G.P.-S.51994—1976-77—3 000 (P)

24-7-78

146/78 J 219

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE ~~Provincial~~ Division)
(~~Provinsiale~~ Afdeling)

Appeal in Civil Case
Appèl in Siviele Saak

BILLS OF COST (PTY) LTD 1 AND 2 ... *Appellant,*

versus

REGISTRAR SUPREME COURT CPD AND ANOTHER ... *Respondent(s)*

Appellant's Attorney COOPER & SONS
Prokureur vir Appellant

Respondent's Attorney NCI DEP STATE ATTORNEY
Prokureur vir Respondent MCINTOSH & D POST

Appellant's Advocate 1° WP SCHUTZ SC
Advokaat vir Appellant 2° MS JACOBS

Respondent's Advocate 1° GA KUHN
Advokaat vir Respondent 2° WM ODES

Set down for hearing on
Op die rol geplaas vir verhoor op

(CPD)

CORAM: WESSELS, TROLLIP, MULLER, ARR, GALGUT et HOEXTER WNP ARR

SCHUTZ 9h05 - 11h00, 11h15 - 12h12, "15h52 - 16h12"

JACOBS 12h12 - 12h45, 14h15 - 14h32, 16h12 - 16h32

KUHN 14h32 - 15h16

ODES 15h16 - 15h39

JUDGMENT 1.6.1979 COURT NO 1 CAV 9.45 AM

The appeal is dismissed. The appellants are ordered to pay, jointly and severally, the costs of the respondents

Gylgut 9/7A

Registrar

Writ issued Lasbrief uitgereik.....	Bills taxed—Kosterekenings getakseer		
	Date Datum	Amount Bedrag	Initials Paraaf
Date and initials Datum en paraaf.....			

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

BILLS OF COSTS (PROPRIETARY) LIMITED.. 1st appellant

AND

JOHANNES LEONARDUS MARIE HANOU ..... 2nd appellant

versus

REGISTRAR OF THE SUPREME COURT OF SOUTH AFRICA (CAPE OF GOOD HOPE PROVINCIAL DIVISION)..... respondent

Coram: Wessels, Trollip, Muller, JJA, Galgut et Hoexter AJJA

Date of Appeal: 20 March 1979

Date of Judgment: 1 June 1979

J U D G M E N T

GALGUT AJA:

The appellants were the applicants in the Cape of Good Hope Provincial Division. The respondent was the Registrar of that Court, cited "in his capacity as

Taxing.....

Taxing Master". The relief sought by the appellants in the notice of motion reads:-

> "An order directing Respondent to permit Second Applicant to appear before him (Respondent) as Taxing Master and before all Taxing Masters under Respondent's direction and control, as a representative of a party (if authorised by such party) at any taxation of any bill of costs (including bills of cost drawn by First Applicant), at which such party is entitled to appear or be represented."

I shall refer to each appellant as the first and second applicant respectively and to the respondent as the Registrar. He did not appear and was not represented at the hearing in the Court a quo. The Law Society of the Cape of Good Hope ("the Society"), even though it was not cited as a party, nor was it given notice of the application, nevertheless intervened and opposed the grant of the relief sought. The application was dismissed. The appeal is against that order.

The applicants contended in the Court a quo that the Society had no locus standi to intervene in the proceed-

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ings. On this aspect the learned Judge who delivered the judgment of the Court a quo said the following:

> "I come now to an ancillary matter. The applicants contended in limine that the Law Society had no locus standi to intervene in these proceedings, a contention which the Law Society contested. Since I have come to the conclusion that the application must fail, and since the Law Society is not asking for an order for costs, it seems to me that this question is purely academic. Even if the Law Society had not been entitled as of right to intervene as a party to these proceedings, this Court would have welcomed its assistance as an amicus curiae on a difficult and important point of practice."

It must have been obvious that the Court a quo would welcome assistance from counsel appointed by the Society. Furthermore sections 4 and 5 of the Law Societies' Act 41 of 1975 set out objects and powers of a law society. I quote only certain subsections. These read:-

> "4. The objects of a society shall be —
>
> (a) to maintain and enhance the prestige, status and dignity of the profession;
>
> .....
>
> (d) to deal with all matters relating to the interests of the profession and to protect those interests.

