

Before Mr. Justice Norman (Officiating Chief Justice) and Mr. Justice Markby.

1870
March 31.

RAJKUMAR PARAMANIK v. L. STEWART.

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 costs of the reference, nor appeared in the High Court, held, the case was not properly before the Court, and an application for costs by the defendant who did appear was therefore refused. See also
14 B. L. R. 180

THIS was a reference by the first Judge of the Calcutta Small Cause Court, under section 7, Act XXVI of 1864.

The case was referred at the request of the plaintiffs.

It appeared that no security or deposit for costs had been given as required by section 8 of Act XXVI of 1864 (1), and plaintiff did not appear.

Mr. Phillips, for the defendant, applied for costs, stating that he appeared on notice received from the Registrar.

The opinion of the High Court was delivered by

NORMAN, J.—It appears to me that this case ought not to have been sent up, security for costs not having been given.

You may have appeared for the protection of your client; it seems to me the case is not properly before the Court. It ought not to have been sent up at all.

Application for costs refused.

Attorneys for plaintiffs: Messrs Gray and Co.

Attorney for defendant: Mr. Oliver.

(1) Act XXVI of 1864, s. 8.—“When judgment is given contingent upon the opinion of the High Court, the party against whom such judgment is given, shall, unless he be willing to submit to such judgment, forthwith give security to be approved by the Clerk of the Court for the costs of the reference to the High Court and for the amount of the judgment; provided, nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case, where the Judge of the Court of Small Causes, who tried the suit, shall have ordered the defendant to pay the amount of such judgment into the hands of the Clerk of the said Court, and the same shall have been paid accordingly; and the said High Court may either order a new trial in such terms as it think fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of reserving the question and stating the same for their opinion and otherwise arising thereout or connected therewith, as such High Court may think proper, and all orders made by the High Court under this section shall be final.”