

Swinhoe and chunder Vs Hera Lal Sirkar and another

Court: Calcutta High Court

Date of Decision: July 27, 1894

Judgement

1. During the year 1891, Messrs, Swinhoe and Chunder, Solicitors of this city, acted for Hera Lal Sirkar and Dhoronidhur Sirkar, in a suit brought

against them on the Original Side of this Court for possession of certain property by partition; and certain monies became due from the Sirkars to

Messrs. Swinhoe and Chunder for costs of their services rendered in defending the suit. The suit was dismissed on the ground that this Court had

no jurisdiction to entertain it. The Sirkars have never paid Messrs. Swinhoe and Chunder the costs due to them, though they have been duly taxed

and are now and have been since the dismissal of the suit due to them. The papers and documents which belong to their clients and which were

placed in their hands by them for the purposes of the litigation are still in Messrs. Swinhoe and Chunder's possession, and they claim a lien upon

them for the costs due to them from the Sirkars. After the suit in this Court had been dismissed, another suit was brought in the Court of the

Subordinate Judge of Hughly, by the same Plaintiff against the same Defendants in which the same relief was claimed as had been claimed in the

suit in this Court, Mr. Swinhoe was summoned on behalf of his old clients, the Sirkars, to produce at the trial certain of their papers, which were in

his possession, for the purpose of their being used by them as evidence as part of their case. A clerk of the firm attended with the papers, but

objected to produce them on the ground that the firm had a lien on them for their costs, and that they could not be compelled to produce them by

the person against whom they claimed the lien until their costs had been paid, and their lien discharged. The Subordinate Judge overruled the

objection, and order Mr. Swinhoe to produce the documents, making it part of his order that after the case was over the papers and documents

should be made over to him and his lien on them should still subsist. The learned Advocate-General then applied to and obtained from this Bench

of three Judges a rule under sec. 15 of the Royal Charter Act calling upon the Sirkars to show cause why the order of the Subordinate Judge

should not be set aside and the papers and documents returned to the solicitors. The rule has been argued before us, and we have now to dispose

of it. Whether or not the Subordinate Judge was right in the view he took of the right of the attorneys under their lien, as to which I do not propose

to express any opinion. I am clearly of opinion that this is not a case in which this Court ought to exercise the power of superintendence created by

the Charter Act. This power has occasionally been used by this Court to correct errors in judicial decisions, but I am not aware that any attempt

has been made to define the precise limits within which it can be exercised, and I do not think it would be wise for us to attempt any such definition

in the present case. It is enough to say that the Court is not compelled to use this power unless, in the interests of justice, it finds it necessary to do

so, and that whether the order of the Subordinate Judge is right or wrong, we do not see that any failure or miscarriage of justice is likely to result

from it. The Advocate-General has told us that the Sirkars are well able to pay these costs, and no doubt would do so at once if they found that,

unless they did, they would not be able to have the advantage of these documents at the trial, and he contends that the loss of this particular means

of recovering his claim by an attorney, is such a miscarriage of justice, that this Court ought to interfere under this very exceptional jurisdiction. In

this view I am unable to agree. The loss of this particular remedy, assuming him to be entitled to it does not involve the loss of his costs by the

attorney, as he still has all the other remedies for the recovery of his claim, which he has in common with all the other members of the community,

and as we are told by his counsel that his debtors are persons of means, there would appear to be no fear that he will ultimately lose his money

because he cannot compel payment in this particular way, and there is no danger of any such failure of justice as would render it necessary for us

to interfere under our power of superintendence. For these reasons I think that this rule must be discharged with costs. Pleader's fees five gold

mohurs.