

certain sum of money claimed for a certain period. It decides no question of the rate of rent payable by the defendant. It, therefore, has not the effect of *res judicata*.

We accordingly dismiss these appeals with costs.

*Appeals dismissed.*

S. M.

1908  
 MANINDRA  
 CHANDRA  
 NANDI  
 v.  
 UPENDRA  
 CHANDRA

## ORIGINAL CIVIL.

*Before Mr. Justice Harington.*

ATUL CHUNDER GHOSE

v.

LAKSHMAN CHUNDER SEN.\*

1909  
 Feb. 23.

*Attorney and Client—Attorney's Retainer, how revocable—Civil Procedure Code (Act XIV of 1882), ss. 2, 39—Continuance of Authority of Attorney—Bill of Costs—Cause of Action, accrual of—Limitation.*

An attorney's retainer cannot be revoked by his client by a mere letter: it can be revoked only with the leave of the Court by a writing signed by the client and filed in Court, as provided in section 39 of the Code of Civil Procedure of 1882.

In the case of an attorney's costs, the cause of action arises when the work for which he was retained is completed and limitation begins to run from that time.

*Coburn v. Colledge* (1) followed.

Where the decree in the suit for which the attorney was retained, directed that the client should personally pay to other parties certain costs to be taxed:—

*Held*, that the attorney's authority continued after judgment and covered the taxation of these costs, and the retainer was not at an end until the issue of the *allocatur*.

*Lady de la Pole v. Dick* (2) referred to.

### ORIGINAL SUIT.

THIS suit was instituted by an attorney for the recovery of the sum of Rs. 4,588-8 being the amount of his bill of costs remaining unpaid.

On the 18th December 1901, the plaintiff, Atul Chunder Ghose, was retained by certain members of the Sen family, Lakshman Chunder Sen, Gocool Chunder Sen, Gopal Chunder

\* Original Civil Suit No. 616 of 1908.

(1) [1897] 1 Q. B. 702.

(2) (1885) 29 Ch. D. 351.

1909  
 ATUL  
 CHUNDER  
 GHOSE  
 v.  
 LAKSHMAN  
 CHUNDER  
 SEN.

Sen, Brindaban Chunder Sen and Sreemutty Moonjari Dasse, in respect of a certain family suit being suit No. 882 of 1896 in which they were defendants. He was subsequently retained by other members of the family, having similar interests as party-defendants. The warrants of attorney executed by all the defendants were duly filed in Court.

It was alleged by the plaintiff, Atul Chunder Ghose, that he acted as the attorney of these parties in suit No. 882 of 1896, and in the appeal therefrom being appeal No. 29 of 1903, and that on the final taxation of his costs on the 16th September 1907, the aggregate sum of Rs. 7,727-8 was allowed him as between attorney and client. Various sums were received by the plaintiff from time to time on general account, aggregating to Rs. 3,139. This suit was instituted for the balance, against the clients, who had retained the plaintiff as their attorney, and the representatives of two of them who had died in the meanwhile. The plaint was filed on the 4th July 1908.

This claim was contested by only one of the defendants, Gocool Chunder Sen, who alleged that on the 13th January 1903, before the hearing of the suit in the Court of first instance, he had revoked the authority he had given to the attorney. It appears that on the 13th January 1903 he wrote to the attorney as follows: "I regret to advise you that as my circumstances do not allow me at present to bear the expenses necessary to conduct the above case, please take notice that you need not act any more on my behalf in this case." The attorney replied on the same date: "Now that the joint written statement has been filed and counsel have been instructed, I am sorry I do not find how I can accede to your request. You better arrange matters between yourselves." In reply to this Gocool wrote on the 21st January 1903: "I have to say that my letter of the 13th idem cancelled the authority I gave you to act on my behalf for conducting the above suit, consequently I am in no way responsible for any costs whatsoever and counsel's fee regarding the above suit from that date." On the same date the attorney replied: "I do not think you can cancel the authority at your pleasure without paying my costs, and so long as I am the attorney on

record I do not know if I will be justified in refusing to act for you." Gocool submitted that he was not liable for the costs incurred since the 13th January 1903, and that the claim for costs arising before that date, was barred by limitation.

It appears that the decree in appeal No. 29 of 1903 directed that certain parties, amongst others Gocool Chunder Sen, should personally pay to the appellants certain costs of the appeal to be taxed on scale No. 2, and that the *allocatur* in connection with the taxation of those costs was issued on the 6th July 1905. It further appears there were divers items in the attorney's bill of costs principally relating to the taxation of the costs in the suit and appeal, under date within three years previous to the date of the filing of the plaint in the present suit. It was established in evidence that Gocool gave instructions to the plaintiff, subsequent to the letter of withdrawal.

*Mr. C. C. Ghose*, for the defendant. This suit is not maintainable. The retainer giving authority to the plaintiff to act as defendant's attorney was expressly revoked by letter on the 13th January 1903, and the defendant never at any subsequent date authorised the plaintiff to act for him in that capacity. The revocation of the 13th January 1903, effectually discharged the plaintiff from acting as defendant's attorney. Secondly, assuming the authority to continue, the claim was barred by limitation. The plaint in this suit was filed on the 4th July 1908. The items in the bill subsequent to the 4th July 1905 relate to the taxation of costs. This does not save limitation. It is the judgment that determines the *lis*.

