

(1911) 05 CAL CK 0019

Calcutta High Court

Case No: Suit No. 965 of 1906

Khitish Chandra Acharya
Chowdhury and others

APPELLANT

Vs

Osmond Beeby

RESPONDENT

Date of Decision: May 16, 1911

Final Decision: Dismissed

Judgement

Harington, J.

This suit has been set down for trial on a preliminary point, namely, in order that it may be determined whether, on the facts which are common ground between the parties, the suit can succeed or whether it must not be dismissed. The claim is that a certain account be investigated, and five several sums which were allowed to the Defendant in this account be refunded. The Defendant was the administrator pendente lite in a certain suit under an order which entitled him to a commission on the assets at the rate of 2 per cent. The particular sums claimed in this case appear in the account. The first is under the date 27th August 1901 and the last in February 1904. The allegation of the Plaintiffs is that these items are improper charges, and therefore the account ought to be reopened, and these items refunded. Now there is no allegation that the Defendant has been guilty of anything of the nature of a fraud or dishonesty. It is part of the Plaintiff's case that the items in question appear in the accounts which were filed by the Defendant as administrator pendente lite, and were in due course allowed and passed by the Court. The complaint which the Plaintiff makes as regards the first item is that the commission ought not to have been allowed on the assets, but on the balance left of the assets after satisfying the claims which various banks had on them. As to the second item the complaint is that commission has been charged on an overvaluation of the deceased's share in joint property. As to the third item it is said that the commission charged has been calculated on a higher value than that given in the affidavit of valuation. Then as to the fourth item it is said that the commission has been charged upon the property without a sufficient specification of the property on which the commission is

charged being given. And, lastly, the fifth ground of complaint is that commission has been charged on the gross collections, and it is said it ought to have been charged on the net collections, which would have been considerably less. The position which the Defendant, as administrator pendente lite, occupied with relation to the Plaintiff or rather to the person through whom the present Plaintiff claims was that he was bound to render an account of all his dealings with the property during the time he occupied the office to which he was appointed. The Plaintiff or rather his predecessor was entitled to call upon him to account. But when the Defendant has accounted, it appears to me that he has discharged the duty that lay upon him as long as his accounts are complete and as long as the account is honest and contains neither any false or fraudulent entries, or as long as there are no omissions. I confess that where the Defendant has accounted in the presence of the parties who are entitled to call on him to account and those parties have had the opportunity of being heard, and when those accounts have, in the presence of those parties, been passed by the Court, I cannot see on what principle the Defendant can be called upon to account over again unless there has been fraud, mistake or some omission. The case of *Seagram v. Tuck* 18 Ch. D 296 (1881) which was referred to in the course of the argument is distinguishable, because in that case the Defendant was called upon to account for a sum which had been omitted from his accounts, and had never been accounted for. In that case the Defendant could not answer "I have accounted," because the particular sum in respect of which the suit was brought did not appear in the accounts at all, and he had neglected to do his duty to the Plaintiff in that suit by not accounting for it. Here it is conceded that every item of which the Plaintiff now complains appears in the account which was rendered by the Defendant. No case was cited in the course of the argument as an authority for the proposition that the Court could reopen accounts which had been properly passed in the presence of the parties, in the absence of either omission, fraud or mistake, because the party now desires to say that the sums which were allowed by the Court for commission ought to have been calculated on a different principle from that which the Court allowed when the accounts were in due course before it. In my view therefore the present suit will have to be dismissed, because the accounts have been passed by the Court in the presence of the parties, and there is no allegation that the order of the Court in passing those accounts was obtained by fraud or by the suppression of any material fact. If the parties objected to the principle on which the commission was allowed, they ought to have objected when the accounts were before the Court. For these reasons the suit must be dismissed with costs on scale No. 2.