as so 'n wetsbepaling bestaan. Na my mening moet die Tesourie se bevoegdheid om transaksies goed te keur ook die bevoegdheid insluit om sodanige transaksies aan te gaan waar dit nie binne 'n ander instansie se bevoegdheid val nie."

Soos later sal blyk is ek ook van mening dat betoog B nie kan slaag nie, maar op ander gronde. Op hierdie stadium wil ek net meld dat niks in hierdie uitspraak beskou moet word as 'n aanduiding dat ek dit eens is met, of verskil van, die bovermelde *dicta* van die geleerde Regter *a quo* nie.

Dit blyk uit mnr Kemp se getuienis dat toe hy Sanlam se versoek oorweeg het en daarna die sessie onderteken het dat hy ingevolge die Tesourie se beleid en kragtens art 31 (1) (*i*) opgetree het. In Sanlam se verdere besonderhede van eis is dit ook gestel dat die Tesourie ingevolge art 31 (1) (*i*) opgetree het. Al wat nodig is om te sê, is dat die korrekte verwysing na 'n betrokke magtigende bepaling nie 'n vereiste vir die geldigheid van 'n magsuitoefening is nie. Die feit dat Kemp se mening verkeerd is, kan die bestaan of omvang van die bevoegdhede nie raak nie. Kyk Steyn *Die Uitleg van Wette* 5de uitg op 206 nota 5 en die gewysdes daar aangehaal. Die submissie dat die Tesourie nie 'n behoorlike diskresie uitgeoefen het nie, kan nie slaag nie. Dit is vanselfsprekend dat die beleid self die gevolg is van 'n vorige uitoefening van 'n diskresie. In alle geval, Kemp het die saak deeglik oorweeg en sy besluit geneem nadat regsadvies ingewin is.

Ek het al die bovermelde betoë oorweeg maar om die redes wat volg vind ek dit onnodig om hulle te bespreek.

Die lang lys van sake wat vroeër gesiteer is bewys dat die beginsel dat ontbinde maatskappye se eiendom die Staat toeval sonder teenspraak sedert *Ex parte Sprawson* (*supra*) aanvaar is. Hierdie prerogatief is nie deur enige wetgewing afgeskaf nie. Sedert die *Sprawson*-saak is dit gevestigde bestaande praktyk dat in alle aansoeke, ingevolge art 191 van die Maatskappywet 36 van 1926 en art 420 van die nuwe Maatskappywet 61 van 1973, om die tersydestelling van die ontbinding van 'n maatskappy, kennis van die aansoek aan die Departement van Finansies gegee word waar die betrokke bates van die ontbinde maatskappy bestaan uit 'n vorderingsreg of geld. Kyk Henochsberg *On the Companies Act* 3de uitg op 734 en die gewysdes daar aangehaal; kyk ook Joubert *The Law of South Africa* vol 4 para 501 nota 18 en die gewysdes daar aangehaal. Die beleid dat die Staat hom nie verryk ten koste van iemand wat belang het in die herregistrasie van die maatskappy nie, is bestaande praktyk. Uit die gewysdes blyk dit dat dit nog steeds die gebruik is dat die Tesourie (die *fiscus*) die reg uitoefen om te besluit of die Staat aanspraak sal maak op die geld of vorderingsreg by die ontbinding van 'n maatskappy.

Die *Sprawson*-saak is die fondament waarop die latere sake berus. Die praktyk en prosedure bestaan reeds vir 70 jaar. Dit is in die algemeen aanvaar en toegepas. Mens moet aanvaar dat alle Staatsdepartemente en die wetgewende gesag te alle tye daarvan bewus was. Geen stappe is oor die tydperk van 70 jaar gedoen om dit te verander nie. Hierdie Hof sou derhalwe duidelike bewys van 'n foutiewe benadering vereis vóór dit dié praktyk en prosedure omverwerp.

