

ORIGINAL CIVIL.

Before Cunliffe J.

ANGLO-INDIAN DRUG AND CHEMICAL
COMPANY

v.

SUGANDHA PERFUMERY COMPANY*.

*Attorney and Client—Change of attorney—Discharge by conduct of attorney—
Attorney's lien—Costs.*

Where an attorney, by his conduct, puts an end to the contract between himself and his client, he only retains the modified lien. It comes into effective operation only after the case is ended and the other attorney has completed his work.

Pankajkumar Ghosh v. Sudheerkumar Shikdar (1) relied on.

APPLICATION by client for change of attorney.

The defendants' attorney wrote to the defendant on the 24th November, 1934, as follows:—

This is to place on record that neither you gave me instructions nor funds to enable me to prepare myself for the case * * * . Unless I receive instructions and funds, at least Rs. 500, in course of this day, your case will be heard *ex parte* and I shall not be held responsible for the same.

Thereupon, correspondence ensued between the attorney and the client, in which the client alleged that he had made payments for out-of-pocket expenses, as required by the terms of employment of the attorney and had also given all necessary instructions. The attorney denied the allegations and stated that he had briefed counsel and counsel had intimated that he could not proceed with the case without further instructions.

Thereupon, the client applied for a change of attorney for the following reasons:—

(1) the attorney has discharged himself by the letter of the 24th November, 1934,

(2) he had been negligent in the conduct of the case.

*Application in Original Suit, No. 1369 of 1933.

(1) (1933) I. L. R. 60 Cal. 1273.

The summons was *inter alia* for an order that Beerendrakumar Basu, attorney on record for the applicants, be discharged from further acting and for direction upon him to make over cause papers, *etc.*, to Sudheerkumar Ray Chaudhuri with liberty to the said Beerendrakumar Basu to retain his lien, if any, on such cause papers, *etc.*, for which the said Sudheerkumar Ray Chaudhuri was prepared to give an undertaking to make them over or give searches, access to, for the purpose of taxation of the said Beerendrakumar Basu's bill of costs and costs of this application be paid by the said Beerendrakumar Basu to the applicants.

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P. C. Basu for the applicant. The proper construction of the letter of the 24th November, 1934, is that the attorney has refused to carry on the litigation which he was bound to do. The demand for further instructions was a mere camouflage. The attorney has clearly discharged himself by his conduct and change of attorney should be ordered as prayed for. *Maheshpur Coal Company, Ltd. v. Jatindra Nath Gupta* (1), *Bluck v. Lovering & Co.* (2).

Page (with him *N. C. Chatterjee*) for the attorney. The attorney has not discharged himself. Whatever may be the rules relating to change of attorney in England, the courts here have always declined to sanction a change so long as attorneys' costs remain unpaid. *Pankajkumar Ghosh v. Sudheerkumar Shikdar* (3).

All the cases in which the attorney was held to have discharged himself show that the attorney refused to act for his client unless funds were paid. *Basanta Kumar Mitter v. Kusum Kumar Mitter* (4), *Atul Chunder Mookerjee v. Soshi Bhushan Mullick* (5) and *Prabhu Lal v. Kumar Krishna Dutt* (6). In this case there was no clear repudiation.

Basu was not called upon to reply.

(1) (1912) I. L. R. 40 Calc. 386.

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

(2) (1886) 35 W. R. (Eng.) 232.

(5) (1901) I. L. R. 29 Calc. 63.

(3) (1933) I. L. R. 60 Calc. 1273.

(6) (1916) 20 C. W. N. 437.

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CUNLIFFE J. This is an application under rule 66 of the second Chapter of the Original Side Rules for sanction of a change of attorney. The petitioners are the defendants in an action which is due for hearing shortly. They ask that their original attorney shall be directed to hand over all the papers entrusted to him by them, whilst reserving, through the second attorney, the lien on those documents for any outstanding costs, which have already been incurred in the first attorney's favour.

It is said in the notes to the Original Side Rules that the attitude of the courts in India towards the protection of attorneys in circumstances such as these is more favourable to them than the attitude adopted by Judges towards solicitors in England. I am unable to appreciate this contention. It seems to me that the courts in both countries have acted and must act on exactly the same principles. I think the decisions show this.

As I understand it, the position is as follows, that when an attorney or solicitor is on contract for service to a litigant, the status of the attorney or solicitor with regard to his lien on documents depends upon how the contract between him and his client is terminated. If it is terminated unjustifiably by the client, then the attorney has the absolute right to maintain his lien and say "I stand by my right in law; I will not give up your papers until my legitimate costs already incurred are paid". If, on the other hand, the attorney or solicitor puts an end to the contract himself, he is not so entitled. True, he retains his lien, but according to the decision the lien is postponed. It comes into effective operation only after the case is ended and after the other attorney has completed his work. There is, I apprehend, no lien in favour of an attorney, who is discharged by his client for misconduct; but that is not the case here.

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In this case, the sole point seems to me to be—what were the circumstances in which this contract of service came to an end? Did the defendant petitioning company notify the attorney Mr. Basu that he was discharged from appearing on their behalf, or did Mr. Basu himself take the initiative and say that he was not going to proceed further unless his costs were paid? I do not propose to enter into a minute examination of the facts here, which are set out in the affidavits and correspondence. I have come to the definite conclusion that it was Mr. Basu who put an end to the contract, because he was not placed in funds by his clients for the purpose of taking the necessary legal steps and making the necessary legal payments. Although I sympathise with the attorney, he need never have allowed his services to be retained without obtaining a lump sum down or security for his costs. But he is not entitled to embarrass and impede the litigants by retaining the papers entrusted to him when he himself has declined to act further.

The only decision to which I shall refer is the case of *Pankajkumar Ghosh v. Sudheerkumar Shikdar* (1) on which counsel for the respondent, relied. That was a decision of an appellate court, in which the judgment was delivered by the late Acting Chief Justice Sir Charu Chunder Ghose. This case, so far being in the respondent's favour, is in my opinion, against him. The learned Acting Chief Justice relying on the experience and views of another Judge of this Court, Mr. Justice Sale, summed up by the governing principle in this regard as follows:—

The practice has always been, so far as I have understood it, that no order for change of attorney is made unless provision is made for the payment of the costs of the attorney, subject of course to this, that no such provision will be made, where the attorney has by his own conduct or misconduct discharged himself:—

Again, I say that here there is no question of misconduct on the part of the attorney; but I think by his

(1) (1933) I. L. R. 60 Calc. 1273.

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conduct he put an end to the contract between himself and the petitioning company. He did so for a very good reason, but the repudiation came from him and, in these circumstances, he only retains the modified lien, the position being that his priority of lien is sacrificed, and to that extent impaired. I shall, therefore, allow this application in the terms put forward in the prayer.

Application allowed.

Attorney for applicants: *S. K. Ray Chaudhuri.*

Attorney for respondent: *Beerendrakumar Basu.*

S.M.