5. A society may for the purpose of achieving its objects —

.....

(j) appear in support of or in opposition to, or to abide the decision of any court in any proceedings brought in terms of the provisions of the Act, and if permitted by any other law, such law;

(k) generally, do anything that is necessary for or conducive to the attainment of the objects of the society, and the generality of this provision shall not be limited by the preceding paragraph of this section."

In this Court the second applicant maintained that the Society had no locus standi. The objection was not persisted in after second applicant was advised that the Society had been invited by this Court to brief counsel to appear on its behalf. It is therefore not necessary to discuss or decide the effect of the above-quoted subsections.

The first applicant is a company. It commenced business in January 1978. It carries on business as a drawer of bills of costs and its employees attend to the taxation thereof before the taxing master.

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The second applicant has no legal qualifications and is employed by first applicant. The affidavit in support of the application was attested to by him. He alleges therein that he was at one time employed as a clerk in the offices of an attorney; that prior to January 1978 he had drawn many bills of costs for various firms of attorneys and appeared before the taxing master at the taxation thereof; that since January 1978 at least fifteen different firms of attorneys had entrusted to first applicant the drawing of numerous bills of costs and the attending to the taxation thereof. He then goes on to say that a bill of costs drawn by first applicant had been set down for taxation in March 1978; that on 3 March the Registrar advised him that he, the Registrar, "was unhappy about my appearing at taxations and asked me to satisfy him that I had authority so to do"; that correspondence followed; that on 8 March the Registrar advised him that "in his view 'non-qualified' persons" were unable adequately or satisfactorily to deal with the taxation of bills of costs; that the Registrar ruled that he, second

/ applicant, ...

applicant, could no longer appear at taxations of bills of costs but "I could continue to draw bills of costs"; that on 10 March the Registrar advised that he would permit second applicant to continue with the taxation of the bill of costs which was then before the taxing master "on condition that the other parties to the bill did not object to his attendance". First applicant contends that it is not practicable to obtain the consent of the party opposing a bill of costs; that if such consents were required in the future the result would be that attorneys will cease to employ first appellant.

Attached to the petition are affidavits from persons who allege that even though they hold no legal qualifications, they have for many years been practising as "taxing consultants involved in the drawing, taxing and opposing of bills of costs in various courts throughout the Republic of South Africa". It is said that this practice has been permitted in the Transvaal Provincial Division, Witwatersrand Local Division; Durban and Coast Local Division; Orange Free State Provincial

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Division and Appellate Division since 1969.

The crisp point for determination by this Court is whether a person, such as the second applicant, who has no legal qualifications, i.e., is not an admitted attorney or advocate, has a right of audience before a taxing master on behalf of a party to a bill of costs which is being taxed. The question whether such a person is entitled to draw a bill of costs does not arise.

The submissions made on behalf of the applicants fall under five main heads. These are:-

(a) In our law a person is entitled to appoint an agent to perform acts on his behalf unless there is a clear prohibition in the law to the contrary effect.

(b) While it is not disputed that in the Netherlands the taxation of costs was conducted by the courts and that attorneys attended thereto, there is no authority to the effect that taxation is the exclusive preserve of attorneys or that attorneys are not entitled to employ others to attend at the taxation before the taxing master.

(c) The relevant statutes (these will be detailed later) and rules of court define the exclusive rights, in certain

fields of legal practice, of attorneys and advocates but do not contain provisions prohibiting non-qualified taxing consultants, such as second applicant, from appearing before the taxing master.

(d) The taxation of costs to-day is not an integral part of the judicial proceedings giving rise to such costs. It is a separate and distinct process in the hands of an administrative official, the taxing master. There are many instances of tribunals (which will be detailed later) where the right to appear on behalf of another is accorded to persons other than advocates or attorneys and, accordingly, as the taxing master does not function as a court of law, the right of audience before the latter should also not be limited to advocates and attorneys more particularly if regard is had to what is set out in (e) below.

(e) An established and recognised practice has grown up in most of the Divisions of the Supreme Court in terms whereof persons who are not legally qualified have been and are permitted to attend to taxation of bills of costs before the taxing master.