van die vorderingsreg[t] Hierdie regte sou vanself aan Sanlam oorgegaan het. By Mankor se ontbinding het die regte die Staat toegeval as *bona vacantia*. Die Tesourie is die departement wat namens die Staat die bevoegdheid gehad het om te besluit dat die Staat nie aanspraak op die regte sal maak nie. Normaalweg sou 'n Hof die ontbinding van Mankor tersyde gestel het en vanweë sy beleid sou die Tesourie nie aanspraak gemaak het nie op die regte wat aan Mankor sou teruggeval het en dus oorgegaan het op Sanlam. Die beleid en gebruik is dat die Staat hom nie verryk ten koste van enige regmatige aanspraakmaker nie. Sanlam was die enigste regmatige aanspraakmaker. Die sessie was die praktiese manier om die regte aan Sanlam oor te dra. Deur die ondertekening van die sessie het die Tesourie die regte aan die regmatige aanspraakmaker oorgedra. Hierdie handeling verskil nie in beginsel of in praktiese gevolg van wat sy roetine-optrede sou gewees het indien 'n aansoek om herregistrasie van Mankor ingevolge die Maatskappywet plaasgevind het nie. Ek is dus van mening dat die Tesourie die bevoegdheid gehad het om die sessie aan te gaan. Dit volg dat betoog B nie kan slaag nie.

Om op te som, die Staat het by die ontbinding van Mankor eienaar geword van die vorderingsregte. Die Tesourie het die bevoegdheid gehad om namens die Staat van sy regte afstand te doen ten gunste van die regmatige aanspraakmaker, Sanlam. Om dit te bewerkstellig is die sessie aangegaan.

Die appèl kan dus nie slaag nie en word afgewys met koste, insluitende die koste van twee advokate.

RABIE HR, JANSEN AR, CORBETT AR en JOUBERT AR het saamgestem.

Appellante se Prokureurs: *Marais Muller*, Kaapstad; *Symington & De Kok*, Bloemfontein. Respondent se Prokureurs: *Jan S de Villiers & Seun*, Kaapstad; *Naude & Van de Wall*, Bloemfontein.

OCEAN COMMODITIES INC AND OTHERS v STANDARD BANK OF SA LTD AND OTHERS

(APPELLATE DIVISION)

1984 *February* 17; *March* 29 RABIE CJ, KOTZÉ JA, JOUBERT JA, TRENGOVE JA and GALGUT AJA

Costs—Taxation of—Review of—When Court will interfere with ruling by Taxing Master—Must be satisfied that ruling was clearly wrong—Implications and reasons for formulation of test set out.

Costs—Counsel's fees—Existing Appellate Division practice of allowing composite fee for the appeal, inclusive of travelling and hotel costs, affirmed and separate claims disallowed—Separate claim for drafting heads of argument likewise not in accordance with practice, even where heads were requested prior to allocation of date

of hearing in accordance with Appellate Division Rule 8 (1) as amended by GN R248 of 8 February 1980—Claims for above average fees in view of eminence of counsel also disallowed—Appropriate test the value of the work done.

With reference to the test (regarding the circumstances in which a Court will interfere with a ruling made by a Taxing Master) annunciated in *Legal and General Assurance Society Ltd* v *Lieberum NO and Another* 1968 (1) SA 473 (A) at 478G, it is better to state the test to be that the Court must be satisfied that the Taxing Master was clearly wrong (as opposed to the Court being "clearly satisfied that he was wrong"), since it indicates somewhat more clearly what the test actually involves, viz that the Court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should be held to vitiate his ruling.

In terms of Rule 8 (1) of the Appellate Division Rules (as amended by *Government Notice* R248 of 8 February 1980) the parties to an appeal may be required to lodge heads of argument before the allocation of a date of hearing. Applicants contended that in such circumstances a separate fee should be allowed for the drawing of heads of argument. In dismissing this contention and upholding the existing practice within the Division, the Court expressed the view that heads of argument are drawn when counsel has done his research and prepared for the appeal. They reflect the result of that research and preparation, and if counsel should thereafter, due to the lapse of time, regard it as necessary to consider them again, the extra work involved will normally not be so substantial as to warrant a separate fee. A Taxing Master could, of course, depending on the circumstances, and if persuaded that the extra work was such as to warrant his doing so, make allowance for that work when determining a composite fee for the whole of the appeal.

The existing practice, whereby the Taxing Master has regard to the cost involved in counsel having to come to Bloemfontein when he determines the composite fee in respect of the appeal, affirmed and the Taxing Master's disallowance of separate claims for hotel and travelling expenses upheld.

