Case No: A2/2001/2198 QBENI, Neutral Citation Number: [2002] EWCA Civ 1500
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM QUEEN'S BENCH DIVISION
MR JUSTICE TOMLINSON

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday 22nd October, 2002

B e f o r e:

LORD JUSTICE WARD,
LORD JUSTICE MANCE
AND
SIR MARTIN NOURSE

– – – – – – –

RALPH HUME GARRY

Appellant

– v –

GWILLIM

Respondent

– – – – – – – – –

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Philip Newman appeared pro bono for the Appellant in Person
Paul Girolami Q.C. (instructed by Barlow Lyde & Gilbert) for the Respondent

J U D G M E N T
As Approved by the Court

Lord Justice Ward :

Introduction.

1. The appellant, Mr David Gwillim, is an experienced solicitor specialising in construction disputes. He became embroiled in a dispute with his partners in the firm Winward Fearon and instructed the respondents, Ralph Hume Garry, to act on his behalf to extricate him from that partnership and to recover the sums due to him on the taking of the necessary accounts. Mr Stephen Ralph, also a very experienced litigator, supervised his junior partner Mr Simon Blandy in this task. On 25th April 1998 Mr Gwillim signed the firm's standard terms of business which provided that fees were to be calculated on the basis of hourly rates for the time spent and the standard hourly rates were agreed. Bills were to be submitted on a monthly basis and would "take the form of a final account for all work done during the relevant period". If a fee note was not paid when due, the firm reserved the right to charge interest on the balance outstanding at "the official judgment rate" from when the bill was due until payment in full was made. This appeal concerns the propriety of the bills submitted and gives rise to a point of principle of some importance to solicitors. The facts which underlie the dispute may not make the finest advertisement for the profession and perhaps the least said about the merits, or what could be seen as the common lack of them, the better.

2. In short, the material facts are that between 30th April 1998 and 22nd June 2000 Ralph Hume Garry rendered 23 bills for their fees and disbursements in the total amount of £215,819.09 of which only £87,883.39 was paid leaving a balance outstanding of £127,935.70. In July 2000 the firm issued a claim for that amount with interest thereon to that date of £7,502.31 and for further interest thereafter. Those fees were incurred partly in proceedings commenced in the High Court by Mr Gwillim against Winward Fearon for the dissolution of the partnership. These proceedings were stayed when the defendants resorted to the arbitration clause in the partnership deed. Mr Gwillim had to pay the defendants their costs of about £8000. He then took the dispute to arbitration. He succeeded in a preliminary issue and was awarded costs. The main arbitration apparently lasted 7 days and the arbitrator found that in fact the firm had already been dissolved. There was a further hearing to deal with costs which resulted in the arbitrator ordering Mr Gwillim to pay the costs of the arbitration in the sum of £200,000 or thereabouts. The taking of an account was allowed (though not without difficulty) and eventually (and after Ralph Hume Garry had terminated their retainer because their fees remained unpaid), the arbitrator found that Mr Gwillim was entitled to £84,000. I do not know how long that hearing lasted or who was liable for the costs. On any account Mr Gwillim is very considerably out of pocket having regard to his liability for the very substantial costs he has been ordered to pay and for his own costs whatever they may prove to be.

3. Mr Gwillim originally sought to defend the claim not on a basis that his solicitors were not entitled to their fees as billed but only on the basis that his liability was extinguished or was to be reduced by setting off his counterclaim for damages for the negligent conduct of the proceedings on his behalf. He requested the court to assess the proper quantum of costs. In summary his allegations of professional negligence, which are extensive, cover these principal grounds. First he complained that the firm lulled him into the litigation and then the arbitration after giving him hugely over−optimistic advice as to his prospects of success. Secondly, the firm failed to have regard to the fact that he had a limited "fighting

fund" of only £30,000 and could not afford and did not wish to risk the enormous liability for costs which he has now incurred. Thirdly, he alleged that the firm should never have advised him to commence proceedings in the High Court given the arbitration clause. Fourthly, he complained of the manner in which the arbitration was conducted and particularly of the decision to allow the arbitration to proceed by way of a split trial of liability and quantum which had the result that although he "won", he lost the main battle for costs. Finally, his solicitors failed to help him with regard to costs insurance.

4. These issues were fixed for trial for five days between 15th and 25th October 2001 when, without any warning, Mr Gwillim applied on 7th September to strike out the claim for disclosing no reasonable grounds for bringing it. He contended that Ralph Hume Garry were not entitled to sue on the fee notes rendered because they failed to comply with the strict requirements of the Solicitors Act 1974. On 27th September 2001 Tomlinson J. dismissed that application but Mr Gwillim appeals with permission of Rix L.J.

The Bills.

5. Each of the bills stated the period to which the work related and identified the matter as one "Re: Your dispute with David Cornes and others re: Winward Fearon". The first bill described the work in these terms:−

> "To the provision of legal services to date, involving taking instructions, consideration of your bundle of documents, advising you thereon, drafting memoranda and correspondence on your behalf. The whole involving meetings with you and discussions over the telephone and with David Cornes to date.
>
> Disbursements ×"

The second bill gave a similar description. The validity of these two bills is not challenged before us.

6. The third to sixth bills describe the work done in these terms:−

> "To continue to act on your behalf in relation to the above matter.
>
> Disbursements ×"

There was a slight change in the "mantra", as it has been called, for the next batch of bills where the phrase "To our professional charges" was added to precede the description "to continuing to act on your behalf in relation to the above matter".

7. The last two bills were for "disbursements only" being a further amount of unpaid counsel's fees of £46,770.87 and the cost draftsman's unpaid fee of £740.25.

8. The first eleven bills delivered between April 1998 and January 1999 were paid in full - though usually by instalments - and £10,781.13 was paid on account of the twelfth bill

rendered in February 1999 for a total amount of £14,770.23. By then Mr Gwillim had paid about £83,000. He paid a further £4,883.39 to settle the July and August bills, but he paid no more.

Mr Gwillim's Case.

9. Mr Gwillim contends that these bills are defective because they fail to give an adequate description of the work done to justify the fees charged. Tomlinson J. observed:−

> "It is perhaps surprising, as I have already indicated, that the defendant did not at an earlier stage make an application of this sort if the point was thought to be well founded. However Mr Newman for his part whilst accepting that it would have been preferable if this point had been thought of at an earlier stage, nonetheless submits that if it is a good point it is a point that goes to the jurisdiction of the court and therefore it is one which the court should and must entertain, even at this late stage before the due date of the trial."

I agree with all those comments.

10. In a sentence, Mr Gwillim's case is that these bills are defective because they do not contain sufficient to tell the client what it is for which he is asked to pay. I note in parenthesis that the argument was addressed to us on the basis that all bar the first two bills (which were hardly informative) were thus infected even though it may be said that the last two bills, being for disbursements only, fall into a different category. We have not had to investigate whether proper requests were made for detailed bills, nor whether the bills which were paid in full are to be treated as settled and thus no longer open to challenge.

The current Statutory Scheme.

11. The case hangs upon the meaning and effect to be given to section 69 of the Solicitors Act 1974 ("the 1974 Act"). This reads as follows:−

> "Action to recover solicitor's costs.
>
> (1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2); ×
>
> (2) The requirements referred to in subsection (1) are that the bill -
>
> (a) must be signed by the solicitor, or if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm, or be enclosed in, or

accompanied by, a letter which is so signed and refers to the bill; and

(b) must be delivered to the party to be charged with the bill, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house, or last known place of abode;

and, where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the solicitor to prove the contents of the bill and it shall be presumed, until the contrary is shown, to be a bill bona fide complying with this Act.

