

(1881) 02 CAL CK 0005

Calcutta High Court

Case No: None

Annoda Persad Roy

APPELLANT

Vs

Dwarkanath
Gangopadhya and
Another

RESPONDENT

Date of Decision: Feb. 1, 1881

Citation: (1881) ILR (Cal) 754

Hon'ble Judges: McDonell, J; Field, J

Bench: Division Bench

Judgement

Field, J.

We think that the decree of the District Judge in this case cannot be sustained. It is quite possible that the plaintiff has not properly conceived, or correctly stated in his plaint, the exact remedy to which he is entitled; but we think, having regard to the whole of the circumstances of the case, and the inexact practice prevalent in the mofussil in this class of cases, that the plaintiff ought not to be denied any remedy whatever. In his plaint he states (and on this point there is no dispute) that the defendant was in his employment from September 1875 to May 1879. He states, further, that the defendant has not submitted to him proper accounts of his agency; and in the 9th para, he asks that a decree be passed to the effect that the defendant No. 1 do submit the nikas papers called for agreeably to the provisions of the kabuliat executed by him. The plaint then goes on to ask that, on failure to submit the said accounts, the defendant may be decreed to pay him Es. 1,200 by way of damages. It is further alleged that, in consequence of the defendant's negligence and mismanagement, he (the plaintiff) believes that he has sustained a loss of Es. 5,000, and he asks that a decree may be passed in his favour for this sum, or in respect of such sum as will represent the loss which may be found by the Court to have been sustained by him.

2. Now some of these prayers have been wrongly conceived. There can be no decree for Rs. 1,200 or Rs. 5,000, or any other sum, until, upon taking the accounts, it has been ascertained that the plaintiff is entitled to receive a sum of money from the defendant, and until it has been further ascertained what the amount is to which the plaintiff is so entitled. That it is the duty of the defendant to render proper accounts to his employer, and this irrespective of the stipulations contained in the kabuliat, there can be no doubt. Mr. Story, in para. 203 of his work on Agency, says that "it is the duty of an agent, where the business in which he is employed admits of it or requires it, to keep regular accounts of all his transactions on behalf of his principal, not only of his payments and disbursements, but also of his receipts, and to render such accounts to his principal at all reasonable times without any suppression, concealment, or overcharge." See also Story's Equity Jurisprudence, 462, 468. We may add that an agent does not discharge the duty of accounting, by merely delivering to his employer a set of written accounts, without attending to explain them, and produce the vouchers by which the items of disbursements are supported.

3. In the written statement, which was filed by the defendant in this case, he alleged (para. 12) that the nikas papers required by the plaintiff had been prepared and submitted to him; and in other parts of the same written statement, he further alleged that certain other accouuts had been required from him within such a time, and in such a form, as rendered it impossible for him to comply with this requisition of his employer.

4. We think that, having regard to these allegations, the proper points for enquiry in this case were: first, did the defendant render to the plaintiff such reasonable and proper accounts of his agency as the plaintiff was entitled to require from him? and secondly, did the defendant further explain these accounts and support them by the production of proper vouchers? We may observe that the defendant does not allege that his accounts have been settled, or that the plaintiff has expressly or by acquiescence, accepted the accounts submitted by him. If sufficient accounts have been rendered, but not explained and supported in the manner above pointed out, the defendant must be called upon to explain and support them. If sufficient accounts have been rendered, explained, and supported, or, in the latter case, as soon as the accounts rendered have been explained and supported, it will then lie upon the plaintiff to point out the entries in those accounts which he alleges to be erroneous; or, in respect of transactions not shown in the accounts to state what monies have been received and not credited. The Judge must then proceed to deal with the questions thus raised between the parties, treating each item separately.

5. If, on the other hand, no sufficient accounts have been rendered by the defendant, the proper course then for the Court is that pointed out in a judgment of Phear, J., in the case of Syed Shah Maiahmad, alias Boolahi Ali v. Mussamut Bibee Nusibun (24 W. R. 70). Phear, J., there says:-"The proper and convenient mode of

doing so is to fix a day before which the defendant should file a written statement of his account, exhibiting therein all the items of receipt for which he is accountable on one side and all items of disbursements on the other; and to fix another day before which the plaintiff should file any objections which he may have to make to these accounts when filed; and finally, the Judge ought to appoint a third day upon which an inquiry into the truth and correctness of the statements of account filed by the defendant should be made ; and on that enquiry he will take all such evidence, in the way of books and vouchers, and so on, as the defendant is entitled to produce, as well as the testimony of necessary witnesses, and also all evidence on the part of the plaintiff tending to invalidate the accounts or to surcharge them; and eventually, upon the termination of the enquiry, the Judge should satisfy himself as to the amount which is due upon the account as established by the evidence of both parties, and frame his decree accordingly. He ought not to give a decree for alternative damages founded upon any antecedently estimated amount, which must, apart from the evidence, be simply a matter of conjecture or of claim. He should give no decree other than an order on the defendant to file his accounts, before the accounts have been taken, and then confine his decree to such amount as he may find to be due upon the proper taking of the accounts against the defendant. If the defendant prove contumacious with regard to filing his statement of accounts, the Judge may proceed with the taking of the accounts against him on the footing of evidence furnished by the plaintiff, and in so doing he may make all reasonable presumptions against the defendant." See also the directions to be found at page 12 of the Memorandum of Practice prefixed to the edition of the Circular Orders published in 1876. There may be cases (and it is possible that this present case may be one) in which the taking of any account in the manner above pointed out may occasion so great a waste of public time of the Judge, that resort may well be had to the provisions of the CPC contained in Section 394. If it be found advisable to have recourse to these provisions, the Judge should then follow the directions contained in Section 395, and furnish the commissioner with such part of the proceedings and such detailed instructions as appear necessary. We think that if these directions be carried out, there will be no greater difficulty in taking accounts in the mofussil than is experienced on the Original Side of this Court, or in any other Court in which accounts have to be taken and settled between parties as disputatious as the parties in the present case.

6. We think it desirable to add that, in order to enable the defendant to prepare such accounts as the plaintiff is entitled to receive from him, the defendant ought to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the plaintiff's sherista as may be necessary for the preparation of the accounts.

7. The case will be remanded to the District Judge in order that he may proceed in accordance with the above directions. All costs in the case will follow the ultimate result.