

1880

JULY 1.

4 B. 353.

[353] ORIGINAL CIVIL.

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Before Mr. Justice West.

4 B. 353.

BAI KESSERBAI, Plaintiff, v. NARRANJI WALJI Defendant.\*  
[29th June and 1st July, 1880.]

*Lien of solicitors—Translation of documents.*

Messrs. P. and W. were solicitors for the plaintiff in this suit from its commencement. When the case was about to appear in the list of hearing, Messrs. P. and W. wrote to the plaintiff, requesting her to second them an advance of Rs. 1,000 to enable them to deliver briefs to counsel. They received no reply from the plaintiff, who afterwards obtained leave to sue as a pauper, and appeared by other solicitors. Messrs. P. and W. were subsequently served with a subpoena to produce, at the hearing certain translations and other documents relating to the plaintiff's case which had remained in their possession, and upon which they claimed a lien in respect of costs due to them by the plaintiff.

*Held*, that Messrs. P. and W. could not be compelled to produce. A solicitor who is discharged by his client, holds the papers entrusted to him subject to his lien for costs, and the plaintiff by her conduct had discharged Messrs. P. and W. from being her solicitors.

A solicitor has the same lien upon translations as he has upon other documents, and the fact that they have been made by the Court's interpreters, makes no difference. Having got the work done, and paid for it, he need not part with such translations, or produce them except on terms which will secure him against fraud.

MESSRS. Prescott and Winter had conducted this suit as solicitors for the plaintiff from its commencement until it was ready for hearing in the month of June 1879. In that month they wrote to the plaintiff, requesting an advance of Rs. 1,000, in order that they might be enabled to deliver briefs to counsel. No reply was sent by the plaintiff, nor did she again communicate with the firm. Subsequently, she obtained leave to sue as a pauper, and secured the services of other solicitors. On the 25th February 1880, Messrs. Prescott and Winter were served with a subpoena, at the instance of the plaintiff, requiring them to appear at the hearing of the plaintiff's suit, and to produce the original translations and other papers connected with the case, as also the probate of the last will and testament of Thucker Tricumji Walji. Messrs. Prescott and Winter claimed a lien upon the above [354] documents in respect of costs due to them by the plaintiff, and declined to produce them. They stated that they had themselves paid for the translations.

*Starling*, for the plaintiff.

*Jardine*, for Messrs. Prescott and Winter.

The following cases were cited:—*In re Faithfull* (1), *Lord v. Wormleighton* (2), *In re Bevan and Whitting* (3), *Ross v. Langhton* (4), *Commerell v. Poynton* (5), *Hope v. Liddell* (6), *Robins v. Goldingham* (7), *In re The Cameron Railway Co.* (8), *Richards v. Plater* (9), *Kemp v. King* (10).

#### JUDGMENT.

WEST, J.—I have looked into the cases cited by counsel and into some recent ones in which these earlier cases have been considered, and

\* Suit No. 116 of 1879.

(1) L.R. 6 Eq. 325.

(4) 1 V. & B. 349.

(7) L.R. 13 Eq. 440.

(10) 2 M. & Rob. 437. M.

(2) Jacob 580.

(5) 1 Swanston, I.

(8) 25 Bea. I.

(3) 33 Bea. 439.

(6) De G. M. & G. 321.

(9) 1 Cr. & Ph. 73.

I am of opinion that Mr. Winter cannot be compelled to produce the translations. He has not, I think, renounced the conduct of the case, but has been discharged by his client. The case which goes nearest to imposing an obligation on him to produce the translations, seems to be that of *Robins v. Goldingham*(1). In that case the solicitor wrote to his client: "I really must decline to incur any liabilities on your account, unless some satisfactory arrangement be made as to costs." Vice-Chancellor Malins on this says: "It is as plain as anything can be that Mr. Suckling thereby declined to go on with the suit. It is a clear case of a solicitor discharged by himself." If an intimation by a solicitor, that he will not advance money, is a self-discharge, this no doubt was so; but it does not seem to me that it is part of a solicitor's duty to supply funds, or that, having begun to supply fund, he is under any obligation to continue doing so. He may be quite willing to go on if provided with money for the requisite disbursements, without instant payment for his own services as they are rendered; and if he is ready to do all that properly devolves on him, he cannot, I think, be said to discharge himself, that is, [355] to renounce the conduct of the case, because he declines to lend money, or more money, to his client. The attorney may withdraw if not kept in funds for disbursements (*Wandsworth v. Marshall* (2)); but he must give distinct and timely notice (*Hoby v. Buitt*(3)). When such notice has not been given, I am inclined to think that it is the client resorting to another solicitor who discharges his former one so soon as the change is made. In the present case, Messrs. Prescott and Winter merely say; "We may as well remind you to send us an advance of Rs. 1,000, at least, to enable us to deliver our briefs to counsel." Such an intimation is often made where there is not the slightest intention to renounce the conduct of the litigation. Mr. Starling argued that, as the plaintiff was, in fact, without money, it was impossible for her to comply with the request made by Messrs. Prescott and Winter, whose letter was virtually a discharge; but the fact is, that the request was itself a proper and ordinary one which the solicitors might expect would be complied with, and quite consistent with a desire to proceed with the suit. The plaintiff did not answer it, and did not supply funds, but, obtaining leave to proceed as a pauper, took the case out of Mr. Winter's hands, and so discharged him. Under such circumstances, as is said in the case I have lately referred to, "the solicitor has a lien for his costs upon the papers in his hands, and can retain them till he is satisfied." In the case of *In re Faithfull* (4) the same principle was followed in the shape given to it by Lord Eldon in *Lord v. Wormleighton* (5), that a solicitor "ought to make use of the non-production of the papers in order to get at what is due to him; that is, in other words, he may embarrass the client in order to force him to pay what is due to him." In the very recent case of *Ex parte Yalden* (6), Lord Justice James says: "A man has right to change his solicitor if he likes; but then the law imposes certain terms in favour of the solicitor, that is to say, that the papers in the suit cannot be taken out of his hands without his having his costs paid." These cases make it clear that a solicitor, who is discharged by his client, holds the papers entrusted to him subject to his lien for costs. But in *Ex parte* [356] *Yalden*, Lord Justice James points out in favour of the solicitors that "the things on which they claim a lien are things on which they have