(3) ×"

12. It is necessary to see section 69 in its context. It falls within Part III of the Act dealing with remuneration of solicitors. Non−contentious business is dealt with first. Section 56 provides for general orders to be made prescribing and regulating the remuneration of solicitors in respect of non−contentious business according to a scale of fees or by a gross sum or a fixed sum or as may be appropriate. So long as an order is in operation, the taxation of bills of costs is to be regulated by that order. Section 57 provides for non−contentious business agreements which again can provide for remuneration by a gross sum or otherwise. Following taxation the agreement may be set aside or the payment under it reduced as may be fair and reasonable. Section 58 is irrelevant for present purposes.

13. Contentious business is then dealt with. Section 59 provides for contentious business agreements allowing remuneration by a gross sum or otherwise. By virtue of section 60, these costs are not subject to section 69. Section 61 provides for the enforcement of contentious business agreements and includes provisions to allow for taxation consequent upon which the amount payable under the agreement may be reduced. Section 62 and section 63 are not material. Section 64 is of significance because it deals with the form of bill of costs for contentious business. It reads:−

"(1) Where the remuneration of a solicitor in respect of contentious business done by him is not the subject of a contentious business agreement then, subject to subsections (2) to (4), the solicitor's bill of costs may at the option of the solicitor be either a bill containing detailed items or a gross sum bill.

(2) The party chargeable with the gross sum bill may at any time -

(a) before he is served with a writ or other originating process for the recovery of costs included in the bill, and

(b) before the expiration of three months from the date on which the bill was delivered to him,

require the solicitor to deliver, in lieu of that bill, a bill containing detailed items; and on such a requirement being made the gross sum bill shall be of no effect.

(3) Where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable with the bill before the expiration of one month from the service on that party of the writ or other originating process, order that the bill be taxed.

(4) If a gross sum bill is taxed, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation, and the solicitor shall furnish the taxing officer with such details of any costs covered by the bill as the taxing officer may require."

I can omit section 65 and 66.

14. There follow some general provisions about remuneration dealing in section 67 with the inclusion of disbursements in the bill and in section 68 with the power of the court to order a solicitor to deliver a bill of costs and any documents in his possession. Section 70 gives the client the important right to seek taxation. On application made within a month of delivery of the bill the High Court shall order taxation. If application is made within a year the court may order taxation but special circumstances have to be shown to allow taxation twelve months after delivery. If one−fifth of the amount of the bill is taxed off the solicitor is to pay the costs of taxation but otherwise the party chargeable shall pay those costs. Finally, section 87 contains a fairly useless circular definition of contentious and non−contentious costs.

15. Here Mr Gwillim submits that these are not bills bona fide complying with the Act. There is no other hint or help in the Act to determine what is or is not bona fide compliance with the Act. To discover the answer one may have to trawl through statute and case law stretching back over 273 years. It has been an interesting, if not entirely satisfactory exercise.

The statutory history and the development of the case law.

16. I begin with the Solicitors Act 1843 which appears to be the precursor and foundation of the modern law. Section 37 provides as follows:−

"× No × solicitor × shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such × solicitor, until the expiration of one month after such × solicitor × shall have delivered unto the party to be charged therewith × a bill of such fees, charges, and disbursements, and which bill shall either be subscribed with the proper hand of such × solicitor, (or, in the case of a partnership, by any of the partners ×) ×

> ×[I omit a number of provisions relating especially to taxation and move to the penultimate proviso] ×
>
> Provided also, that it shall not in any case be necessary in the first instance for such × solicitor × in proving a compliance with this Act, to prove the contents of the bill he may have delivered, sent, or left, but it shall be sufficient to prove that a bill of fees, charges, or disbursements, subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in the manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a bona fide compliance with this Act ×"

17. This replaced the Act for the better Regulation of Attorneys and Solicitors, 1729, 2 Geo. II. c 23, section 23. As early as that time there had been a bar on the solicitor commencing action until the expiration of one month from the delivery of his bill and there were provisions, slightly different provisions it has to be emphasised , for the taxation of that bill. Even then the bill had to be properly delivered and "subscribed with the proper hand of such attorney or solicitor". The content of the bill received a little more clarification than has since appeared in that it was prescribed that the bill should be:−

> "Written in a common legible Hand and in the English Tongue (except Law Terms and Names of Writs) and in Words at length (except Times and Sums) ×"

That may explain the practice of having a narrative account of the work done.

18. One thing which did not appear in the Georgian statute but which features in 1843 and continues to feature even now was the proviso for the client to show that the bill delivered was "not such a bill as constituted a bona fide compliance with this Act".

19. There is a marked similarity in the substance of the provisions of the 1843 Act and the 1974 Act, especially between the above−quoted parts of section 37 and section 69 respectively. By way of further example, if application were made by the client within a month of delivery of the bill for that bill to be taxed, the court would so order but taxation would only be allowed in special circumstances after twelve months- compare section 70 of the 1974 Act. The provision in 1843 was slightly more complicated and needs to be explained for an understanding of some of the following case law. The provision read:−

> "× and upon the application of the party chargeable by such bill within such month it shall be lawful, in case the business contained in such bill or any part thereof shall have been transacted in the High Court of Chancery, or in any other Court of Equity, or in any Matter of Bankruptcy or Lunacy, or in case no part of such business shall have been transacted in any Court of Law or Equity, for the Lord High Chancellor or Master of the Rolls, and in case any part of such business shall have been transacted in any other Court, for the Courts of Queen's Bench, Common Pleas, Exchequer, Court of Common Pleas at Lancaster, or Court of Pleas at Durham, or any judge of either of them, and they are hereby respectively required to refer such

> bill, and the demand of such × solicitor ×, thereupon to be taxed and settled by the proper Officer of the Court in which such reference shall be made, without any money being brought into court ×"

After the Judicature Act 1873, the power to order taxation was given to the High Court and so it is today.

20. There is also a common provision in section 37 of the 1843 Act and section 70 of the 1974 Act that the cost of the taxation be paid by the client if he were to be unsuccessful in taxing off more than one−sixth of the amount in 1843 or one−fifth of the amount of the bill in 1974.

21. Both the old Act and the current Act make provision for the court to be able to order the solicitor to deliver his bill of costs and relevant documents - compare section 68 of the 1974 Act.

22. Section 37 was the subject of a number of Victorian decisions. We were only referred to *Haigh v Ousey* (1857) 7 El. & Bl. 578. I have found it necessary to look at two of the earlier decisions referred to in that case. The first is *Keene v Ward* (1849) 13 Q.B. 513. That was an action by the solicitors under a bill which contained charges in respect of nine actions in the Court of Exchequer and two in the Common Pleas. It also contained items in respect of two other actions as to one of which the parties were named and the bill was itemised to state, for example, "Instructions to sue 3s. 4d., writ of summons 12s. 6d". The final charges in the bill did not identify at whose suit the defendant was the client and contained the fascinating description:−

> "Attending you on your informing an action had been brought against you, and as to possibility of throwing it over the Long Vacation; and you were to bring me the writ and notice of declaration × 6s.8d."

