Sami Effendi, Ordinary Judge, sent the case to the full District Court.

The full District Court refused to settle issues on the ground that a guardian should be appointed and that the *Qadi* should appoint the guardian.

The Plaintiffs appealed.

Pavlides for the Appellants.

The Court gave judgment that the case should be remitted to the District Court with directions that, if it appeared as was alleged that the Defendant Mussa was an infant, that Court should appoint a guardian *ad litem*, and, if it did not so appear, that the Court should, on due proof of service of the writ of summons on the Defendants or on their appearance, proceed to settle the issues or give judgment as the case might require.

Appeal allowed.

[HUTCHINSON, C.J. AND TYSER, J.]

PAPA PHILIPPO HAJI MICHAEL AND OTHERS *Plaintiffs*,

v.

CHRISTODOULO GEORGIADES AND ANOTHER *Defendants*.

EX-PARTE: PAPA PHILIPPO HAJI MICHAEL AND OTHERS.

COSTS—PARTY AND PARTY—TAXATION—SPECIAL AGREEMENT.

On taxation between party and party, a party cannot recover for costs a sum which he has neither paid nor is liable to pay.

Where there is an agreement between advocate and client to conduct an action for a gross sum the client can only recover in taxation between party and party the amount fixed by the agreement or so much thereof as is allowed in taxation.

This was an application on behalf of the Plaintiffs that fees for advocates and instructions to advocates, higher than those contained in the scale of costs, should be allowed, the case being one of unusual difficulty.

Artemis for the Applicants stated that he was the advocate for the Applicants, that he had no right to claim these higher rates from his clients. That if the amount allowed in taxation was less than the amount his client had agreed to pay him, he then would have a claim on his client. That if the amount allowed in taxation exceeded the amount agreed to be paid by his client, that the surplus would belong to the advocate and the client would get no benefit.

He stated further that advocates do agree to conduct proceedings for costs recovered on taxation from the other side, and that if such an agreement existed, they would feel justified in applying for fees on a higher scale.

Theophani Theodotou opposed the application.

HUTCHINSON, C.J. & TYSER, J.

PAPA PHILIPPO HAJI MICHAEL v. CHRISTODOULO GEORGIADES

November 28

Judgment: In this case the application is that the Court should direct that a special fee for instructions to the advocate and for the appearance of the advocate in Court should be allowed in taxation.

It is admitted by Mr. Artemis that the client is not liable to pay his advocate the fee, and has not paid it, and that the client would not have any claim upon the fee if it were ordered to be paid, but it is applied for in reality on behalf of the advocate.

Mr. Artemis states that there was a contract between the advocate and client, by which the client was to pay the advocate a fixed sum for conducting the suit and made over to him in addition the cost of the suit (δικαστικὰ ἔξοδα.) He states that the intention of this contract was that the advocate should receive in addition to the fixed sum such costs as he could recover from the opposite party in the lawsuit.

It was further admitted by both parties that it is a common practice for advocates to undertake suits for clients on the terms that the clients should incur no liability to the advocates and that the advocates should transact the business of the litigation and only receive such remuneration as they can obtain from the other party to the suit on taxation of costs.

It was stated that advocates in doing this thought that they were doing what was allowed by r. 10 of the Rules of Court dated 4th July, 1895; and the Court was invited to express its opinion on the practice for the guidance of advocates.

In taxation between party and party the costs taxed are the costs which the Court directs one party to the action to pay to the other party to the action.

Such costs are ordered to be paid not as a penalty but to reimburse the party who is to receive them for the expense he has been put to in asserting his rights by the action.

The Court has no power to order costs to be paid to a person not a party to the suit merely because he has advanced money to a litigant.

It makes no difference whether such person is an advocate or not; the judgment of the Court can deal only with the rights between the parties to the action.

The advocate has no *locus standi* to make such an application as this one now made on his own behalf.

We are further of opinion that the client cannot make an application to recover costs which he has not incurred and for the payment of which he is under no liability; therefore if the application were made on his behalf it must fail.

So far as the agreement is for a gross sum it is an agreement within the meaning of r. 10 of the Rules of Court of the 4th July, 1895. So far as it gives the right to take costs from the other litigant it is not within the meaning of the rule; and if it were this part of the agreement would be inoperative.

The contract relied on is wholly without effect so far as it gives the right to take costs.

At the time of the contract the costs are not an existing thing which the client can assign to the advocate; therefore there is no sale (Mejellé, Art. 205).

It is not like a hawale, which is a transfer of indebtedness from one person to another (Mejellé, Art. 673).

The Law concerning hawale does not authorize the transfer of a claim (4 C.L.R., 48); and even if it did there is no claim, at the time of the transfer, for any costs.

Neither could any claim afterwards arise because, under the agreement the client will never incur any outlay the reimbursement of which he can claim.

An advocate cannot take under such an agreement any right against the adverse litigant.

Where there is a contract between advocate and client that the advocate shall conduct an action for a fixed sum, the client can only recover in taxation between party and party the amount payable under the agreement or so much of it as does not exceed the amount of costs which would be recovered if there were no agreement.

As to the practice, which is alleged to exist, viz.: that advocates undertake to conduct suits on the terms that they should have such remuneration only as they can obtain from the adverse litigant on taxation of costs, we will further state, that in our opinion it is an extremely bad one.

It is calculated to lead to unnecessary litigation and to the stirring up of strife between people who would otherwise remain in harmony.

It may lead to great oppression, where the party suing is unable to pay costs. The person sued will be liable to pay costs if he loses and unable to recover them if he wins.

We will further state that where an advocate claims, as in this case, costs in taxation, which, by virtue of his agreement with his client, the client is not liable to pay and has not paid to him, he is putting forward an improper claim.

Advocates have hitherto acted in good faith in making their contracts and in claiming costs in the way these costs are now claimed and cannot be held morally wrong because they have acted in ignorance; but after this judgment it must be understood that an advocate who seeks to recover costs as though there were no special contract with his client and does not produce to the Taxing Master the contract which he has made will be committing an act which may make him subject to the disciplinary powers of the Supreme Court.

Application refused.