

(1874) 11 PRI CK 0002

Privy Council

Case No: None

Mussumat Chahee
Kowar and Another

APPELLANT

Vs

Seths Gujmul;
Jeithmul And;
Thanmul

RESPONDENT

Date of Decision: Nov. 18, 1874

Citation: (1874) 2 IndApp 34

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Barnes Peacock, J.

1. In this case a question involving partnership accounts came before the First Court, that of the Assistant Commissioner. The Court referred the investigation of the accounts to Commissioners, under Section 181 of Act VIII. of 1859. Upon that the Commissioners made a report. Objections were taken to that report by the Defendant, and the Commissioners made a reply to those objections. The Court sent the matter again to the Commissioners for further investigation, and the Commissioners made a supplemental report. No objections were taken by the Defendants to the supplemental report. It appears clear that this objection, which Mr. Cowie has now raised on the part of the Defendants, was not raised before the first Court by the objections to the first report of the Commissioners. It was certainly not taken by way of objection to the second report, inasmuch as no objections were taken to it; and it does not appear that the matter was ever called to the attention of the first Court, orally, when the case came before it.

2. Their Lordships do not think it necessary to lay it down as an absolute rule of law that no objection can be taken to the report orally, unless the parties have taken formal exceptions in the way in which exceptions are now taken to a Judge's certificate in this country. But they are of opinion that, at least, the attention of the Court ought to be called to the objections. Section 181 enacts that the proceedings of the Commissioners to whom

the accounts are referred for report shall be received in evidence in the case, unless the Court shall have reason to be dissatisfied, in which case the Court shall make such further inquiry as may be requisite. Now, if the attention of the first Court had been called to this particular point which is raised by the learned Counsel for the Defendants, the first Court would have entered into an investigation to see whether there was really any substance in the objection, and if they had entertained any doubt upon the point, they could have referred the matter back to the Commissioners for a report as to whether the objection did apply, and then they would have received the answer of the Commissioners. But nothing of the kind occurred. The attention of the Court never appears to have been called to the objection, and the Court acted upon the report of the Commissioners, in the absence of any such objection being raised. Upon that there was an appeal to the next Court namely, to the Deputy Commissioner. The objection not having been raised before the first Court, it appears also that no objection was taken by way of appeal to the second Court upon the point. It was admitted by the learned Counsel for the Defendant that the grounds of appeal from the Assistant Commissioner to the Deputy Commissioner did not include the point which is now made; subsequently, however, he called their Lordships' attention to the sixth reason of appeal, first, second, and third paragraphs. Their Lordships have carefully examined those grounds of appeal, and it appears to them that they do not include the objection which has been taken. Their Lordships, therefore, think that the point is not now open for discussion, and, consequently, that the decision of the Commissioner upon the final appeal was correct.

3. Under these circumstances, they will humbly recommend Her Majesty to confirm the decision of the Commissioner, and to dismiss this appeal, with costs.