

Chan. Ch.]

McPHATTER v. BLUE.

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CHANCERY CHAMBERS.

(Reported for the LAW JOURNAL by F. LEPROY, Barrister-at-law)

McPHATTER v. BLUE.

Solicitor's lien.

Where D, a solicitor, had recovered certain money for his client B, and another solicitor, acting on the instructions of B, had obtained a cheque for the amount payable to the order of B, and had parted with the control of the said cheque without first giving proper notice to D, —he was held liable to D to the extent of D's lien on the said money so recovered through him.

[The Referee, April 3, 1876.

[Proudfoot, V.C., April 24, 1876.

This was a petition by one Duff who, during the proceedings in this cause in the Master's Office, had acted as solicitor for Donald Blue, one of the respondents in the above suit. The suit was one for administration, and by his report made therein, the Master found that there was payable to Blue, for his costs of suit, \$74.62, and also in respect of a claim against the estate, the further sum of \$51.81. It appeared from the affidavit of Blue that while the suit was going on, the petitioner said it was necessary for Blue's interests that he should take out letters of administration to the estate of the deceased, and told him to get money from some one for the purpose. Accordingly Blue went to one Wells and told him what the petitioner had said, and Wells lent him \$28, which Blue promised he should get back out of the money that would be coming to him (Blue) in the suit. After the Master's report, as appeared from the affidavits of Wells, and of a member of the firm of Messrs G. W. & C., solicitors, Wells went to Messrs G. W. & C. and told them that he had a claim against Blue for money given him to pay his lawyer, which money, he said, Blue was willing to pay him out of his share of the money in Court. He, therefore, asked Messrs G. W. & C. to do what was necessary for the purpose, and they gave him a paper to be signed by Blue, giving them authority to apply for the money, and to pay Wells out of it the money advanced by him to Blue. Having received the paper, duly signed, they on March 10, 1876, obtained a cheque for \$52.41, being

the sum hereinbefore mentioned with interest, payable to Blue's order, and thereupon they gave it to Wells' son to be endorsed by Blue. They, then, on the same day, wrote to the petitioner, telling him that, in pursuance of a written retainer from Blue, received through the said Wells, they had obtained a cheque for him, and added: "we think it right that you should know this in case you have any claim on the money. The balance after paying Wells will probably be in our hands for a few days."

The above letter was the first intimation the petitioner had of the proceedings taken by Messrs. G. W. & C. for obtaining the money out of court on behalf of Blue. There was at that time due and unpaid to the petitioner his costs for proving said claim, his general costs of suit, and a further sum as costs between solicitor and client, in respect of which he claimed to be entitled to a lien on all moneys payable to Blue by the Master's report. He, therefore, on March 11, telegraphed to G. W. & C. as follows:—

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"Do not pay any money to Donald Blue from this suit. I have a lien for costs on same."

Afterwards on the same day, the petitioner wrote a letter to G. W. & C. telling them that he had a lien on the moneys recovered in this suit for Blue for his costs, both those taxed and also for certain costs as between solicitor and client. He, therefore, told them to let him know the amount they had obtained, and pay it over to him or else to hold it, until he could obtain an order for payment over to him.

It appeared, however, from the affidavit of the said member of the firm of G. W. & C., that they did not receive this last mentioned letter until March 13th. They, however, duly received the petitioner's telegram on March 11th, but they had by that time given up the cheque to Wells' son. In fact, as set out in the said affidavit, they deemed notifying the petitioner at all was an act of courtesy, and not necessary in law; and they understood from the telegram, that all the petitioner objected to was their paying