

(1881) 03 CAL CK 0018

Calcutta High Court

Case No: None

Sheriff

APPELLANT

Vs

Gobind Mohun
Chuckerbutty

RESPONDENT

Date of Decision: March 10, 1881

Citation: (1881) ILR (Cal) 169

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that this appeal must be dismissed. [The learned Judge here stated the facts and continued.]

2. The only ground of defence which has been relied upon is that in the former suit, which was brought in 1275, although the decree of the Court was merely for rendering an account, a commissioner was appointed to adjust the accounts between the parties, and to ascertain what sum was due from the defendant; that the commissioner found Rs. 82-3-11 only to be due; and that the plaintiff in this suit is bound by that finding.

3. Now although it certainly does appear, that, in the former suit, a commissioner was appointed for some purpose or other we do not find that he had any authority to go into the account, or to ascertain what was due. The decree merely orders the defendant to render proper accounts to the plaintiff; and it has not been proved how or why the commissioner was appointed, nor that the report of the commissioner was in any way confirmed by the Court.

4. It was, therefore, competent for the plaintiff, after the accounts had been filed by the defendant, and adjusted by the commissioner, either to accept the money found by the commissioner to be due to him, or to sue the defendant in a fresh suit for the sums which he now claims.

5. We have been referred to *Luchmeeput Singh Bchadoor v. Nund Coomar Goopto* (22 W. R. 388), a case decided by Kemp and AINSLIE, JJ., in which those learned Judges considered that in that suit the lower Courts did not do their duty by merely ordering that accounts should be rendered ; that the proper order was that the accounts should be examined and adjusted; and that it should be ascertained what was due from the defendant to the plaintiff; and as this had not been done, the case was remanded.

6. It may be that the nature of the suit perfectly justified the learned Judges in making the remand; but in the generality of suits in the mofussil, the plaint merely prays for an account. I remember a case in this Court (though I cannot say whether it was reported) in which MARKBY, J., explained very clearly the usual difference in the procedure between suits for an account brought on the Original Side of this Court, and similar suits brought in the mofussil.

7. On the Original Side the prayer of the plaint is not only for an account, but to have the account adjusted, and the balance ordered to be paid to the party entitled to it. The case is referred to the Registrar for this purpose; and after the account has been taken and the balance ascertained by the Registrar, the case comes again before the Court, and a final decree is made. Both parties have a full opportunity, if they please, of going into evidence before the Registrar, and afterwards objecting to the Registrar's findings and the whole matter is thus adjusted finally in one suit.

8. In the mofussil, however, this is generally done by means of two suits. The first is brought to compel the rendering of an account, and then, when the account has been rendered, and the plaintiff has had an opportunity of examining it and testing its correctness, he may sue in a second suit for the amount which he considers to be now due.

9. Of course, it is far more convenient, and a saving of time and expense, to have the whole matter settled in one suit instead of two; but the reason why two suits are generally brought in the mofussil is, because the Courts there have no officer like the Registrar to whom the account can be referred for adjustment.

10. In this particular case the plaintiff was of course unwilling to be bound by any account furnished by the defendant, considering the dishonest manner in which the latter had dealt with him. His claim in this suit embraces several sums which were not entered in the account rendered by the defendant, and we see no reason for saying that the plaintiff's claim is barred by anything that occurred in the former suit.

11. Another point raised here, (I can scarcely say that it has been argued), is, that the defendant is wrongly found to be indebted to the plaintiff in a sum of Rs. 333-7-9, which was said to be due to the plaintiff on certain decrees. It does not very clearly appear how or why this sum is found due from the defendant; but we rather gather that the defendant must have received that sum, and did not pay it over. This is

quite immaterial, however, for the purpose of the suit, because the plaintiff is found to be entitled to Rs. 837 altogether, and the decree is only for 500 rupees ; so that the sum due for rents received is amply sufficient to support the decree, quite irrespective of the Rs. 333-7-9 said to be due as the amount of the decrees.

12. The appeal is dismissed with costs.