

1871.
BAMASUNDARI
DASI
v.
RAMNARAYAN
MITTER.

perfectly *bona fide*. Under section 342, the Court has no power to order security to be given for the costs of the original suit, or make that a condition precedent to allowing the appeal to proceed. If security is ordered it must be confined to the costs of the appeal.

On Mr. *Marindin* rising to support the rule, Mr. *Lowe* objected that there was no right of reply, as in showing cause he had put in no affidavit. Mr. *Marindin* submitted that when a rule nisi had been obtained and cause had been shown against it, the party obtaining it had a right to be heard in reply, even though the side showing cause had made use of no affidavit.

The *Advocate-General*, as *amicus curiæ*, stated that the practice had been to allow a reply in such a case, and that the point had been ruled in his favor by Phear, J., on a former occasion.

PHEAR, J.—I think there is a right to reply.

Mr. *Marindin* in reply.—The Court has unlimited discretion under section 342 to make the order.

PHEAR, J.—I think the order must be made absolute. The security to be limited to the costs of the appeal. Amount to be estimated by the taxing officer.

The amount was fixed at Rs. 1,200.

Before Mr. Justice Phear.

1871
June 28.

ULLMAN AND OTHERS v. THE JUSTICES OF THE PEACE FOR
CALCUTTA.

Leasehold is Immoveable Property within section 34, Act VIII of 1859.

THIS was an application in Chambers that the plaintiffs might be ordered to give security for the costs of the suit, in accordance with section 34, Act VIII of 1859, on the ground that they were all out of the jurisdiction of the Court, and had no immoveable property within the jurisdiction other than the property in suit. It appeared that the plaintiffs had leasehold property in Calcutta.

Mr. *Adkin*, for the defendants, contended that a lease was not such immoveable property as was intended by section 34 of Act VIII of 1859. The object of the section was that the plaintiffs ought to have within the jurisdiction such property as would be available as security for the costs of the suit if the plaintiffs were unsuccessful. The leasehold was not property which could be attached and sold.

Mr. *Judge* for the plaintiffs *contra*.

PHEAR, J., was of opinion that the leasehold was "immoveable property other than the property in suit" within section 34, and refused to make the order for security.