

The *interim* protection already granted will, in the meantime, be continued.

1880

IN THE  
MATTER OF  
THE  
PETITION OF  
D. COWIE.

*Discharge postponed.*

Attorneys for the insolvents: Messrs. *Roberts, Morgan, & Co.*

Attorneys for the opposing creditor: Messrs. *Carruthers* and *Jennings.*

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ORIGINAL CIVIL.

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*Before Mr. Justice Wilson.*

RAMLALL AGARWALLAH v. MOONIA BIBEE AND OTHERS.

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July 12.

*Practice—Attorney and Client—Application to restrain Attorney changing sides.*

An attorney who has acted for a party to a suit, and has discharged himself, cannot afterwards act for the opposite party; and the Court will restrain him from doing so on an application made for that purpose.

*Earl Cholmondeley v. Lord Clinton* (1) followed.

THIS was an application made on behalf of the defendants (on notice to Messrs. Wheeler and Sowton and to the plaintiff) for an order restraining the plaintiff from engaging or appointing Messrs. Wheeler and Sowton, or either of them, as his attorneys, and also for an order restraining Messrs. Wheeler and Sowton or either of them from acting as attorney or attorneys on behalf of the plaintiff, and from communicating to the plaintiff or his agents any information in the matter in dispute in the suit, which had come to the knowledge of Mr. Wheeler whilst he was a partner in the firm of Pittar and Wheeler.

The facts of the case, as disclosed by the affidavits on either side, were as follows:—

In 1873 the suit of *Pertub Chunder Khandelwal v. Kailowall Sett* and others was instituted, for the administration of the estate of one *Sew Churn Dutt*, deceased; and a decree obtained on the 22nd November 1876, ordering accounts to be filed and taken; and on the 20th March 1878 the Court ordered the inves-

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tigation of accounts to be referred to the assistant clerk of the Court. In such suit the defendants were represented by Mr. Pittar as their attorney. In 1877 Mr. Wheeler joined Mr. Pittar in business, the firm being known as "Pittar and Wheeler," (Mr. Pittar's name was, however, alone on the record as the defendants' attorney). The defendants alleged that, from 1877, the entire management of the suit was undertaken by Mr. Wheeler up to December 1879, when the firm of Pittar and Wheeler was dissolved. Mr. Wheeler, however, in his affidavit, whilst admitting that he had regularly attended before the assistant clerk of the Court at the investigation of the accounts under the order of the 2nd March 1878, denied that he had received any further instructions from the defendants or his partner other than that he was to uphold the accounts as filed; and further denied, that his acting as attorney for the plaintiff would prejudice the case of the defendants, as he had received no information from the defendants, which, if disclosed, could affect their case in any way. On the 5th June 1880, the plaintiff assigned over his interest in the decree to one Ramlall Agarwallah, and the latter obtained an order substituting his name for that of the original plaintiff on the record, and appointed Messrs. Wheeler and Sowton as his attorneys. Several letters passed between Mr. Pittar and Messrs. Wheeler and Sowton, regarding the latter firm's acting as attorneys for the plaintiff, after Mr. Wheeler had, whilst in the firm of Pittar and Wheeler, acted for the defendants; but as no change in the plaintiff's attorney took place, the defendants made the present application to the Court to restrain him from so acting.

Mr. *Hill* (with him Mr. *Trevelyan*) for the applicants. The case of *Earl Cholmondeley v. Lord Clinton* (1) is here applicable. It was there decided that an attorney cannot give up his client and act for the opposite party, the only distinction between that case and the present being that Montriau had formerly been an articled clerk in the firm of the defendants' attorney, and had then, and subsequently, when a partner in the firm, obtained information regarding defendants' case, which, it was said, would be prejudicial to the defendants, if he were not restrained from

acting as attorney to the plaintiff (Montriau having subsequently set up in business for himself); whereas in the present case Wheeler had been a partner in the firm of defendants' attorney, and had subsequently set up business in a new firm. The question is,—can Wheeler, after discharging himself from the relation of attorney for the defendants, become attorney for the plaintiff. He is not in the position of an attorney discharged by a client, and therefore, according to the case of *Earl Cholmondeley v. Lord Clinton* (1), cannot become the attorney of the plaintiff. With regard to Sowton, the rule, that instruction to one partner implies instruction to the other, should be applied. The doctrine of constructive notice should apply.

