a Bill was delivered as required by the party chargeable, with the payment, and on the other shewing that Bills were only required of the items contained in a more recent general account, and that the payment and settlement of the costs in the suit of *Ketchum* v. *Duffy*, was unknown to Mr. McIntyre, who was employed to procure the Bills of Costs for taxation.

These affidavits are proper to be laid before the master for his guidance, and should he find that the costs in that case have in fact been paid and settled more than twelve months, he will scarcely feel at liberty to open the matter on taxation at the instance of either of the parties.

In the application for a Revision of Taxation I am asked to give specific directions to the master in reference to particular items of the Bills or accounts taxed; but this I do not feel called upon to do until he has exercised his judgment, after seeing the affidavits now laid before me. I will only add that with respect to the taxation of items in a Bill which are not strictly taxable, as for fees, charges, or disbursements, for business done by an Attorney or Solicitor in Court, or in some cause depending in Court. Such taxation, in my opinion, will not be binding on either party, and that for such services parties must be guided, as in other cases between individuals. Under all the circumstances of this case I think it should be referred back to the master to revise his taxation on the affidavits and papers now produced.

Order granted.