

(1872) 01 CAL CK 0001

Calcutta High Court

Case No: None

In Re: Parke Pittar and
Another

APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 26, 1872

Judgement

Phear, J.

The question of which I reserved consideration in reference to the claim of the Bank of Bengal is whether the dividends, already declared in favor of the Bank of Bengal in the two insolvencies of Shibchandra Mullick and Dinanath Dey, should be deducted from the amount claimed by the bank in this insolvency. Mr. Marindin for the bank argued mainly on the footing of the decision in *The Midland Banking Company v. Chambers* 4 L.R., Ch. App., 398, that even an actual payment of this kind, if it were made, ought not to be deducted. I say mainly on the footing of *The Midland Banking Company v. Chambers* 4 L.R., Ch. App., 398, because Mr. Marindin did also refer to other cases which, however, he at the same time acknowledged that I had dealt with adversely to him in a case which lately came before me 8 B.L.R., 30. Now *The Midland Banking Company v. Chambers* 4 L.R., Ch. App., 398 is certainly a very singular case. There a surety for the insolvent debtor to the Banking Company, creditor, had paid a sum of ₹300 on account of the insolvents' debt to the Banking Company, and yet the Court held that the Banking Company was entitled to prove against the debtors' estate, to the full extent of the debt, without deducting this sum of ₹300 so paid to them. I need not read the facts as mentioned in the appeal. Both the Lords Justices Selwyn and Giffard put their judgment on the special ground that the payment of the ₹300 by the surety was not, and was not intended to be, a general payment in reduction of the debt, but was, by the express terms of the surety-ship a payment in reduction of such debt as should remain after the bank had received any possible dividend from the estate of the debtor. The surety had said in effect this:-- "You get, in the event of your debtors' insolvency, all possible dividends out of his estate, and I will guarantee you the payment of so much as may remain due after that to the extent of ₹300." Now it seems to me that that case in which the argument of

Counsel, and the judgment of the Court was placed solely on the express and peculiar terms of the surety's guarantee, is really an authority against Mr. Marindin's position, rather than a support to it; because I infer from this that the argument and the judgment would not have been put on those special grounds, if it were a recognized principle in ordinary cases that the payment by the surety should not be taken in reduction of the amount to be proved. This being so, I think that any payments made by Shibchandra Mullick and Dinanath Dey to the bank would certainly have to be deducted: and I am also of opinion that a dividend, actually declared by the Official Assignee, must be taken in this Court to be tantamount to a payment. I come to the conclusion, therefore, that the reduction asked for by Mr. Ingram must be made.