

the privilege of the witness, *i.e.*, of the Judge or Magistrate of whom the question is asked. If he waives such privilege or does not object to answer the question, it does not lie in the mouth of any other person to assert the privilege. We would answer this reference accordingly, the objection not having been taken by the Deputy Magistrate, but by the Magistrate of the District.

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 EMPRESS  
INDIA  
V.  
CHIDD:  
KHAN

SPANKIE, J.—I have considerable doubt whether we ought to entertain this reference. Neither the Deputy Magistrate examined by the Sessions Court nor the Magistrate of the District have called for the Court's interference. S. 121 of the Evidence Act merely provides that, except upon the special order of some Court to which he is subordinate, no Judge or Magistrate shall be *compelled* to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to any thing which comes to his knowledge in Court as such Judge or Magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting. There is nothing in this section which forbids such Judge or Magistrate being called as a witness, and if he does not object to answer questions as to his own conduct in Court, there appears to be no prohibition to his doing so. But he cannot be compelled to answer such questions except upon the special order of some Court to which he is subordinate. The illustrations to s. 121 seem to show that the Sessions Judge could not compel the Magistrate to answer such questions. I know of no provision in the Code of Criminal Procedure which gives the Sessions Judge, whilst trying a case, the power of compelling a Magistrate to answer questions as to his own conduct in Court as such Magistrate.

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## CIVIL JURISDICTION.

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March

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

**THE MAHARAJA OF BENARES (PLAINTIFF) V. DEBI DAYAL NOMA  
(DEFENDANT).**

\* Signed"—"Stamped"—Act X of 1877 (Civil Procedure Code), s. 2.

The expression "person referred to" in s. 2 of Act X of 1877 means person referred to in the subsequent sections of the Code, as being required to sign or verify certain documents, and it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name.

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THE MAHA-  
RAJA OF  
BENARES  
v.  
BIBI DAYAL  
NOMA.

THIS was a reference to the High Court by Babu Ram Kali Chaudhri, Judge of the Court of Small Causes at Benares. The plaintiff in a suit instituted in that Court by H. H. Maharaja Ishri Prasad Narain Singh Bahadur, Maharaja of Benares, was not signed by the plaintiff, but was stamped with his name and title. The Judge was of opinion that, as the plaintiff was able to write, the plaintiff was not "signed" by him within the meaning of s. 53 of Act X of 1877, holding, with regard to the terms of s. 2, and more particularly with regard to the words "person referred to," that "signed" as defined in that section included "stamped" only when the person using the stamp could not write. Entertaining, however, some doubt on the point the Judge referred it to the High Court for decision.

Munshi *Hanuman Prasad*, for the plaintiff.

The defendant did not appear.

The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.,) was delivered by

STRAIGHT, J.—We are of opinion that the word "stamped," as mentioned in s. 2 of Act X of 1877, is not limited in the manner suggested by the Judge of the Small Cause Court. We think that the expression "person referred to" means person referred to in the subsequent sections of the Code, as being required to sign or verify certain documents, and that it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name.

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*Before Mr. Justice Oldfield and Mr. Justice Straight.*

HAZARI LAL (PETITIONER) v. KHERU RAI (OPPOSITE PARTY).\*

*High Court's powers of revision under s. 622 of Act X of 1877 (Civil Procedure Code)—Regulation XVII of 1806—Redemption of Mortgage.*

After a mortgage had been foreclosed under the provisions of Regulation XVII of 1806 the representative of the mortgagor deposited the mortgage-money in Court. The District Judge ordered that the money should be paid to the mortgagee on the ground that the mortgagor had not been personally served with the notice required by s. 8 of that Regulation, and that it did not appear that she had

Application, No. 9 of 1881, for revision under s. 622 of Act X of 1877 of an order of J. W. Power, Esq., Judge of Gházipur, dated the 4th January, 1881.