

(1885) 05 CAL CK 0015
In the Calcutta High Court

Bipro Doss Dey

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 21-05-1885

Acts Referred:

Citation : (1885) ILR (Cal) 655

Hon'ble Judges : Pigot, J

Bench : Single Bench

Judgement

Pigot, J.—I think the question in issue in this matter is more as to what is to be gathered from a fair construction of the words in the affidavit of Major Thomas, than any question of law at issue between the parties.

2. The case of Southwark & C Water Co. v. Quick L.R. 3 Q.B.D. 315 is relied on by the Advocate-General for the defendant, and also by Mr. Hill for the plaintiff.

3. I construe the affidavit thus: The letters of which production is sought, were a letter by Major Thomas to Major Hallet, and Major Hallett's reply to it; the first being a letter written for the purpose of giving Major Hallett information with a view to possible future litigation. It does not appear that it, or the reply to it, was written for the purpose of being communicated to any solicitor. It is consistent with the terms of the affidavit that both letters were written without such a purpose; but that they were of such a nature, that they might, in the event of litigation, be communicated to a solicitor. This does not show enough to entitle the documents to protection. It is for the party claiming the privilege to show that the documents were prepared for the use of his solicitor; that they came into existence for the purpose of being communicated to the solicitor with the object of obtaining his advice or of enabling him to prosecute or defend an action, as Cotton, L.J. at page 322, or as Brett, L.J., at p. 320, in the case of the Southwark and Vauxhall Water Co. v. Quick says (modifying the words of Mellish, L.J. in Anderson v. Bank of British Columbia "merely for the purpose of being laid before the solicitor for his advice or consideration."

4. I think the affidavit does not show that these letters were written for the purpose--which I think means substantially "merely" for the purpose--of being communicated to the solicitor. It does not say that Major Thomas' letter was addressed to Major Hallett in order that it might be submitted to the solicitor of the Government; but that "all such information"--an ambiguous phrase as it is here used--should be submitted to him.

5. Nor would it, I think, be enough to protect these letters, if they were written with a view to possible future litigation, and with the intention that, in that case, they should be laid before a solicitor.

6. I think the plaintiff is entitled to the discovery sought with regard to the letters mentioned in paras. 4 and 5 of Major Thomas' affidavit.