

*Privy Council Appeal No. 46 of 1913. Bengal Appeal No. 32 of 1910.*

**Rai Dwarka Nath Sarkar Bahadur and  
another** - - - - - *Appellants,*

*v.*

**Haji Mahomed Akbar and others** - - - *Respondents.*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL DELIVERED THE 7TH MAY 1914.

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*Present at the Hearing :*

LORD MOULTON.

SIR JOHN EDGE.

LORD PARKER OF WADDINGTON.

MR. AMEER ALI.

[*Delivered by* LORD PARKER OF WADDINGTON.]

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This was a partnership action instituted by the legal personal representatives of a deceased partner against the surviving partners. By the decree dated 31st May 1906, as varied by the order of the High Court dated 26th March 1907, it was directed that a Commissioner be appointed for the purpose of taking the accounts therein referred to, being the usual partnership accounts. The Commissioner made his report on the 14th August 1907 and various objections to it were filed. On the 24th September 1907 the Subordinate Judge overruled these objections and confirmed and gave relief on the footing of this report. The order of the Subordinate Judge was appealed. On such appeal two points were decided by the High Court. In the first place such Court decided that the report of the Commissioner was unsatisfactory and that

the accounts as taken by him were not properly taken or supported by proper evidence and must be investigated afresh. In this respect, after careful consideration, their Lordships see no reason to differ from the High Court. Without going into detail, it will suffice to say that the accounts were taken without production or discovery of the partnership books and documents. For the purpose of working out a partnership decree each party to the action is bound to produce and discover all documents in his possession relating to the partnership, and an application by the plaintiff in the action for discovery of the documents in the possession of the present appellants appears to have been refused.

The second point decided by the High Court stands on a different footing. It appears that the partnership firm had in 1903 entered into a contract with the Secretary of State for India to construct a bridge. The bridge was completed in due course, but a dispute arose between the firm and the Secretary of State as to the amount payable to the firm under the contract. The surviving partners, or one of them, agreed with the Secretary of State that this dispute should be referred to the arbitrament of a Mr. Sanders. The legal personal representatives of the deceased partner were not parties to the reference. The arbitration resulted in the award of a certain sum as payable to the firm, and this sum has been paid and brought into the partnership accounts. On the appeal the legal personal representatives of the deceased partner put forward for the first time a contention that they were not bound by the agreement of reference or the award. The High Court upheld this contention. In their Lordships' opinion the High Court ought to have rejected the contention as having been put forward at too late a stage in the

proceedings. The question whether the legal personal representatives were bound by the agreement and award was not a simple question of law, to be decided without reference to the facts of the case, or any evidence which might have been available. The original contract with the Secretary of State is not in evidence, and it is possible that it contained a submission binding on the legal personal representatives of the deceased partner. Even if it did not, and the agreement to refer was not originally binding on such legal personal representatives, it may have become binding on them by their acquiescence therein, or their acceptance of benefits thereunder. The point not having been raised prior to the hearing of the appeal, there has been no opportunity of ascertaining the relevant facts. Further, assuming that the agreement to refer was not binding on the legal personal representatives, it could hardly follow that they were entitled to relief on the footing that it was binding, but had been negligibly and improperly entered into. And lastly, if relief could be given on this footing, why should the measure of damages be the difference between the amount originally claimed against the Secretary of State and the amount payable under the award, and why should the onus of proving that it was any less sum be thrown on the persons accused of negligent and improper conduct? In their Lordships' opinion the decision of the High Court in these respects was erroneous.

Under the circumstances their Lordships will humbly advise His Majesty to discharge the order appealed from, and remit the case to the High Court with directions that the Commissioner's Report and the order of the Subordinate Judge confirming the same be discharged, and the case sent back to the Subordinate Judge in order that the accounts

may be taken on the basis of the order of 31st May 1906 as varied by the order of the 26th March 1907, and on the footing that every party is bound to account to the best of his ability and to give full discovery of all documents in his possession relating to the matters in dispute, the costs of the appeal to the High Court being made costs in the action, and the appellants being entitled to their costs of this appeal.

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In the Privy Council.

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RAI DWARKA NATH SARKAR  
BAHADUR AND ANOTHER.

v.

HAJI MAHOMED AKBAR AND  
OTHERS.

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DELIVERED BY  
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