
(1879) 12 CAL CK 0003

Calcutta High Court

Case No: None

Shibkristo Sircar

APPELLANT

Vs

Abdool Hakeem

RESPONDENT

Date of Decision: Dec. 19, 1879

Citation: (1880) ILR (Cal) 602

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

The case of the plaintiff as set out in his plaint is, that the defendant hired cargo boats of him, and that a balance of Rs. 3,121 is due to him on that account. He prays judgment for this sum without any other prayer for relief. The defendant's case, as set out in his written statement, is, that he was not the hirer of the plaintiff's boats, but was only employed as an agent to find hirers for them, except in the case of certain boats for which he had paid.

2. I have come to the conclusion, on the whole of the evidence, that the defendant's version is the true one, and that the plaintiff cannot recover against the defendant as the hirer of his boats.

3. It was said, however, for the plaintiff that, even on the defendant's own account of the facts, he was entitled to account and discovery. Prima facie, no doubt, a principal is entitled to such relief against his agent. But I think it clear that the plaintiff cannot have such relief in this suit as at present framed. I cannot give him relief for which he has not asked, on the ground of a state of facts the contrary of that which he has asserted.

4. It was said, however, that the plaintiff might be allowed to amend his plaint to meet this view of the case. I think, however, when the parties have come to trial to determine which of two stories is true, it would be a dangerous precedent to allow the plaintiff to amend, by abandoning his own story and adopting that of the

defendant, and asking relief on that footing. The question whether on that footing the plaintiff is entitled to relief, is one to which in such case the defendant's attention has not been called, and as to which he has had no opportunity of answering. Nor would much have been gained by amending, for it could only have been on the terms of the plaintiff's paying all the costs of the suit.