

(1880) 09 CAL CK 0001

Calcutta High Court

Case No: None

Jugtanund Misser

APPELLANT

Vs

Nerghan Singh and  
Another

RESPONDENT

---

Date of Decision: Sept. 15, 1880

Acts Referred:

- Evidence Act, 1872 - Section 92

Citation: (1881) ILR (Cal) 433

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

---

### Judgement

Richard Garth, C.J.

(who, after setting out the facts as above, continued):-I think that the District Judge was wrong in admitting the parol evidence; he appears to have admitted it under proviso 3 to Section 92 of the Evidence Act; but that proviso in my opinion does not apply to a case of this kind.

2. I think that the District Judge has taken a wrong view of proviso 3. That proviso, as it seems to me, is intended to introduce into the law of evidence the rule which is well established and understood in England, and treated of in Section 1038 of Mr. Taylor's book on Evidence. That rule is, that when, at the time of a written contract being entered into, it is orally agreed between the parties that the written agreement shall not be of any force or validity until some condition precedent has been performed, parol evidence of such oral agreement is admissible to show that the condition has not been performed, and consequently that the written contract has not become binding.

3. This will be found exemplified and explained in the following cases:-Davis v. Jones (17 C. B. 625), Bell v. Lord Ingestre (12 Q. B. 317), Pym v. Campbell (6 E.B. 370) and Annagurabala Chetti v. Kristnasami Nayakkan (1 Mad. H. C. Rep. 457).

4. These cases show that, until the condition is performed, there is in fact no written agreement at all.

5. But this rule could never apply to a case where the written agreement had not only become binding, but had actually been performed as to a large portion of its obligations.

6. To admit parol evidence to show that some particular stipulation could not be enforced, would be to introduce the mischief which Section 92 was intended to prevent; and it seems clear to me that the true meaning of the words "any obligation" in proviso 3 is any obligation whatever under the contract, and not, as is contended by the defendants, some particular obligation which the contract may contain.

7. I think, therefore, that the parol evidence was inadmissible, and that, as the defence entirely rests upon it, the plaintiff is entitled to a decree.

8. The plaintiff will be entitled to his costs in both Courts.

Mitter, J.

9. I concur in this decision. I do not think it necessary to decide the question whether the defendants are entitled to prove the parol agreement upon which they rely; because, assuming that they were so entitled, it was shown in the course of the argument that the plaintiff has discharged the obligation imposed upon him by that agreement.