

Basheer and anr. Vs. Ellem and anr.

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Court : Kolkata

Decided On : Aug-28-1875

Reported in : (1876)ILR1Cal185

Judge : Richard Garth, C.J. and ;Birch, J.

Appellant : Basheer and anr.

Respondent : Ellem and anr.

Judgement :

Richard Garth, C.J.

1. In this case the same question arises as in the last Beni Madhub Ghose v. Kali Churn Singh see post p. 201 note with this difference: 1st, that the Subordinate Judge of Sylhet reviewed his own decision instead of his predecessor's; and 2ndly, that he gives as a reason for the review that he was referred by the pleader to two authorities, decided by the High Court many years ago, one of which he considered to be opposed to his former judgment. He, accordingly, made an order for the review, and reversed his previous decision.

2. But the case appears to us to depend upon precisely the same principle as the last, and must be decided in the same way. It is less objectionable, no doubt, in one sense, for a Judge to review his own decision than that of his predecessor's; but he has no more right to do so without sufficient reason in the one case than in the other; and we cannot consider that the production of an authority to which the

attention of the Judge was not called at the first trial, is sufficient ground for demanding a second trial. The parties ought to come prepared with all their materials, both of law and facts, at the first hearing, and if they do not come properly prepared, they ought not to be allowed, upon discovering that they had omitted to bring forward some decided case, to try the case over again upon the strength of their own omission. If the Judge had decided improperly upon a point of law, that would be a matter for appeal, not for review. So held in a similar case *Nobeen Kishen Mookerjee v. Shib Pershad Pattuck* 9 W.R. 161; but see *Koh Poh v. Moungh Tay* 10 W.R. 143 in which it was held that an error on a point of law may be ground for review.

3. The appeal will therefore be allowed; the second decision of the Subordinate Judge will be reversed, and his first decision confirmed, and the appellant will be entitled to his costs of this appeal, as well as the cost of and incidental to the review.

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