

(1869) 12 CAL CK 0002

Calcutta High Court

Case No: Appeals Nos. 5 and 6 of 1869

In Re: In the matter of the
petition of Mussamat Bibi
Najibunnissa

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 8, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that the judgment of Mr. Justice Kemp is the correct one. Putting out of the question the evidence of the nikah marriage between Reasat Ali and Turaban, there was an acknowledgment by Reasat Ali that Nowazis Ali was his son. An acknowledgment according to Mahomedan law in these cases in which acknowledgment is binding, does not amount merely to prima facie evidence which may be rebutted, but it establishes the fact acknowledged. The acknowledgment of a child as being the son of the acknowledger is valid, when the ages of the parties admit of the party acknowledged being the son of the acknowledger, and where the descent of the person acknowledged has not been already established from another. In the present case, as I understand the evidence, when Reasat Ali acknowledged Nowazis Ali to be his son, the latter was not known and had not been established to be the son of another person. If Mr. Allan's contention is correct that an acknowledgment in Mahomedan law in cases in which acknowledgment is allowed, has merely the effect of prima facie evidence, then the rule which is laid down as to the acknowledgment of a son must also be applicable to an acknowledgment of any other relationship, because if a man says that another man is his brother, it is prima facie evidence that the person so acknowledged is the brother of the person acknowledging him; but the Mahomedan law says that the acknowledgment of a man as being another's brother has not, under the Mahomedan law, the same effect as the acknowledgment by a person that another is his son. It appears to me that, according to Mahomedan law, a certain effect, subject to certain conditions, is given to a certain acknowledgment which is not

given to other acknowledgments (see Baillie's Digest of Mahomedan Law, page 403). In this case there was the acknowledgment by Reasat Ali that Nowazis Ali was his son, and there was nothing at the time which, according to the conditions of Mahomedan law, would prevent that acknowledgment from being binding on Reasat Ali

2. The judgment of Mr. Justice Kemp is affirmed with costs.

¹ If a person acknowledge a son, the person acknowledged inherits together with the other heirs of the acknowledger, though they should all (as in the case before us), deny his descent. The person so acknowledged would also inherit from the father of the acknowledger, though the grandfather should deny his descent.--Baillie's Digest, p. 406.