

(1863) 02 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 822 of 1862

Purnima Chowdrain and Others

APPELLANT

Vs

Nittanand Shah and Others

RESPONDENT

Date of Decision: Feb. 19, 1863

Judgement

Sir Barnes Peacock, Kt., C.J.

In this case the plaintiff sued upon an adjusted account. The first Court held that the plaintiff had proved the adjustment of the account. The Judge reversed that decision, upon the authority of two cases decided in the late Sudder Court,--viz., Ramgopal Nundee v. Sreeram Pattuk S.D.A., 1859, 1228 and Bhoopnarain Sahoo v. Sheogolam Sahoo S.D.A., 1852, 594. In the latter case, the Court referred to a decision in the Privy Council, Sorabjee Vacha Ganda v. Koonwurjee Manikjee 1 Moore's I.A., 47; but all that was decided in that case was that one party could not bind the other party by an adjustment made by himself alone in his own books. In that case there was no evidence whatever to show that the defendant had adjusted or acknowledged the correctness of the account. We are of opinion that the adjustment of an account or the acknowledgment of its correctness may be proved by verbal evidence, in the same manner as any other fact; and that the Judge was wrong in point of law in holding that the adjustment could not be proved except by an acknowledgment in writing, or by a signature or visible mark. The Judge was, no doubt, right in acting upon the decision of the late Sudder Court, but we think that those cases were erroneously decided. The case must, therefore, be remanded to the Judge to try whether in fact there was any adjustment or not.