

MADRAS HIGH COURT REPORTS.

APPELLATE JURISDICTION (a)

*Special Appeal No. 213 of 1870.*

KANAKATALA CHELLAMAIIYA..... *Special Appellant.*

POLESHETTI PAPAIIYA..... *Special Respondent.*

Although a Commissioner's Report should have very great weight attached to it, it is not absolutely binding.

Venkata Reddi v. Venkataramaiya, 1, *High Court Reports*, 418, dissented from.

170.  
number 7.  
No. 213  
1870.

THIS was a Special Appeal against the decision of H. Morris, the Civil Judge of Rajahmundry, in Regular Appeal No. 157 of 1869, confirming the decree of the Court of the Principal Sadr Amin of Rajahmundry, in Original Suit No. 3 of 1868.

This was a suit to recover Rupees 1,871-5-9, principal and interest due on an adjustment of accounts.

The plaintiff stated that, on his leaving his village to reside for some years in one of the Southern Districts on December 16th, 1856, the defendant entered into a contract, which was reduced to writing on a cadjan leaf, agreeing to act as the plaintiff's agent, receiving a commission of two per cent. on all articles of merchandise received from the plaintiff, and a commission of one per cent. on all articles purchased for him. An adjustment of accounts took place on March 7th, 1865, after the plaintiff's return, when a balance was found due from the defendant, which he has since refused to pay.

The defendant denied the cadjan account, and pleaded that the plaintiff owed him Rupees 364-4-6, instead of his owing anything to him.

The Principal Sadr Amin considered that the cadjan contract was genuine, but the parties agreed that the defendant should receive only one per cent. as commission on all articles of merchandise purchased for him. The Principal Sadr Amin appointed a Commissioner under Section 181 of the Code of Civil Procedure to examine the accounts of both parties, and as he reported, after examining the accounts in the presence of the parties, that Rupees 411-15-11 were due from the defendant to the plaintiff together with

(a) Present: Holloway, Acting C. J. and Innes, J.

interest at 12 annas per cent., the Principal Sadr Amin gave judgment in favor of the plaintiff for that amount with costs. 1870.  
December 7.  
S. A. No. 213  
of 1870

Both parties appealed to the Civil Court against the decision.

Upon appeal the Civil Judge gave judgment as follows :—

The Principal Sadr Amin appointed a Commissioner under Section 181 of the Code of Civil Procedure to investigate and adjust the accounts connected with this suit, and both parties appeal against the report submitted by the Commissioner, on which the Principal Sadr Amin founded his judgment. The parties were present while the Commissioner made his investigation, and it does not appear from anything in the record that they made any objection in the Court below to the account which he furnished. I decline, therefore, with reference to the ruling of the High Court in the two Regular Appeals published in the *High Court Reports, Vol. I, pp. 1,418*, to take a fresh account, or to enter into the details of the account already prepared.

The Principal Sadr Amin's decision is confirmed, and both appeals dismissed with costs.

The defendant appealed specially to the High Court.

*Sloan*, for the special appellant, the defendant.

*Kuppuramasamy Sastry*, for the special respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—The decision at page 418 of the 1st Volume of the *High Court Reports* has been frequently held not law. While a Commissioner's Report should have very great weight given to it and not be capriciously deviated from, it is not absolutely binding. We are of opinion, therefore, that the Judge should decide the appeal upon the merits.