23. The defendant objected to the bill submitting it did not satisfy the requisites of section 37. The argument was that because the bill did not state the court to which the business related, no−one could advise as to the taxation of those parts of the bill and if the bill could not be referred for taxation, it was insufficient. Patteson J. delivering the judgment of the court held:−

> "In requiring the delivery of an attorney's bill, the legislature intended that the client should have sufficient materials for obtaining advice as to taxation: and we think that we fulfil that intention by holding the present bill sufficient within that principle: whereas, if we required in respect of every item a precise exactness of form, we should go beyond the words and meaning of the statute, and should give facilities to dishonest clients to defeat just claims upon a pretence of a defect of form in respect of which they had no real interest

24. The next case of interest was *Cook v Gillard* (1852) 1 E. & B. 26. It does merit reading because it contains a careful analysis of a large number of the authorities and so I shall cite from it at some length. Here the solicitor Mr Cook delivered a bill to his client divided into

four parts. The first part was headed "Yourself and Ransom". It consisted of a charge for attending the defendant and consulting as to slanderous reports; and then, under a fresh head, "Hilary Term 1846", there were charges for "Letter before action", "Instructions to sue", "Writ of summons", and "Attending settling". The amount of the first part of the bill was £2. 19s. 8d. Except insofar as might be inferred from the items quoted there was nothing to show whether the suit of *Gillard v Ransom* had been pending in any, or which, of the superior courts. The second part of the bill related to conducting the defence of a case at the Middlesex Quarter Sessions and the third part for conducting a prosecution there. The fourth part of the bill was headed "Yourself and Mrs Heydeman". It contained charges for taking the opinion of counsel on the construction of an agreement, various charges for collecting evidence and making enquiries at Hatton Garden, Tottenham Court Road, and other places well known to be in Middlesex, but which were not stated on the face of the bill to be there; for "Instructions to sue in an action on the case"; for "Writ" and "Service"; for attending in court when on motion by counsel "A rule was made to refer all matters in dispute"; and for attending the reference. The amount of this head of the bill was £122. 8s. 10d. Except insofar as might be inferred from the items quoted there was nothing to show whether the cause of *Gillard v Heydeman* had been pending in any, or which, of the superior courts. It was contended for the defendant that the first and last parts of the bill were insufficient, as they did not show in what courts the business there charged for was transacted; and therefore that the bill, being one entire bill, was not sufficient as to any part. For the plaintiff it was contended that the bill was sufficient for the whole; or, if not, that it was divisible and good pro tanto.

25. Lord Campbell C.J. delivered the judgment of the court. He referred to *Ivimey v Marks* (16 M. & W.) 843 in which the rule was laid down that a charge for an item in an action, without specifying in what court the action is brought, rendered the bill bad, the reason being that the client ought to be enabled by the bill to obtain advice as to taxation without the need of further question. The Lord Chief Justice pointed out section 37 of the 1843 Act and said:−

> "No requisites for the bill are particularised: there is no requirement that the court should be specified: and the section further declares that the plaintiff is not bound in the first instance, in proving a compliance with the Act, to prove the contents of the bill delivered; but it is presumed sufficient unless the defendant proves that it is not such a bill as constitutes "a bona fide compliance with this Act." The defendant here does not prove that any further information was practically wanted for taxation, or suggest that the name of the court in which the two writs of summons were issued would have been of any use to him: nor does he contend that the Act has not in this case been bona fide complied with, unless the arbitrary rule be deduced from the cases above mentioned, that the name of the court as to every item is indispensable, can be maintained. Now this rule, as applied to the existing statute, appears to have originated in a mistake: it was first introduced by judges applying the provisions of stat. 2 G. 2, c 23, s.23; and then there was good reason for it; for the jurisdiction to tax under that statute is given to the court in which the greater part of the business was done; and it was therefore indispensable for the parties and for the taxing officer to be able to assign each item to its appropriate court, before the taxation could be entered upon: moreover at that time the scale of charges in the different courts was different; so that the name of the court was also

wanted in order to estimate the amount of charges. But, under the existing statute, if there is any item in any court of law, jurisdiction is given to all the superior courts indifferently; so that in respect of jurisdiction the name of the court is entirely immaterial: and so likewise it is for estimating the amount due, as the scale of charges in all the superior courts is now uniform. The judges, who instituted the rule in relation to the existing statute, adopted it from cases under the former statute, without adverting to the important changes in the law which the legislature had made; and thereby, as we think, contravened the intention of the legislature. If this reasoning is correct, it follows that the rule, which so originated, has been maintained without any useful purpose."

26. He analysed a number of cases including *Keene v Ward* and then said:−

> "This has been followed by a very salutary judgment in *Cozens v Graham* (16 Jurist, 952), where a bill was held valid although the court in which the business was done was not mentioned or described, it being clear that the defendant, knowing the court, did not want the information and only made the objection to evade payment of a debt.
>
> × *This judgment appears to us to give effect to the true meaning of the statute; the defendant who undertakes to prove that the bill is not a bona fide compliance with the Act cannot found an objection upon want of information in the bill, if it appears that he is already in possession of that information.* It seems to us probable that the legislature changed the law relating to attorneys' bills from having perceived that a clerical error or accidental oversight is often worked the forfeiture of the remuneration due for many years of professional services; and therefore meant, *while it secured the client a right to reasonable information respecting the bill before an action should be brought upon it, at the same time to give the attorney security that the delivery of a bill intended to give and giving all requisite information should be a compliance with the Act, unless the client could show that information which was really wanted had been withheld . Upon this principle* , and according to these cases, we decide against the objection raised by the present defendant. We consider that the doubt, whether the writs of summons and other proceedings, apparently such as belong to the courts at Westminster were issued here or in the borough court of some municipal corporation, emanated from the ingenuity of the advocate without having had any existence in the mind of the defendant: and *a client has no ground of objection to a bill who is in possession of all the information that can be reasonably wanted for consulting on taxation."* (I have added the emphases.)

27. We then come to *Haigh v Ousey* (1857) 7 El. & Bl. 578, the case referred to in all the text books. The bill there contained charges for business transacted in different suits, one of which was headed "Yourselves ats. Walker", where there were charges for various items including such as "Attending on the charges of plaintiff's attorneys herein", "Instructions to

defend", "Agent perusing correspondence, and attending plaintiff's attorneys; conferring and inspecting original writ ×" It may be significant to note that, according to the report, there was nothing else in the bill to indicate the nature of this action. Other parts of the bill related to actions in the superior courts at Westminster. Objection was taken to the bill that it did not state the court in which the business charged for was done and was not in accordance with the statute. Lord Campbell C.J. held:−

> "I think the plaintiff has proved that he delivered such a bill as the statute requires. The statute, it is to be observed, requires the delivery of a bill of fees, charges and disbursements, but does not specify further what its contents shall be. I agree, however, that the bill must disclose on the face of it sufficient information as to the nature of the charges. I adopt the rule as to this, laid down in *Keene v Ward* × and in *Cook v Gillard* × The view taken by my brother Patteson in *Keene v Ward* seems very sensible. [He quoted from the judgment I have already set out] and in *Cooke v Gillard* we laid down the principle that the legislature intended × [and he quoted from that case]."

28. He went on to say:−

> "Complaints have sometimes been made that solicitors are not at liberty to recover the fair remuneration for their services as freely as any other person. It may be necessary to subject them to some regulation; but they have just ground for complaint if those regulations are vexatious, preventing the fair recovery of a just amount. I do not think that the legislature intended to throw on the solicitors the burthen of preparing a bill such that another solicitor on looking at it should, without any further statement, see on the face of the bill all the information requisite to enable him to say the charges were reasonable."

