

Chan. Cham.]

RE S. & M., SOLICITORS.

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the particular instance." Certainly much of the evil pointed out by Lord Langdale might result from the delivery of bills by solicitors which they were at liberty to withhold upon any ground from taxation. His Lordship proceeded upon the construction of the Act, adding, "It ought to be observed that any other construction of the Act would facilitate the practice of great fraud and oppression," and he then proceeded to point out how this would be in the language that I have quoted. It is not contended on behalf of the solicitor in this case that the bills delivered were not taxable under our statute unless saved from taxation by the reservation made by the solicitor who delivered them. There is language of the same learned judge in another case, *In re Carven*, *supra*, which applies with more or less force to this case, according to the sense in which certain words are used. He says: "I must take leave to say that if a solicitor has delivered his bill he is bound by it, and the taxation must be on that bill; he is not entitled as of course to reduce his demand, or to reserve the power of delivering a bill containing other charges. I conceive that a most improper object." If by reason of the words, "reserve the power," is meant that he cannot expressly reserve the power, that is this case; if by the words is meant "he cannot have the power in reserve," it is not a direct authority against an express reservation of the power, but it is an authority against the policy of allowing such a power to be reserved.

What was done by the solicitor in this case was to append to the foot of each bill this memorandum: "In the event of a taxation being applied for in this case we reserve to ourselves the right of delivering another and more complete bill," and underneath is written the partnership name of the solicitor, and the solicitor's agent at Woodstock says that before delivering the bills to the two clients to whom or to one of whom he delivered them, he said that the solicitors reserved to themselves the right of making up and delivering more full and complete bills of costs. The solicitors now put it that there was no absolute delivery to the clients of the bills of costs; but only a qualified, or conditional delivery, and that the clients should have objected to receive them if they were not content so to receive them. I inclined at first to agree with the solicitors, but upon examining the exact terms of the memorandum, and of what was said by the agent to the clients, the delivery of the bills does not appear to me to have been a conditional one. The memorandum treats the delivery as an actual delivery of a bill of costs, and speaks of another delivery of another bill, and the message of the agents to the clients was to the same effect. The question now is, whether the solicitors can in this way take themselves out of the general rule. They have delivered bills asserting a right which they said they reserved to deliver other bills. They had, in fact, no such right as they so claimed to have. How is such a delivery of bills of costs to be regarded? It was not a delivery for the purpose of taxation. Can the clients use it for the purposes of taxation, because it is a bill delivered, and the statute enacts that bills delivered shall be taxable? Apart from the policy of the law, and if this was a transaction not connected with bills of

costs, I should hold the parties to whom these papers were delivered not entitled to use them for any purpose from which they were in terms restricted from using them. But the subject matter being bills of costs, and the policy of the law being in my judgment against the delivery of them with the restriction which the solicitors have attempted to put upon their delivery, the question presents other considerations. Is there any way of carrying out the policy of the law, and preventing the mischiefs pointed out by Lord Langdale and others to which I have referred, except by holding the solicitor's attempted restriction upon the ordinary right of the client upon the delivery of a bill of costs to be inoperative? I confess I think it necessary to go to that length. I found myself entirely upon the policy of the law which could in any case be defeated if solicitors were to be at liberty to annex to the delivery of their bills of costs such a restriction as has been attempted in this case. There is no hardship upon the solicitor in this. If there is any good reason why they should not be bound by their bills delivered by them the Court will, in a proper case, relieve them and allow them to deliver other bills, or to amend those already delivered. That would be a matter in the discretion of the Court. What has been attempted here has been to substitute for the discretion of the Court, under the name of reserving a right, the act of the solicitor himself. I think it right to meet this attempted innovation at the threshold, and to say at once that it cannot be.

Since writing the foregoing, I have referred to the case of *In re Chambers*, 34 Beav. 177. A bill of costs had been delivered, and after some objections and some discussion the solicitors delivered a new bill of costs, giving notice that he abandoned the first bill and substituted the second. The client then took out an order to tax the first bill. The solicitor moved against it, and the question was, whether the solicitors could substitute the second bill and have that bill taxed, and the Master of the Rolls held that he might. That case differed from the one before me in this, that here there have been no bills but the one set delivered, and that there has been an order for taxation; while in that case there was no order to tax until after the delivery of the second bill. The language of the Master of the Rolls in giving judgment is again the solicitor. In this case "I am of opinion that a solicitor cannot deliver his bill with items of overcharge, and say, 'I do not intend this to be my bill, but if objected to I intend to deliver another.' This is precisely what the solicitors in this case have done." He goes on to say, "Nor after a bill has been once referred for taxation, when he finds that items in it will be struck off, can he deliver another bill of costs. But the circumstances of this case are different, for the substituted bill was delivered before the service of or notice of the order to tax. Lord Langdale held, and I have also held, that a solicitor cannot substitute as a matter of course a second bill for the first; but I have not held that you never can do it." Looking at the previous part of the judgment, that "a solicitor cannot deliver a bill and say, 'I do not intend this to be my bill, but if objected