

1870  
 May 27.

See also  
 14 B.L.R. 180

*Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Markby.*

F. DISSENT v. THE JUSTICES OF THE PEACE FOR THE  
 TOWN OF CALCUTTA.

*Reference from Small Cause Court—Costs—Act XXVI of 1864, s. 8.*

Where a case had been referred from the Small Cause Court for the opinion of the High Court, at the request of the plaintiffs, and they neither deposited any security for the cost of the reference, nor appeared in the High Court, *held*, the defendants, who appeared, were entitled to judgment and to an order that the plaintiffs should pay the costs of reference and other expenses connected therewith.

This was a reference by the first Judge of the Small Cause Court of Calcutta. Judgment had been given for the defendants contingent on the opinion of the High Court, upon a question which had been reserved at the instance of the plaintiff. It appeared no deposit or security for costs had been given in accordance with Act XXVI of 1864, section 8. The plaintiff did not appear in the High Court.

Mr. *Wilkinson* appeared for the defendants, and contended that the judgment of the Small Cause Court should be upheld with costs. He called attention to the case of *Rajkumar Paramanik v Stewart* (1).

The opinion of the High Court was as follows :

Couch, C. J.—We think that in this case, as the plaintiff does not appear and the case was reserved upon the application of the plaintiff, and not by the Court on account of a doubt which the Court entertained, we may give judgment for the defendants, judgment having been given for them in the Court below. We also make an order under section 8 of Act XXVI of 1864 for costs. If a party asks the Judge of the Small Cause Court to refer a case and does not appear in this Court, he must be taken to have abandoned his case, and must have judgment given against him in this Court. Judgment will be entered for the defendants, and the plaintiff must pay the costs of reversing the question, and stating it for the opinion of this Court, and otherwise arising thereout, or connected therewith.

Attorneys for the defendants : Messrs. *Berners & Co.*

(1) *Ante*, p. 23.