
(1871) 05 CAL CK 0002

Calcutta High Court

Case No: Regular Appeal No. 253 of 1869

Krishna Mohan Shaha
and Others

APPELLANT

Vs

Munshi Aftabuddin
Mahomed and Others

RESPONDENT

Date of Decision: May 26, 1871

Judgement

Mitter, J.

I am of opinion that a putnidar, whose tenure has been advertized for sale by the Collector under the provisions of Regulation VIII of 1819, is entitled to pay to that officer the amount of arrears claimed from him by the zamindar, and that such a payment, if duly made within the period of the notice issued under the second and third clauses of the 8th section of that Regulation, is a legal bar to the sale. I take it to be an undisputed proposition of law, that a person who is sued in a Court of Justice for a specific sum of money, is entitled to bring that money into Court together with the costs incurred by the plaintiff up to the date of the payment, and that such a payment, if duly made, is sufficient to put a stop to all further proceedings against him and his property upon the same cause of action. The question, therefore, is whether a payment to the Collector by a putnidar, whose tenure has been advertized for sale under the provisions of Regulation VIII of 1819, is entitled to be ranked in the same category as a "payment into Court" within the meaning of the above proposition.

2. I am of opinion that this question ought to be answered in the affirmative.

3. (After reciting sections 8, 9, 10, 13 and 14, clause 1 and 2, his Lordship continued.)--The above provisions are, in my opinion, sufficient to show that a proceeding under Regulation VIII of 1819 is in fact a summary suit for rent instituted in a Court of Justice, although it is required to be dealt with in a somewhat peculiar manner. Indeed the very word "Court" is expressly used in clause 2 of section 13, and as the functions which the Civil Court of the district or the Registrar of that Court had to perform under the Regulation, as it originally stood, have been all vested in the Collector by subsequent

legislation, the cut-cherry of that officer must be necessarily regarded as a "Court" within the meaning of that clause, and therefore within the meaning of the Regulation itself. The expressions "amount claimed," "amount of the demand" frequently used in the sections cited above, clearly show that the zamindar is the plaintiff in the suit, and we must therefore look upon the petition filed by him under clauses 2 and 3 of section 8 as the plaint by which that suit is commenced. Indeed the very expression "summary suit" is distinctly used in clause 2, section 14, and if it is once admitted that the proceeding is a summary suit, a payment to the Collector would stand precisely in the same category as a payment to any other Court of Justice in any other suit for money.

4. It has been argued that clause 2, section 14, refers to cases in which the putnidar has come forward to contest the zamindar's demand, and that it would be therefore improper to characterize the proceeding in an uncontested case as a summary suit within the meaning of that clause. This objection is not entitled, in my opinion, to any weight whatever. In the first place it is clear that even in uncontested-cases the Collector is bound, under the express provisions of section 10, to enquire whether there is an arrear or not, although the enquiry is directed to be confined in such cases to the mere inspection of the accounts produced by the zamindar, who alone is answerable for their authenticity. Conceding however that an enquiry of this sort is not, strictly speaking, such as is ordinarily made by a judicial tribunal, the character of the proceeding would still remain the same. That proceeding must be supposed to have commenced with the petition filed under the 2nd and 3rd clauses of section 8; and it is upon that petition, treated as a plaint, that the Collector has to make his award under clause 2 of section 14, for there is no provision in the Regulation which requires the presentation of any other plaint or petition on the part of the zamindar. The mere fact that the putnidar has not come forward to deny the truth of the zamindar's claim, cannot alter the character of the proceeding from what it was at the time of its original institution. It was a suit at its commencement when the zamindar's petition was filed, and it must consequently retain the character of a suit until it is terminated either by an award under clause 2, section 14, or by a sale held in the mode prescribed in the Rubakari required to be recorded by the concluding words of section 10. If the defendant in the suit is desirous of having a summary investigation, he is entitled to have it by the express terms of the Regulation; but in a case in which no such investigation is asked for, the Legislature could well afford to dispense with its necessity, for an appeal to the Civil Court in the shape of a regular suit is after all the only ultimate remedy in either case. An undefended suit is just as much a suit as a defended one, and the mere fact that the Legislature has laid down two different modes for their disposal, cannot make any difference whatever in the determination of the question now under our consideration.