29. The judgment of Erle J. is interesting. He said:−

> "The principle laid down in *Ward v Keene* that all that is required is that the bill should supply sufficient materials for advice, is not, I think, any where disputed; but it is said that in applying it, we must consider it indispensable that a solicitor on reading the bill may be able without asking for further information, to advise whether the items are overcharged; and that for this purpose if any of the items are for business in court, it is indispensable that the court should be named. Now I am sure no bill that contained charges for anything beyond mere steps in a cause ever did contain this full information. No person on earth by reading a bill of costs without further information can tell what is a fair charge for such an item as "advising you". It may have been a minute's work; it may have required a week's careful consideration. No man, unless there were interminable prolixity in the bill, could tell from the bill alone what is the fair charge for matters depending on the quantum meruit, that is, for almost everything except mere steps in a cause. × It seems to me that the statute with regard to solicitors' bills ought to be construed on the principle on which we act with regard to particulars of demand.

> The bill should give reasonable information; if the client wants more he may demand it. Formerly, the law has been administered as if it were the object of the Act to enable a fraudulent client to defeat his solicitor on a mere matter of form which it would be ludicrous to suppose to have misled in point of fact. But in *Cooke v Gillard*, after an elaborate review of the law, a rule was laid down, applying which to this bill I find no item insufficient. But I am further of the opinion that, supposing there was one bad item, it would not prevent the plaintiff from recovering for the rest. The doctrine that it would is founded on what was thrown out in *Ivimey v Marks* that a solicitor applied to for advice cannot tell whether the sums which he thinks overcharged form one−sixth of the whole, unless he sees all the items. It may be desirable that he should be able to tell this; but the evil arising from enabling a client to lie in wait with a formal objection, and dispute the whole bill because of the absence, as to some one item, of information which he never asked for or needed, greatly outweighs this. To decide that one bad item vitiates the whole bill is to affirm that the legislature intended a fraudulent client might lie in ambush with a technical point until the moment of trial."

30. Crompton J. held:−

> "I am strongly opposed to the idea that the presence of one bad item vitiates the whole bill; and I cannot well see the force of the reason for the rule contended for, that the consulted solicitor must be able to judge, ex facie, and without further information, whether he will advise the reference of the bill to taxation. No bill ever gives such information as to items not done in a cause in court, and I do not see why more particularity is required in items done in the course of a cause. I think it would be a very dangerous rule to require the description to be such as to enable a person of competent skill on reading the bill to say, ex facie, whether it is reasonable. I think it should be sufficient if it contains such reasonable information as, coupled with what the client must be able to tell him, would be sufficient to enable him to judge."

An analysis of the position under the 1843 Act.

31. What help can we get from this trilogy of cases where the dispute arose in contentious business not because of any insufficiency in the description of the work done but because of a want of identification of the court in which the business was conducted? We must bear in mind the statutory background, viz:−

i) the client's only protection against overcharging was to seek taxation;

ii) the bill to be taxed was the bill as delivered ("refer *such* bill × to be taxed");

iii) if less than one−sixth was taxed off that bill, the client paid the costs of taxation;

iv) the Georgian statute that jurisdiction to tax was given to the court in which the greater part of the business had been done and that different scales of charges prevailed in different courts had been repealed: now taxation could take place in all of the superior courts on substantially the same principles and on a uniform scale of charging.

32. Against that background the principles to be deduced from those cases appear to me to be these:−

i) the legislative intention was that the client should have sufficient material on the face of the bill as to the nature of the charges to enable him to obtain advice as to taxation. The need for advice was to be able to judge the reasonableness of the charges and the risks of having to pay the costs of taxation if less than one−sixth of the amount was taxed off.

ii) that rule was, however, subject to these caveats:−

a) precise exactness of form was not required and the rule was not that another solicitor should be able on looking at the bill, *and without any further explanation from the client* , see on the face of the bill all information requisite to enable him to say if the charges were reasonable;

b) thus the client must show that further information which he really and practically wanted in order to decide whether to insist on taxation had been withheld and that he was not already in possession of all the information that he could reasonably want for consulting on taxation.

iii) the test, it seems to me, is thus, not whether the bill on its face is objectively sufficient but whether the information in the bill supplemented by what is subjectively known to the client enables the client with advice to take an informed decision whether or not to exercise the only right *then* open to him, viz., to seek taxation reasonably free from the risk of having to pay the costs of that taxation.

iv) a balance has to be struck between the need, on the one hand, to protect the client and for the bill, together with what he knows, to give him sufficient information to judge whether he has been overcharged and, on the other hand, to protect the solicitor against late ambush being laid on a technical point by a client who seeks only to evade paying his debt.

The subsequent changes in the legislation.

33. *The Attorneys' and Solicitors' Act 1870 ("the 1870 Act")* : this allowed the remuneration to be fixed by agreement in writing with the client:−

> "× respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements

> in respect of business done or to be done by such attorney or solicitor, whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or percentage, or by salary or otherwise."

There was a proviso in respect of business done or to be done in any action at law or suit in equity that the amount payable under the agreement should not be received until the agreement had been examined and allowed by a taxing officer of the court having power to enforce the agreement and if it appeared that the agreement was not fair and reasonable the court had the power to cancel the agreement and allow costs to be taxed in the same manner as if no such agreement had been made. This statute introduced the phrase "a gross sum" for the first time that I have been able to trace.

34. *The Solicitors' Remuneration Act 1881 ("the 1881 Act"):* this was an Act "for making better provision respecting the remuneration of solicitors in conveyancing and other non−contentious business". It allowed General Orders to be made regulating the remuneration:−

> "in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not being business in any action, or transacted in any court, or in the chambers of any judge or master, and not being otherwise contentious business."

For the first time there is reference to "contentious business". The General Order could prescribe that remuneration be by a gross sum. It was provided that as long as any General Order was in operation taxation of bills of costs of solicitors was to be regulated thereby. Agreements could be sued upon but if objection was taken that the agreement was unfair and unreasonable the taxing master could enquire and the court had the power to order cancellation of the agreement or reduction of the charge. The 1870 Act did not apply to business to which the 1881 Act related and thus a distinction was now to be drawn between contentious and non−contentious business.

35. *The General Order 1883:* this seems sometimes to be referred to as the General Order of 1882 but no−one seems to be quite clear why. I think the answer to the mystery is that although the order was dated August 1882 it only came into effect after 31st December 1882. It hardly matters. That provided for scales of charges in Schedule 1 and Paragraph 2(c) provided that remuneration for other non−contentious business was to be regulated "according to the present system as altered by Schedule 2 hereto".

36. *The Solicitors' Remuneration Act General Order 1920* : this provided that the remuneration of a solicitor in respect of all business regulated by clause 2(c) of the 1883 General Order "may at the option of the solicitor be by a gross sum in lieu of by detailed charges". So here we have for the first time the option to render gross sum bills in lieu of detailed bills. The protection for the client was that he could require that a detailed bill of charges be delivered and the bill so delivered was to be subject to taxation as if the provisions of the order with respect to the regulation of remuneration by gross sum had not been made.

37. *The Solicitors Act 1932 ("the 1932 Act")* : this was a consolidating Act and is a precursor of the 1974 Act. I need not refer to it in detail.

38. *The Solicitors' Remuneration (Gross Sum) Order 1934* : this repeated the option for the solicitor to charge by a gross sum in lieu of by detailed charges but it slightly altered the timetable for enabling the client to obtain a detailed bill of charges and to have it taxed.

