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advances proved by the plaintiff to have been made to the first defendant a sum of not less than Rs. 3,800 had been expended by him upon the property although the Court was not able to say that he had spent it out of his own pocket. This conclusion to say the least of it does not render it *prima facie* improbable that the money advanced by the second defendant was expended by the first defendant, as he alleged against his interest in his written statement, upon the repairs of the house in question.

For these reasons, we are of opinion that the second defendant advanced his money upon the mortgage of the house in good faith and without notice that the plaintiff had any interest in it, and that his present mortgage of the 4th April 1903 is binding upon the property in the hands of the plaintiff; and we reverse the decree of the lower Court and dismiss the suit with costs throughout upon the plaintiff as between her and the second defendant.

Solicitors for the appellant : Messrs. *Manchershah and Narmada-shanker*.

Solicitors for the respondent : Messrs. *Mehta and Dadachanji*.

Decree reversed.

K. McL. K.

ORDINARY ORIGINAL.

Before Mr. Justice Robertson.

AISHABIBI AND ANOTHER, PLAINTIFFS, v. AHMED BIN
ESSA AND OTHERS, DEFENDANTS.*

JASSEN BIN MAHOMED, PLAINTIFF, v. AHMED BIN
ESSA AND OTHERS, DEFENDANTS.†

AHMED BIN ESSA, APPLICANT, v. MESSRS. THAKURDAS
AND Co., RESPONDENTS.

*Solicitor's lien for costs—Charge of Solicitors—Inspection of
documents—Administration suit.*

The right to be exercised by a Solicitor claiming a lien largely depends upon the circumstances under which he has ceased to act for his client, the test being whether the Solicitor has discharged himself or has been discharged by the client.

* Suit No. 423 of 1907.

† Suit No. 517 of 1908.

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The obligation on the Solicitor to give inspection of and to produce documents in his possession over which he has a lien in an administration action is confined to those cases where they are essential to the determination of those questions which arise in the normal administration proceedings when the estate is being actually administered.

Boughton v. Boughton⁽¹⁾ and *In re Capital Fire Insurance Association*⁽²⁾, considered.

PROCEEDINGS in chambers.

This matter came before Mr. Justice Robertson in chambers in the following circumstances.

In the year 1907 Aishabibi and Lulvabibi filed a suit (No. 423 of 1907) against one Shaikh Essa bin Khalifa, an Arab Mahomedan, for the administration of the estate of his alleged wife, their late mother Fatmabibi. On the death of Shaikh Essa in June 1908, his sons Ahmed bin Essa, Yusuff bin Essa and Mahomed bin Essa were brought on the record in his place. Shortly thereafter Mahomed filed a suit (No. 517 of 1908) against his two brothers (making the abovementioned Aishabibi and Lulvabibi parties thereto) for the administration of Shaikh Essa's estate. A further suit (No. 640 of 1908) was also filed against the brothers by a creditor of the estate. In March 1909 Mahomed died, and his only son Jassen bin Mahomed was substituted on the records of all three suits.

In this litigation Messrs. Thakurdas and Co., attorneys, had acted for Shaikh Essa in Suit No. 423 of 1907, and after his death had acted for his sons (and, after the death of Mahomed, for Jassen) in all the above suits. They continued so to act up to November 1909. At that date, however, disputes arose between Ahmed on the one hand and Yusuff and Jassen on the other as to the continuance and mode of conduct of the litigation. After some correspondence, in the course of which Messrs. Thakurdas and Co. informed Ahmed that they would continue to act for Yusuff and Jassen in Suit No. 517 of 1908, but advised him to engage another firm of attorneys to represent him in that suit, Ahmed engaged Messrs. Ardesbir, Hormusji, Dinshaw and Co. to act for him in all the suits. Ahmed was at this time

(1) (1883) 28 Ch. D. 169.

(2) (1883) 24 Ch. D. 408.

