

ORIGINAL CIVIL.

Before Panckridge J.

HARI DAS DATTA

v.

KALU RAM BHOWSINGKA.*

1935

Nov. 26.

Attorney's lien—Client's claim to set-off—Crossclaims for costs in separate suits.

In an application for execution of an order for costs, the defendant was ordered to pay into Court the taxed costs, pending a decision as to the defendant's claim to set off costs ordered against the plaintiff in another suit. On the defendant so paying in the taxed costs, the plaintiffs' attorney claimed to exercise his lien on the fund in Court and applied for leave to withdraw the same.

Held that the plaintiff's attorney was entitled to exercise his lien irrespective of any claim to set-off which the defendant might have against the plaintiff.

In re *Wadsworth, Rhodes v. Sugden* (1) distinguished.

APPLICATION by the plaintiff's attorney to withdraw the amount of his costs from money paid into Court by the defendant as taxed costs ordered against him. The facts of the case are sufficiently set out in the judgment.

S. P. Chowdhury for the applicant. The attorney has a lien over money paid into Court, including costs awarded against third parties. *Halsbury*, Vol. 26, p. 821. *Tyabji Dadabhai & Co. v. Jetha Devji & Co.* (2); *Ved and Sopher v. R. P. Wagle & Co.* (3); *Premasukhdas Singhania v. N. C. Bural & Pyne* (4).

A plea of set-off cannot prejudice such lien. Both under the Common Law and the statute, an attorney has rights which are unaffected by any equities available against his client. *Vide* O. VIII, r. 6 of

*Application in Original Suit No. 1603 of 1932.

(1) (1885) 29 Ch. D. 517.

(2) (1927) I. L. R. 51 Bom. 855.

(3) (1925) I. L. R. 49 Bom. 505.

(4) (1934) I. L. R. 61 Cal. 1005.

the Code of Civil Procedure; O. 65, r. 14 of the Rules of the Supreme Court.

R. N. Mitra for the defendant. The Common Law lien, which governs cases in India, does not extend beyond the clients' interest in the fund in Court. *Bhupendra Nath Bhose v. E. D. Sassoon & Co.* (1). The plaintiff must establish his right over any part of the sum paid into Court before his attorney can claim a lien over it. There cannot be any lien over money paid as security for costs. *In re Wadsworth. Rhodes v. Sugden* (2). The defendant's claim for set-off cannot be defeated by the attorney coming in at this stage to assert his lien. *Pringle v. Gloag* (3).

PANCRIDGE J. This is an application on behalf of the plaintiff's attorney that he may be declared to have a first charge on the sum of Rs. 1,389-15 annas now in Court to the credit of this suit and that he be at liberty to withdraw that sum in satisfaction of his costs.

It appears that the plaintiff was successful in an ejectment suit instituted by him. The defendant Kalu Ram Bhowsingka was directed to pay the taxed costs of the suit. These costs have now been taxed and they amount to Rs. 1,389-15. The circumstances in which this sum is now in Court are as follows :—

When it was sought to execute the order for costs as against the defendant he set up a case that he had obtained an order for costs against the plaintiff in another suit. I understand that those costs had not, at that time, been taxed. The order made by the Judge dealing with the execution matter was that the application for execution should be adjourned on the defendant's paying the amount of the taxed costs into Court. The defendant fulfilled this condition, and I am told that if the costs, which the defendant was awarded in the other suit, and which have now been

(1) (1916) I. L. R. 43 Cal. 932, 936. (2) (1885) 29 Ch. D. 517.

(3) (1879) 10 Ch. D. 676.

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taxed, are set-off against the costs payable to the plaintiff in this suit, the balance in the plaintiff's favour will be comparatively a trifling sum.

The plaintiff's attorney, however, contends that the sum paid into Court by the defendant, in the circumstances which I have mentioned, is property recovered by his exertions, and that he is entitled to exercise his lien over it irrespective of any claim to set-off which the defendant may have against the plaintiff. In my opinion, the attorney's contention is correct and must follow from the provisions of O. VIII, r. 6 of the Code of Civil Procedure, which lays down that no set-off shall affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree. I have come to this conclusion with some reluctance, because I do not think it is in conformity with equity that the attorney should be in a position to disregard the set-off which would be operative against his client; but at the same time it must not be forgotten that there is a claim for costs against the defendant, and he has satisfied that claim by paying the amount of it into Court. The situation might be different if the money had been paid into Court as security for a potential claim for costs, and if such potential claim had never become an actual claim under an order of the Court. The situation of which I am thinking is one similar to that in *In re Wadsworth. Rhodes v. Sugden* (1). There the plaintiff, being resident outside the jurisdiction, had been ordered to pay £100 into Court as security for such costs as he might thereafter be directed to pay. The plaintiff, however, was successful in his suit, and the defendant was ordered to pay the costs. In these circumstances, it was held that the solicitor's lien did not attach to the £100 paid by the plaintiff into Court as security for costs. It is obvious how widely that case differs from the case before me, because here there has been an order

(1) (1885) 29 Ch. D. 517.

for costs against the defendant, the costs have been taxed, the precise amount of the taxed costs has been paid into Court, and the only answer which the defendant has got to the attorney's claim is that he is entitled to a set-off against the plaintiff.

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In my opinion, both under the Common Law governing the relationship of attorney and client, and under O. VIII, r. 6, sub-r. (2), the defendant is not entitled to the set-off claimed by him as against the attorney's claim to exercise his right of lien. In these circumstances, the application succeeds. The attorney is entitled to the costs of the application as against the plaintiff.

Attorney for plaintiff: *S. N. Mukherji.*

Attorneys for defendant: *Akhil Bose & Co.*

S. M.