

PRACTICE—EVIDENCE—EXHIBIT TO AFFIDAVIT, RIGHT TO INSPECTION OF.

In re Hinchcliffe, (1895) 1 Ch. 117; 12 R. Jan. 123, the Court of Appeal (Lord Herschell, L.C., and Lindley and Smith, L.JJ.) have solemnly determined that when an exhibit is referred to in an affidavit any person entitled to inspect and take copies of the affidavit is also entitled to inspect and take a copy of the exhibit. The question arose as between the committee of a deceased lunatic and the executor of the lunatic. The committee, during the lifetime of the lunatic, had applied to the court for leave to take proceedings against a trustee in his name, and in support of the application filed an affidavit wherein the deponent referred to a case submitted to counsel and the opinion of counsel thereon. The executor applied to inspect and take a copy of these exhibits, which the committee refused to permit, claiming that the documents were privileged as being documents of title, and being the property of the committee, and not of the lunatic, but the Court of Appeal considered that the question of privilege could not arise, as, altogether irrespective of any such question, there was an absolute right in any party entitled to see the affidavit to see also and take a copy of the exhibits as part and parcel thereof; although, if the committee had not chosen to bring them before the court, he might then not have been compellable to produce them for the purposes of discovery.

PRACTICE—JURISDICTION OF JUDGE TO VARY PREVIOUS ORDER MADE BY HIM.

In Preston Banking Co. v. Allsup, (1895) 1 Ch. 141; 12 R. Feb. 147, an order had been made directing the receiver to pay the costs of an application made by him to the court. The receiver subsequently applied to the judge who had made this order to vary it by directing that the costs should be costs in the action, and staying all proceedings thereunder, on the ground that when the order was made a misrepresentation had been made as to the assets of the company of which the receiver was appointed. The Vice-Chancellor of Lancaster held he had no jurisdiction to alter the previous order, and the Court of Appeal (Lord Halsbury, and Lindley and Smith, L.JJ.) affirmed his decision, holding that where an order had been correctly drawn up there is no jurisdiction to alter it after it has been passed and entered by application to the judge who made it, or to any other judge. The only remedy is by appeal.