39. *The Solicitors Remuneration Order 1953.* This revoked the 1920 and 1934 orders. It provided for "other business" than conveyancing to be charged in accordance with Schedule II by way of "such sum as may be fair and reasonable". In place of the right to demand a detailed bill, the client was given a new right that without prejudice to the right to seek taxation of the costs, the client could require the solicitor to obtain a certificate from the Law Society certifying that the sum charged was fair and reasonable. There was a further safeguard that before the solicitor could bring proceedings to recover costs on a bill delivered under the second schedule, he had, unless the costs had been taxed, to have drawn the attention of the client in writing to his right to require the solicitor to obtain the certificate from the Law Society and to the provisions of the Solicitors Act with regard to taxation of costs. On any taxation it was the duty of the solicitor to satisfy the taxing master as to the fairness and reasonableness of his charges.

40. *In Re a Solicitor: In Re a taxation of costs* [1955] 2 Q.B. 252. There the client consulted solicitors to advise her on questions of domicile, custody of her children and maintenance from her husband. They took counsel's opinion and settled a draft petition for judicial separation. She then changed solicitors who later issued a petition in substantially the form drafted. The first solicitors delivered a bill described by Gerrard J. as:−

> "containing a very detailed description of the work they had done on her behalf × It was not an itemised bill of costs in the traditional form; it was a lump sum bill which the first solicitors maintained complies with the Solicitors Remuneration Order 1953."

The judge was invited to consider whether the bill could be presented in that form on an agreed footing that the contents related solely to non−contentious business. The judge had his doubts about that. He was of the view that it might be contentious business. It was agreed that if any part of it was, then the document could not come within the Solicitors Remuneration Order 1953. He concluded there was an element of contentious business but, assuming the contrary, the solicitor was still able to submit a lump sum bill which could be taxed. He did not imagine that the taxing master would be hampered by the absence of a long traditional itemised bill of costs. The Court of Appeal agreed that the nature of the business done was contentious business. On the assumption that the work was all non−contentious, Denning L.J. held that despite the revocation of the 1920 and 1934 orders, the solicitor was still entitled to "a lump sum as before". The client was given "a valuable new right" of putting the matter before the Law Society to whom the solicitor had to give full details of all the work he had done, the time spent by himself, his assistants and his clerks respectively and all the material circumstances. The client retained the right to have the bill taxed by the taxing master who could call for all the details just as the Law Society could, and the client had full opportunity to challenge matters if so desired. He went on to say, and Parker L.J. and Roxburgh J. agreed with him,:−

> "Such being the effect of the new order, the question is: what must a solicitor's bill for non−contentious business now contain? It need not contain detailed charges as it used to do before 1920. Nor need it contain all the details which the solicitor will have to give, if required, to the Law Society or the taxing master. But I think that it must contain a summarised statement of the work done, sufficient to tell the client what it is for which he is asked to pay. A bare account for "professional services" between certain dates, or for "work done in connection with your matrimonial affairs" would not do. The nature of the work must be stated, such as, advising on such and such a matter, instructing counsel to do so and so, drafting such and such a document, and so forth. Tried by this test, I am of the opinion that the bill delivered by the solicitors in this case would have been a good bill if it had been all non−contentious business."

41. Three points must be noted about this judgment. First, in view of the finding that the work was partly in respect of contentious business, the observations on the propriety of the non−contentious bill were strictly obiter. Secondly, and in my view more importantly, the question whether or not the client's own knowledge could supplement and cure any insufficiency in the narrative did not arise. Both counsel were agreed that the bill had to contain a summarised statement of the work carried out sufficient to tell the client what he was paying for and the argument was whether particulars of time expended and the number of documents prepared should have been given. *Haigh v Ousey* and that line of authorities did not appear to have been cited to the court at all. Thirdly, the judgment must be read in the light of the changes introduced a year later.

42. *The Solicitors (Amendment) Act 1956 ("the 1956 Act")* : this made important amendments for contentious business done by a solicitor where his remuneration was not subject to an agreement. For the first time there were definitions of contentious and non−contentious business. The solicitor's bill of costs could now at the option of the solicitor be for a gross sum instead of containing detailed items subject to three provisos:−

(a) within certain time limits the client could require the solicitor to deliver to him in lieu of that gross sum bill a bill containing detailed items and the gross sum bill would thereupon be of no effect;

(b) the court was given power to order the bill to be taxed; and

(c) if the gross sum bill was referred to taxation the solicitor would have to furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer might require.

43. *The Solicitors Act 1957 ("the 1957 Act") and the Solicitors Act 1974 ("the 1974 Act"):* these were both Consolidating Acts and so re−enacted the provisions which I have already sufficiently set out.

44. Finally and for completeness, *The Solicitors (Non−Contentious Business) Remuneration Order 1994:* this is similar to the 1953 Order providing that solicitors' costs were to be such sum as might be fair and reasonable to both solicitor and client, giving the client the right to require the solicitor to obtain a remuneration certificate from the Council of the Law Society certifying what would be a fair and reasonable charge for the business covered by the bill. The solicitor still has to inform his client of his rights to seek to obtain that remuneration certificate and to have the bill taxed.

45. *Re a Solicitor,* an unreported judgment of Mr Christopher Clarke Q.C. sitting as a deputy judge of the Queen's Bench Division on 10th October 1994*:* there the solicitors rendered a bill for their professional charges for legal services in connection with a licensing application and supported it by a "Narrative Bill" which informed the client that the charges were:−

> "In connection with the renewal of licence of the above premises.
>
> To include correspondence concerning witnesses, attending consultation with counsel × attending final hearing × and preparation of service of notice of appeal and reporting, instructions to counsel on application to the Crown Court for continuance of licence pending appeal, correspondence and attendance arising."

46. The deputy judge applied Denning L.J.'s dicta and concluded that:−

> "In my judgment Parliament did not intend to oblige a solicitor submitting a gross sum bill for contentious business to include any more than, in the words of Lord Denning, "a summarised statement of the work done sufficient to tell the client what it is for which he is asked to pay. × A bill which, to use Lord Denning's example, simply said "To professional services" would not, of course, be sufficient since such a document would leave it wholly unclear what the client would be paying for, if he paid it, or in respect of what the solicitor might or might not, after payment, be able to make a further claim. If such a document is a bill at all it is certainly not a bill contemplated by the Act. Judged by the applicable standard, I have no hesitation in deciding that the bill sued on in the present case is a proper gross sum bill within the meaning of section 64. It contains in my judgment, a perfectly adequate description of the work covered, particularly having regard to the fact that it relates to proceedings in which the defendant was the applicant and, latterly, appellant and in which he was the person personally involved with the solicitors. The contrary, is in my judgment, unarguable. It was not and is not necessary for such a bill to contain details of the hours sought and the charges per hour (or the number of letters written)."

