

Before Mr. Justice L. S. Jackson and Mr. Justice Macpherson.

1872  
February 6.

SURBESWAR GOSE AND OTHERS (PLAINTIFFS) v. CHOTO ARIZOLLAH  
MANDAL (DEFENDANT).\*

*Special Appeal—Finding of Fact*

A finding of a fact by the lower Appellate Court was set aside on special appeal, and the case was remanded on the ground that the Judge assumed a state of things in favor of the defendant which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts.

In this case there was a dispute between the plaintiffs and the defendant as to the rate of rent which the defendant was bound to pay. The defendant produced a potta apparently more than fifty years old, and also a quantity of receipts, from which he showed that the rent due from him was at the rate of 56 rupees annually: but the plaintiffs produced the accounts of the village for the year 1268 (1861-62) delivered by the defendant himself, who was at that time the Naib of the village, and those accounts contained an entry of the defendant's rent at the rate of 64 rupees and some annas, which were stated to be sicca rupees, the equivalent of which is 68 rupees some annas in Company's rupees as stated by the plaintiffs.

The Judge on this part of the evidence said,—“The chief evidence in support of the plaintiffs' averment is afforded by the accounts of 1268, because they bear the signature of the defendant himself, who was at that time employed as a Naib on the estate; and on that evidence alone, I think, that the plaintiffs would be entitled to a verdict notwithstanding the potta and earlier accounts; if it were quite clear that he was aware of the entry against himself. But of this there may be some doubt, for it is possible that the leaf which contains the entry in question may have been inserted in the account which is signed by him on the first page only.”

Baboo *Srinath Das*, for the appellant, contended that the Judge had dealt with the case in an improper manner and had started with a wrong impression upon his mind, owing to his having drawn an incorrect and improper inference from a fact. The Judge assumed that the defendant was not aware of the entries in the account. This was not even alleged by the defendant. Where an incorrect and illogical inference is drawn from facts, it is an error in law in the investigation of a case and affords a ground of special appeal.

Mr. *Allan* for the respondent.—This is a special appeal, and this Court is bound to accept the facts found by the lower Courts. The Judge has not

\*Special Appeal, No. 854 of 1871, from a decree of the Judge of 24-Pergunnas, dated the 4th May 1871, reversing a decree of the Deputy Collector of that district, dated the 23rd August 1870.

rested his decision solely on the supposed assumption that the defendant was not aware of the state of the accounts, but has gone fully into, and commented upon, the whole of the evidence; and has come to the conclusion that the particular leaf in the account may have been inserted afterwards, which is tantamount to a finding that that leaf is false, and the signature upon it a forgery. The question was purely one of fact and the finding is final.

The judgment of the Court was delivered by

JACKSON, J. (after stating the facts as above and adverting to the Judge's decision)—Now the Judge here starts with a theory of his own as to the defendant's being possibly unaware of the entry relied on by the plaintiff. That is not merely not alleged by the defendant, but it seems to be actually contradictory to his case; for it seems, he denied the accounts in question altogether; that denial has been found against him, and, from the circumstance of that false denial, I should say that the inference rather was that he knew of the entry against him. But the Judge supports his theory by a statement of fact which appears to be altogether incorrect. He says that the account is signed by the defendant on the first page only. Now it appears, on inspection of the accounts, that they are signed not only on the first page but on every leaf; and the leaf which contains the entry in dispute is signed just in the same manner as the other leaves are. Of course it would be open to the Judge, if that particular signature was denied, to find that it was forged; but this he has not found, and unless the Judge finds that, the objection to this leaf and the entry upon it falls entirely to the ground. If the leaf be genuine the entry in it is clearly an admission on the part of the defendant that he had been accustomed to pay the amount of rent set down there.

Therefore, I think, the case must go back to the Judge in order that he may reconsider this matter in view of the fact I have stated. No doubt, the Judge does go at considerable length into the rest of the evidence, and seems to find on the whole in favor of the defendant, but it must be remembered that he starts with this strong impression on his mind that the defendant's accounts had a leaf interpolated in them which was not authenticated, and which shewed an entry of which the defendant was not aware.

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