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indebted in a large sum to Messrs. Thakurdas and Co. for costs, for which the latter claimed a lien on the papers in their possession. For some time, however, they allowed the new attorneys to take inspection, but, eventually, finding it impossible otherwise to secure their costs, withheld inspection.

Ahmed, therefore, took out a summons against Messrs. Thakurdas and Co. to show cause why they should not produce the above documents.

Jinnah for the respondents showed cause:—Section 171 of the Contract Act gives an absolute lien. If this section does not apply, there is a lien in English law, and such lien includes the right of withholding inspection: *Re Biggs and Roche*⁽¹⁾. If the client has discharged the attorney, the latter has even the right to embarrass the client in pending litigation: *Lord v. Wormleighton*⁽²⁾. Here the client discharged the attorneys. The fact that the applicant gave the warrant while Messrs. Thakurdas and Co. were actually his attorneys on the record and the wording of the Court's order of discharge, making the payment of taxed costs a condition precedent, point to a discharge by the client, not by the attorney. The correspondence shows the same. In any event no discharge by the attorney can be alleged save in Suit No. 517 of 1908. Thus, at the most, the only lien lost is that for costs of Suit No. 517 of 1908. The respondents have still a lien on all the papers in all the suits for costs of Suits No. 423 of 1907 and No. 640 of 1908, and for costs of Shaikh Essa. Further, the applicant has no right to inspection of Essa's papers, which came into the respondents' hands before the applicant was their client at all. Essa's estate still owes costs.

Bahadurji for the applicant:—The applicant did not discharge the respondents: they compelled him to change his attorneys. Numerous cases show that a Solicitor who refuses to continue to act save on payment of his costs discharges himself: *Heslop v. Metcalfe*⁽³⁾; *Robins v. Goldingham*⁽⁴⁾; *Wilson v. Emmett*⁽⁵⁾; *Atul Chunder Mookerjee v. Soshi Bhushan Mullick*⁽⁶⁾;

(1) (1897) 41 Sol. J. 277.

(4) (1872) L. R. 13 Eq. 440.

(2) (1822) Jac. 580.

(5) (1854) 19 Beav. 233.

(3) (1837) 3 My. & Cr. 183.

(6) (1901) 29 Cal. 63.

Basanta Kumar Mitter v. Kusum Kumar Mitter⁽¹⁾. But even if the client has discharged the attorney, the latter cannot embarrass the conduct of suits in which parties other than his client are interested, *e. g.*, in administration proceedings. See *Boughton v. Boughton*⁽²⁾. It makes no difference who is entitled to the conduct of the suit: *Boden v. Hensby*⁽³⁾; *In re Hawkes*⁽⁴⁾. The right of an attorney to refuse production altogether is confined to cases where he is arbitrarily discharged by the client without provision for costs, and the suit concerns the clients' interests alone. See *Cordery* (3rd Ed.) p. 371.

ROBERTSON, J.:—In this case the applicant Ahmed bin Essa Khalifa has taken out a summons in Suit No. 423 of 1907 against the firm of Messrs. Thakurdas and Co. calling upon them to show cause why they should not forthwith give a full free and complete inspection of certain papers and documents relevant to that suit in the respondents' possession and why the applicant should not be allowed to take full and complete copies of the said documents. He has taken out a similar summons against Messrs. Thakurdas and Co. in Suit No. 517 of 1908.

The applicant alleges that after the death of his father Essa bin Khalifa, Messrs. Thakurdas and Co., who had been his father's Solicitors, continued to act as the Solicitors of himself and his two brothers in the litigation that was then pending between his father and one Fatmabibi, and they also acted as Solicitors of himself and his brothers in certain other actions, which were filed after the death of his father.

Some time in November 1909 the applicant became on bad terms with his brother and nephew and it became impossible for Messrs. Thakurdas and Co. to continue to act for all the three.

