

C. L. Cham.]

IN RE O'DONOHUE V. WARMOLL—GRIFFIN V. MCGILL.

[Chan. Cham.]

place their case before him, as well as the other two arbitrators. The award is a joint judicial act. The judgment of the three arbitrators was not the result of hearing the parties, for that of the third arbitrator was based on what the other two told him, in the absence of the applicant, and without his being notified that the third arbitrator was called in to deliberate on the subject. It is impossible to say what the parties would have done, or what course they might adopt to bring their case before the third arbitrator. If the case had been reheard they might have suggested a new view of the case, as said by Littledale, J., in *Salkeld v. Slater*, 12 A. & E. 767.

The general rule is, that an umpire to whom a case is referred by arbitrators must hear the evidence over again, and in the case cited Lord Denman says—"It is important to have it understood that the umpire, as well as the arbitrators, ought to hear and see the witnesses." And so in this case, the third arbitrator should have seen and heard the statement of the case from the parties themselves, or any witnesses they might produce. The parties are entitled to have their case, as made by themselves, put directly to the arbitrators, and are entitled to the benefit of the judgment of all three on the case, as made. Two of the arbitrators heard the case, apart from the third arbitrator, and the third heard it at second-hand and apart and in the absence of the parties, (as said by Coleridge, J., in *Plews v. Middleton*, 6 Q. B. 845)—"whereas it ought to have been considered by the arbitrators and umpire jointly, in presence of the parties." There is no imputation on the motives or conduct of the arbitrators; it is only the irregularity of the proceedings that invalidates the award; and the Court, in such a case, sends back an award to the same arbitrators, where there is no reason to believe that they are not to be trusted. I think that this is a case in which I ought to exercise that power, and that it should go back with an intimation that the third arbitrator should have an opportunity of hearing the parties and considering the evidence with the other two arbitrators.

COMMON LAW CHAMBERS.

IN RE O'DONOHUE V. WARMOLL.

Delivery and taxation of attorney's bill—Business done by attorney, as an attorney, though not in any suit.

An attorney or solicitor may be ordered to deliver a bill of his charges for business done by him as such, though the services performed were not, in whole or in part, for business done in court, as in this case, where the retainer was to investigate the title of and purchase property.

[Chambers, Sept. 17, 1868.]

A summons was obtained calling upon the above attorneys to show cause why they should not deliver a bill of costs to one William Charles Pulaski, for professional services rendered in reference to the investigation of title to and purchase of certain property, situate, &c., wherein they acted as attorneys for the said Pulaski, shewing the moneys by them received from and paid out for the said Pulaski, with dates and items, &c.

The affidavit of the applicant stated that these attorneys were employed by him as such attorneys, in reference to the purchase of a certain lot of land; that as such attorneys they had transacted business and paid out money for him; and that, though frequently asked for, the applicant had not obtained any account of the services done, and money paid, &c.

Givins showed cause, and contended that, as the services performed were not wholly or in part for business done in court, there could be no reference of the charges to taxation. He referred to *In re Lemon and Peterson*, 8 U. C. L. J. 185.

Bigelow, contra cited, *In re Eccles et al.*, 6 U. C. L. J. 59; *Smith v. Dimes*, 4 Ex. 32, 40; 1 Ch. Arch. 11 ed. 109; C. S. U. C. cap. 35, sec. 35, and cap. 91, sec. 5.

DRAPER, C. J.—The Imperial Stat. 6 & 7 Vic., cap. 73, as affecting this application, differs from our Act principally in this—that when no part of the business has been transacted in any court of law and equity, the Lord Chancellor or the Master of the Rolls, may refer the bill to be taxed, or may order the delivery of such bill under the English Act, while the same powers are in language substantially identical, given to any of the Superior Courts of law or equity or to any judge thereof.

In the present case two questions arise:

1st—Is this a case in which business has been done by any attorney or solicitor as such, that is business of a professional character, which the respondents in this case were employed to do by reason of their character as attorneys or solicitors. The business is stated to be proof of personal services rendered in reference to the investigation of title to and purchase of certain property. Now an action would lie against an attorney for negligence in such investigation or for investing his client's money on insufficient security, and that shews the acts are professional services proper to be rendered in the character of attorney or solicitor, on a retainer as such. I think therefore the client is entitled to a bill.

2nd—In our statute, power is given to every judge of the Superior Courts of law and equity, to order the delivery of a bill for business done by any attorney or solicitor as such.

I think the order should go.

CHANCERY CHAMBERS.

(Reported by J. W. FLETCHER, Esq., Barrister-at-Law).

GRIFFIN V. MCGILL.

Infant—Investment and application of fund for maintenance and education of.

In this suit a legacy bequeathed to one Sarah Shuter Hall had been paid into court, and the executors of the testator's will discharged from all liability in respect thereof.

S. H. Blake, on behalf of the said Sarah Shuter Hall, moved *ex parte* on petition for the investment of the said moneys, and for payment out of the interests or dividends thereon to Sidney Smith, the uncle of the petitioner. The petition was supported by the affidavit of the said Sidney Smith, and it appeared that the said