

Before Mr. Justice, Macpherson.

FRANKRISHNA CHANDRA (PLAINTIFF) v. BISWANATH CHANDRA  
AND OTHERS (DEFENDANTS).

1872  
June 5.

*Practice—Examination under Commission—Barrister—Attorney.*

In this case a commission had issued at the instance of the plaintiff for the examination of one Pashpamayi Dasi. Upon the examination before Mr. Lowe as Commissioner, Mr. Evans appeared for the plaintiff, but no Counsel appeared for the defendants who were represented by their attorneys, Biswanath Chandra being represented by Mr. Remfrey, and two other defendants by Mr. Camell. The Commissioner's return showed that, after Pashpamayi Dasi had been examined by Mr. Evans, she had been cross-examined by the attorneys representing the defendants: the return did not show that any objection had been made at the time to such cross-examination, nor did it show that Mr. Lowe had taken the usual oath before entering upon his duties as Commissioner.

Mr. Woodroffe, for the plaintiff, proposed to read the evidence taken under the commission, but before doing so he called the attention of the Court to the fact that the defendants were represented before the Commissioner by their attorneys. This, he contended, was not merely irregular but also illegal—*Hoffmann v. Framjee* (1). He should treat the deposition as if there had been no cross-examination.

Mr. Kennedy, on behalf of Biswanath Chandra, contended that the deposition must be read *in toto*, or not at all.

MACPHERSON, J.—I am clearly of opinion that it was not competent to the defendants' attorneys to conduct the cross-examination before the Commissioner. The examination of witnesses under a commission is of the same nature as an examination in open Court; and there is no reason why attorneys should be allowed to examine in the one case more than the other. As a matter of practice, moreover, attorneys never have been in the habit of examining such witnesses, save under very exceptional circumstances. There is another objection with regard to this commission, namely, that there is nothing on the face of the return to show that the Commissioner ever was sworn. The Commissioner is bound to administer the oath to himself as well as to the interpreter

(1) Cor., 7.