

Sutherland Vs. Cohen

Sutherland Vs. Cohen

SooperKanoon Citation : sooperkanoon.com/863245

Court : Kolkata

Decided On : Jul-01-1890

Reported in : (1890)ILR17Cal920

Judge : W. Comer Petheram, C.J., ;Prinsep and ;Pigot, JJ.

Appellant : Sutherland

Respondent : Cohen

Judgement :

W. Comer Petheram, C.J., and Prinsep J.

1. This is a suit brought by the plaintiff against the defendant for the specific performance of a contract to purchase a house. The contract was in writing, and two points have been argued before us: first, that the defendant is entitled to give evidence to show that the written document does not accurately express what the contract between the parties was; secondly, that on the true construction of the written contract as it stands, the defendant was not liable to take the house unless his solicitors approve the title: that they had not done so, and consequently this action is not maintainable. The first point was taken before Mr. Justice Wilson, and he says: 'I may say at once that the oral evidence in my opinion conclusively shows that the letters contained the whole of the contract between the parties, and that the defendant himself, his _ attorney and everybody else concerned in the case acted on that view of the matter.' As to that, it is sufficient for me to say that I

entirely agree with Mr. Justice Wilson in that view of the facts. The second question then resolves itself into one of the construction of the document, and on that question of construction there have been a variety of cases cited before us, which show that in a contract for the purchase of property where words such as 'subject to the approval of our solicitor' are contained—that puts the solicitors in the position of persons who are to say whether the title is a good one or not. It is sufficient to say that this contract does not contain such words, and I do not think it is necessary for me to say anything more than that I agree with the view that Mr. Justice Wilson has taken of the contract. The result in my opinion is that the appeal must be dismissed with costs, and the case must go back to the Registrar for the ordinary enquiry as to title in accordance with the order of Mr. Justice Wilson.

Pigot, J.

2. I am of the same opinion. I think that the meaning of the contract, as unaffected by any of the considerations arising from the evidence which has been given, is that which has been attributed to it by the learned Judge in the original Court. If, on the other hand, the evidence in the case may be looked to upon the grounds argued by Mr. Evans, and having reference to the provisions of Section 92 of the Evidence Act and of the Specific Belief Act as referred to by him, then the safest guide we in that case could take would be, as it seems to me, the evidence of Mr. Siddons, who has stated the circumstances of the introduction into the contract of the interpolated words. It seems to me that, assuming the propriety of using that gentleman's evidence for this purpose, and giving to that evidence its fair and reasonable construction, and to the rest of the words of the document their fair meaning, the effect of the agreement certainly could not be carried further than is expressed in the words of Lord Justice Cairns in *Hussey v. Home Payne* in L.R. 4, Appeal Cases, page 322, where he says: 'I am disposed to look upon the words as meaning nothing more than a guard against its being supposed that the title was to be accepted without investigation, as meaning in fact the title must be investigated and approved of in the usual way, which would be by the solicitor of the purchaser.' In no way in which the case is to be looked at can it, I think, be properly held that it was the intention of the parties, or of either of them, that the

bargain was to depend upon the unfettered discretion of Mr. Gregory.

3. I agree with the Chief Justice that this appeal must be dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com