5. Every contested case, it is clear, must be regarded as a summary suit under the express wording of clause 2, section 14, and as the position of the putnidar in such a case is precisely the same as that of a defendant in a suit for money, there can be no doubt whatever that he is entitled to save his tenure from sale by paying to the Collector

the full amount of rent due from him to the zamindar, provided that the payment is duly made within the period of the notice which has been so often referred to. Even on the day of sale it is competent to him to get the sale stayed or postponed, by "lodging" the amount in cash or Government securities, under the provisions of clause 2, section 14; and it is to be further borne in mind that there is nothing in the language of that clause to support the contention, that the said amount cannot be so lodged on any previous date although it falls within the period of notice. It has been suggested in the decision of the late Sudder Court, relied upon by the Subordinate Judge in this case, that there is a wide distinction between paying money into Court and lodging money in Court, Both the expressions however are used in clause 2, section 13, and the only distinction that I can find between them is that the one refers to an unconditional payment, whilst the other refers to a mere deposit, or in other words to a payment clogged with conditions dependant upon some contingent event, as, for instance, the completion of the award referred to in clause 2, section 14, the non-payment of the balance by the putnidar up to the date fixed for the sale, &c., but this distinction cannot affect the question in any manner whatever.

Suppose, for instance, that an award is made under clause 2, section 14. Suppose also that it is made some days before the day fixed for the sale. If in such a case the putnidar can save his tenure from sale by lodging the amount claimed in the Collector's office even so late as the day fixed for the sale, can he not do the same thing by lodging it in the same place on an earlier day not beyond the period of notice? And if the amount can be so lodged conditionally on any day within that period, can it not be paid unconditionally to the same functionary whether before or after the date of the award above referred to?

6. If we allow then that a payment to the Collector, if made within the period of notice, is a legal bar to the sale in contested cases, what reason have we to come to a different conclusion upon the validity of such payments in uncontested cases? Can it be supposed for one moment that the Legislature ever intended that a dishonest defaulter who has come forward with a false denial of his landlord's claim should enjoy greater facilities for paying the arrears, than one who has come forward with an honest admission of its truth, and who is perfectly ready and willing to pay into Court the full amount of rent claimed to be due from him. According to such a contention, all that a putnidar would have to do in order to give validity to the payment would be to start with a false repudiation of his liability, and I am therefore of opinion that it is entitled to no weight whatever.

7. That a direct payment to the Collector affords an invaluable security to the putnidar is evident not only from the fact of its being a payment in a public office, but also from the very nature of the proceeding itself. The zamindar may insist upon the sale by repudiating any private payments made to himself or to his authorized agent, and unless the putnidar is in a position to secure a favorable award before the date of sale, he must submit to his property being sold by the Collector, although he is entitled to bring a regular suit for the reversal of the sale. Why then are we to suppose that the Legislature intended to deprive him of the above security, at the very time when it was arming the Collector with such plenary powers on behalf of the zamindar? It is true that money paid to the Collector does

not immediately pass to the zamindar's hands, but, besides that the latter is always at liberty to draw it with the least possible delay, it is beyond all dispute that a little inconvenience of this kind is the inevitable lot of every person who is obliged to resort to a Court of Justice or to any other public authority for the recovery of his dues.

8. Clause 2, section 13, gives power to the talookdars of inferior degree to pay the amount into Court or even to lodge it antecedently, but the inconvenience suffered by the zamindar in the case of such a payment is precisely the same as in the case of a payment made by a putnidar. It is true that the putnidar is bound to pay his rent directly to the zamindar, before he is actually sued for it, but after a suit has been once commenced, there is no reason whatever why he should be deprived of a privilege which is every day exercised by a defendant in an ordinary suit for money.