47. *Eversheds v Osman* (2000) 1 Costs Law Reports 54*:* there the bills were in the form of an amount charged for fees in the costs column and then a number of itemised disbursements. In each case the entry for the fees under the heading "Professional Services" was "General Matters" and then the month for which they were charged was specified. The solicitor said in evidence before the court that the client "was more than well aware of the intensive work carried out on his behalf in connection with his various habeas corpus applications and other

associated proceedings generally. × In the autumn of 1991 we commenced the practice of supplying Mr Osman with a copy of the print−out from our computerised time records on which the invoices were based." That print−out stated the various forms of activities engaged in by the plaintiffs together with the names engaged in them, the date of their engagement, the time occupied and the consequential cost. In that case both sides were agreed that the test to be applied was that stated by Crompton J. in *Haigh v Ousey* . Nourse L.J. referring to arguments advanced for the defendant said:−

> "First, he (counsel for the defendant) says that the bills themselves, which simply refer to "general matters", are entirely insufficient. *Had there been nothing more than the bills, I would have seen great force in that submission.* Secondly, Mr Reid says that the defendant, although he knew that the plaintiffs had devoted an immense amount of time to his affairs, did not know whether the fees which they were charging were reasonable. As to that point, I am bound to say that *this is not a case where the defendant is unable to judge as to the justice of the amount of the fees which are charged.* He had been told from the start that he would be charged at hourly rates attributable to the particular grade of person who transacted the business on his behalf. × In my view none of [counsel's] points is sufficient to impinge on the adequacy of the print−outs as satisfactory and adequate back−up material. × But taking, as I think one must, a broad and sensible view of the print−outs, it does seem to me that they were satisfactory for the purposes for which they were required. × The judge, by failing to take account of the print−outs and the importance which they ought properly to be given, did arrive at a conclusion with which this court ought to interfere. I would therefore decide the question of the narratives in favour of the plaintiff." (The emphases are added by me.)

48. *Ring Sights Holding Co. Ltd. & Another v Lawrence Graham*, 8th October 2001, an unreported decision of Nigel Davis J. in the Chancery Division: here bills were rendered for the "provision of legal services" and this narrative was given:−

> "Advising from your instructions in relation to the two s.7 Insolvency Act applications, your bankruptcy appeal, the two s.6 Insolvency Act applications, and H.M. Attorney−General v Yourself. Further details available on request."

It was submitted that these were not for valid gross sum bills.

49. Nigel Davis J. held:−

> "Mr Gledhill [counsel for the solicitors] did not accept that a gross sum bill needed to provide reasonable information sufficient to enable the client to decide whether or not to seek a detailed bill for taxation. Mr Gledhill submitted that the new entitlement provided by s. 64(2) of the Solicitors Act 1974, enabling the client to seek a detailed itemised bill and thereby render a previous gross sum bill of no effect, made it unnecessary to require a solicitor to supply reasonable information at all in a gross sum bill; and he relied on Mr

> Clark's judgment to bolster that submission. Put like that, I unhesitatingly reject those submissions which Mr Gledhill frankly conceded were radical. The very fact that, in the Solicitors Act 1974, Parliament chose not to define "gross sum bill" connotes, in my view, that it was intended that at least some regard be had to the custom and practice of the profession with regard to such bills. In my view, the general statements made in *Haigh v Ousey* make as much sense in the year 2001 as in the year 1857. Further, in my view, the general approach outlined by Denning L.J. in *Re a Solicitor* is a valuable guide, equally applicable to gross sum bills for contentious business, in this context. × In summary, in my judgment, a gross sum bill must contain information sufficient in the circumstances of the particular case to let a client know what it is for which he is being asked to pay. × What is sufficient or reasonable information, in my view, must be assessed by reference to the facts of each individual case. × Moreover, it is also appropriate to have regard not just to what appears on the face of the bill itself but also to what the client himself knows."

50. I should record that Mr Girolami Q.C. did not mount the same full−frontal attack advanced by Mr Gledhill and so I refrain from expressing a view about the judge's rejection of it. On the facts of that particular case Nigel Davis J. found that the client was closely involved in all aspects of the litigation. He was an intelligent man who prided himself on his grasp of legal procedure and he took considerable interest in the substantive points of law. He had received copies of all substantive inter−solicitor correspondence and court documents. So the judge held that although the description of the legal services in the bills was "extremely *jejune* " and would probably not have sufficed by itself, the client's own knowledge supplemented the deficiency. So the bills were held valid. An appeal against that order was listed to be heard with this appeal but the parties sensibly settled their differences before it came to us.

The judgment under appeal.

51. It is necessary to remind oneself that the judge was dealing with a belated claim to strike out the claim in whole or in part as disclosing no reasonable grounds or as being otherwise incompetent. He directed himself to the judgments of Denning L.J. and Mr Christopher Clarke Q.C. and held:−

> "For my part, I think it unlikely that Lord Denning intended that the bill should be looked at entirely in isolation. One can think of many examples in which it would be perfectly apparent to the person to whom the bill was delivered what was the nature of the work in respect of which he was asked to pay because of his intimate involvement with it. It seems to me that Mr Clark × had that point particularly in mind × In a case where the bills have been rendered to a client who is himself a litigation solicitor in relation to contentious business, that is to say a partnership dispute, it is to my mind not the correct approach merely to have regard to the form of the bill in isolation from the context in which it was sent and all of the other information that was available to the recipient. Accordingly, I do not

> regard it as appropriate to make a summary determination to the effect that these are not gross sum bills. By the same token, I do not consider that it is appropriate to make a summary determination to the effect that they are gross sum bills. If this is a point which is to be pursued, it is a point which must be determined at trial, having regard to the evidence × It follows, however, that I decline to strike out the proceedings or any part of them as disclosing no reasonable grounds for bringing the claim."

The arguments for and against.

52. Mr Newman, who appears pro bono for Mr Gwillim and for whose help the court is indebted, relies on Denning L.J.'s dictum as the correct statement of law regarding the minimum content of a bill of costs. Since it was conceded that a proper bill must contain at least a summarised statement of the work done sufficient to tell the client what he is paying for, this bill failed to meet those tests. It is a question of construction of the bill itself together with any covering letter or documents referred to or incorporated into the bill, for example accompanying computer print−out. What is not to be permitted is an uncertain, time consuming and costly enquiry into the state of the client's knowledge to ascertain whether he from that knowledge knew enough to be able to judge whether to seek taxation of the bill.

53. Mr Girolami Q.C. accepts that the question for us as for the judge below is whether the bills contain sufficient to identify to the client what he was being asked to pay for. He submits that they do not least because these were monthly bills which identified the period to which they related and there was no doubt as to the matter to which they related. He submits that the court can take account of the client's knowledge of the work being done for him which in this case was total.

54. During the course of the argument submissions were addressed to us by both sides on the merits. We did not investigate those matters in any great detail. It was abundantly plain to me that neither side could emerge from such an enquiry without embarrassment and, because these are reputable solicitors, I shall spare their blushes by not highlighting the criticisms of some aspects of their conduct which could be advanced even if allowance is made for the passions engendered by a partnership dispute and this subsequent falling out of professional colleagues.

55. As the above brief summary of the submissions makes plain, the question raised in the appeal is deceptively short and simple, namely, do the bills contain sufficient to identify to the client what he is being asked to pay for? I am already embarrassed by the length of the answer I am giving it and I have also found it to be less simple than at first sight it seemed.

An elaboration of the arguments.

56. One has to begin this overview with a consideration of the position in Victorian times. For more than a century there had been a restraint upon a solicitor or attorney suing for his fees. He had to wait a month before bringing his action. The reason was to give the client the absolute right to seek taxation of the bill within that month and the right thereafter to apply for permission to tax the bill in order that the court through its proper officer could verify the reasonableness of the charges and reduce them if necessary. That right of taxation is a powerful protection for the client. As I have pointed out it is clear from the language of the statute ("refer *such* bill × to be taxed") that the bill delivered under the hand of the solicitor is the bill which becomes subject to the taxation. That probably explains why, as Denning L.J. pointed out in *In Re a Solicitor* :−

> "Until the year 1920 a solicitor's bill, even for non−contentious work, had to be drawn in the traditional way, item by item, with a separate charge against each item."