The submissions made on behalf of the Registrar and the Societies can also be summarised. They are:-

(aa) That in the Roman-Dutch Law the process of taxation was an integral part of judicial proceedings; that originally the judge who awarded the costs attended to the taxation thereof and later the duty was delegated to commissioners; that only the litigant himself or his qualified legal representative could attend the taxation of the bill of costs; that this long established practice was several centuries old.

(bb) That in the rules of court or the various statutes, which govern the procedure and practice of the Supreme Courts or the right to practise the law in the Republic, there is nothing which permits a non-qualified person to attend to the taxation of a bill of costs before the taxing master and hence the Roman-Dutch practice has not been changed; and

/ (cc).....

(cc) That even assuming, without conceding, that in many of the Provincial Divisions persons who have no legal qualifications have for many years been carrying on business as "tax-consultants" and, as such, appearing before the taxing master, it has not been shown that this has become an established or accepted practice in the Cape of Good Hope Provincial Division or elsewhere in the Republic and that the Roman-Dutch practice as set out in (aa) above still prevails in the Republic.

Even though it was not disputed before this Court that in the Netherlands it was the function of the court or one of the judges to tax the costs of a case, it is necessary to have regard to the Roman-Dutch practice. The procedure in the Netherlands is relevant to the issue in this case. In this regard the Court a quo said:

/ "The.....

"The question which was argued before us was one of principle, namely, whether a person who is not an advocate or an attorney or even an articled clerk is entitled to appear before the taxing master to represent a party at a taxation. To answer this question it is necessary, in my view, to have regard to the history of the taxation of costs. The practice in the Netherlands is set out in authorities like Van der Linden, Verhandeling over de Judicieele Practijcq, 2.8.2-6, and Regtsgeleerd, Practicaal en Koopmans Handboek, 3.1.9.17; Merula, Manier van Procedeeren, 4.102.1.3 - 4.104.1.1.4; Voet, 42.1.26; and Aanhangsel tot het Hollandsch Rechtsgeleerd Woordenboek (Kersteman) sub. voc. "Sententie". This practice was conveniently summarised as follows in Mouton &Another v Martine 1968 (4) SA 738 (T) at p 742:

> 'In former times it was the function of the Court, or one of the Judges, to tax the costs of a case. The purpose of the taxation was really two-fold: firstly to fix the costs at a certain amount so that execution could be levied on the judgment and, secondly, to ensure that the party who is condemned to pay the costs does not pay excessive, and the successful party does not receive insufficient, costs in respect of the litigation which resulted in the order of costs. In the Courts of

/Holland....

> Holland the taxation of the costs was expressly reserved in the order for costs when judgment was pronounced in the principal case. The form of the order was 'condemneren den impetrant of gedaagde in den kosten van dezen processe tot taxatie en moderatie van den Hove'.

For the purpose of taxation a declaration of costs was served on the attorney of the party who was condemned to pay the costs. It was a document prepared by the attorney and comprised a summary of the case, a specified account of the costs which were to be taxed and the 'na-kosten' which relate to the costs involved in the taxation. The attorney of the party condemned to pay the costs may challenge the various items of costs claimed in the declaration in the 'diminutie' which was a similar sort of document as the declaration and contained the arguments on which the items were challenged. The attorney of the successful party then dealt with these arguments in a 'contra-diminutie'. The taxation was then done by the Court, or commissioners ordained by the Court to do the taxation, on these documents. The party who was aggrieved with the taxation had a right of 'rivisie'."

In addition to the above-mentioned passages from the Roman-Dutch writers referred to by the Court a quo, the

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following passages are relevant: V.d. Linden op. cit. 3.1.3.2; Merula op. cit. 4.103.1 s.v. "Wie de kosten Taxeren" and 4.104. i to vi. The many passages referred to leave no doubt that the taxation was the task of the judge. In fact Voet, 42.1.26 (Gane's translation), says that "The taxation and controlling of expenses must also be settled by that same Judge and not by another" (he is referring to the trial judge). It appears that at a certain stage the task could be delegated by the judges to "commissionares". As to the nature of the tasks allotted to such commissioners and their duties see Huber, The Jurisprudence of My Time (Gane's translation) iv. 16.1-10; iv. 34.9-16; v. 31. See also Kersteman, Hollandsch Rechtgeleert Woordenboek s.v. "Commissarisen". It appears that the commissioners acted as it were as junior judges; they were judicial officers.