1880

JULY 1.

ORIGINAL

CIVIL.

4 B. 353.

(1) L.R. 13 Eq. 440.

(2) 2 C. &amp; J. 665.

(3) 2 Brad. 350.

(4) L. R. 6 Eq. 325.

(5) Jacob 590.

(6) 4 Ch. Div. 131.

1880  
JULY 1.  
—  
ORIGINAL  
CIVIL,  
—  
4 B. 353.

expended their own labour and their own money. Why are they not to have that lien in the same way as any other workman (who is entitled to retain the thing upon which he has worked until he has been paid for it?" The documents held by Messrs. Prescott and Winter are translations of entries in account books made at their expense in order that the originals might be used as evidence under No. 6 in chap. V of the Rules of this Court. They are not muniments of title, but ancillary papers which the plaintiff can replace by fresh translations. The fact that they have been made by the Court's interpreters, makes no difference in principle. The matter stands as if the solicitors, in the absence of a rule of the Court, had had them made by a clerk of their own or any other unofficial expert. Having got the work done, and paid for it, they need not part with the translations, or produce them, except on terms which will secure them against fraud. A translation, once produced and used in a suit, has, in fact, discharged in general the only function of which it is capable;—a lien on such a document, subject to an obligation to produce it, would be not only illusory, but a source of trouble, loss of time, and expense. The considerations, I have mentioned are as applicable to India as to England. They rest on a universal principle of justice; and, although no case in the Indian Courts has been cited to me, I cannot doubt that the views and the reasonings of the English Courts will be accepted whenever such a question as the present arises for decision in this country. I refuse to order Mr. Winter to produce the translations without payment to him, of the moneys actually expended by him in the litigation.

Attorneys for the plaintiff.—Messrs. *Nanu and Hormusji*.

4 B. 357.

[357] APPELLATE CRIMINAL.

*Before Mr. Justice West and Mr. Justice Pinhey.*

IMPERATRIX v. BHAGWAN DEVRAJ, ON APPEAL BY THE  
GOVERNMENT OF BOMBAY.\* [27th February, 1879.]

*Sanction to prosecute—Police patel—Bombay village Police Act VIII of 1867, s. 9, as amended by Bombay Act I of 1876—The Code of Criminal Procedure (X of 1872) s. 466—Indian Penal Code (XLV of 1860), s. 217.*

The prosecution of a police patel, for an offence committed by him in his official capacity as needs such, no previous sanction. The provisions of the Bombay Village Police Act (VIII of 1876), s. 9,† as amended by the Bombay Police Amendment Act (I of 1876) render a police patel removable from his office without the previous sanction of Government, and, therefore, s. 466 of the Criminal Procedure Code (Act X of 1872) does not apply.

\* Appeal No. 240 of 1878.

† The amended section runs thus:—"Any police patel, or member of a village establishment liable to be called on for the performance of police duties, who shall be careless or negligent in the discharge thereof, shall be liable to be fined, under the order of any Magistrate of the 1st Class, to any amount not exceeding the fourth part of the annual emoluments of his office.

"If he shall be accused of any violation of duty, or breach of rules, or of other misconduct which shall seem to such Magistrate to require a heavier punishment, he may suspend him from office during inquiry into such accusation, and at the close of such inquiry, if the said Magistrate shall consider him guilty of misconduct meriting such punishment, he may suspend him from office for a further period not exceeding