In Suit No. 517 (which was originally filed by the applicant's brother Mahomed for the administration of the estate of Essa bin Khalifa) on the death of Mahomed his son Jassen was made plaintiff as his father's representative. In Suit No. 423 Jassen

(1) (1900) 4 C. W. N. 767.

(2) (1883) 23 Ch. D. 169.

(3) [1892] 1 Ch. 101.

(4) [1898] 2 Ch. 1.

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was similarly substituted as a party in the place of his deceased father.

The question that arises in the summons is whether in the circumstances that have happened Messrs. Thakurdas and Co. are entitled to refuse the inspection asked for on the ground that they are entitled to exercise their lien to its full extent even though such exercise should embarrass the applicant in the conduct and defence of these various suits. The authorities appear to show that the right to be exercised by a Solicitor claiming a lien largely depends upon the circumstances under which he has ceased to act for his client. The test suggested in the text-books and authorities is whether or not the Solicitor has discharged himself or whether he has been discharged by the client; in other words the question is whether the Solicitor has ceased to act for his client owing to unjustifiable action of his own or whether he has so ceased owing to the action of the client.

Both the parties have based their case on the result of the correspondence between them, and the letter by which the correspondence begins is that of the 16th November 1909 addressed by Messrs. Thakurdas and Co. to the applicant and his brother and nephew and headed as of the Suit No. 517 of 1908 which runs as follows:—

“ We have received instructions from you Mr. Ahmed to proceed with the suit, whereas you Mr. Yusuff and Mr. Jassen do not desire the suit to go on in the manner proposed by Mr. Ahmed.

These conflicting instructions are injurious to our cause, and we are at a loss what to do.

You Mr. Ahmed must remember that the suit has been on the postponed list for a long time and may soon be placed on the prospective board.

We must therefore arrange to get the suit postponed unless it is settled as there is hardly time for translations of documents and preparing materials for trial.

We must also know definitely whether you Mr. Ahmed wish to renew your application for commission.

If you Mr. Ahmed decide to go on with the suit, please note that you Mr. Ahmed will alone have to pay us our costs of the suit and be liable for any costs decreed by the Court, as Mr. Yusuff and Mr. Jassen have given us notice

that they will not be liable for the future costs of this suit, and that the arrangement to share costs and expenses has been put an end to.

Under the circumstances, you Mr. Ahmed will please send us a letter agreeing to bear the costs of the suit from this date yourself.

You Mr. Yusuff and Mr. Jassen will also please inform us precisely what you want us to do. You cannot simply tell us that you do not desire to go on with the suit. You must tell us what attitude you wish to adopt and arrange for your desires being carried out."

Thus it would appear that the applicant was expressly asked to state whether he wished to proceed in Suit No. 517 of 1908 and he was called upon to note that if he did desire Messrs. Thakurdas and Co. to continue to act for him in that suit he would be liable for any costs that might be incurred. There is no demand for any payment on account of costs. From the correspondence annexed to the affidavits, it appears that the applicant sent no reply to that letter, and the next letter annexed to the affidavits is again one from Messrs. Thakurdas and Co. to the applicant, which is written by them on behalf of Messrs. Yusuff and Jassen. Again Messrs. Thakurdas and Co. point out to the applicant how extremely awkward their position had become and ask the applicant to arrange with Messrs. Yusuff and Jassen that they should be represented by different Solicitors. Again no reply seems to have been sent by the applicant to this letter, and accordingly on the 18th January, Messrs. Thakurdas and Co. write to the applicant to say that under the circumstances they propose to act for Messrs. Jassen and Yusuff. In considering whether this correspondence shows that Messrs. Thakurdas and Co. so far as that suit was concerned were discharged by the applicant, it is necessary to bear in mind that the plaintiff in that suit originally was Mahomed, and that the applicant was a defendant who sided with the plaintiff; but the attorneys Messrs. Thakurdas and Co. would necessarily be primarily Solicitors of the plaintiff who had committed to them the conduct of the suit on his behalf. It appears to me under those circumstances that Messrs. Thakurdas and Co. had done all that they could possibly be expected to do under the circumstances in calling the applicant's attention in the first place to the fact that if he

