
(1877) 06 AHC CK 0003

Allahabad High Court

Case No: None

Akbar Khan and
Others

APPELLANT

Vs

Lachman Rai and
Others

RESPONDENT

Date of Decision: June 5, 1877

Citation: (1875) ILR (All) 440

Hon'ble Judges: Turner, J; Pearson, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

Turner, J.

It is to be regretted that the Courts below have not inquired more fully before affirming the existence of customs of which some, although no doubt they at onetime obtained in certain parts of the country, appertained to the feudal system and are disappearing with that system.

2. In such cases it, is peculiarly incumbent on the Courts to try the existence of the custom regarding each cess as a separate issue, and to test the parol evidence given generally as to the existence of the custom by ascertaining on what grounds the opinion of each witness is based. The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by judicial or revenue records or private accounts and receipts that the custom has been enforced.

2. It should also have been specifically determined on what castes or classes of tenants custom imposes a cess claimed if the existence of the custom is proved. Again, a custom to be good must be definite, the size of the pot of sugar and the

basket of cow-dung is left uncertain, as are also the times of rendering these alleged dues.

3. That the claims may be more thoroughly tried, we set aside the decrees of both Courts, and direct the Court of First Instance after framing specific issues to re-try the suit. The costs incurred hitherto will abide and follow the result.