My researches have led me to *In Re Pender* (1847) 10 Beav. 390 where the Master of the Rolls said this:−

> "These bills were delivered for payment without taxation; and, without making any imputation on the solicitor, who has followed a practice which, I am informed, has prevailed, I must observe, that I think it is very desirable to solicitors themselves, that, when they deliver bills for payment, they should be so framed, that, though delivered without any view to taxation, they should not differ much, if at all, from bills delivered in the expectation of their being taxed. In consequence of not attending to this, charges like those now in question are sometimes disallowed on taxation; and it must be painful to an honourable mind to have it determined that they are not entitled to that, which, by their bills, they have sought payment of.
>
> This bill having been submitted to taxation, the master has struck out many items. As to the first charge of £2, 10s., for "attending a great many times", I have to say, that it is an item so expressed, as strictly speaking, to entitle him to no payment. A solicitor is not to make a general sweeping charge in his bill of costs for many attendance, but he must specify the very thing for which he makes his claim."

57. Thus it seems to me plain that solicitors were at risk of having their costs taxed off if they did not condescend to sufficient particularity of the work they had done to justify the charge. In their own interests, bills would have the necessary narrative to withstand attack on taxation. Whilst the right to tax was an important protection for the client which the statute was clearly intending to enforce, the client was at risk for costs if he failed to reduce the bill by less than the appropriate fraction (then one−fifth, now one−sixth). It seems to me, therefore, that the origin of the requirement that he have enough information to take a decision to tax or not to tax, was to preserve the right to tax and to ensure it was an informed decision. A client left in ignorance of what had been done should not unfairly be left at risk of paying the costs of taxation.

58. I am left in little doubt that *good* practice required then, and still requires, an adequate description of the work done to justify the charge. Thanks to a helpful librarian at the Law Society I was able to refer to Mr Cordery's Treatise on *The Law relating to Solicitors* , 2nd Edition, 1888, where at p. 247 he wrote:−

> "The bill must be so stated that the client can obtain advice as to its taxation. The items must, therefore, be specified. Thus, a charge "for attending a great many times" is too vague ×"

In 1961 (after Denning L.J.'s judgment and the 1957 Act) the 5th Edition of Cordery read:−

> "Subject to exceptions mentioned below, a bill of costs must be drawn so that it provides sufficient materials to enable the client to obtain advice as to its taxation and the taxing master to tax it. It must therefore specify the particular matter for which the charges are made and the charge for "attending a great many times" is too vague. But where a lump sum is charged, as between solicitor and client for a discretionary item (e.g. instructions for a brief) of which particulars are only given in general terms, the taxing master may make an allowance on the item as verbally explained by the solicitor. In such cases therefore the applicant should request written details and, if refused, should object on the ground of such refusal rather than to the allowance of the item at a certain sum."

In the latest edition of Cordery, written by His Hon. Judge Michael Cook, it is said that:−

> "A bill of costs must contain sufficient particulars to enable the client to judge the fairness of the charges."

Judge Cook says the same in his own work *Cook on Costs.* Mr Newman attaches to his skeleton argument a precedent taken from the Encyclopaedia for a contentious gross sum bill where a detailed narrative is given.

59. One way in which the critical question in this appeal can be formulated is, therefore, whether a breach of good practice disentitles the bill from being "a bill bona fide complying with [the] Act". Putting the question another way, it may be asked whether the need for sufficient narrative is merely a rule of practice, or is it a matter of principle?

60. It seems to me this court is bound to honour the earlier judgments of the King's Bench in Banc. Lord Campbell C.J. in *Haigh v Ousey* said:−

> "I adopt *the rule* as to this, laid down in *Keene v Ward* ×"

and

> "and in *Cooke v Gillard* we laid down *the principle that the Legislature intended* × " Emphasis added.

61. But what is the principle? Is it as absolute as expressed by Denning L.J. so that the answer has to be found within the four corners of the bill? Or can other documents fill the lacuna as in *Eversheds v Osman* ? If so, must their delivery be contemporaneous with the bill? Or, if there is *some* sufficient description of the work in the bill, can the client's own knowledge cure the deficit? And finally, have the changes in the legislation lowered the threshold?

62. For my part, I do not feel bound to treat Denning L.J.'s dictum as binding upon me though it is obviously hugely persuasive. I have already explained why it was obiter. Given the way the question was addressed, I cannot believe Lord Denning was laying down an exhaustive statement of the principle or intending to say that the client's knowledge was immaterial. He did not have the benefit of argument addressed to him on the rulings in *Haigh v Ousey* and the other cases to which I have referred. In *Eversheds v Osman* this court proceeded upon the concession that *Haigh v Ousey* provided the test to be applied and the court's attention does not appear to have been drawn to Lord Denning's dictum. I see no reason not to accept the qualifications accepted there that the knowledge of the client is a material factor. Why should it not be so? Assume a client who perfectly well knows everything he needs to know about the work done and about his right to tax the bill and his prospects of success on that taxation (or to make the facts even more stark, assume he knows he has no prospects of reducing the bill on taxation). It would be extraordinary if he could ambush his former solicitor and evade his debt, perhaps only temporarily, by claiming a defect in the bill. There are ample dicta in those early authorities where the court sets its face against such disreputable conduct. The purpose of the legislation is to protect the innocent or ignorant client, not to give the unscrupulous a wholly unmeritorious advantage over his solicitor.

63. I accept the principle expressed in Lord Campbell C.J.'s judgment in *Cook v Gillard* that:−

> "The defendant who undertakes to prove that the bill is not a bona fide compliance with the Act cannot found an objection upon want of information in the bill if it appears that he is already in possession of that information", and
>
> "A client has no ground of objection to a bill who is in possession of all the information that can be reasonably wanted for the consulting on taxation".

In *Eversheds v Osman* Nourse L.J. posed this test in not dissimilar terms, viz., is the client unable to judge as to the justice of the amount of the fees which are charged.

64. Thus I would accept the proper principle to be that there must be *something* in the written bill to indicate the ambit of the work but that inadequacies of description of the work done may be redressed by accompanying documents (as in *Eversheds v Osman* where it was doubtful whether the bill on the face of it would have been sufficient) or by other information already in the possession of the client. That, it seems to me, would serve the purpose of the Act to give the client the knowledge he reasonably needs in order to decide whether to insist on taxation. If the solicitor satisfies that then the bill is one bone fide complying with the Act.

65. I have not reached that conclusion without having given careful thought to the submission of Mr Newman that to allow the legitimacy of the bill to depend upon the state of knowledge of the client is to introduce uncertainty where in the interests of certainty, saving costs and saving time, it ought to be clear whether the bill does genuinely comply with the Act. I fully see the force of his point. That is why this court threw up its hands in horror at the prospect of this litigation between two reputable solicitors. But those evils are not outweighed by improper advantage being taken of a technicality.