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wished to continue the suit he would be from that date the party liable to pay Messrs. Thakurdas and Co. their costs, and in the second letter, to which I have referred of the 11th January asking the applicant to arrange with his brother and nephew, so that they could be represented by different Solicitors. After the receipt of the letter of the 18th of January, the applicant wrote a letter through his Solicitors on the 20th January, in which he says that he notes what is stated in the letter of the 18th instant, namely, that it would be necessary for him to appear by other attorneys than those acting for Jassen and Yusuff, and asks what are the circumstances which require the parties to appear by different Solicitors and why Messrs. Thakurdas and Co. have elected to act for Jassen and Yusuff. Having regard to the fact that this letter was written more than two months after the receipt by the applicant of Messrs. Thakurdas and Co.'s letter of the 16th of November and to paragraph 8 of the applicant's affidavit filed on this summons, I cannot regard this letter as being altogether *bona fide*.

The para runs :—

8. From November 1909 certain disputes and differences arose between me on the one hand and Jassen and Yusuff the plaintiff and the second defendant on the other hand when Messrs. Thakurdas and Co. sided with the plaintiffs and the second defendant herein and declined to act any further for me this deponent in any of the said suits and matters and proceedings relating to estate of the said deceased Essa bin [Khalifa and upon this I was compelled to change attorneys and to go to my present attorneys Messrs. Ardeshir, Hormusji, Dinshaw and Co. Copy correspondence on the subject is hereto annexed and marked collectively with the letter A.

He was expressly warned that it would be necessary either to agree to be liable for the costs of the suit if he wished Messrs. Thakurdas and Co. to continue to act for him or that he should himself appoint other Solicitors; and in my opinion he was not entitled to wait for two months before answering that letter and then to suggest that as a matter of fact Messrs. Thakurdas and Co. discharged themselves as his Solicitors.

In subsequent correspondence a request was made by the applicant to be allowed to take inspection, and Messrs. Thakurdas and Co. took up a very reasonable position

in that they offered to allow the applicant to take inspection in the meantime but requested him to make arrangements for the payment of their costs. It is clear from the letters written during the month of February that the applicant did make from time to time certain promises with regard either to the payment of the costs or to the proposed arrangements securing their payment to Messrs. Thakurdas and Co. That inspection continued for at least 22 days and it was only stopped when according to Messrs. Thakurdas and Co. they discovered that the promises of the applicant to secure their costs were wholly illusory and not made with any *bona fide* intention of carrying them out. Under these circumstances I consider that it is impossible to hold that Messrs. Thakurdas and Co. have acted in this matter otherwise than with perfect propriety, and I do not consider that they can be held to have discharged themselves within the meaning of the decisions relied upon by the applicant. It must be noted that the demand for *payment* of costs was made after and not before the discharge of Messrs. Thakurdas and Co. Before their discharge they had only asked the applicant to hold himself liable for costs.

It was then suggested that even if that were so Messrs. Thakurdas and Co. were bound to give this inspection on the ground that even if they had been discharged by the client as this was a suit of a representative character they could not embarrass the action of the Court in administering the estate of Essa bin Khalifa by withholding the inspection of these documents; but it is admitted that the main question in the suits will be whether the third and fourth defendants are the legitimate daughters of the said deceased Shaikh Essa bin Khalifa and as such entitled to a share in his estate, and it is principally for the purpose of proving their illegitimacy that this inspection is sought and I do not think that the inspection which the English decisions show the Solicitor is required to give in administration actions is for the purpose of determining such questions as this. It is only incidentally that such a question would arise in an administration action and I gather from the cases that have been cited to me and others to which I have referred that the obligation on the Solicitor to give inspection of

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and to produce documents in his possession over which he has a lien in an administration action is confined to those cases where they are essential to the determination of those questions which arise in the normal administration proceedings, when the estate is being actually administered: *Boughton v. Boughton*⁽¹⁾; *In re Capital Fire Insurance Association*⁽²⁾.

