

*Before Mr. Justice Phear.*

1869  
May 10.

RAJENDRA MATILAL v. RAMNARAYAN MATILAL.

*Commission of Partition.*

THIS was a case in which three commissioners had been appointed to make a partition. Two of them agreed in their return, but the third dissented. The words of the commission in this case did not give any power to two of the commissioners to make a return without consent of the third.

Mr. *Marindin*, for plaintiff, contended, that two commissioners were competent to make a good return even though the third might dissent, citing in support of his argument 2 Daniel's Chancery Practice, 4th edition 1048, *Watson v. Duke of Northumberland* (1); *Curzon v. Lister* (2); Russell on Awards, 3rd Edition, 206.

Mr. *Kennedy*, for defendant, also wished the return to be held to be a valid one.

PHEAR, J.—I have always understood this difference between commissioners appointed by the Court and arbitrators. In the first place commissioners are officers of the Court, and act by a majority, whereas private arbitrators make their awards jointly, unless there be a clause in the submission empowering them to make by majority an award binding between the parties.

*Before Mr. Justice Phear.*

IN THE MATTER OF THE ESTATE OF SAMUEL FENN, LATE OF CALCUTTA  
IN THE EAST INDIES, SOLICITOR, DECEASED.

ALEXANDER BRODIE MACKINTOSH OF DURMOO IN SCOTLAND, v.  
CHARLES JAMES WILKINSON, OFFICIATING ADMINISTRATOR  
GENERAL OF BENGAL AND EXECUTOR OF LAST WILL AND TESTAMENT  
OF THE SAID SAMUEL FENN.

1869  
June 7.

*Petition for Administration Summons.*

Samuel Fenn died indebted to A. B. Mackintosh, who prays for an administration summons to be issued, to cause the moveable and immoveable estate of the said Samuel Fenn to be administered to.

PHEAR, J.—Ordered that the petition should be taken as a plaint and filed as such, and should be the foundation of an administration suit. Written statements ordered.

(1) 11 Ves., 153.

(2) Seton on Decrees, 3rd Ed., 578.