

Eng. Rep.]

LORD BROUGHAM V. CAUVIN—IN RE. F——, &c.

[Eng. Rep.]

succeeded in the action) claimed to be allowed, on taxation, his costs of such attendance.

The Master, however, refused to allow these costs, on the ground that it was the invariable practice not to allow the costs of the attendance of the country attorney at a trial in town.

Thesiger having obtained a rule calling on the plaintiff to show cause why the master should not review his taxation,

Watkin Williams now showed cause against it.

BOVILL, C. J.—I am of opinion that this rule must be made absolute. It is important that cases of this kind should be strictly watched, and that two attorneys should not be charged for where one is sufficient. In ordinary cases it is not necessary for the country attorney to attend.

Here the master has declined to exercise his discretion in the matter, considering he was bound by the general rule. That rule is a very proper one, and only to be departed from in exceptional cases. But in this case the presence and advice of the country attorney was important. The plaintiff has chosen to lay the venue in London, and it would be hard if the defendant were deprived of the assistance of his attorney or compelled to pay his costs. I think it right that the master should enquire into the matter.

BYLES, J.—The general rule is a very salutary one. All we say is that the master should exercise his discretion in a case like the present.

Rule absolute.

CHANCERY.

LORD BROUGHAM V. CAUVIN.

Suit to recover possession of documents—Summons for production and inspection.

Where a depositee of documents claimed to retain them by way of lien for work done upon them by him for the depositor.

Held, that the depositor was entitled to the common order for production and inspection of the same documents in a suit to recover possession of them.

[16 W. R. 688, May, 1868.]

This was the usual summons for production of documents, adjourned into court.

The plaintiff having determined to take steps for the publication of an autobiography entered into negotiations with the view of securing the assistance of the defendant in collecting, selecting, and arranging the materials for the proposed work. Mr. William Brougham, who acted for the plaintiff in the matter, made a verbal arrangement with the defendant in reference thereto, but nothing was said as to the amount of remuneration which the latter was to receive for his services. However, he undertook the work and commenced in the early part of 1867. The plaintiff had in his possession many very valuable papers, letters, and other documents, stated to amount to many thousands in number, relating to the various events of his public life, and the chief business of the defendant was to collect, arrange, select, and make extracts from these various documents with a view to the preparation of the proposed work.

The defendant was put into possession of these documents, and continued to work upon them almost down to the present time.

The plaintiff being recently desirous of recovering possession of them applied to have them

handed back to him, but the defendant refused to do so except upon payment, by way of remuneration, of a sum which the plaintiff considered exorbitant, and claimed to retain the papers by way of lien for the amount of his demand.

The plaintiff thereupon filed the bill in the present suit by which he prayed that the papers in question might be decreed to be handed back to him upon payment by him of sum such by way of remuneration as the Court should think reasonable.

The plaintiff applied by summons in chambers in the usual way for production and inspection of the documents in question in the suit, and as the application was opposed by the defendant it was on the suggestion of the chief clerk adjourned into court.

Jessel Q. C. (*O. Morgan* with him), after stating the facts, was stopped by the Court.

Baggallay, Q. C., and *W. W. Cooper*, for the defendant, contended that this was not the usual application for production of documents. It was not required for the purpose of discovery, for the only decree to which the plaintiff could be entitled was one directing inquiries, and inspection was not required for that purpose. The result of granting the application would be that the plaintiff might take a note of the results of the defendant's work, and thus derive the benefit of his labour, and then take his bill off the file.

LORD ROMILLY, M.R.—This is, in my opinion, a most unreasonable offer. The bill is filed to get back certain papers which have been entrusted to the defendant to enable him to perform a work for the plaintiff. The depositee is entitled to retain them till he has been paid for work and labour undertaken for the depositor.

Two cases may be supposed. First, that he has done nothing to them. In that case is not the plaintiff to be entitled to show at the hearing that no work has been done? In the second case if work has been done is he not entitled to see what is the amount and nature of such work?

Everybody knows that a person who has a lien does not lose it by inspection. But a suggestion has been made that the plaintiff may get the benefit of the defendant's work and then abandon the suit. But in that case he would have to pay the costs of the suit and be liable to an action at law by the defendant. I never heard of a more unreasonable opposition to the order, but as the chief clerk appears to have approved of the adjournment into court I shall give no costs.

IN RE F—— (A SOLICITOR).

IN RE 6 & 7 VIC. c. 73.

Solicitor and client—6 & 7 Vict. c. 73, s. 37.

Taxation ordered upon an application made after the expiration of twelve months after delivery of the bill, on the ground of the continuance of the relation of solicitor and client subsequently to the delivery of the bill.

[M. R. 16 W. R. 749.]

A summons for the taxation of seven bills of costs, three of which had been delivered more than twelve months before the summons was taken out. Down to the 18th of December, 1867, Mr. F. was the solicitor of the applicants, who were executors and trustees of a will, and acted as such solicitor in a suit for the administration of the testator's estate, in which the applicants