

(1880) 04 CAL CK 0012

Calcutta High Court

Case No: None

In Re: McCorkindale
(Deceased)

APPELLANT

Vs

RESPONDENT

Date of Decision: April 15, 1880

Acts Referred:

- Contract Act, 1872 - Section 171

Citation: (1881) ILR (Cal) 1

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

I don't think there is any reason for doubt in this application. The facts are simple. Mr. McCorkindale employed the firm of Messrs. Orr and Harriss as his attorneys. On the 23rd of January last he died, leaving a will, whereby he appointed Messrs. James Anderson and William Palam his executors. These gentlemen having renounced probate of the will, the Administrator-General, on the 19th of February last, obtained letters of administration to the property and credits of Mr. McCorkindale. On the 3rd of February the firm of Messrs. [5] Orr and Harriss dissolved partnership, and the business was carried on under the style of "Messrs. Harriss and Co." They retained possession of Mr. McCorkindale's papers. Repeated demands were then made by the Administrator-General to the present firm of Messrs. Harriss & Co., to deliver over to him all drafts, deeds, letters, documents and papers which were then in their hands in reference to all matters and suits wherein the late firm of Messrs. Orr and Harriss were concerned on behalf of Mr. McCorkindale, the Administrator-General holding these documents subject to their lien thereon for costs. Messrs. Harriss & Co. refused to deliver up the papers without payment of their costs in full. These are the important facts. The question now is, whether the attorneys are entitled to say "we will not part with the papers until our debt is paid," or whether the

Administrator-General is entitled to say, "Give up the papers to my attorneys, and I will undertake to take" them subject to your lien for costs." Mr. Apar says, -Section 171 of the Contract Act gives the attorney an absolute lien. I don't think so, because the first section of the Act says, -"Nothing herein contained shall affect any usage or custom of trade." It seems to me that no part of the English law is inconsistent with Section 171 of the Contract Act, and, therefore, this case must be governed by the English authorities. The clear principle on which this case rests is, that while the relation of attorney and client exists, the client may either continue to employ the attorney, or change him. When he claims to do that, the attorney being willing to act, he cannot ask the attorney to give up the papers without first satisfying the lien. The attorney has his option; he may if he chooses go on acting for his client, or if he chooses to cease to act, then he must give up the papers. There is no doubt how this case would have been decided had Mr. McCorkindale been still alive. It is clear that the attorneys would have, by their own act, put it out of their power to continue to act for him. The only circumstance which distinguishes that from the present case is, that the client himself dies. But does this really alter the case? I think not. The case is analogous to the case of *In re Moss* (L. R. 2 Esq. 345). The Master of the Rolls there said: -" I hold it to be settled by the authorities, that if a firm of solicitors becomes bankrupt, the bankruptcy is itself a discharge of the clients who employ them: but I also hold this, which I think is equally clear, that if the client becomes bankrupt, and the assignees do not employ the firm of solicitors, that is a discharge by the client of the solicitors." If the assignee had refused to act, the termination of the employment would be the act of the attorney. It appears to me that, after the Administrator-General had taken out letters of administration, he was entitled to the same freedom of action as the client had. He was at liberty to change the attorneys or continue employing them. The only thing which prevented that option being exercised in this case was, that the attorneys had, by their own act, put it out of the power of the Administrator-General to employ them. The case is the same as if the original client were alive. I think the order must, therefore, be made, and with costs.