

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

WILLIAMSON BROTHERS (PLAINTIFFS) *v.* ARAB ISMAIL KHAN  
(DEFENDANT).

*Small Cause Court Reference—Case referred at request of Party—Non-appearance of such Party before High Court—Costs.*

1873  
August 11.

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Where a case is referred by the Small Cause Court, for the opinion of the High Court, at the request of one of the parties, and such party does not appear in the High Court, the decision must be given against him, whether security has been given for the costs of the reference and the amount of the judgment or not, and he must pay the costs of the reference.

This was a reference by the first Judge of the Calcutta Small Cause Court, under s. 7, Act XXVI of 1864. The case was referred at the request of the defendant, who duly deposited a sum sufficient to meet the costs of the reference and the amount of the judgment, but did not appear in the High Court.

Mr. *Phillips* for the plaintiffs was about to address the Court when he was stopped.

The judgment of the Court was delivered by

COUCH, C.J.—We are of opinion that, where a party to the suit requests the reservation of a question by the Small Cause Court for the opinion of this Court, and it is not reserved because the Judges entertain any doubts, if he does not appear in this Court, the decision must be given against him, whether security has been given for the costs of the reference and the amount of the judgment or not. The Court is not bound to act as Counsel for him. The judgment in this case will be for the plaintiffs with an order for the costs of reserving the case for the opinion of this Court in the same terms as in the case of *Dissent v. The Justices of the Peace for the Town of Calcutta* (1), *viz.*; the costs of reserving the question and stating it for the opinion of this Court and otherwise arising thereout or connected therewith.

Attorneys for the plaintiffs: Messrs. *Berners, Sanderson, and Upton.*

Attorney for the defendant: Mr. *Pittar.*

(1) 5 B. L. R., App., 24.