

RECENT ENGLISH PRACTICE CASES.

and on April 2nd, BACON, V. C., dismissed the summons with costs: he declared the principle to be perfectly distinct and plain—

"A man is not to be so impeded in his transactions whether he is, or is likely to be engaged in litigation or not, as to be prevented from employing a solicitor, first for the purpose of obtaining his advice, and next to collect evidence, or from employing any agent, not being a solicitor, who is engaged for the like purpose. If the defendants take upon themselves to say that those were all confidential communications, what right have I to say that their confidence should be disclosed? The case of *Anderson v. Bank of British Columbia*, 15 L. T. N. S. 76; L. R. 6 Ch. D. 644 is totally different. One man there wrote to another, and asked him to send the full particulars of a transaction. That is an act done by which the rights of parties may be influenced. With regard to the cases of reports made by medical officers, such reports are protected from discovery because they are made with respect to the litigation going on. There is no doubt about the law. The general principles laid down by Lord Lyndhurst in the case of *Herring v. Cloberry*, 1 Phil. 91 in my opinion, cover the whole ground of the right to production."

The plaintiff appealed, and by his notice of appeal stated that he applied for production of the documents, "except such, if any, of the same documents as consist of confidential communications between the defendants and their solicitors."

Counsel for the appellant contended that communications between the defendants and their solicitors and agents before the litigation began, and so far as they were not made for the purpose of defending the action were not privileged, and cited *Anderson v. Bank of British Columbia* supra; *McCorquodale v. Bell*, L. R. 1 C. P. Div. 471; *Bustros v. White*, L. R. 1 Q. B. Div. 423.

Counsel for the defendants contended that it is immaterial whether any litigation is proceeding or in contemplation, and cited *Herring v. Cloberry*, supra; *Cromack v. Heithcote*, 2 Br. & Bing. 4; *Manser v. Dix*, 25 L. T. O. S. 113; 1 K. & J. 451; *Mostyns v. West Mostyn Coal & Iron Co.* 34 L. T. N. S. 531; *Minet v. Morgan*, L. R. 8 Ch. App. 361; *Southwark & Vauxhall Waterworks Co. v. Quick*, L. R. 3 Q. B. D. 315;

Lawrence v. Campbell, 4 Drew, 485; *Macfarlane v. Rolt*, L. R. 15 Eq. 580; *Walsham v. Stainton*, 9 L. T. N. S. 603; 2 H. & M. 1; *Ross v. Gibbs*, L. R. 8 Eq. 522; *Cossey v. London Brighton and S. Coast Ry. Co.*, L. R. 5 C. P. 146; *Friend v. London, Chatham & Dover Ry. Co.* L. R. 2 Ex. D. 437; *Wilson v. Northampton & Banbury Junction Ry. Co.* L. R. 14 Eq. 477.

The Court reversed the decision of Bacon, V. C., and ordered that the defendants must produce the correspondence, except such, if any, as the defendants should state by affidavit to have been prepared confidentially after the dispute had arisen between the plaintiff and defendants, and for the purpose of obtaining evidence and legal advice for the purpose of the action.

JESSEL, M. R., after observing that the Counsel for the respondents had fairly admitted that no decided case could be produced which carry the rule to the extent they wished, and that the principle as to protection from discovery was of a very limited character, and after illustrating this by examples, said:—

"The protection is of a very limited character. It is a protection in this country restricted to the obtaining the assistance of lawyers as regards the conduct of litigation or the rights to property. It has never gone beyond the obtaining legal advice and assistance, and all things reasonably necessary in the shape of communication to the legal advisers are protected from production or discovery, in order that legal advice may be obtained safely and sufficiently. Keeping that in view, what has been done is, that the actual communication to the solicitor by the client is of course protected, and it is equally protected whether that communication is made by the client in person to the solicitor in person, or is made by an agent on behalf of the client, who obtains the advice from the client for the solicitor. It would extend also to a clerk or subordinate of the solicitor who acted in his place or under his direction. Again, with the same view, the evidence obtained by the solicitor, or by his direction, or at his instance, even if obtained by the client, is protected after litigation has been commenced or threatened, or with a view to the defence or prosecution of such. So again, it does not matter whether the advice is obtained from the solicitor, as to a dealing which is not the subject of litigation.