

(1889) 06 CAL CK 0011
In the Calcutta High Court

Mackenzie Lyall and Co.

APPELLANT

Vs

Chamroo Singh and Co.

RESPONDENT

Date of Decision : 15-06-1889

Acts Referred:

Citation : (1889) ILR (Cal) 703

Hon'ble Judges : W. Comer Petheram, C.J.;Trevelyan, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—The question in this case is, whether there was any contract between the parties.

2. The plaintiffs in this case are auctioneers carrying on business in this city, and the defendants are merchants, and on some day the plaintiffs published an advertisement of the goods they had to sell, and they also published the conditions of sale. On the occasion of this sale, an agent of the defendants attended the sale and bid for certain lots and the auctioneer who held the sale did not knock down the lots, but intimated to the bidder that his bid was accepted kutcha-pncca.

3. Now, the first thing that occurs to one to do is to look at the conditions of sale to ascertain whether there are any conditions which deal with an intimation of this kind, and we find that there are not- The plaintiffs say that by the custom of the sale room, an intimation of this kind is an intimation that the goods were put up by them for sale, subject to a reference to the owners of the goods if, I suppose, the bids are below a certain amount. What they undertake to do is, they undertake to submit the bid to the owners within a certain time, but until it has been so submitted there can be no acceptance of the bid. In this case, the defendants withdrew the bids, or repudiated the bids, or at all events they wrote to the auctioneers intimating that they did not intend to purchase the goods. In an ordinary sense, it is clear that a bid made at auction can be retracted before it has been accepted, the reason being that until the goods are knocked down there is no contract with any one. He who makes the offer may withdraw unless

he is under a contract not to do it, because until it is accepted there is no contract between the parties. The defendants having withdrawn the bids before they were accepted, it is clear there was no contract of sale. Mr. Acworth admits that what took place could not amount to a contract of sale, but he contends that there is, by the custom of these sale rooms, an implied agreement, or an agreement by the bidder that, in consideration of the agreement by the auctioneers to submit the offer to their principals, the bidder promises not to retract his bid until it has been either accepted or refused, It may be that that very often takes place. There is no evidence to show that there was such a contract in this case. Indeed the evidence is the other way, because if it were part of each contract, you would expect to find it mentioned in the conditions of sale, but the auctioneers do not place anything of the kind in the conditions of sale. Then, is there any evidence that there was so universal a custom as to become part of the contract by operation of law? There is no evidence of that kind. The only evidence given on the subject is the evidence of one of the assistants in the sale room, that such an arrangement had never been repudiated. That in my opinion is absolutely insufficient to establish a custom of this kind, and I think, therefore, that, under these circumstances, there was no contract, and there being no contract there could be no breach and no cause of action, and the learned Judge of the Small Cause Court was right in dismissing the suit so far as the goods were concerned.

4. I think it right to add that if any persons in the position of auctioneers wish to incorporate any such special arrangements as this in their contracts, it ought at least to be made a portion of the conditions on which they sell. In the result, the questions referred to us will be answered in the negative.