9. It has been argued that there is no express provision in Regulation VIII of 1819, authorizing a direct payment to the Collector. I am by no means prepared to admit the correctness of this argument, even as far as it goes. The wording of the notice issued under the 2nd and 3rd clauses of section 8 of the Regulation appears to me to be a sufficient authority for such a payment. That notice is issued by the Collector, and it simply tells the putnidar that if the amount claimed be not paid within a fixed date, his tenure will be sold in liquidation. In the absence, therefore, of any specific directions as to the person to whom or the place where the payment is to be made, the putnidar would be fully justified, in my opinion, in paying directly to the very officer by whom the notice is issued. That the tenure can be saved from sale even in uncontested cases by lodging the amount in the Collectorate seems to be pretty clear from the provisions of clause 1, section 14. The provision made for contested cases in clause 2 of that section is a mere amplification, as is clearly shown by the use of the word "also," and if we admit that the putnidar is entitled even in an uncontested case to save his property by lodging the amount, there seems to be no reason why he should not be permitted to do so by "paying it" unconditionally as the amount of arrears admittedly due from him. I do not mean to say that there is anything in the language of the notice above referred to, to show that a direct payment to the, zamindar or his agent would not be just as valid in law as a payment to the Collector, but I think that the putnidar is fully entitled to say that that language is at any rate sufficient to justify both sorts of payment. It is beyond all questions that a payment in Court, after legal proceedings have once commenced, is much more favored by public policy than a payment out of Court, as may be seen from the provisions of section 206, Act VIII of 1859. The publicity attached to the first kind of payment is almost a sure guarantee against further litigation upon the same cause of action, and there is no reason whatever for thinking that the framers of Regulation VIII of 1819 intended to deprive the putnidar of that guarantee by the adoption of a contrary policy, when the sole object of the proceeding directed to be held by that Regulation was to enable the zamindar to realize his rents with facility.

10. But even if it is conceded that there is no express provision in Regulation VIII of 1819, authorizing a direct payment to the Collector, it must be admitted, on the other hand, that

there is no express provision to the contrary; and the case must therefore fall within the operation of the general principle enunciated at the commencement of this judgment in regard to payments into Court. No express provision was necessary in the case of the putnidar, who is in fact the defendant in the suit, and against whom directly the zamindar's claim is brought. The case of the durputnidars referred to in section 13 stands on a quite different footing. They are not parties to the proceeding, which is one entirely between the zamindar and his tenant the putnidar, and it was therefore necessary to make some special provision for the protection of their interests, they being not in a position as third parties to avail themselves of the general principle above referred to. Such a provision would have been superfluous in the case of the putnidar, and as the object of the Legislature in making that provision was to protect the durputnidars from the consequences of the putnidar's default, the extension of a similar privilege to the latter would be nothing but an additional step in the same direction. If the putnidar is not allowed to pay to the Collector, the consequences would be as injurious to him as to his under-tenants; for the Collector is bound to proceed with the sale without reserve, even in cases in which the rent has been actually paid to the zamindar, if the latter chooses to repudiate such payment on the day appointed for the sale, and the durputnidars are not in a position to pay the amount. It is clear therefore that the security afforded by a payment in a public office is as necessary for the protection of the putnidar as for that of the durputnidars; so that the existence of a special provision in favour of the latter, rather goes to strengthen the position which I have been seeking to establish.

11. Some stress has been laid upon the words of section 10, which say, "a person shall be present on the part of the zamindar with a particular statement of the payments made up to the day of sale." But these words merely go to show that a private payment to the zamindar himself is prohibited by the Regulation, and that such a payment would be sufficient to stop the sale if the zamindar would choose to admit it. Suppose, for instance, that the zamindar is living at a great distance from the district in which the proceeding is instituted, which must be the district in which the putni is situated. Suppose also that he has got no one in that district duly authorized to receive payments on his behalf. The agent required to be present on the day of sale need not be authorized to receive such payments, for he is required merely to produce a statement showing the payments made up to the date of sale. If the day of sale is near at hand, and if there is no time left to enable the putnidar to go and pay his rent directly to the zamindar, is the Collector to sell his property although he is perfectly ready and willing to pay down the entire amount then and there, or even on an earlier date? It is true that a debtor is bound to pay his debt as soon as it becomes due, and that it is for him to go to his creditor for the purpose of making the payment; but these reasons can be scarcely urged in support of the contention that the putnidar is to lose his property by a public sale if he is ready and willing to pay the full amount due from him to the very officer by whom that sale is to be made. The notice issued under clauses 2 and 3 of section 8 gives him a full month's time to pay, but if we deny him the privilege of paying to the Collector, the result would be, in some cases at least, to deprive him of the full benefit of that period.