*Mr. A. N. Chaudhuri*, for the plaintiff. The letter of the 13th January 1903 was not sufficient to revoke the attorney's authority. The attorney's retainer can be revoked only with the leave of the Court by a writing signed by the client and filed in Court: see the Code of Civil Procedure (old Code, section 39, new Code, O. 3, r. 4), Belchamber's Rules and Orders, rule 136, Cordery's Law of Solicitors, 3rd edition, page 103. The reason for this is to protect attorneys, who are bound to act for their clients, unless discharged by their clients, even without payment of costs: see *Basanta Kumar*

1909  
 ATUL  
 CHUNDER  
 GHOSE  
 v.  
 LAKSHMAN  
 CHUNDER  
 SEN.

1903  
 ATUL  
 CHUNDER  
 GUOSE  
 v.  
 LAKSHMAN  
 CHUNDER  
 SEN.

*Mitter v. Kusum Kumar Mitter* (1). On the second defence raised it is submitted that the *lis* cannot be considered determined by the judgment: see *Lady de la Pole v. Dick* (2). There might be a considerable amount of work to be done by the attorney in connection with settling the decree and taking steps in execution. The attorney's retainer covered the taxation of costs and hence this suit was not time-barred.

*Cur. adv. vult.*

HARINGTON J. This is an action by an attorney to recover his bill of costs. The retainer was given by a number of members of the Sen family. The present defendants are either the persons who gave, or the representatives of the person who gave the retainer.

Only one defendant appears to contest the plaintiff's claim. He does not deny the retainer and the doing of the work, but says that on January 13th, 1903, he revoked the authority he gave to the attorney, and that he is, therefore, not liable for costs incurred since that date. The claim for costs arising before that date is, he says, barred by limitation. The retainer was given on December 18th, 1901, by Gopal Chunder Sen, Brindabun Chunder Sen, Gocool Chunder Sen and Sreemutty Moonjari Dasse, and the plaintiff acted as attorney for these parties at the hearing before the Court of first instance and in the Court of Appeal.

On January 13th, 1903, the defendant Gocool wrote to the plaintiff to the effect that his circumstances did not allow him to bear the expenses necessary to the conduct of the case and giving him notice not to act further on his behalf.

The attorney replied saying that as the joint written statement had been filed and counsel had been instructed he could not accede to the request in the letter. He recommended the defendant to settle matters with his co-defendants.

In reply the defendant wrote saying that his letter of the 13th cancelled the authority to act, and that he was in no way responsible for costs or counsel's fees from that date.

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

(2) (1885) L. R. 29 Ch. D. 351.

To this the plaintiff replied "I do not think you can cancel the authority at your pleasure, and as long as I am attorney on the record I do not know if I will be justified in refusing to act for you."

To this letter the defendant made no reply.

As to what happened after this, there was a dispute in fact. The plaintiff said that during the hearing the defendant Gocool was present and gave him instructions and that he attended at his office on May 13th, 1903. The last piece of evidence was corroborated by an entry in his Day-Book.

This the defendant met with a flat denial. He said he never instructed the plaintiff after January 13th that he never went to his office after that date, and while he admitted that he was in Court from time to time during the progress of the trial, he swore he never gave any instructions to the attorney while in Court.

As to this I believe the plaintiff, because his evidence is supported by an entry in his Day-Book the genuineness of which I see no reason to doubt. I find in fact, therefore, that the defendant Gocool did attend the attorney in his office as his client at a date subsequent to his letter purporting to withdraw his authority.

The first question to be considered is as to whether the letters of January 13th, to which I have referred, were effective to discharge the plaintiff from acting as the defendant's attorney.

By Act XIV of 1882, section 39, read with section 2, "the appointment of an attorney must be in writing and must be filed in Court, and when filed it is to be considered in force until revoked with leave of the Court by a writing signed by the client and filed in Court."

In this case this provision of the law has not been complied with. The letters purport to discharge the attorney and leave it open to the defendant to go on with the litigation in person. In my opinion the attorney's authority is not revoked, because the defendant has not complied with the provisions of section 39 of Act XIV of 1882.

1909  
 ATUL  
 CHUNDER  
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 &  
 LAKSHMAN  
 CHUNDER  
 SEN.  
 HARRINGTON  
 J.

1909  
 ATUL  
 CHUNDER  
 GHOSE  
 v.  
 LAKSHMAN  
 CHUNDER  
 SENGUPTA  
 J.

Next, assuming the authority to continue, is the claim barred by limitation? The plaintiff's cause of action arose when the work for which he was retained was completed: see *Coburn v. Colledge* (1).

The plaint in the present suit was filed on July 4th, 1908. It is necessary, therefore, for the plaintiff to show that some work was done under the retainer given by the defendants since July 4th, 1905.

In the bill there are divers items under date later than that date principally relating to the taxation of the costs in the suit and appeal in which the attorney had acted. This, it is argued, does not bring the case out of the statute. I think it does—it is work done for the client under the retainer originally given to the solicitor.

The case of *Lady de la Pole v. Dick* (2) is an authority for the proposition that the authority of the attorney may continue after judgment.

In the present case, I think in fact the attorney's authority did continue after judgment and covered the taxation of costs, because the decree directs that certain parties, amongst others Gocool, shall personally pay to the appellants 6-12ths of the costs of the appeal to be taxed on scale No. 2. Until taxation, therefore, the amount payable by the client under the decree could not be ascertained. The solicitor's retainer, therefore, covered the taxation of these costs which took place early in July 1905, and was not at an end until the issue of the *allocatur* on the 6th of that month. Until the *allocatur* issued, the amount payable by the client was not ascertained and the work was, therefore, not completed.

For these reasons, I hold that the plaintiff is entitled to recover, and judgment must be given in his favour for the amount claimed, with costs on scale No. 2.

*Judgment for plaintiff.*

Attorney for plaintiff: *R. L. Mukerjee.*

Attorney for defendant: *S. C. Mitter.*

J. C.

(1) [1897] 1 Q. B. 702.

(2) (1885) 29 Ch. D. 351.