Suit No. 423 of 1907 was filed during the life-time of Shaikh Essa by Aishabibi and Lulvabibi, daughters of Fatmabibi, claiming to be the legitimate daughters of the said Essa bin Khalifa by their mother Fatmabibi, and for the administration of the estate of Fatmabibi whom they alleged to be the wife of the said Essa bin Khalifa. In that case Messrs. Thakurdas and Co. continued to be the Solicitors of the applicant and his brothers and subsequently of the applicant and his brother and nephew after the death of Essa bin Khalifa. That suit is not referred to in the earlier correspondence. On the 31st January 1910 Messrs. Ardeshir, Hormusji, Dinshaw and Co. wrote to Messrs. Thakurdas and Co. an urgent letter in which they say that the applicant had instructed them to act for him in Suit No. 517 of 1908. To that Messrs. Thakurdas and Co. reply asking whether the applicant intended to change his attorneys also in Suit No. 423 of 1907 and in Suit No. 640 of 1908. In reply to that Messrs. Ardeshir, Hormusji, Dinshaw and Co. wrote on the 31st January to say that the applicant had instructed them to appear for him in Suit No. 640 of 1908 and on the 4th February they wrote to say "we beg to inform you that Mr. Ahmed bin Shaikh Essa Khalifa has instructed us to represent him in the above suit" *i. e.* in Suit No. 423 of 1907; and in all these three Suits Nos. 517, 640 and 423 the order of the change of attorneys was obtained at the instance and by the new Solicitors of the applicant. In this state of things it seems quite clear that Messrs. Thakurdas and Co. have never refused to act as the attorneys of the applicant in Suit No. 423 of 1907 and that the change of attorneys was entirely the applicant's own act. I must, therefore, hold that he discharged Messrs. Thakurdas and Co. from their retainer. Exactly the same dispute arises in

(1) (1883) 23 Ch. D. 169.

(2) (1883) 24 Ch. D. 408.

that suit as in Suit No. 517, namely the legitimacy or illegitimacy of these two ladies Aishabibi and Lulvabibi. It appears to me that under these circumstances, therefore, and having regard to the English decisions and the jurisdiction that the Courts have exercised from time to time in these matters, that it is open to me to make such an order in these summonses as will meet the justice of the claims of the applicant on the one hand and the right of the Solicitor to be paid his costs on the other. It is unfortunate that Messrs. Thakurdas and Co. have not taken more active steps to have the exact amount of the costs which they are entitled to recover from the applicant, specifically ascertained. The only calculation they can make is a rough calculation that their costs may come to something like Rs. 25,000. There is no clear indication anywhere in the affidavits put in on their behalf what exact proportion of this sum would be payable by the applicant. In their letter of the 14th March 1910 Messrs. Thakurdas and Co. asked Messrs. Ardeshir, Hormusji, Dinshaw and Co. whether their client would pay them Rs. 5,000 on account of costs and in another letter they ask whether he is willing to give a charge upon his share in the estate of his father. That appears to me to be a perfectly reasonable proposal on the part of Messrs. Thakurdas and Co., and I order accordingly that on payment by the applicant of the sum of Rs. 5,000 and on his charging his share in the estate of his father to the extent of the balance of costs payable by him, the summonses be made absolute, the applicant to pay the costs. In default of this being done within a fortnight from the date of this order, the summons will be discharged with costs. Affidavits taken as read.

Attorneys for applicant: Messrs. *Ardeshir, Hormusji, Dinshaw and Co.*

Attorneys for respondents: Messrs. *Thakurdas and Co.*

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