12. Suppose again that the full amount of the claim is offered to the zamindar in the first instance, and the zamindar refuses to receive it. Can it be contended that even in such a case the putnidar would not be competent to pay it to the Collector and thereby to save his tenure from the threatened sale? Such a contention would be in my opinion absurd on the face of it; and yet the same arguments which can be brought forward in this case, might be urged with equal force in support of it.

13. The only, other light in which we can possibly regard the Collector is that of an agent of the zamindar, appointed by the law for the realization of his dues from the putnidar. But in such a view a payment to the Collector would stand precisely on the same position as a direct payment to the zamindar himself, particularly if it is made after the issue of a notice like that prescribed by clauses 2 and 3 of section 8.

14. The next question which we have to determine in this case is, whether the payment relied upon by the plaintiffs was duly made or otherwise.

15. That it was made within the prescribed time, is not disputed, nor has any question been raised as to the sufficiency of the amount.

16. The plaintiffs alleged that they paid the money to the accountant of the Collectorate who was authorized, according to the practice, prevailing therein, to receive such payments; and that they have got a receipt which they have filed in evidence. This receipt consists of a duplicate challan containing a full specification of the object for which the payment was made, and an endorsement on the back of it under the seal of the Collector acknowledging the receipt of the money. The defendants contend that this mode of payment was irregular, and that the plaintiffs ought not to derive any benefit from it, particularly when they took no steps whatever to give any notice of the payment either to the Collector or to the zamindar. The accountant of the Collectorate has been made a defendant in this case, and the plea set up by him is that it was no part of his duty to inform the Collector of the payment.

17. This part of the case, however, has not been gone into by the Subordinate Judge. He says "they (the plaintiffs) do not pretend that they are covered by the Putni Sale Law of 1819, No. 8, in making the deposit at the Collectorate-before the sale. All they say is this: that it was the custom at the Collectorate to receive such deposits from defaulting putnidars and to stop the sale; and that they had made the deposit in conformity to that custom. But no custom however long practiced, could justify the violation of the law."

18. I have already shown that there was no violation of law in this case, and if the custom of the Collectorate was, as it is represented by the plaintiffs, there seems to be no reason whatever why they should not get the full benefit of the payment. Whether we look upon the Collector as a judicial officer presiding over a Court of Justice in which a summary suit for rent has been instituted by the zamindar, or as an agent of the latter, it seems to be equally clear that the plaintiffs ought not to suffer for having acted in conformity to a

custom prevailing in his office, I would therefore send this case back to the Subordinate Judge under the provisions of section 354 of the CPC for the purpose of enquiring into the following points, namely,--

1st What was the customary mode prevalent in the Collectorate of Tipperah with reference to the receipt of monies paid by putnidars whose tenures were advertized for sale under Regulation VIII of 1819.

2ndly. Whether the plaintiffs were bound according to that custom to do any thing more than that they have done in order to complete the payment relied upon by them in this case.

3rdly. Whether the accountant of the Collectorate had any authority to receive that payment, and whether he or any other Amla on the Collector's establishment was bound, according to the customary routine of his duties, to give notice of it to the Collector in order to stop the sale.

4thly. Whether the said payment came to the knowledge, or received the sanction, of the Collector at any time before the sale.

19. The most important evidence on these points is likely to come from the Collectorate itself; but the parties ought to be allowed to produce any evidence they may think proper.

Macpherson, J.

20. The object of this suit is to set aside a sale of a putni tenure, which was sold, under Regulation VIII of 1819, for arrears of rent claimed by the zamindar and, the question at issue seems to me to turn very much on the construction to be put upon certain sections of that Regulation.

21. (After reciting sections 8, 9, 10, 13 and 14, clause 1 and 2, his Lordship continued.)--In the case now before us, the facts are that after the sale had taken place, apparently in the manner prescribed by law, it turned out that the putnidars had, some days before the sale, paid into the office of the Commissioner the amount of arrear specified by the zamindar in his notice of sale. So far, however, as the evidence goes, the putnidars gave no notice to the Commissioner or to the zamindar or his agent that they had made any payment into Court: both the Commissioner and the person attending the sale on behalf of the zamindar, were at the time of the sale entirely unaware that any such payment had been made,--as also was the purchaser. The plaint contains various allegations of fraud, notice, refusal of money tendered, and the like; but no evidence has been given in support of those allegations.

