

(1868) 11 CAL CK 0005

Calcutta High Court

Case No: Regular Appeal No. 61 of 1868

Bhagawani Kunwar

APPELLANT

Vs

Lala Baijnath Prasad

RESPONDENT

Date of Decision: Nov. 19, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

The plaintiff purchased a debt due from the defendant to Ramnath, but the defendant had received a decree against Ramnath for a certain amount arising out of the same transaction. According to the English law, the plaintiff, as the assignee of Ramnath's interest in the debt, would have had to sue the defendant in the name of Ramnath, as plaintiff. If that had been done in the present case, it is clear that the defendant might have set off the debt due from Ramnath to her. According to the equity and good conscience administered in the mofussil, the plaintiff was entitled to; sue the defendant in his own name for the debt due from the defendant to Ramnath, which he purchased; but the same equity and good conscience, which allows the plaintiff to sue for the debt due to Ramnath entitles the defendant to set off, as against the plaintiff, the debt which was due from Ramnath to her at the time of the plaintiff's purchase, and of which the plaintiff had notice. Under these circumstances the defendant is entitled to set off the amount of the decree recovered by the defendant against Ramnath, with interest from the date of the decree to the date of the judgment in the lower Court in this case, that is to say the 29th August 1869. The amount of the interest will be calculated by the Officer of the Court at 12 per cent., the rate given by the decree; the principal and interest due on the decree will be deducted from the amount awarded to the plaintiff; and the decree of the lower Court amended by giving a decree to the plaintiff for the balance. The costs of this appeal and the costs in the lower Court will be borne by the parties in proportion to the amounts decreed and disallowed.