

foundations of his new chawl on his (the plaintiff's) land and required him to remove them. The cases relied on by the District Court are all light and air cases and have no bearing on the present question. As the removal of the building is optional with the defendant, and is for his benefit, a mandatory injunction to the defendant is not the right order to make.

The decree of the Court below must be, therefore, reversed, and an order made that the plaintiff do recover the land in question with liberty to the defendant forthwith to commence to remove his building on the said land and to restore the property to the condition in which it was when he took possession. The same to be completed within one year from the date of this decree. In default, the plaintiff to be at liberty to remove the same at the expense of the defendant. Plaintiff to have his costs throughout.

1895.

PREMI
JIVAN
BEATE
vs.
HA'JI
CA'SSUM
JUMA
AHMED.

ORIGINAL CIVIL.

Before Mr. Justice Starling.

THE ADVOCATE GENERAL OF BOMBAY, PLAINTIFF, v. MOULVI
ABDUL KADUR JITAKER AND OTHERS, DEFENDANTS.*

Taxation—Charity suit—Defendants' costs as between attorney and client ordered out of the charity estate—Charges allowed and disallowed as against estate—Discretion of Taxing Master.

1895.

July 27.

In a suit brought by the Advocate General at the instance of relators for the purpose of removing the defendants from the position of directors of a Mahomedan mosque, and for administration of the property of the mosque, &c., the decree ordered that the defendants should have their costs taxed as between attorney and client out of the charity funds. The attorneys of the defendants accordingly brought in their bill of costs, and in taxation it was contended that they should be allowed out of the charity funds all the sums which the Taxing Master certified they should pay their attorneys.

Held, that where the Taxing Master decided that certain items allowed against the defendants should not come out of the charity funds, his decision could not be disturbed.

It does not follow that because a charge is proper to be allowed between an attorney and a client, that the client, if a trustee, should be allowed that charge out of the trust funds.

* Suit No. 656 of 1891.

1895.

APPEAL from the Taxing Master.

ADVOCATE
GENERAL OF
BOMBAY
?
MOULVI
ABDUL
KADUR
JITAKER.

This suit was brought by the Advocate General at the relation of certain persons to remove the defendants from the position of directors of a Mahomedan mosque in Bombay and for administration of the property belonging to the mosque, &c., &c. For a report of the trial see I. L. R., 18 Bom., 401.

The decree ordered that the defendants (other than defendant No. 5) should have their costs out of the estate taxed as between attorney and client. Their attorneys sent in their bill of costs to the Taxing Master, who refused to allow out of the estate certain items which he allowed as between the defendants and their attorneys. The attorneys thereupon applied for and obtained his certificate, and the matter now came, by way of appeal, before the Judge in chambers.

Macpherson (Acting Advocate General) in support of the decision of the Taxing Master.

Inverarity, for the defendants, *contra*.

STARLING, J. :—This was a charity suit brought in regard to the funds of the Juma Masjid in Bombay. By the decree the first, second, third, fourth, sixth, seventh and eighth defendants were allowed their costs, taxed as between attorney and client, out of the mosque funds. Their attorneys sent in their bill to the Taxing Master for taxation, and he has disallowed certain items in the bill which amount in the whole to a large sum. Some of the items have been disallowed altogether as between the attorneys and their clients the trustees, and some have been allowed between the parties, but disallowed against the mosque funds. Objections have been taken to the disallowance, by the Assistant Taxing Master, of all these items. And I have now to determine whether his certificate should be varied in any way. [After dealing with the items which had been disallowed as between attorney and client, His Lordship continued :—]

All the other items which have been allowed in favour of the attorneys as against the defendants have been either reduced in amount or disallowed entirely as against the mosque funds, and it is contended that as the defendants were ordered to have their

costs, as between attorney and client, out of the mosque funds, they ought to be allowed all the sums which the Taxing Master certified they ought to pay their attorneys. The Acting Advocate General as representing the charity said he thought the defendants were entitled to what they asked; as, although the expenditure was high, he did not think it excessive, and great good had been done by the defendants for the charity. He, however, only represents the charity officially, and it would be difficult to hold that his consent was sufficient to bind the charity and to release me from the duty of determining whether the Master was right in disallowing what he did. In deciding this question I am, therefore, under the disadvantage of not having heard any argument in support of the Taxing Master's decision.