To quote from the judgment of the Court a quo:

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> "The point which emerges from the above discussion is that the taxation of costs was regarded in the Netherlands as an integral part of the judicial process. The necessary documents were prepared and filed by the parties' attorneys (or the parties themselves) and the taxation itself, unless delegated to commissioners, formed a part of the duties of judges who exercised civil jurisdiction generally, i.e. who also decided substantive civil disputes. In principle this is hardly surprising. The respective rights and liabilities of the parties to legal proceedings were then, as now, not finally defined until the amount of costs had been determined."

It follows that in the Netherlands taxation of the bill of costs was an integral part of the law suit.

It is perhaps necessary to be reminded that in Holland only attorneys and advocates could appear in the courts; or as it is stated by Voet, 3.3.1 (Gane's translation):

> "Nevertheless if we look at our customs today, no one can take care of his own case in a judicial proceeding, but all are bound in the lower tribunals to conduct their business through an attorney, and in the higher courts to employ the services at once of an advocate and an attorney in cases of greater importance, but of one or the other in more trivial cases; lest

/ they.....

> they should go down rather from ignorance of the affairs of courts than from the lack of justice in their cases. And for the same reason the rule now also holds good that not any person may be chosen haphazard as an attorney; ....."

Furthermore it was the legal practitioner (the attorney) who prepared and presented the bill of costs for taxation: V.d. Linden, Verhandeling over de Judicieele Practijcq, 28.2.3.5; Merula, Manier van Procedeeren, 4.102.1.

It is generally accepted that the law, and practice thereof, in the Cape prior to the Charter of Justice of 1832 was the law and practice of Holland. See Dr Visagie's thesis "Regspleging en Reg aan die Kaap van 1652 tot 1806" at pages 69-78 and 100-113. At p. 49 the author states that anyone who appeared before the "Raad van Justisie" had to be assisted by "n **prokureur**". The Charter of Justice came into force in 1834 to make provision for the administration of justice "in our Colony of the Cape of Good Hope". Section 14 pro-

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vided for the appointment of certain officers who shall "be attached and belong to the said Court". Thereafter the appointment of further officers was to be made by the Chief Justice. A taxing officer was thereafter appointed (see Rule 351 as replaced by Rule 407 in Rules of Court) as to which see Tennant, Rules of Court, fifth edition at pages 86 and 96. His duties were to "exercise and perform all the powers and duties in the Rules contained regarding the Taxation of Costs". The taxing master remained subject to the control of the court and there is nothing to suggest that the taxation of the bill of costs did not remain an integral part of the lawsuit.

Sections 21 and 22 of the Charter of Justice provided that no person who was not an admitted attorney or advocate was allowed "to appear, plead or act in the Supreme Court on behalf of any suitor". There were provisions which provided that the functions to be performed by an advocate could not be performed by an attorney and vice versa. The

/ sections.....

sections (19 and 20) dealing with the admission of attorneys were repealed by the Attorneys, Notaries and Conveyancers Admission Act No 23 of 1934. The Supreme Court Act 59 of 1959 repealed the whole of the Charter of Justice, "except so much as relates to admission to and the right to practise before the courts". In the result sections 21 and 22 of the Charter remained in force, i.e. the express provision prohibiting persons, who were not admitted attorneys or advocates, from practising in the courts remained. I pause to say that the provisions in the other provinces of South Africa, corresponding to the above sections 21 and 22, also remained in force. The Admission of Advocates Act 74 of 1964 eventually repealed "so much as is unrepealed" in the Charter of Justice (and in the corresponding statutes of the other provinces). Our attention was drawn to the fact that there is no section in Act 23 of 1934 or Act 59 of 1959 or Act 74 of 1964 which directly prohibits persons who are

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not admitted attorneys or advocates from appearing, pleading or acting in the Supreme Court on behalf of suitors. Despite the lack of such a direct statement there can be no doubt that persons not admitted to practise as attorneys or advocates may not appear, plead or act on behalf of a litigant or do any of the acts specially pertaining to the professions. That they are so precluded is implicit in section 32 (5) of Act 23 of 1934 and section 9 (3) of Act 74 of 1964. These sections respectively make it an offence for anyone who is not an admitted attorney or advocate to hold himself out as being the one or the other or directly or indirectly performing any act pertaining to the particular profession.