The measure for determining a reasonable fee is the value of the work that was done, and the eminence of counsel is not by itself a good reason for allowing a larger fee.

Review of taxation. The facts and the nature of the items in the bill of costs objected to appear from the judgment of RABIE CJ.

D J Hammerschlag for the applicants cited the following authorities: *Preller* v *Jordaan* 1957 (3) SA at 203; *Legal and General Assurance Society Ltd* v *Lieberum NO* 1968 (1) SA 473; Herbstein and Van Winsen *The Civil Practice of the Superior Courts in South Africa* 3rd ed at 503; *Duvos (Pty) Ltd* v *Newcastle and Others* 1965 (4) SA at 559; *Port Elizabeth Local Road Transportation Board and Others* v *Liesing* 1968 (4) SA at 401-2; *Minister of Water Affairs* v *Meyburgh* 1966 (4) SA at 52-3; *Menday* v *Protea Assurance Co Ltd* 1976 (1) SA at 572; *City Deep Ltd* v *Johannesburg City Council* 1973 (2) SA at 115-116; Jacobs and Ehlers *Law of Attorneys' Costs and Taxation Thereof* at 123-4; *Magwill Carriers* v *National Transport Commission and Another* 1982 (1) SA at 170; *Jackson and Ginsberg NNO* v *Steenkamp* 1973 (1) SA 309; *Groenewald* v *Selford Motors (Edms) Bpk* 1971 (3) SA at 681; *Nku* v *Nkosi* 1981 (1) SA at 144; *Reef Lefebvre (Pty) Ltd* v *SAR & H* 1978 (4) SA 961; *Scott and Another* v *Poupard and Another* 1972 (1) SA at 686.

A P Beckley for the respondents cited the following authorities: *Preller* v *Jordaan* 1951 (3) SA 201; *Legal and General Assurance Society Ltd* v *Lieberum NO* 1968 (1) SA 473; *Duvos (Pty) Ltd* v *Newcastle and Others* 1965 (4) SA 553; *City Deep Ltd* v *Johannesburg City Council* 1973 (2) SA 109; *Port Elizabeth Local Road Transportation Board and Others* v *Liesing* 1968 (4) SA 401; *Menday* v *Protea Assurance Co Ltd* 1976 (1) SA 565; *Minister of Water Affairs* v *Meyburgh* 1966 (4) SA 51; Jacobs and Ehlers *The Law of Attorneys' Costs and Taxation Thereof* 1st ed at 98; *Groenewald* v *Selford Motors* 1971 (3) SA 677; *Windhoek Crushers (Pty) Ltd* v *Voigts en Andere* 1969 (1) SA 574; *Buonanno* v *The Taxing Master* 1965 (2) SA 653; *Scott and Another* v *Poupard and Another* 1972 (1) SA 680; *Reef Lefebvre (Pty) Ltd* v *SA Railways & Harbours* 1978 (4) SA 961; *Gundelfinger* v *Norwich Union Fire Insurance Society Ltd* 1916 TPD 341.

Hammerschlag in reply.

Cur adv vult.

Postea (March 29).

RABIE CJ: This is a review of taxation in terms of Rule 9 of the Rules of this Court. The applicants were the successful respondents in the appeal reported as *Standard Bank of South Africa Ltd and Another* v *Ocean Commodities Inc and Others* 1983 (1) SA 276 (A), in which the following order was made:

"The appeal is dismissed with costs, such costs to include the costs of two counsel."

Pursuant to the aforesaid order the respondents submitted a bill of costs between party and party for taxation which included the following items:

"21	. . . paid senior counsel on heads	R 1 200
22	. . . paid junior counsel on heads	R 800
24	. . . paid counsels' and attorney's air fares (3 × R138)	R 414
25	. . . paid counsel's and attorney's hotel expenses	R 214,91
26	. . . paid senior counsel on arguing appeal.....	R10 500
27	. . . paid junior counsel on arguing appeal.....	R 7 000"

The Taxing Master taxed off the entire amounts claimed in items 21, 22, 24 and 25. In item 26 he taxed off the amount of R6 500, and in item 27, R4 300, thereby allowing a fee of R4 000 in the case of senior counsel, and a fee of R2 700 in the case of junior counsel. It appears from the Taxing Master's report, furnished in terms of Rule 9 (4), that he allowed each of the said fees of R4 000 and R2 700 as a composite fee for the appeal, ie as a fee for preparing for the appeal, drawing the heads of argument and appearing in Court to argue the appeal.

