

Chan. Ch.]

McPHATTER V. BLUE.

[Chan. Ch.]

any money to Blue, and that he did not object to Wells' being paid.

Accordingly, on the same day, March 11, they wrote to the petitioner as follows:—"We have your telegram of this morning. The cheque we got was only for Blue's share, not his costs. We have given the cheque to Wells to be endorsed by Blue, and returned to us after paying Wells out of it. The balance we will hold as long as we can to enable you and Blue to agree on a settlement."

Blue indeed swore in his affidavit that when he put this case into the hands of the petitioner and his partner, now deceased, he made an express bargain with the said partner of Mr. Duff, that he would not charge anything for attending to his interests in the suit beyond such costs as he could tax, and recover out of the lands when sold, and that he was not to pay him anything personally.

The petitioner, however, now prayed that it might be referred to the Master to tax his costs against Blue, in addition to those already taxed herein, and that Blue and G. W. & C. might be ordered to pay to him the amount of the said costs to the extent of \$52.41, and his costs of this application.

Boyd, Q.C., for petitioner. G. W. & C. cannot hold the money without answering the lien of the petitioner. The said lien was a prior lien to that of Wells, and by withdrawing the said sum from Court without previous notice to the petitioner, G. W. & C. rendered themselves liable to pay the petitioner the amount due to him to the extent of \$52.41. There had been no order to change the solicitors, therefore they are answerable for the consequences: *Haymes v. Cooper*, 33 L. J. N. S., Chy. 488. They don't say when they paid the money to Wells, therefore it must be assumed that they paid after having received notice by the petitioner's telegram.

Hoyles, contra: The petitioner's telegram only requires G. W. & C. not to pay to Blue. Blue swears that there was an express agreement between him and the petitioner that there should be no costs between solicitor and client: *Geddes v. Wilson*, 2 Chy. Ch. 447. The petitioner should have obtained a stop

order. As soon as the money was paid out the lien ceased. Notice was necessary to render G. W. & C. liable. He also cited *Read v. Dupper*, 6 Term Rep. 361; *Brunsdon v. Allard*, 28 L. J. Q. B. 306.

Boyd, Q.C., in reply: G. W. & C. could not have been misled by the telegram. The previous letter from G. W. & C. to the petitioner did not state that Wells had any claim. The amount of costs due to the petitioner as between solicitor and client, must be taxed by the master, as the affidavits are contradictory. The solicitors G. W. & C. were affected with all the equities even without notice.

THE REFEREE refused the petition with costs.

On appeal this decision was reversed.

W. Cassells, for appellant.

Hoyles, contra.

PROUDFOOT, V.C.—I cannot ascertain from the papers what it was that was done in *Muntz v. Brown*.* At all events it was distinguishable from this because the solicitors entitled to the lien assented to what was done. Here there was no assent.

I think as against Blue the order asked is quite clear: and as to the solicitors who got the cheque from court and suffered a portion to be paid away, I also think the order must go. No case has been found in our Court. Those in England are in favour of the order asked, *Haymes v. Cooper*, 33 Beav. 431. As to notice I think it clear as a matter of fact they had notice, but as was said by the M. R. in the last case—"Where a man knows there is a fund in Court he knows also that it is subject to the solicitor's lien for his costs in recovering it and that he is entitled to be paid in the first instance;" and there does not seem to me to be anything in the practice of our Courts to sanction a variance from the English practice.

It is quite clear that G. W. & C. could not have been misled by the telegram of Duff, it did not reach them till they had given up the cheque.

Order to go as prayed.

* The judgment does not show whether this case of *Muntz v. Brown* has ever been reported. I have been unable to ascertain.—REP.