

think that effect ought to be given to this contention on behalf of the respondent. The result is that the judgments and decrees appealed against must be set aside, and the case sent back to the First Court in order that it may determine the question whether the defendant has acquired a right of occupancy. The parties will be at liberty to adduce fresh evidence upon that question. The costs will abide the result.

MACLEAN, C. J.—I have only one word to add. The appeal might, to my mind, be disposed of upon this short ground. It is clear that the defendant was claiming as a sub-lessee not as an occupancy raiyat; but as the instrument creating the sub-tenancy was not registered, it was not valid under s. 85 of the Bengal Tenancy Act as against the landlord. That ought to end the case. Then it is said that, inasmuch as here the interest of the landlord and of his tenant became united in the same person, *viz.*, the superior landlord, the defendant's rights are saved under s. 22 of the Bengal Tenancy Act. The answer is that he had no rights and there was nothing to be saved.

S. C. G.

Appeal allowed, case remanded.

1900

 PEARY
 MOHUN
 MOOKERJEE
 v.
 BADUL
 CHANDRA
 BAGDI.

ORIGINAL CIVIL.

*Before Mr. Justice Stanley,*BARLOW *v.* CHUNI LALL NEOGHI AND ANOTHER.**Evidence—Account sales—Evidence Act 1 of 1872, s. 32.*

1901
 Jan. 3.

In a suit to recover loss sustained on the sale by the plaintiffs of goods consigned to them by the defendant for sale by their London firm, account sales are good *prima facie* evidence to prove the loss, unless and until displaced by substantive evidence put forward by the defendants.

THE defendants in Calcutta consigned mica through the plaintiffs for sale by the plaintiffs' London firm in London. The mica so consigned was sold at a loss. The plaintiffs thereupon instituted this suit in Calcutta to recover the loss, and desired to

* Small Cause Court Transfer Suit No. 15 of 1899.

1900
 BARLOW
 v.
 CHUNI LALL
 NEOGHI.

prove the amount of the loss on the London sales. They tendered the London account sales which their witnesses proved were received in the ordinary course of business in Calcutta for London together with the accounts-current. Press copies of the said account sales had been previously sent to the defendants and not objected to by them. None of the witnesses, however, could prove the signature of the London brokers on the original account sales.

Mr. Knight (Mr. J. G. Woodroffe with him) for the plaintiff's cited *Smith v. Blakey* (1); *Shearman v. Fleming* (2); *Hodgson v. Rupchand Hazarimul* (3); *Mayen v. Alston* (4); and Story's Equity Jurisprudence, s. 526, and referred to s. 32 of the Evidence Act.

Mr. Ghose and Mr. M. P. Roy for the first defendant.

The second defendant filed a written statement, but did not appear at the hearing.

STANLEY, J.—Account sales were furnished to one partner and no objection was ever made to them. As has been pointed out by Counsel account sales are *primâ facie* evidence of the amount realised in the foreign market by the sale of the goods. If it were not so, it would be impossible to carry on mercantile transactions with merchants in distant parts.

Attorneys for the plaintiff: Messrs. *Watkins and Co.*

Attorney for the first defendant: Babu *B. Mullett*.

C. E. G.

(1) (1867) L. R., 2 Q. B., 326.

(2) (1870) 5 B. L. R., 619.

(3) (1869) 6 Bom., H. C. (O. C.), 39.

(4) (1892) 1, L. R., 16 Mad., 238.