

**In Re: Two Attorneys**

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**SooperKanoon Citation :** [sooperkanoon.com/860346](http://sooperkanoon.com/860346)

**Court :** Kolkata

**Decided On :** Jun-19-1925

**Reported in :** AIR1925Cal964,90Ind.Cas.468

**Appellant :** In Re: Two Attorneys

**Judgement :**

Sanderson, C.J.

1. This is a Rule which was issued against two attorneys of the Court and which was based upon allegations contained in a petition, presented by the President of the Incorporated Law. Society, Calcutta.
2. In view of the course, which has been adopted by the learned Counsel, who appeared for the attorney, whose name stands first on the record, it is possible for me to deal with this matter shortly.
3. It appears that one Gora, the plaintiff in a suit Gora v. Templeton, instituted, in the High Court, obtained an attachment of certain furniture before judgment. The furniture was in same premises in Calcutta which were rented at about Rs. 600 per month. Apparently it was thought desirable on the part of the plaintiff that the furniture should be removed to premises which could be obtained at a less rental. The result was, that by an arrangement made by or on behalf of the plaintiff and the person representing a certain trust, the furniture was removed to and stored at premises belonging to the trust, namely, 84, Dhurumtolla Street.

4. The Sheriff, who had attached the furniture, had nothing to do with this arrangement.

5. The furniture was lying in the premises 84, Dhurumtolla Street for about ten months and was then sold. The proceeds of the sale were in the hands of the Sheriff. A claim was then made by the owners of the premises upon the plaintiff for rent at the rate of Rs. 325 per month.

6. The attorneys, against whom that rule was issued and who were acting for the plaintiff, wrote to the Sheriff on the 9th of May, 1924, as follows: 'Perhaps you may remember that our client rented the premises No. 84, Dhurumtolla Street for storing the furniture attached herein and the landlord has submitted his bill at Rs. 325 per month. We shall be much obliged if you will kindly send us your cheque for Rs. 3,250 out of sale proceeds to enable our client to discharge the liability. We enclose herewith a copy of the said bill.'

7. Accordingly a cheque for Rs. 3,250 was sent to the attorneys by the Sheriff and a receipt was given, dated the 13th of May. The terms of the receipt were as follows :- 'Received from the Sheriff of Calcutta by cheque No. 61 on the Imperial Bank of India the sum of Rupees (3,250-0-0) three thousand two hundred and fifty only, being the rent of the premises No. 84, Dhurumtolla Street, from November, 1922, to August, 1923, in the above cause.'

8. The cheque or its equivalent was handed by the attorneys to their client and they obtained a receipt from him in these terms 'Received from (the attorneys) the sum of Rs. 3,250 being amount realised by them from the Sheriff of Calcutta for payment of rent of premises No. 84, Dhurumtolla Street, which I undertake to settle with the landlord.'

9. It seems clear that this sum of Rs. 3,250 was obtained by the attorneys from the Sheriff upon the representation that the money was due to the landlords of 84, Dhurumtolla Street, for the rent of the premises and that if it were received from the Sheriff it would be paid in full to the landlords.

10. When the attorneys handed the money to their client I have no doubt that it was expected that the client would pay the amount in full to the landlords. I think that is obviously the meaning of the receipt which the plaintiff gave to the attorneys.

11. It turned out, however, that the attorneys' client did not propose to pay the Rs. 3,250 to the landlords.

12. In my opinion, it was then the duty of the member of the firm of attorneys, who had this matter in hand, to have told his client in effect: 'You must either pay this money (3,250) to the landlord in full or the money must be returned to the Sheriff.'

13. Instead of that being done the attorney upon the instructions of his client, wrote to the trustees of Society a letter, the material part of which is as follows:

Our client is informed by the Sheriff that you have sent in a bill to him in respect of the rent of the premises and he tells us that the Sheriff repudiates all liability in the matter on the ground that he did not engage the premises. Our client also denies liability on the ground that he did not engage them but as a matter of grace he instructs us to send you, as we do herewith, a cheque for Rs. 474, the balance remaining in his hands out of the monies realised by the sale after deducting the expenses he has been put to. Our client considers this sum a very handsome donation to charity in the circumstances.

14. In my judgment, that is a letter which ought not to have been written and the attorney ought not to have made himself a party to the course adopted by his client. The money had been obtained from the Sheriff on the express understanding that the money was due to the owners of the premises and that the whole amount would be paid to them in respect of the rent of the premises. But for that representation the money would not have been paid to the attorney by the Sheriff. Having regard to the way in which the money was obtained from the Sheriff and the purpose for which it was obtained, apart from other considerations, it is clear that the plaintiff in this suit was not entitled to retain the balance in his hands. The attorney, being an officer of the Court, owed a duty to the Court, as well as to his client, and in my judgment the attorney made a serious mistake in

the course which was adopted. If the money was not to be used for the payment of the rent it should have been returned to the Sheriff. The learned Counsel, who appeared for the attorney, has stated that the attorney now recognises that a serious mistake was made.

15. It is not suggested that there was any moral turpitude on the part of the attorney: I am of opinion however that there was a breach of the duty which the attorney owed to the Court.

16. I understand that at some date, subsequent to the above-mentioned letter, the plaintiff sent a cheque for Rs. 800 to the owner of the premises but, that sum was not accepted and the cheque was not cashed. The result is that at present no part of the Rs. 3,250 has been used for the payment of the rent. The attorney, through his learned Counsel, has undertaken to return the sum of Rs. 3,250 to the Sheriff to-day, and, through his learned Counsel he has expressed his regret for the mistake which was made.

17. In these circumstances, and in view of the above-mentioned undertaking, my learned brothers and I are of opinion that with regard to the first attorney on the record, it is not necessary for this Court to take any further steps or to make any order in respect of the Rule, which accordingly is discharged.

18. With regard to the second attorney on the record, it is clear that at the time when the material incidents of this case occurred he was not in India and he was in no way responsible for the matters, upon which the Rule was based. If that fact had been known to the Court at the time the application for the Rule was made, I feel sure that the Rule would not have been issued in his case. In the case of the second attorney on the record, therefore the Rule is discharged.

19. The learned Counsel who appeared for the Incorporated Law Society stated that if the first attorney would withdraw certain passages in the correspondence to which objection was taken, the Law Society would not ask for costs. The passages have now been withdrawn. Consequently we make no order as to costs.

20. There remains one more matter to which I must refer having regard to certain remarks which were made by the learned Counsel who appeared for the first attorney on the record, with regard to the action which was taken by the Incorporated Law Society.

21. My learned brothers and I are of opinion that when the matter, which we have been considering was brought to the notice of the Incorporated Law Society, it was competent to and proper for the Society, to bring the matter to the attention of the Court.

**Ghose, J.**

22. I agree.

**Buckland, J.**

23. I agree.

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