The question as to when the Court will interfere with rulings made by the Taxing Master in the exercise of the discretion he enjoys when taxing bills of costs, was dealt with by this Court in the case of *Legal and General Assurance Society Ltd* v *Lieberum NO and Another* 1968 (1) SA 473. In that case POTGIETER JA, delivering the judgment of the Court, stated (at 478G) that —

"the review referred to in Appellate Division Rule 9 (1) confers upon this Court the wider exercise of supervision envisaged by INNES CJ in this decision

(ie *Johannesburg Consolidated Investment Co* v *Johannesburg Town Council* 1903 TS 111). The Court, therefore, has the power to correct the Taxing Master's ruling not only on the grounds stated in *Shidiack's* case (ie *Shidiack* v *Union Government* 1912 AD 642) but also when it is clearly satisfied that he was wrong. Of course, the Court will interfere on this ground only when it is in the same or in a better position than the Taxing Master to determine the point in issue."

In the course of his judgment POTGIETER JA referred, with apparent approval, to decisions in which it was said that the Court would be entitled to interfere with a ruling by a Taxing Master only if it were satisfied that the Taxing Master was "clearly wrong" (see *Century Trading Co (Pty) Ltd* v *The Taxing Master and Another* 1958 (1) SA 78 (W) at 84E; *Adamant Laboratories (Pty) Ltd* v *General Electric Co* 1964 (3) SA 363 (T) at 366F-G), and it would therefore seem doubtful whether the learned Judge intended to lay down a test different from the one mentioned in the earlier cases. (See also the remarks of BOTHA J in *Noel Lancaster Sands (Pty) Ltd* v *Theron and Others* 1975 (2) SA 280 (T) at 282H-283C.) In *Scott and Another* v *Poupard and Another* 1972 (1) SA 686 (A) this Court (*per* JANSEN JA), applying the test laid down in the above-quoted passage in the *Legal and General Assurance Society* case, set aside a ruling by the Taxing Master on the ground that had he had "clearly erred" in his assessment of *inter alia* the complexity of the appeal in issue in that case. This case indicates, I think, that the Court was of the view that the test as formulated by POTGIETER JA in the *Legal and General Assurance Society* case *supra* and the statement that the Court will interfere with a ruling of a Taxing Master only if it is satisfied that he was clearly wrong, are merely two ways of saying the same thing. I think, with respect, that it is better to state the test to be that the Court must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him, since it indicates somewhat more clearly than does the formulation of the test by POTGIETER JA what the test actually involves, *viz* that the Court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should be held to vitiate his ruling.

I turn now to applicants' attack on the Taxing Master's ruling in respect of the various items mentioned above.

Items 21 and 22: heads of argument.

The applicants contend that the Taxing Master should have allowed separate fees for the drawing of heads of argument and that he erred in allowing a composite fee relating to the whole of the appeal, as mentioned above. It appears from the Taxing Master's report that it has always been the practice of the Taxing Master of this Court to determine a composite fee for the whole of an appeal, and to make allowance for the drawing of heads of argument when determining that fee. The applicants accept this to have been the case up to now, but they submit that the recent amendment to Rule 8 (1) has made it necessary to alter this practice. In terms of this amendment, introduced by *Government Notice* R248 of 8 February 1980, parties to an appeal may

