

(1870) 06 CAL CK 0001

Calcutta High Court

Case No: None

Srimati Jagadamba
Dasi

APPELLANT

Vs

J.M. Grob and Another

RESPONDENT

Date of Decision: June 9, 1870

Judgement

Norman, J.

In this case there are two issues: first, what is the amount due to Messrs. Grob & Co. on the banianship account of Rajkrishna Mitter & Co., as between the defendant and the plaintiff as representing Lalchand Mitter. This question has been disposed of, and the exact state of the account will be ascertained by reference to Baboo Kadarnath Bose; secondly, did Lalchand guarantee to the defendants, Messrs. Grob & Co., the payment of the amount of that account? The alleged guarantee is not in writing; that which the defendant seeks to prove is an agreement by word of mouth. (His Lordship held that Lalchand did guarantee the debt, and continued.) An ingenious point of law has been raised by the Advocate-General on the 4th section of the Statute of Frauds, which enacts that no action shall be brought whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriage of another person, &c., unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him law-fully authorized." The Advocate-General argued that this is not so much a law relating to contracts as a law of the forum regulating the procedure of the Court, and he referred to *Leroux v. Brown* 12 C.B. 801, in which it was held that a verbal contract made in a foreign country cannot be enforced in a Court of law in England if required under the 4th section to be in writing. The decision is certainly a very startling one, that a contract, valid and binding, according to the law of the place where it was made, shall be treated by an English Court as of no force, because the parties making it have not observed certain formalities required by English law, of the requirements of which, at the time of making the contract, the parties might have had no means of informing themselves. I think that no lawyer can read the judgment in that case without

surprise. Its correctness has been questioned, but it never has been overruled. But whether that case be law or not, it does not govern that now before me. The statute 21 Geo. III., c. 70, s. 17, provides that "the Su-prima Court shall have full power and authority to hear and determine in such manner as is provided for that purpose in the Charter or Letters Patent all and all manner of suits against the inhabitants of the city of Calcutta, provided that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans; and in the case of Gentus, by the laws and usages of Gentus; and where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant." Now I have no doubt that a contract of guarantee is a matter of contract and dealing, and therefore the validity of it, and the decision or determination of this Court, must be, in the case of Hindus, according to the laws and usages of Hindus. The Advocate-General raised a second point on the construction of the 2nd clause of the 17th section of 21 Geo. III., c. 70, that, where only one of the parties is a Hindu, the case must be determined according to the laws and usages of the defendant. I think that the 1st clause is quite general; matters of contract and dealing between party and party, in the case of Gentus, are to be determined by the laws and usages of Gentus. The 2nd clause does not appear to me to limit the operation of the first. It is merely intended to make it clear that no person shall be made liable on a contract, except according to his own, whether it be Mahomedan or Hindu laws. However that may be, in another view of the section in question, the present case would fall within the 2nd clause. Messrs. Grob & Co. seek to set off a debt alleged to be due to them from the estate of Lalchand. Mr. Grob is an actor; and Jagadamba, for the purposes of this issue, must be treated as a defendant, and exactly in the same position as if there were two cross-actions, in one of which she was defendant. I am of opinion that the contract of guarantee may be proved, though not in writing as required by the 4th section of the Statute of Frauds. I am satisfied it has been proved, and, subject to the enquiry as to the amount due to the defendant, the rupees 23,000 may be set off.