As shown above non-qualified persons were prohibited from appearing on behalf of others in lawsuits in Holland. This prohibition in due course became part of the administration of justice in South Africa under the Raad van Justisie and in terms of the Charter of Justice. Also, as shown above, in Holland the taxation of bills of costs was an integral

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part of the lawsuit and, whether such taxation took place before a judge or a commissioner, a non-qualified person could not appear on behalf of another. It further appears that the common law and practice of Holland was part of the law in South Africa under the Raad van Justisie. The Charter of Justice in sections 21 and 22 retained the provisions prohibiting non-qualified persons from appearing in lawsuits. There is nothing in the Charter which suggests that the taxation of a bill of costs did not continue to be an integral part of the lawsuit. Hence it follows that according to our common law non-qualified persons were prohibited from appearing before the taxing master.

I turn now to consider whether any provisions of the relevant statutes altered the above position. It was submitted that Act 23 of 1934 defines the exclusive preserves of attorneys and that one would expect to find any relevant prohibitions, if such exist, in that Act. That, however, is not the correct approach. What one has to seek in that Act and other relevant legislation is whether they have explicitly or by necessary implication altered the common law so as to enable non-qualified persons to appear before the taxing

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master at taxations (see Steyn, Die Uitleg van Wette, 3rd ed. pp 97 - 99). In my view, none of the legislation referred to effects such an alteration. On the contrary, if anything, it assumes the continuance or retention of that common law rule.

Section 32 (1) of Act 23 of 1934 provides:

> "No persons other than an attorney, notary or conveyancer shall practise as such or in any manner hold himself out as or pretend to be, or make use of any words or any name, title, or addition or description implying or tending to the belief that he is an attorney, notary or conveyancer or is recognised by law as such or perform any act which he is in pursuance of any regulations made under paragraph (h) of sub-section (1) of section 30 prohibited from performing."

Our attention was drawn to the fact that no mention is made in such regulations of the drawing or taxation of bills of costs. Section 32 (1) ter reads:-

> "Notwithstanding anything to the contrary in any law contained, no persons other than an advocate of the Supreme Court of South Africa or an attorney or an agent referred to in section 22 of the Magistrates' Courts Act 1944... shall appear for or on behalf of any other person in any proceedings or classes of proceedings which are held under the provisions of any law and which have been designated by the Minister of Justice by notice in the Gazette after consultation with the presidents of the several law societies".

Our attention was drawn to the fact that there has been no relevant designation in respect of the taxation of bills of costs.

We were also referred to section 32 bis (1) which makes it an offence for a non-practising attorney, who, in expectation of a fee, draws a document intended for use "in any action, suit or other proceeding" in a court of civil jurisdiction.

It is urged that this subsection does not deal with an appearance before a taxing master in that he is not a court.

There is no doubt that the above sections, and others in the Act, are aimed at preventing unqualified persons from setting themselves up, or practising, as attorneys or doing attorneys' work. The fact that they set out certain acts which are specifically prohibited does not mean that the "catalogue" (for want of a better word) of prohibitions is exhaustive and therefore it does not mean that because

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an act is not included in the catalogue, it is permitted. This is particularly so when one realises that the type of act with which we are concerned was at all times recognised in the Netherlands as being an integral part of the court proceedings and as such part of the functions of the advocate and attorney and that this became part of our common law. If the intention had been to alter the common law that would have been done explicitly.

Reference was also made to sections 20 to 22 of the Magistrates' Courts Act and sections 6, 9 and 10 of the Admission of Advocates Act, 74 of 1964. A perusal of these sections will show that they have no bearing on the present issue.

