
(1870) 03 CAL CK 0022

Calcutta High Court

Case No: None

Cumming and Others

APPELLANT

Vs

Green and Others

RESPONDENT

Date of Decision: March 21, 1870

Judgement

Markby, J.

I think it quite clear that I have power to make the order asked for. The application is to set this cause down at the bottom of the General Cause List for hearing. Mr. Hechle, as attorney for the defendants, has entered appearance on behalf of the defendants, although the time within which to appear granted to them by the summons has not yet expired. No doubt, under the summons served on the defendants, it was entirely in their option not to appear till the time had elapsed. They, however, chose, no doubt for very good reasons, that an attorney residing in Calcutta should accept service of the summons, and Mr. Hechle has, accordingly, filed a warrant to defend, and instructed the Registrar to enter his name as attorney for the defendants. I quite agree with Mr. Marindin that an appearance under Act VIII is not the same thing as appearance in England, or as it used to be in the Supreme Court. But in this Court the practice ever since its establishment appears to have departed in some respects from Act VIII. At any rate the English mode of entering appearance by attorney having been recognized by the Court, and the defendants having, in this instance, availed themselves of it, it must be taken that the result of their proceeding is as if all that was required by Act VIII had been done. It follows that I have full jurisdiction to make any order for hearing the suit which is proper under the circumstances. It was almost admitted by Mr. Marindin that. I could fix a day for the hearing of the case. If I have power to do that, I can Bet the cause down in the General List of Causes. The matter seems to me so clear, that when an attorney of this Court enters appearance for a defendant before the expiration of the time mentioned in the summons, I think it is the duty of the Registrar to put it down immediately in the Cause List, or at all events he ought to ask the Judge whether he should do be or not. In this case, I dare say there would be no difficulty in the defendants obtaining a postponement if they showed good cause when the case came on for hearing. The cause must be set

down at the bottom of the General Cause List. Costs of the application to be costs in the cause.

¹ Except, by order of the Court, or a Judge, no suit for final disposal shall be heard.....within three calendar months after the date of [the] service [of the summons on the defendant], if the defendant resides in England or elsewhere out of Her Majesty's dominions in India.