be required, if so decided by the Chief Justice, to lodge their heads of argument with the Registrar of the Court before a date has been allocated for the hearing of the appeal, and the applicants' contention is that where heads of argument are called for at such an early stage, "the successful party will only receive his full indemnity if a separate fee is allowed for heads of argument". (The quotation is from counsel's heads of argument.) It is submitted that, when counsel is required to draw heads of argument well before the appeal (as happened in the present case), he will have to work up the appeal again before he appears in Court. Consequently, it is said, a separate fee should be allowed for the drawing of heads of argument. The submission has no real substance. Heads of argument are drawn when counsel has done his research and prepared for the appeal. They reflect the result of that research and preparation and, if counsel should thereafter, due to the lapse of time, regard it as necessary to consider them again, the extra work involved will normally not be so substantial as to warrant a separate fee. A Taxing Master could, of course, depending on the circumstances, and if persuaded that the extra work was such as to warrant his doing so, make allowance for that work when determining a composite fee for the whole of the appeal. I may add in this connection that the Taxing Master states in his report that, in considering the question of counsel's fees, he had regard *inter alia* to "die feit dat argumentshoofde 11 maande voor die verhoor van die appèl aangevra is". The applicants were asked on 24 June 1981 to lodge their heads of argument with the Registrar by 24 October 1981. In a letter dated 2 November 1981 their attorneys requested the Chief Justice to allocate a date for the hearing of the appeal on which counsel for all the parties would be available, and they stated that counsel would be available during the weeks commencing 13 September 1982 or 20 September 1982. The appeal was set down for 13 September 1982. (On 3 June 1982, I may add, the applicants' attorneys addressed a letter to the Registrar in which they inquired about the possibility of postponing the appeal, for the convenience of counsel, to the November term of 1982.) In these circumstances it is difficult to see how the lengthy lapse of time between the drawing of the heads of argument and the date of the hearing of the appeal can be advanced as a reason why the Taxing Master should have allowed counsel a separate fee for drawing the heads of argument.

Counsel for the applicants made a few further submissions in support of his contention that a practice should be adopted of allowing a separate fee for the drawing of heads of argument. He submitted, firstly, that it may happen, if heads of argument are to be lodged with the Registrar before a date has been allocated for the hearing of the appeal, that counsel who drew the heads may not be available to argue the appeal, in which event he will receive no fee for the appeal itself. I realise that such a situation may arise, but such a possibility can hardly provide justification for the adoption of a practice as suggested by counsel. The burden of the party who loses an appeal ought not to be increased because counsel for the successful party, who drew

the heads of argument, could not make himself available for arguing the appeal. It should be observed, also, that counsel's submission has no real relevance to the facts of the present case, for counsel who drew the heads of argument also argued the appeal.

Counsel also submitted that a separate fee should be allowed for drawing heads of argument because they are documents of "fundamental importance" which are required by the Rules of Court and which are intended to assist the parties to the appeal and the Court. Heads of argument which are required by the Rules of Court, counsel submitted, referring to the case of *Minister of Water Affairs* v *Meyburgh* 1966 (4) SA 51 (E) at 52H, should be distinguished from "so-called heads of argument" which are not required by the Rules of Court, but are prepared by counsel for the convenience of himself and the Court and are handed to his opponent merely as a matter of courtesy. Counsel's submission is that, while the costs of drawing heads of argument of the latter kind are not allowed to counsel in a party and party bill costs, they should be allowed when heads of argument are required by the Rules of Court and that the *dictum* to the contrary of GALGUT J in *City Deep Ltd* v *Johannesburg City Council* 1973 (2) SA 109 (W) at 115 *in fine* was *obiter* and incorrect. Counsel's submission is without substance. Heads of argument, admittedly documents of great importance, have always been required by the Rules of this Court, but this fact has never been considered to be a sufficient reason for allowing a separate fee for the drawing thereof, and there is nothing in the present case which persuades me that such a fee should have been allowed by the Taxing Master.

Counsel also contended that the fact that an attorney is entitled to a fee for perusing heads of argument (see Rule 10.C.4) is a reason why counsel's fee for drawing heads of argument should be allowed as a separate fee in a party and party bill of costs. I do not agree. The attorney is allowed such a fee for work he has done, but that is no reason why one should depart from the long-standing practice of not allowing counsel a separate fee for drawing heads of argument.

Items 24 and 25: travelling and hotel expenses.