The relevant section in the Supreme Court Act 59 of 1959 is section 43. I need only quote subsections (2)(a) and (3) thereof:

> "(2) (a) The Chief Justice may, after consultation with the judges president of the several divisions, and subject to the approval of the State President, make rules for regulating the conduct of the proceedings of the provincial and local divisions.

/ (3) .....

(3) The rules made under paragraph (a) of subsection (2) may prescribe:-

.....

(q) the taxation of bills of costs, including bills of costs not relating to litigation, and the recovery of costs; and

(r) generally any matter which is necessary to be prescribed in order to ensure the proper despatch and conduct of the business of the court."

I pause here to emphasize that it appears from these provisions that the legislature accepted and proceeded on the basis of the common law that the taxation of bills of costs was an integral part of judicial proceedings.

Rule 70 is headed "Taxation and Tariff of Fees of Attorneys". The following are relevant subsections thereof (the underlining is mine):-

"70. (1) (a) It shall be competent for any taxing master to tax any bill of costs for services actually rendered by an attorney in his capacity as such in connection with litigious work and such bill shall be taxed in accordance with the provisions of the appended tariff: Provided that the taxing master shall not tax costs in instances where some other official is empowered so to do.

.....

(4) The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as

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> to the time and place of such taxation and notice that he is entitled to be present thereat: .....
>
> (8) Where in the opinion of the taxing master, more than one attorney has been necessarily engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him."

The heading and opening lines of section G of rule 70 read:-

> "G — BILL OF COSTS
>
> In connection with a bill of costs for services rendered by an attorney, such attorney shall be entitled to charge: ....."

Sections 1 and 2 of section G detail the fee payable for drawing the bill of costs and for attending to the taxation thereof.

The Court a quo was of the view that the use of the word "party" in subrule 4 above was significant

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because the definition of "party" includes a party's attorney. It does not include a taxing consultant. Hence, so it was held, the rule contemplated notice could only be given to a party or his attorney. I do not find that this takes the matter any further. The subrule only requires that the opponent is notified. If the applicants are correct in their view the party notified could then appoint anyone to act for him. With great respect I am of the view that the Court a quo has read too much into subrule 4.

It was urged on behalf of applicants that the sub-sections did not contain a prohibition precluding a non-qualified person from drawing a bill of costs or attending the taxation. For the Registrar it was urged that the words underlined contained a clear implication that the framers of rules intended that the fees were payable for the services actually rendered by the attorney or his office.

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It was further said that each bill contained a "fee" for the two items described in section G, viz., "for drawing the bill of costs" and "attending taxation" thereof. If, therefore, this work was done by a taxing consultant, such as second applicant, and he received the amount reflected for so doing, it could not be said that it was a fee being paid for services rendered by an attorney. There may well be some merit in the Registrar's submissions; certainly there is nothing in rule 70 which indicates that a non-qualified person is permitted to attend the taxation of the bill of costs; if anything, rule 70 also seems to assume that the common law still applies.

A review of a ruling of the taxing master is provided for in rule 48. Experience and practice have shown that in this type of review it is not necessary to show that the taxing master has committed a misdirection. If the reviewing judge is of the view, on the information before him, that an amount allowed is too much, or too little, or should not have been allowed, he is free to alter the taxing master's figure.

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This suggests that the taxing master is not acting in an administrative capacity. I do not, however, think that a discussion of this rule assists in deciding the issue.

On behalf of the applicants it was submitted that whatever the Roman-Dutch practice may have been, it should be accepted that work once conducted by the profession could slip out of its hands. The following examples were given. Persons other than attorneys or advocates have the right to appear, on behalf of another, before rent boards, liquor boards, township boards, valuation courts, road transportation boards and the Special Income Tax court. It was also said that deceased estates were frequently wound up by banks or accountants. In order to compare the tasks of such bodies with that of the taxing master it was said that the taxing master is not a judicial officer, that he is not bound by the rules of evidence and that his rulings are those of an administrative official. Reliance for these latter submissions was placed on dicta in Botha v Themistocleous, 1966 (1) SA 107 (T) at p 111, and

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in Menzies, Birse and Chiddy v Hall, 1941 CPD 297 at 302. Section 34 of Act 59 of 1959 provides for the appointment of registrars and other officers of a Supreme Court. The taxing master is the registrar or a member of his staff. He is an officer of the Court. Van Zyl, The Judicial Practice of South Africa (2nd ed.) at p 819, states:

> "In taxation of costs the taxing officer is bound to conform to the rules and directions that may have been framed by the Court, or to the instructions given to him by the Court from time to time, or to take as his criterion the decision of the Court on questions of costs."