Mr. Phillips on behalf of Wheeler.—No knowledge of information on the part of my client likely to be injurious to the defendants is disclosed by the facts set out in the affidavit. No general rule has been laid down in the case of *Earl Cholmondeley v. Lord Clinton* (1). The real point is, whether the discharge is optional or compulsory.—Upon what principle does the question stand? [WILSON, J.—Does not the matter rest upon the broad principle, that an attorney cannot change sides?] The distinction between this case and that of *Earl Cholmondeley and Lord Clinton* (1) is that, in the latter there were facts regarding the title of Clinton, which had been disclosed to Montriau. *Bricheno v. Thorp* (2) lays down, that a clerk to an attorney commencing business for himself is not to be restrained from acting as attorney for parties against whom his master was employed, upon general allegations of his having, in his former service, acquired information likely to be prejudicial to the clients of his master. The allegations here in the defendants' affidavits are very general. [WILSON, J.—In that case the man was a clerk and not a partner.] The defendants have not sought to retain Wheeler; they are content with Pittar. This throws the onus on them to show the injury that will accrue. Wheeler's name is not even on the record as attorney for the defendants.

Mr. R. Allen on behalf of Sowton.—There are no allegations in the affidavits against my client, except that he is in partnership

(1) 19 Ves., 261.

(2) 1 Jacob, 300.

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with Wheeler. [WILSON, J.—Assuming it is wrong for one partner to act, how can it be right for the firm to do so.] I am aware that the case of *Davies v. Clough* (1) goes that length, and I shall, therefore, argue the case generally. The Court will not in general restrain an attorney from acting for the opposite side, unless the change was procured by his own act; and some confidential communication has been made to him by his former client: 1 Archibald on Practice, 94. *Johnson v. Marriott* (2) lays down, that the affidavits must disclose that the person whom it is sought to restrain is possessed of information likely to be prejudicial to the other side. The true rule seems to be, that, where an attorney voluntarily discharges himself, and has knowledge of facts injurious to his old client, he cannot then act for the other side. This has not been shown in the present case.

Mr. *Bonnerjee* for the plaintiff.—I object to the order being made, and am willing that Wheeler should act for me; no grounds have been made out for restraining him from acting. The suit is an administration suit, and has merely come before the assistant clerk on the question of accounts, and Wheeler can have obtained no information during the investigation of accounts which is injurious to the defendants. The case of *Earl Cholmondeley v. Lord Clinton* (3) has been cut down by *Bricheno v. Thorp* (4) and *Beer v. Ward* (5). *Robinson v. Mullett* (6) shows, that the case of *Earl Cholmondeley* amounts to this,—that it must be shown that the person to be restrained is in possession of information injurious to the other side. Wheeler was not retained for the defendants, his name is not on the record; if the defendants had wished to change attorneys, would it have been necessary to have served notice on Wheeler?

Mr. *Hill* in reply.—Wheeler, on entering into partnership with Pittar, took upon himself all duties to clients which Pittar had previously undertaken. The clients not objecting to Wheeler's taking up the case after he became a partner, Wheeler must be taken to be engaged by the client for the purposes of this suit.

(1) 8 Sim., 262.

(2) 2 Cr. and M., 183.

(3) 19 Ves., 261.

(4) 1 Jacob, 300.

(5) *Id.*, 77.

(6) 4 Price, 353.

The judgment was delivered by

WILSON, J.—I consider it unnecessary to go into the facts, but upon the broad principle of law, laid down in the case of *Earl Cholmondeley v. Lord Clinton* (1), viz., that an attorney having discharged his client cannot change sides, I will not enter into or decide the motion on the facts as stated in the affidavits. I feel myself bound to follow the ruling laid down in the case cited. I thought it would be for the benefit of the profession, that attorneys should know clearly what cases they were entitled to take up. Mr. Wheeler having admitted that he took an active part in the conduct of the defendants' case, I consider that the defendants are entitled to the order asked for; but in granting the application I wish it to be understood, that I have not entered into a discussion of the facts of the present case, and have refrained from any consideration of the question as to which of the parties to the application would be most prejudiced by my order. I would, therefore, simply decide the matter upon the point of law laid down in the case cited by Mr. Hill.

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*Application granted.*

Attorney for the plaintiff: Messrs. *Wheeler and Sowton.*

Attorney for the defendants: Mr. *Pittar.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Jackson and Mr. Justice Tottenham.*

IN THE MATTER OF THE PETITION OF QUIROS AND ANOTHER.\*

THE EMPRESS v. ALLEN AND OTHERS.

1880

*June 15.*

*Privilege—Waiver—European British Subject—Criminal Procedure Code  
(Act X of 1872), ss. 82 and 84.*

Section 84 of the Criminal Procedure Code must be construed strictly with s. 72, and before a European British subject can be considered to have

\* Criminal Motion, No. 116 of 1880, against the order of Charles P. Casperz, Esq., Assistant Magistrate of Raneegunge, dated the 18th May 1880.

(1) 19 Ves., 261.