

(1868) 01 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 2362 of 1866

Abdul Haye and Others

APPELLANT

Vs

Nawab Raj and Others

RESPONDENT

Date of Decision: Jan. 31, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

The substantial question of law, which has been referred for the decision of the Full Bench, is whether, having reference to the cases mentioned in the order of reference, a bona fide purchaser for valuable consideration, and without notice, at a sale in execution of a decree, is protected from having the sale set aside under the present or former law. We are of opinion that the decisions do not go to the extent of saying that, under no circumstances, can a sale be set aside as against a purchaser. In each case it will be for the Court which tries the case to determine whether it will be in accordance with the principles of justice, equity, and good conscience, that the sale ought to be set aside or not. Each case must be determined by the Court upon its own merits.

2. This case will, accordingly, go back to the Division Bench which referred it, with our opinion that it is not bound by the decisions referred to.