As to counsel's travelling and hotel expenses, the Taxing Master states in his report that expenses of this kind have never been allowed in party and party bills of costs in this Court. Counsel's submission is that, while claims for such expenses may generally be considered to be "unusual", there may be cases in which such claims would be justified. The present is such a case, it is said, because the appeal was a complicated one and because it was, for that reason, reasonable to engage the same counsel who had argued the matter in the Witwatersrand Local Division and thereafter in the Transvaal Provincial Division to argue the appeal in this Court. (The judgments of those Courts are reported in 1978 (2) SA 367 (W) and 1980 (2) SA 175 (T).) There is nothing unusual in the circumstances referred to by counsel, and there is, therefore, no basis for the contention that there should in the present case be a departure from the existing practice. The reason for the practice is, I have little doubt, that counsel, when marking his brief on appeal, takes into consideration the extra cost involved in his having

to go to Bloemfontein. Under the existing practice the Taxing Master has regard to the cost involved in counsel's having to come to Bloemfontein when he determines the composite fee which he thinks ought to be allowed in respect of the appeal, and I am in no way persuaded by the submissions that have been made to us that the Taxing Master was wrong in following this practice in the present case.

As to the fees claimed in respect of the Johannesburg attorney who attended the hearing of the appeal in Bloemfontein, the Taxing Master allowed his fee for attending Court (no similar fee was allowed in respect of the Bloemfontein attorney), but disallowed travelling expenses and his hotel expenses in Bloemfontein. The applicants' contention is that the circumstances of the case warranted the Johannesburg attorney's going to Bloemfontein, and that the Taxing Master acted unreasonably in not allowing his travelling and hotel expenses. These circumstances were, it is said, the fact that the attorney had been involved in the matter from the start, that he had attended the hearing of the matter in both the Courts below, that the matter was a complex one, and that he was *au fait* with all the features of the case. In making these submissions counsel relied on the case of *Groenewald* v *Selford Motors (Edms) Bpk* 1971 (3) SA 677 (C), in which it was held *inter alia* that a Bloemfontein attorney had acted reasonably in going to Cape Town to attend a trial and that the Taxing Master should have allowed his travelling expenses. This finding was based, it would seem, on the Court's view that the attorney had an intimate knowledge of the facts of the case and that he could assist counsel in the conduct of the trial. (See at 680H of the report.) The present case is of a different kind. It was a motion Court matter, and it had gone through two Courts before the appeal was heard in this Court. It is difficult to see what assistance the attorney could have rendered to counsel in connection with the arguing of the appeal, and I may add that there is no suggestion in any of the papers before us that he was in fact of assistance to counsel. I am of the opinion that the Taxing Master had every reason to hold that it was not reasonably necessary for the attorney to have come to Bloemfontein, and, consequently, to disallow his travelling and hotel expenses.

Items 26 and 27: counsel's fees.

In their written contentions on the case stated by the Taxing Master, the applicants (*per* their Bloemfontein attorneys) emphasize "the importance of the matter and the legal principles involved therein", the "complexity of the matter both in law and on the facts", the "substantial and extremely lengthy research" counsel had to undertake in preparing for the appeal, and the "novel" points of law "for which there existed no authority in the Republic of South Africa and very limited authority overseas", and they conclude by submitting "that the fees charged by counsel are reasonable in the circumstances and that the full fees charged by them should be allowed". In this Court counsel for the applicants did not contend that the Taxing Master should have allowed the full fees charged by counsel. He made no attempt to justify those fees, but submitted — I quote from his heads of argument — "that the fees allowed to counsel are, in the circumstances of the case,

too low by a substantial margin". He suggested that the Taxing Master should have allowed senior counsel a fee of R6 000, and junior counsel a fee of R4 000, plus, in the case of each counsel, a fee for drawing the heads of argument.

The Taxing Master states in his report that he appreciated that the appeal was a difficult one, both as to the facts and the law, but that he nevertheless did not consider it to be of such extreme complexity as to warrant the fees charged by counsel. He considered the fees charged to be "buitengewoon hoog" (ie unusually, or exceptionally, high), or even "skokkend hoog" (ie, shockingly high), and out of all proportion to fees normally allowed in respect of appeals of comparable size and complexity.

Counsel for the applicants, in arguing that the Taxing Master erred in reducing counsel's fees to the extent that he did, submitted that he failed to take into account the following "relevant circumstances", viz

"(*a*) the matter involved securities, the purchase price of which on 1 June 1975 was R568 890 (reported judgment at 285);
(*b*) the case involved principles of sufficient importance to have been reported in both Courts *a quo* . . .".