22. For the putnidars, it is contended that the money having been brought into Court, there was no balance due at the time of sale, and therefore the sale ought to be reversed.

23. For the zamindar and purchaser, it is contended (and as it appears to me rightly) that the putnidars are not entitled to treat the payment of the money into Court as a payment to the zamindar, and that therefore the balance claimed by the zamindar did remain unpaid at the time of sale, which consequently cannot be impeached.

24. I agree in the opinion that a zamindar's petition and notice of his intention to sell u/s 8 of Regulation VIII of 1819 is not in any legal sense a "suit," and I also think that a payment into Court without notice to the person entitled to receive the money, is no payment to that person in the absence of any law declaring that it shall be deemed to be payment to him.

25. There is nothing in Regulation VIII of 1819 which either expressly or impliedly declares that a payment, such as the putnidars in this case made, shall be deemed to be payment to the zamindar. It is expressly declared that talookdars of the second degree may stay the sale by paying into Court the money declared due on the day of sale, or lodging or depositing the money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for sale (in so much that it has been decided that "talookdars of the second degree" are bound to bring the money into Court, and are not entitled to pay direct to the zamindar,--*Mirza Mahomed Hossein Ali v. Shaikh Bukaoollah* 6 W.R., 84, but there is no such declaration as regards putnidars or talookdars of the first degree. On the contrary, the language of Regulation VIII shows rather that the only case in which it was contemplated that the putnidar was to bring the money into Court, was that provided for in clause 2 of section 14, the case of the zamindar's demand being contested and the putnidar applying for a summary investigation.

26. By clause 2 of section 8, the original notice informs the putnidar that his tenure will be sold if the amount claimed is not paid before the appointed day: but nothing is said as to bringing the money into Court, and payment in the ordinary fashion is alone contemplated.

27. By section 10, it is the zamindar's agent who is at the time of sale to state the payments made up to that day: and the agent's statement is to be inspected, and the existence of a balance ascertained therefrom: the zamindar is exclusively responsible for the correctness of the statement: and the officer conducting the sale is responsible only for publicity and fairness, and observance of prescribed rules. All these provisions evidently contemplate payments being made to the zamindar. If payments into Court had been contemplated, the provisions of this section must have been different, and we certainly should expect to find the Court declared responsible for them.

28. Then come the rules allowing the durputnidars, &c., to save themselves by paying the money into Court. These rules are immediately followed by clause 1 of section 14, which is much relied on for the appellants. As to this clause, I think that its proper interpretation is that the sale is not to be "stayed, or postponed on any account, unless the amount of

the demand be lodged" in the sense in which alone the word lodged is used in Regulation VIII, i.e., lodged by a "talookdar of the second "degree" under the provisions of section 13, or lodged by a putnidar applying for a summary investigation under clause 2 of section 14. The word "lodged" as used in clause 1 of section 14, has, to my mind, no legal meaning save such as is to be gathered from the use of the word in section 13 and in clause 2 of section 14.

29. If the word "lodged" in clause 1 of section 14 is read in this limited sense, there is absolutely no ground for saying that Regulation VIII any where contemplated the putnidars bringing into Court the arrears claimed by the zamindar, except in the one case provided for by clause 2 of section 14. There being thus nothing in the Regulation which makes a payment into Court, of itself, a payment to the zamindar, I think it is impossible to say that, under the circumstances which occurred in this instance, the balance claimed by the zamindar did not "remain unpaid upon the day fixed for the sale."

30. I further am of opinion that, whatever the ordinary practice of the Collector's office may have been, this sale cannot now be set aside if it was made strictly in accordance with law. The existence of a loose or irregular practice in the Collectorate will not entitle us to reverse this particular sale if it was in itself regularly held, and if there is no evidence of anything fraudulently or wrongly done by the purchaser, or by the zamindar. It is said that the position of the putnidars is one of great hardship. But I do not see that this is so. It is not now for the first time that it is held that putnidars are bound to deal directly with their zamindars, and are not entitled to pay the balance claimed into Court. In 1859, clauses 1 and 2 of section 14 of Regulation VIII of 1819, were construed by the Sudder Court in the same sense in which I would now construe them in the case of *The Collector of Tipperah v. Goluck Chunder Shaha S.D.A. 1859, 521*. Then the laches of the putnidars throughout has been most remarkable.

