

The objection taken by the special appellant on the basis of Circular Order No. 33 of 1843, which prohibits officers from travelling out of the record, or of deciding points not before them, has been, we observe, disposed of in the remarks of the presiding Judges of this Court on the remand.

And with regard to the special appellant's last contention, that, if the property be shown to be joint, the special respondent must take his share of the debt for which the property was sold, we see no reason for expressing an opinion, that point not having been pleaded below, and not being before us now.

We dismiss both these appeals with costs.

The 24th August 1865.

Present :

The Hon'ble F. B. Kemp and W. S. Seton-Karr, *Puisne Judges.*

Judgment of Appellate Court.

Case No. 1399 of 1865.

Special Appeal from a decision passed by Baboo Huro Gourree Bose, Principal Sudder Ameen of Chittagong, dated the 10th March 1865, affirming a decision passed by the Moonsiff of that District, dated the 30th July 1863.

Korban Ali and another (Plaintiffs),
Appellants,

versus

Ashan Ali, *alias* Lotf Ali, and others
(Defendants), *Respondents.*

Baboo Gopeenath Mookerjee for Appellants.

No one for Respondents.

The judgment of an Appellate Court (instead of merely endorsing the opinion of the Court of first instance) should contain the point or points for determination, the decision thereupon, and the *reasons* for such decision.

THE Principal Sudder Ameen has not passed a proper decision in this case. The suit involves points of considerable intricacy. The Court of first instance has given an elaborate decision. The Principal Sudder Ameen contents himself with endorsing the opinion of the Court of first instance. This is not what the law requires.

The judgment of the Appellate Court should contain the point or points for determination, the decision thereupon, and the *reasons* for such decision.

The case is remanded. The Principal Sudder Ameen will record a proper decision, meeting the requirements of Section 185 of the Code of Civil Procedure.

The 25th August 1865.

Present :

The Hon'ble G. Campbell and A. G. Macpherson, *Puisne Judges.*

Arbitration (order of reference to)—Difference of opinion among Arbitrators.

Case No. 702 of 1865.

Special Appeal from a decision passed by the Additional Judge of Bhaugulpore, dated the 22nd December 1864, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 21st June 1864.

Futteh Singh and others (Defendants),
Appellants,

versus

Gango (Plaintiff), *Respondent.*

Mr. C. Gregory for Appellants.

Baboo Dwarkanath Sein for Respondent.

An order of reference to arbitration should provide for difference of opinion among the arbitrators, and authorize a majority to decide the case.

It is greatly to be regretted that the advantages of arbitration (so beneficial for the settlement of disputes in this country) should be lost, owing to the habitual and most inexcusable neglect of the Mofussil Courts to comply with the very simple and salutary provisions of the Code of Civil Procedure regarding arbitration. Many cases which have come before this Court show the constant omission to draw out a proper and definite arbitration award as required by the law. Cases are flowing to the arbitrators in the most vague terms. In this case, we feel reluctantly compelled to declare the arbitration award a nullity, because being not unanimous, but that of a majority of 5 to 2. There is no order as required by Section 316 providing for difference of opinion between the arbitrators, and enabling a majority to decide the case. The case is remanded for re-trial, and we trust that we shall not continue to have occasion to remark on the absence of proper and legal arbitration orders.