

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Duffett  
v. McEvoy from the Supreme Court of the  
Colony of Victoria; delivered February 5th,  
1885.*

---

Present:

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

IN this case their Lordships will advise Her Majesty to dismiss the Appeal. The first question is, whether or not the Court below were right in finding in fact that no bill such as required by Statute had been delivered? Had the bill already been delivered, it would have been an answer to the application to have the bill delivered now. Now, upon that question of fact, first the Chief Justice, and then the Supreme Court in the Colony, have found one way; and upon that question of fact it would require very strong grounds to induce their Lordships here, sitting in appeal, to say that they were wrong, even if we thought or entertained much doubt that they were right. But I believe that the individual impression of each of their Lordships is, that if we were to decide upon that as a Court of first instance, upon these affidavits we should have come to the same conclusion that the Court below did, namely, that there has been no proper bill delivered, and therefore no such bill has been paid. That puts an end to that part of the case.

Then the ingenious argument is, that the Court can have no power to order this bill to be

delivered, because it is said that the power of the Court to order a bill to be delivered is ancillary merely to taxation, and that it cannot order a bill to be delivered until it is ascertained that the bill is one which at least it would have jurisdiction to refer to taxation, and that is not shewn here, so the bill cannot be ordered to be delivered at all. But their Lordships do not think that, when the Act of Parliament is looked at, that is the true construction of the Act. In the English Act, the Attorneys and Solicitors Act, 6 & 7 Vict. c. 73, there is a proviso in Section 37 that the Courts and Judges in the same cases in which they are respectively authorised to refer a bill which has been delivered, may order a bill to be delivered. That, however, when it is looked to, does not mean to say that no bill shall be ordered to be delivered until it is ascertained that the bill itself is proper to be submitted to taxation. It really comes to this, that the Court of Chancery, which has the power to tax Chancery and general bills, should have the power to order a bill to be delivered respecting such proceedings, and that the Court of Common Law, which has power to tax a bill for business done in the Court of Common Law, should have the power to order a bill respecting such business to be delivered. Accordingly, in the Colonial Act, the Common Law Procedure Act, in which Section 37 of the Attorneys and Solicitors Act is broken into several sections, this particular one is changed in its language, and is so worded as to show clearly enough what those who framed the Common Law Procedure Act in Victoria meant. The enactment is, in Section 389:—“And provided further that it shall be lawful for the  
“ said Court or Judge in any case to make such  
“ order for the delivery by any attorney, or the  
“ executor, administrator, or assignee of any  
“ attorney or trustee of his estate of such bill as

“ aforesaid, and for the delivery up of deeds, “ documents, or papers,” and so on, showing plainly that they had seen that the effect of the proviso in the English Attorneys and Solicitors Act was merely what has been already stated.

Now, that being put aside, their Lordships have to consider the effect of Section 41 of the Attorneys and Solicitors Act, which is repeated in Section 396 of the Colonial Act without any alteration in its terms, and that is :—“ The payment of any such bill as aforesaid shall in no case preclude the Court or Judge from referring such bill for taxation if the special circumstances of the case shall, in the opinion of such Court or Judge, appear to require the same, upon such terms and conditions, and subject to such directions as to such Court or Judge shall seem right. Provided always that the application for such reference be made within twelve months after payment.” Now, the argument is, that where there has been payment of the attorney’s demand at all, there a bill should be ordered to be delivered only when it could be ordered to be taxed afterwards, when there are special circumstances, and that it should not be done at all if twelve months has been allowed to elapse after payment ; but when the terms of the section are looked at, it does not amount to that. If there had never been any bill at all, which seems to have been the case here, that is to say, nothing that would give any details or items, or enable the party to judge of the goodness of the items, the bill may be ordered to be delivered, it not necessarily following that then it would be ordered to be taxed, the object of ordering the delivery of a bill being to see whether there are such special circumstances as would cause it to be taxed, and for some reason or other the attorney in the present case has apparently been very reluctant indeed to allow his bill to be seen.

Then it is said that there may be good ground for saying that the payment of this promissory note, for which a receipt was taken (and it seems to have been proved that that was done), and the fact that several years had elapsed before there was any attempt to have the bill delivered, may show that in the exercise of its discretion the Court should not order the bill to be taxed, or anything else done. Their Lordships have not got any materials before them to enable them to give an opinion as to what the result would be. Their Lordships merely say this, that at present the order appealed from was rightly made, and that the attorney must deliver the bill, and then the Court will say what, if anything, is to be done if an application is made when it is delivered. The consequence is, that their Lordships, as I have already said, will advise Her Majesty to dismiss this Appeal.