31. No doubt, in the course of this suit, the existence of a very loose and improper practice in the office of the Collector has been disclosed. In the first place, the office received a balance which was due a putnidar to a zamindar, and which was paid in by the putnidar expressly to save his estate from sale, when the Collector was aware that such payment by the putnidar would not legally have the effect which the putnidar supposed it would have. And in the second place the Amla of the Collectorate having received the putnidar's money, never informed the Collector, or any body else, of the fact, so that, in ignorance of it, the putni was sold some days subsequently. The Collector's office is clearly greatly to blame for what occurred. But the putnidars themselves are also greatly to blame, so much so, that I may say they have themselves to thank for the result. They willfully abstained from paying their zamindar whom they were bound to pay, and chose in preference to pay the money into Court: having paid it into Court, they gave notice of what they had done neither to the zamindar nor to any body else: and they stood by and allowed the sale to proceed without ever suggesting that they had already placed the money in Court.

32. I do not see that, under the circumstances, there is any reason why the case should be remanded: for in my opinion the plaintiffs could in no possible event now be entitled to a decree. I would dismiss the appeal with costs.

Norman, J.

33. (After briefly stating the facts, and reciting sections 8, 9, 10, 13, and 14, continued.)--There is nothing in Regulation VIII of 1819 which empowers a putnidar to make a deposit, either in the Judge's Court or in the Collectorate before the day of sale, or which gives to such payment, if made, the effect of a payment to the zamindar or his agent.

34. It is not pretended that any tender of the rent had been made at the M■ Kutcheri of the zamindar, or that the payment into the office of the Collector was made after such tender in the mode prescribed by Section 4 of Act VI of 1862, B.C., with any declaration such as is prescribed by the 5th section of that Act.

35. The second clause of section 14, Regulation VIII of 1819, provides for cases where the putnidars contest the zamindar's demand of any arrears. The putnidar, in such cases, is empowered to apply for a summary investigation within the period of notice, but even in such cases if the zamindar insists on his demand, the sale is not to be stayed, nor will the summary suit be allowed to proceed unless the amount is lodged by the putnidar, contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages and for a reversal of the sale.

36. My learned colleague, Mr. Justice Mitter, is of opinion that, if the payment to the accountant of the Collector can be treated as payment to the Collector, it would of itself put a stop to all further proceedings. With the greatest respect for his opinion, I am compelled to say that I cannot agree with him. He assumes, in the first place, that the petition to the Collector is a summary suit. But an application for the sale of a tenure, where a right of sale has been specifically reserved in order that the applicant, out of the proceeds of the sale, may realize his rent, seems to me to be something quite distinct from a suit. The investigation which may be demanded by the putnidar under clause 1, section 14, is no doubt a summary suit. But the sale is not to be stayed till that suit is decided. Before its determination the sale may proceed on the responsibility of the zamindar. The proceedings on the petition of the zamindar to bring the estate to sale are more nearly analogous to the remedy by distress, than to a suit.

37. But suppose we treat the petition u/s 8 as the commencement of a summary suit, it is not a suit for money. It is a proceeding to enforce a particular stipulated remedy. I know of no reason or principle on which it can be said, that in a suit to enforce such remedy the Court has, independently of any special authority conferred by statute, power to receive money paid into Court so as to bar the remedy. Could it be contended that in a suit for an injunction or specific performance or in an action for damages the Court would have

