

(1922) 05 AHC CK 0040
In the Allahabad High Court

Dwarka Das Ajodhya Prasad

APPELLANT

Vs

Ram Ratan and Another

RESPONDENT

Date of Decision : 08-05-1922

Acts Referred:

Citation : AIR 1922 All 458 : 68 Ind. Cas. 239

Hon'ble Judges : Stuart, J;Gokul Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The facts of the suit out of which this appeal has arisen are these: The defendants' firm are proved to have contracted to purchase from the plaintiffs' firm 22 maunds, 14 seers and 13 chatacks of Balchar on the 27th of February, 1920, at a price which was fixed at Rs. 815 1-3.

2. The lower Appellate Court has believed the evidence of the witnesses produced by the plaintiff upon this point. According to the evidence the defendants' firm agreed to take these goods as ascertained but requested the plaintiffs' firm to postpone delivery until it was convenient for the defendants' firm to take delivery. In these circumstances, the provisions of the latter part of Section 78, Act IX of 1872, come into operation. The parties had agreed that the delivery should be postponed. The property in the Balchar, therefore, passed to the defendants' firm on the 27th February 1920 as soon as the proposal for sale was accepted. Such being the case, the plaintiffs' suit, which was a suit for the price of goods sold, was regular and in proper form.

3. We, therefore, allow this appeal and pass the following decree. A decree will be given to the plaintiffs for Re. 824-8-3 with interest pendente lite and future interest till the date of realization at 6 per cent, per annum from 1st of May 1920 up to the date of realization. The defendants' firm will pay their own costs and those of the plaintiffs' firm in all Courts. These costs will include in this Court fees on the higher scale. This decree will not be put into execution until the

plaintiffs" firm deliver the 22 maunds, 14 seers and 13 chatacks of Balchar to the defendants of the quality agreed upon or make it available for the defendants" firm to take delivery.