

(1878) 01 CAL CK 0012

Calcutta High Court

Case No: None

Bolye Chund Sing

APPELLANT

Vs

Moulard

RESPONDENT

Date of Decision: Jan. 30, 1878

Citation: (1879) ILR (Cal) 572

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

In deciding this case it seems to me important to see what questions are open and what not. With regard to a large part of the case there is no dispute. The plaint on one side, and the written statement on the other, concur in regard to a large portion of the matter out of which the suit arises. The written statement raises specific ground of defence. It alleges that money for the rent was tendered under certain circumstances stated in the written statement, and sets this out as a defence to the action. The matter came before Mr. Justice Pontifex for settlement of issues, and he raised certain specific issues, and decided certain other points.

2. I do not say that, under certain circumstances, the Judge at the trial is precluded from allowing amendments, or from raising issues other than those settled. But what the Judge has decided at the settlement of issues by refusing to raise an issue, is a question which ought not to be re-opened by the Judge at the trial, and the Judge at the trial ought not to modify the issues so as to re-open any questions which the Judge settling the issues has decided. As it is the opinion of the learned Judge who settled the issues that the statements, if true in fact, are ground for a defence in law, I am tied down to this one issue--are the statements in the written statement true or not?

3. Another issue was raised as to what took place subsequently; but no evidence was tendered on it. The only question is, whether the money was tendered in the manner stated in the written statement? I think it was. The first point raised was as

to Mr. Baxter's authority. His evidence is really what must govern the matter. His evidence is that, being told about the difficulty regarding the rent and not knowing the actual nature of the difficulty between Mr. Hanhart and the defendant, he undertook to settle the matter and received the rent. It would be contrary to all common sense to say that he was not the agent of the plaintiff for the purpose of receiving the rent. He first goes to Mr. Hanhart, then goes to the defendant and applies for the rent, and the next day goes to the Attorney's office by appointment, and there gets a cheque payable to Mr. Hanhart. Mr. Phillips was right in saying that a person, who is employed to receive money, is not bound to receive a cheque, and, therefore, if Mr. Baxter had brought back the cheque to the plaintiff, I think the plaintiff would have been justified in declining to take it. I do not think Mr. Baxter was bound to put himself to the trouble when he asked for the rent, and got a cheque to get the money. But he chose to put himself to the trouble. He took the cheque to Mr. Hanhart, got the money, to the amount of the cheque, and took the money and went away. He was authorized to receive the rent. He did in fact receive money under the circumstances stated in the defendant's written statement. But I am not sure that it is not necessary to look a step further. The question of costs arises. Looking at the pleadings and the issues as settled, I am not bound to go out of my way as to the costs. Each side seems to be playing a sort of a game of chess with a delicacy and finesse which one would hardly expect in a business transaction like this. I am not inclined to go out of my way the least in the matter of costs. The costs must follow the strict legal result of the case. Having found the only issue I am bound to try in favour of the defendant, it is necessary to look to the nature of the tender. If it were only a more tender, Mr. Phillips would be right in saying that, if the tender were not followed by payment into Court, the defendant would not be entitled to costs, and if I thought that, I would not be inclined to give the defendant's costs. But I think the tender was made in such a way as to amount to payment. Mr. Baxter was empowered to receive the money. The defendant gave a cheque on another person, that is, a cheque on her banker to go and receive the money, and a receipt was given by Mr. Baxter. It seems to me as much a payment as if I gave a creditor of mine a cheque on my banker. It is a payment when he takes it and cashes it. Or, if I say I am short of money, my friend, Mr. so and so will give you the money, and I give him a letter, my creditor is not bound to take that trouble; but if he does and gets the money, it is a payment. Mr. Baxter having gone and got money in the way stated, the money was clearly on behalf of the defendant, and I think it was received in such a way as to amount to a payment. Mr. Justice Pontifex has decided that these allegations amount to a defence, and I think they amount to a defence of payment. I think the tender was made under circumstances amounting to payment. The defendant is entitled to have the suit dismissed with costs on scale No. 2.