tion 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."

B. L. R. Vol. V, p. 24.

(*Appendix.*)

The 27th May 1870.

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

F. DISSENT,

versus

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 that 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

(1) *Ante*, p. 117

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 reserving 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.*

B. L. R. Vol. V, p. 28.

(*Appendix.*)

The 25th April 1870.

Before Mr. Justice Norman and Mr. Justice Markby.

RAMFAL SHAW,

versus

BISWANATH MANDAL and others.

Advocate—Witness.

THIS was a reference from the First Judge of the Calcutta Small Cause Court on the following question:—

"Whether one, Ramanath Law, who, though an attorney, had acted as advocate for the plaintiffs, and pleaded their case in Court, could be examined as a witness in the case?"

The Judge admitted the evidence on the authority of *Cobbett* v. *Hudson* (1), and gave judgment in favor of the plaintiffs. The question was reserved at the request of the defendants.

Mr. Macrae for the plaintiffs referred to the case above cited, and to Section 14 of the Evidence Act II of 1855, which mentions the only persons who are incompetent to be witnesses.

Norman, J.—I think it quite plain that the witness is competent; if there had been any doubt on that point, the doubt would have been removed by a reference to the section of the Evidence Act to which Mr. Macrae referred. The plaintiff will be entitled to the costs, in the Small Cause Court, of reserving the question of stating the same for the opinion of the High Court and of the argument before us.

Attorneys for Plaintiff: *Messrs. Swinhoe & Co.*

Attorneys for Defendant: *Messrs. Sims and Mitter.*

(1) 1 E. & B., 11.

B. L. R. Vol. V, p. 29.

(*Appendix.*)

The 6th May 1870.

Before Mr. Justice Bayley and Mr. Justice Markby.

In the matter of the Petition of RANI UMASUNDARI DEBI.

Rule Nisi, No. 332 of 1870.

24 & 25 Vict., c. 104, s. 15—Power of the High Court—Review of Order refusing Petition to sue in Forma Pauperis.

A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue *in forma pauperis*.

Under Section 15 of 24 & 25 Vict., c. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain such an application on the ground that the Court had not jurisdiction to entertain it.

IN this case Rani Umasundari Debi had obtained a rule *nisi* on a petition, which shewed that the petitioner applied to the Court of the Subordinate Judge of Zilla Midnapore, for permission to bring a suit, *in forma pauperis*, against her husband, for the recovery of alimony; that the said Court, after seeing no reason to refuse the application on any of the grounds stated in Section 304, Civil Procedure Code, fixed the 15th day of January last for receiving such evidence as the petitioner might adduce in proof of her pauperism, and for hearing any evidence which the opposite party might bring forward in disproof of the pauperism of the petitioner: that, being now a resident of Bhowanipore, the petitioner forwarded two of her witnesses from the said place of her residence, with a view that they should give evidence as to her pauperism on the said 15th January, in ample time to reach the Court before the day fixed for hearing; that one of the