power to accept some pecuniary payment which it might assume to be a satisfaction of the plaintiff's claim. No doubt, in a suit for a specific ascertained or ascertainable sum of money, the defendant has a right through the intervention of the Court to satisfy the claim. He may obtain an order for liberty to pay into Court the amount of the claim. In *Hallet v. The East India Company* 2 Burrow's Rep. 1120, which was a rule to show cause why the defendants should not have leave to bring into Court the sum of ■ 2,670 for demurrage, the principle on which the Court proceeds in such cases is very clearly stated:-- "where the sum demanded is a sum certain or capable of being ascertained by mere computation without leaving any other sort of discretion to be exercised by a Jury, it is right and reasonable to admit the defendant to pay the money into Court and have so much of the plaintiff's demand upon him struck out, and that if the plaintiff will not accept it, he may proceed at his peril." This is done upon a rule duly served or on notice to the plaintiff. There is no case that I am aware of in which it has ever been held that a defendant can bring money into Court privately and secretly on an ex parte application and without giving notice to the plaintiff either of his intention to pay, or of the fact that the money has been paid into Court and may be taken out by the plaintiff. The case I have mentioned above was a rule which gave notice to the plaintiff. Act VI of 1862 (B.C.), sections 4 and 5, and the form of plea of payment into Court in England which is given by a rule of Court having the force of a statute, provide for notice to the plaintiff informing him that the money is in Court ready to be paid out to him if he chooses to take it¹. Payment into Court does not, as my learned colleague supposes, of itself put a stop to further proceedings in the action; it merely justifies the Court, after notice to the plaintiff, in making an order for the stay of proceedings, where the whole demand of the plaintiff is satisfied by the defendant placing the amount of that demand at the disposition of the plaintiff. In other cases the plaintiff, on receiving notice of the payment into Court towards satisfaction of his demand, may either take out the money and accept it in satisfaction, or proceed in the suit at the peril of a decision against him if he fails to establish his claim, to an extent beyond that which the payment into Court is sufficient to cover.

39. I think it clear that if the payment to the Collector's accountant made before the day of sale be treated as equivalent to payment to the Collector himself at the time when it was made, it would not ipso facto amount to a stay of the proceedings. I think that an irregular payment to the Amla of the Collectorate, not immediately notified to the Collector, ought not to be treated as payment to the Collector, so as to affect the rights of a zamindar who had had no notice of such payment. If such presumption could be made, it would open a door to fraud and litigation and injure both zamindars and putnidars by imperiling the security of titles acquired at sales on account of arrears of rent. Can the payment to the Amla of the Collectorate be treated as payment to the zamindar? Clearly not. "To pay" is to "discharge a debt." To make a good plea of or, in other words, to establish, the defence of payment, the payment must be made to the creditor or to some agent of his having authority to receive the money in satisfaction of the debt. Now the Collector's accountant was, in no sense, the agent of the zamindar to receive this rent. It cannot then be said that the balance claimed by the zamindar did not remain due on the day fixed for the sale.

40. The sale having been for an arrear of rent due at the time of the sale, I think it is final and binding and cannot now be set aside. It seems to me that the plaintiffs have no ground to ask for relief on any principle of equity. The zamindar in putting in force the remedy which the law gives him for the security of his rent has done no wrong. He has simply exercised his legal right and has been guilty of no default. If a decree were to be made u/s 14 reversing the sale, it would be manifestly contrary to justice to indemnify the purchaser against the loss he would sustain at the charge of the zamindar. The purchaser has done no wrong to any one. He has acquired a legal title at a sale duly held in pursuance of the powers given by the Regulation. It would be most unjust to deprive him, without cause, of the property which is now vested by the sale in him. If the plaintiffs have suffered a loss, it seems to me that the loss has been caused by their own default. Had they chosen to attend at the Collectorate at the time of sale with their receipt: had they contended then and there that the arrears were not due; that what had taken place amounted to a payment of the rent: had they produced the receipt of the Collector's accountant showing that the full amount of rent had been deposited in the Collectorate, there can be no doubt but that the Collector would have stayed the sale. They did nothing of the sort. The defendants then have only themselves to blame for the loss which they have doubtless sustained. The decision of the Deputy Collector appears to me to be perfectly correct.

41. There is one point which was adverted to during the argument. The plaintiffs alleged that they had tendered the amount of the rent to the Mofussil agent of the zamindar, Raja Sattya Saran Ghosal. This the Raja by his answer denied. It appears that the plaintiffs, though they gave a list of witnesses to prove this point, did not deposit the necessary expenses and diet-money for these witnesses. After we had gone into the facts, the objection that an issue on this subject had not been tried was abandoned by the appellant's Vakeel. The appeal must be dismissed with costs.

(1)But see the form of plea of payment into Court, under the C.L.P. Act 1852, section 71. "The defendant by--his attorney [or in person, and if the plea is pleaded to part only of the declaration, say, as to the - Court of the declaration, or as to ■--parcel of the money claimed, or as to the residue of the money claimed, or as the case may be;] brings into Court the Sum of ■--and says that the said gum - is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to."