(The quotations are from counsel's heads of argument. I have omitted the references to the Law Reports.) As to (*a*), it appears from the Taxing Master's report that he was fully aware of what was in issue in the appeal and that he had regard to counsel's heads of argument and this Court's judgment in the matter. In the circumstances there is no warrant for saying that the Taxing Master failed to take into account the point referred to in (*a*). As to (*b*), the Taxing Master was, as I have said, aware of what was involved in the case, and the fact that the judgments of the Courts below were reported does not seem to me to be a point of any significance.

A further point raised by counsel in his heads of argument is that in the appeal both sides "saw fit to retain eminent counsel". On this point the Taxing Master refers to the following well-known statement of CURLEWIS J in *Gundelfinger* v *Norwich Union Fire Insurance Society Ltd* 1916 TPD 341 at 348:

"Of course if a litigant wishes to employ eminent counsel who requires a very large fee before he comes into Court, he is entitled to do so, but the Court should not allow him to saddle the losing side with the cost of a specially large fee, which he has thought fit to allow his counsel."

I agree with this statement. (See also *Wellworths Bazaars Ltd* v *Chandlers Ltd and Others* 1947 (4) SA 453 (T) at 461.) The measure for determining what is a reasonable fee is the value of the work that was done, and the eminence of counsel is not by itself a good reason for allowing a larger fee.

Counsel's further submission is that the fees allowed by the Taxing Master are, when viewed in the light of the "recognized inflation rate and the falling value of money", "too low". It is not suggested that the Taxing Master did not have regard to the factors mentioned, and his report shows that there would be no grounds for any such suggestion. The complaint seems to be that the Taxing Master did not have proper regard to these factors. I do not agree. Information contained in his report shows that he has constant regard to the question of inflation,

and that he has in the ' t of the increasing rate of inflation allowed increasingly larger fees in recent years. His report shows that, in determining the fees in issue in the present case, he had regard to fees that were allowed in comparable matters in recent years, and that the fees allowed by him represent a not insubstantial increase on fees previously allowed.

As appears from what has been said above, I am of the opinion that it has not been shown that the Taxing Master, in considering counsel's fees, overlooked or failed to have proper regard to any relevant factor. As to the amount of the fees, I consider that the Taxing Master was quite correct in his view that the fees claimed by counsel were grossly excessive and, as to the amount of the fees allowed by him, I am, applying the test discussed earlier in this judgment, in no way persuaded that it can be said that he was clearly wrong.

In view of all the aforegoing I consider that no part of the application can succeed, and the application is accordingly dismissed with costs.

KOTZÉ JA, JOUBERT JA, TRENGOVE JA and GALGUT AJA concurred.

Applicants' Attorneys: *Werksmans*, Johannesburg; *Rosendorf, Venter & Brink*, Bloemfontein. Respondents' Attorneys: *Bell, Dewar & Hall*, Johannesburg; *Webber & Newdigate*, Bloemfontein.

S v NDLOVU

(APPÈLAFDELING)

1984 *Maart* 13, 29 RABIE HR, JANSEN AR, CORBETT AR, JOUBERT AR en HEFER WN AR

**Strafreg—Moord—Poging tot—Wat uitmaak—Beskuldigde onder die indruk dat sy slagoffer (wat reeds oorlede is) nog lewe en poog om hom te vermoor is skuldig aan poging tot moord.*

Waar 'n beskuldigde wat onder die wanindruk verkeer dat die slagoffer nog lewe terwyl hy inderdaad oorlede is, steekwonde aan die slagoffer toedien met die opset om hom te vermoor, is hy skuldig aan poging tot moord.

Appèl teen 'n skuldigbevinding in die Witwatersrandse Plaaslike Afdeling (LE ROUX R). Die feite blyk uit die uitspraak van JOUBERT AR.

**Criminal law—Murder—Attempted murder—What constitutes—Accused under the impression that his victim (who is already dead) is still alive and attempts to murder him is guilty of attempted murder.*

Where an accused who is under the mistaken impression that his victim is alive, whereas in fact he is already dead, inflicts stab wounds on the victim with the intention of murdering him, he is guilty of attempted murder.