

its case beyond a reasonable doubt, it did not prevent defense counsel from presenting to the jury the possibility of jury nullification, nor did its charge negate defense counsel's statements on this issue. See *State v. Berry*, 117 N.H. 352, 355, 373 A.2d 355, 357 (1977). Defense counsel was permitted, in his closing statement, to argue to the jury that:

"[I]f you find that the prosecution has proven to you beyond a reasonable doubt each and every element, you may, or should, find [the defendant] guilty. You are not required to. You must find him not guilty if each and every element has not been proven; you may, or should, find him guilty if each and every element has been proven. You don't have to."

The jury was expressly made aware of its prerogative to disregard the strict requirements of the law if it found that those requirements were not being justly applied in the defendant's case.

*Affirmed.*

SOUTER, J., concurred in the result; the others concurred.

Rockingham  
No. 83-477

MICHAEL J. MATTLEMAN

v.

MARLENE S. BANDLER

July 3, 1984

*Joseph L. Hamilton*, of Salem, by brief and orally, for the plaintiff.

*Soule, Leslie, Bronstein & Zelin*, of Salem (*Barbara F. Loughman* on the brief and orally), for the defendant.

## MEMORANDUM OPINION

This is the second time this interstate child custody case has come before the court. See *Mattleman v. Bandler*, 123 N.H. 368, 461 A.2d 561 (1983). In our prior decision, we concluded that the Master (*Douglas R. Gray*, Esq.) and the superior court erred in asserting jurisdiction, upon the request of the plaintiff, and in denying summary enforcement of a Maryland custody decree. Further, we vacated the trial court's order granting temporary custody to the plaintiff and remanded the case to the superior court "for the limited purpose of determination and assessment of necessary travel and other expenses, including attorney's fees, against the plaintiff, pursuant to RSA 458-A:15, II (Supp. 1979)." *Id.* at 375, 461 A.2d at 565.

Upon remand, the same master failed to "determine and assess" attorney's fees and expenses against the plaintiff, and the defendant appeals.

Disposition of the present appeal requires that we address only the issue of whether the language of our earlier opinion required the superior court to award reasonable attorney's fees and expenses to the defendant. We believe that our earlier opinion clearly required that.

Counsel for the plaintiff having conceded at oral argument that the amount of attorney's fees and expenses submitted to the superior court by the defendant is reasonable, it is ordered that the plaintiff shall reimburse the defendant for attorney's fees in the amount of \$8,777.00 and for \$623.60 in expenses.

*Reversed.*

Public Utilities Commission  
No. 84-188  
No. 84-204  
No. 84-207

APPEAL OF ROGER EASTON  
APPEAL OF CONSUMER ADVOCATE MICHAEL HOLMES  
APPEAL OF GARY MCCOOL  
(New Hampshire Public Utilities Commission)

July 13, 1984