

(1873) 04 CAL CK 0002

Calcutta High Court

Case No: None

The Nawab Nazim of
Bengal

APPELLANT

Vs

Heeralall Seal

RESPONDENT

Date of Decision: April 17, 1873

Judgement

Macpherson, J.

The lien relied upon is simply a lien upon the fund recovered in the suit No. 9 of 1869 for the costs of the attorney incurred in that suit. Such a lien is wholly different from a lien on the papers (whether connected with the suit or not) of the client, and it in no degree depends upon the attorney being or having been in possession of the papers of the suit or other documents belonging to his client--see *Bozon v. Bolland* 4 M. & C., 354. I think there is no doubt that Mr. Pearson has a lien for his-costs of this particular suit, which must eventually prevail against the attachment issued by Roy Lutchmееput Singh (see *Hough v. Edwards* 2 Jur., N.S., 814 and *Eisdell v. Coningham* 28 L.J., Exch., 213, and the cases collected in *Darnell's Chancery Practice*, 4th Ed., pp. 1698, 1699.) And I further think that the fund recovered is also subject to a, lien for the earlier costs of Mr. Linton and of Mr. Leslie, though Mr. Pearson's lien for his own costs would (apart from any agreement on the subject) take precedence of theirs.

2. But it appears to me that the application which Mr. Pearson makes is in its form misconceived. This fund is attached in the hands of Heeralall Seal by an order directing him to pay it to no one except under a further order of Court. He cannot pay it to Roy Lutchmееput Singh more than to any one else, and Roy Lutchmееput Singh has no means of reaching the fund save by obtaining a further order of Court authorising (but not directing) Heeralall Seal to pay the fund to him, or by applying to have a Receiver appointed to get in and realize the amount doe. Heeralall Seal, being the party to pay the money, would, after notice of the attorney's lien, pay the money at his own peril if he did not first satisfy the lien. And if the fund were brought into Court, the attorney might present a petition for taxation of his bill and for payment of it out of the fund. Under these circumstances I can make no such order as is asked for now. The decree directs that the

defendant Heeralall Seal shall pay to the plaintiff the Nawab Nazim a certain sum. How can the plaintiff now come in and ask that the decree shall be as it were split up into parts, and that as to part an order may be made that it shall be paid to the plaintiff's attorneys?

3. All I can do at present is to order that Heeralall Seal do not pay the fund attached to any body without giving due notice to Mr. Pearson, to Mr. Linton, and to Mr. Leslie. The sooner those gentlemen tax their bills and ascertain their true position, the better will it be for them. There will be no costs of this motion.