Van Zyl, op. cit. at p 818 also points out that the taxing master may receive evidence on oath and sets out the type of occasion which will necessitate his doing so. We have seen that taxation is an integral part of the proceedings before the court. Hence I am unable to agree with the dicta in the above cases to the effect that he is not a judicial officer and that his rulings are those of an administrative official. His position cannot be equated with the type of board mentioned above or with the executor of a deceased estate. I am notaware that either in the Roman Law or in Holland,

the winding up of an estate was the prerogative of the profession. The position in the Special Income Tax Court has been regulated by section 83 (12) and Regulation B.5 of the Income Tax Act 58 of 1962. The proceedings before the boards and tribunals mentioned above are not purely judicial proceedings and cannot be compared with court proceedings. Hence this submission does not assist the applicants.

Counsel for the applicants submitted that whatever the Roman-Dutch practice was, regard should be had to the fact that for many years "taxing consultants" who were not legally qualified had been drawing bills of costs and attending to the taxation thereof before the taxing masters in most of the Provincial Divisions; that the evidence showed that since 1969 appearances by non-attorneys in taxation have been accepted; that as far back as 1946 Roos, who had for many years been the registrar of the Transvaal Provincial Division and was an experienced taxing master, in the preface

/ (p. iii).....

(p. iii) to his Taxation of Bills of Costs in the Superior Courts of South Africa advised attorneys to have their bills of costs drawn up by experienced attorneys "or by men who specialised in that kind of work". It was urged that the above procedure was now a recognised and established practice; that the practice had a great deal of merit in that it was accepted in the profession; that busy attorneys and senior attorneys did not have the time, nor did they wish to attend to the taxation of bills of costs. The Society, on the other hand, contends that the evidence does not show that such a practice has been established and that even if this practice has been permitted in some of the Provincial Divisions, it has not been permitted in all the Divisions and it should not be allowed to continue and so become established. There is merit in the Society's contention. The evidence does not show that the practice has been established in the Cape of Good Hope Provincial Division; nor does it show that the practice has been followed for as long

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as seven or eight years in the other Provincial Divisions. The exception is the Transvaal Provincial Division. I am prepared to accept, as was suggested during the hearing, that as far back as forty-five years ago taxing consultants without legal qualifications were permitted to attend before the taxing master. However, this does not mean that there were many attorneys who were using the services of such persons. Whilst the evidence does show that many attorneys in the Transvaal have for the past ten years been using the services of taxing consultants who have no legal qualifications, it does not show that the majority of attorneys have done so, nor does it show that the practice has become generally accepted by the attorneys. It certainly cannot be said that the practice has become established in the Republic.

I wish to add that we were referred to several decided cases including Sheeley v The Registrar and Taxing Master of the Supreme Court (T.P.D.) and Walsh, 1911 AD 442 and 1911 TPD at p 303. The dicta to which we were referred

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do not really support the contentions of either the applicants or the Registrar. Hence I do not propose discussing them.

It follows from what has been said above that traditionally taxation has been, and still is, regarded as an integral part of the judicial process and that the rights and obligations of the parties to a suit are not finally determined until the costs ordered by the court have been taxed. Accordingly the only persons who can appear before a taxing master in a Supreme Court are persons who are permitted to practise in such court.

In the result the submissions of the applicants detailed in (a), (b), (c), (d) and (e) above cannot be sustained.

The order made is:

1. The appeal is dismissed.
2. The appellants are ordered to pay, jointly and severally, the costs of the respondent.

O. Galgut.

O. GALGUT.

WESSELS JA)
TROLLIP JA) CONCUR
MULLER JA)
HOEXTER AJA)