66. I am fortified in my conclusions by the implications of the changes in the legislation over the years. I recall how a subtle change from the 1729 Statute led to a retreat from the strictness of the earlier application of the rule. At first there was only one form of bill, namely an itemised bill with separate charges set against each item. The practice was to give a narrative description of the item of work covered. Without it the item would not be allowed on taxation: see *In Re Pender*. Thus the old form of bill was, I would have thought, what the legislature meant in 1956 by "a bill containing detailed items" when section 13 of the 1956 Act gave the solicitor the option of submitting "a gross sum [bill] instead of [a bill] containing detailed items". Section 64 of the 1974 Act sets out the current provision. Originally a gross sum bill was unknown. Remuneration by a gross sum entered the vocabulary in 1870, being one way by which parties could agree remuneration. I would imagine a full narrative of the work and charges would be unnecessary because the nature of the work and the charging rate would have been fixed by the written agreement. The distinction between remuneration by gross sum and by detailed charges waited another fifty years for the 1920 order to be expressly set out. Purely on a literal interpretation of the words, the choice was between the old system of itemised charges and a bill which stated the total amount of the charge. As it would seem to me to make no sense still to insist on a detailed narrative of the work, though without itemised charges and with the only change being to substitute at the end of that narrative a gross or total sum, I have little doubt that with the removal of the need to itemise the charges, the practice soon developed of diluting the narrative description and giving simply a compendious account of the service. This could spell danger for the client. The briefer the description, the less the client would know about precisely what had been done. The less he knew, the less able he was to judge the wisdom of exercising the ultimate weapon of taxation. The protection afforded by the original provisions would be diluted. But the legislature appreciated that. That is why the client was given a valuable new form of protection, viz., the right to require a detailed bill to be delivered. Upon its delivery he would know all he needed to know about the work for which he was being charged. That additional right was part and parcel of the 1956 reform.

67. One then asks rhetorically what disadvantage does the client suffer if the bill is barely informative? In everyday commercial or professional business, a client may receive a bill that seems inexplicably high. An ordinary reaction would be to query the bill and ask for a breakdown of the charge or an explanation of how the sum is arrived at. A client of a solicitor should be expected to react in the same way. His query should ordinarily require the solicitor to deliver a new bill with detailed charges: compare *Penningtons v Brown*, Court of Appeal, 30th April 1998. It may be said that there is another in−built unfairness to the client in that the detailed bill then prevails and the gross sum bill no longer has effect so that the client suddenly finds he is charged more than he was, but I would consider it to be perfectly acceptable that the solicitor be entitled to charge in full for the work he has done, bearing in mind that the costs judge is the ultimate arbiter of his entitlement. If the consequence of permitting gross sum bills is to dilute the narrative, this added remedy redresses any injustice.

68. I would, however, add this. It is a pity that section 64 does not provide that the client be informed of his right to seek a bill containing detailed items, as well as the consequence of doing so, and of his entitlement to seek taxation. The 1994 order does give some protection for non−contentious business in that notice has to be given to the client before action on a non−contentious bill of the rights to refer to the Law Society and to taxation. Perhaps the Law Society should consider providing for it as part of the Costs Information and the Client Care Code.

69. The 1956 Act introduced another reform which in my view is not without significance. As now set out in section 64(4) of the 1974 Act, the solicitor must furnish the client with such details of any costs as the costs judge may require. Thus if a gross sum bill in rather vague terms is submitted for taxation, the costs judge can and, I am told by the Senior Costs Judge, will ordinarily require more detail and/or explanation. An item in a bill of the kind submitted in *In re Pender* ("attending a great many times") might be allowed today if it could be satisfactorily explained. The fact that a bill poorly describing the work may yet survive taxation seems to me to be a further pointer of the Legislature's retreat from the earlier insistence on the fullness of narrative description as an essential requisite for the validity of the bill.

Conclusions.

70. This review of the legislation and the case law leads me to conclude that the burden on the client under section 69(2) to establish that a bill for a gross sum in contentious business will not be a bill "bona fide complying with the Act" is satisfied if the client shows:−

i) that there is no sufficient narrative in the bill to identify what it is he is being charged for, and

ii) that he does not have sufficient knowledge from other documents in his possession or from what he has been told reasonably to take advice whether or not to apply for that bill to be taxed.

The sufficiency of the narrative and the sufficiency of his knowledge will vary from case to case, and the more he knows, the less the bill may need to spell it out for him. The interests of justice require that the balance be struck between protection of the client's right to seek taxation and of the solicitor's right to recover not being defeated by opportunistic resort to technicality.

71. On the facts of this case each bill was obviously and latterly expressly for professional charges. Even though it may have been perfectly obvious, the bills did identify the matter. Crucially for a determination of what was being charged for, the bill identified the period over which the work was being done. These bills may not have said much, but they did say something.

72. Whether the client's knowledge was sufficient to supplement the lack of full narrative is a matter of fact. The judge held upon a review of the evidence that it was inappropriate to

strike out the claim since Mr Ralph had shown a real prospect of establishing at the trial that Mr Gwillim knew all he needed to know about the work and the basis of charging reasonably to be able to exercise his right to seek taxation. I could not possibly interfere with those conclusions which, if the law is as I have stated it to be, were inevitable in the particular circumstances of this case. I would, therefore, dismiss the appeal.

73. I add this postscript for the profession's consideration so that an unseemly dispute of this kind does not happen again. Surely in 2002 every second of time spent, certainly on contentious business, is recorded on the Account Department's computer with a description of the fee−earner, the rate of charging and some description of the work done. A copy of the print−out, adjusted as may be necessary to remove items recorded for administrative purposes but not chargeable to the client, could so easily be rendered and all the problems that have arisen here would be avoided. In these days where there seems to be a need for transparency in all things, is a print−out not the least a client is entitled to expect?

Lord Justice Mance :

74. I have read in draft the judgment given by Ward LJ, to which I am greatly indebted, and with which I agree, making only one comment.

75. The issue we have had decide is one of interpretation of ss.64 and 69 of the Solicitors Act 1974, a consolidating Act. The general principle of statutory construction indicated by the House of Lords in R. v. Secretary of State, ex p Spath Holme [2001] 1 AER 195 is that the court should take as its starting point the consolidating Act, and seek to give effect to its language.

76. It may in some future case be relevant to consider how far interpretation of the concept and purpose of "a gross sum bill" in s.64(1) of the Solicitors Act 1974 can be determined by reference to Victorian authority, particularly Haigh v. Ousey (1857) 7 E & B 578. That case and the other Victorian authorities which Ward LJ has analysed were decided before revised legislation introduced and permitted gross sum bills, together with a number of important new safeguards for clients. As a result, although s.69 of the 1974 Act mirrors s.37 of the Solicitors Act 1843, s.64 includes provisions for gross sum bills and other protections that have no equivalent in the 1843 Act.

77. If and when the question identified at the beginning of the previous paragraph arises, it will be useful to consider further a judgment, of which we were shown a transcript, given by Mr Christopher Clarke QC, sitting as a deputy High Court judge, in re a Solicitor on 10th May 1994.

78. Ultimately, both Mr Clarke QC, in his judgment in re a Solicitor, and the parties before us were content to adopt Lord Denning's words in re a Solicitor [1955] 2 QB 252 to the effect that a gross sum bill "must contain a summarised statement of the work done, sufficient to tell the client what it is he is asked to pay for".

79. I agree with Ward LJ that, on any view, the changed form of the modern legislation and the new safeguards which it introduces fortify a conclusion that Lord Denning's words are to be interpreted in a relaxed, rather than a rigorous sense. Further, it is, as I have said, clear, going back to the Victorian authority, that any solicitor's bill is to be read in the light of all the information that the client may himself have. That is just as sensible and inevitable an approach under the modern legislation as it was under the legislation in its early Victorian form.

Sir Martin Nourse :

80. I agree that this appeal should be dismissed for the reasons given by Lord Justice Ward.

Order: appeal dismissed; counsel to lodge written submissions re costs and any other consequential matters.

(Order does not form part of approved judgment)