That trustees cannot always obtain from their *cestui que trustent* all that they pay the attorney they employ, is evident from the cases of *Johanson v. Telford*⁽¹⁾, *Allen v. Jarvis*⁽²⁾ and *Brown v. Burdett*⁽³⁾; but the case which seems to me to govern the present case is *In re Brown*⁽⁴⁾, referred to in *In re Robertson*⁽⁵⁾. In the former case Lord Romilly, M. R., says: "If a person, being a trustee, chooses to employ a solicitor for the purpose of conducting the affairs of the trust, which, of course, the solicitor is well aware of, there is a distinction between his employing that same solicitor for exactly similar purposes with regard to which he is not a trustee. Suppose for instance that he is not a trustee, but simply a client, and that he says to the solicitor, 'I wish you would make for me, or procure for me, copies of such and such deeds, and I want to have them fully explained to me, and I come to you for that purpose.' The solicitor tells him 'You can have them if you wish, but they are not at all wanted, they are of no species of use.' The client says 'Never mind, I require it to be done.' When the bill is taxed, and that fact is stated, the client cannot complain. But take the case where he is a trustee. * * There it is the duty of the solicitor to tell him 'Very well, it shall be done, but you must understand that this is not required for the purposes of the administration of the trust; you cannot charge these costs

1895.

ADVOCATE
GENERAL OF
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v.
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KADUR
JITAKER.

(1) 3 Russ., 477.

(3) 40 Ch. D., 244 at p. 254.

(2) L. R., 4 Ch., 616.

(4) L. R., 4 Eq., 464.

(5) 42 Ch. D., 553, at p. 558.

1895.

ADVOCATE
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KADUR
JITAKER.

against your *cestui que trust*, and I cannot put them into the bill of costs which will have to be paid out of the trust estate ; therefore, if you require it to be done, you must pay for it personally, and you will understand it is a personal matter between you and me.' * * I think, therefore, it is the duty of the solicitor to tell the trustee ' This is not wanted for the administration of the trust, and if you insist upon its being done, it is for your private convenience, and, therefore, cannot be charged against the trust estate.' So regarding it I have looked at this bill and I have no doubt that the client did order it all ; but then the application of the rule I have mentioned appears to me to be necessary, and then ' comes this question, which is properly a question for the Taxing Master to determine, is it proper or necessary or fit for the administration of the trust that certain things should be done ?' The Master of the Rolls then goes on to say that the question of *quantum* and *quoties* is one in which the opinion of the Taxing Master as to how much of the trustees' bill ought to be charged against the *cestui que trustent* ought to be accepted.

I think I must follow this decision and refuse to disturb the decision of the Taxing Master that the items now under discussion ought not to come out of the mosque funds.

Attorneys for the Advocate General :—Messrs. *Ardesir, Hormasji and Dinsha*.

Attorneys for the defendants :—Messrs. *Nani and Hormasji*.

ORIGINAL CIVIL.

Before Mr. Justice Starling.

SAMIBA'I, PLAINTIFF, v. PREMJI PRA'GJI, DEFENDANT.*

Civil Procedure Code (Act XIV of 1882), Sec. 375—Agreement adjusting suit—Power of Court to determine fact of agreement having been made—Arbitration—Reference of suit to arbitration—Award—Submission and award filed as an agreement—Civil Procedure Code (Act XIV of 1882), Sec. 525—Practice—Procedure.

The plaintiff sued the defendant to recover certain property of which she alleged he had taken possession. Subsequently the " matters in difference in the said suit " were by a signed submission paper referred to arbitration. An award was made

* Suit No. 40 of 1895

1895.
August 31