

*Mitter, J.*—We see reason to interfere with the judgment of the Lower Appellate Court. It is admitted that the suit was under-valued, and it is also admitted that if the claim were properly valued, the suit could not have been instituted in the Court of the Moonsiff who tried it in the first instance. Under these circumstances, the Lower Appellate Court was right in reversing the decision of the Moonsiff, upon the ground that it was heard without jurisdiction.

It is contended that the objection as to valuation was not taken before the Court of first instance, but whether it was so taken or not, the jurisdiction of the Court by which the suit was heard, is admittedly affected, and the Lower Appellate Court was, therefore, justified in taking up the point even though it was not urged by the defendant before the Court of first instance.

We dismiss the special appeal with costs.

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*B. L. R. Vol. V, p. 21.*

(Appendix.)

The 2nd June 1870.

*Before Mr. Justice Norman.*

In the Goods of SHAMLAL DAS.

**Administration, Certificate of—Act XXVII of 1860, s. 6.**

THIS was an application for Letters of Administration, or for a fresh Certificate of Administration in supersession of one which had originally been granted by the Judge of the 24 Pergunnas, under Section 6 (1) of Act XXVII of 1860.

*Norman, J.*, ruled that, sitting on the original side of the Court, he could not grant the latter.

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(1) *Act XXVII of 1860, s. 6.*—"The granting of such certificate may be suspended by an appeal to the Sudder Court, which Court may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The Court may also, upon petition, after a certificate, shall have been granted by the district Court, grant a fresh certificate in supersession of the certificate granted by the district Court."

*B. L. R. Vol. V, p. 21.*

(Appendix.)

The 7th May 1870.

*Before Mr. Justice Norman.*

SMITH *v.* BOGGS.

**Act XXIII of 1861, s. 8—Act VIII of 1859, ss. 273, 280.**

Section 8 of Act XXIII applies only to applications made under Section 273 of Act VIII of 1859, not to applications made under Section 280.

THE prisoner was brought up on a writ of *habeas corpus*, and applied for his discharge under Section 280, Act VIII of 1859.

*Mr. Hyde* for the plaintiff asked for a reasonable time for inquiry, and to enable the plaintiff to be prepared with the proof required by Section 281.

*Mr. Ingram* for the prisoner contended that, if time was granted, his client should be let out of prison on undertaking to appear at the expiration of the further time granted, as provided by Section 8 of Act XXIII of 1861.

*Mr. Hyde* contended that Section 8 referred to a different case from the present, *viz.*, to the circumstances described in Sections 273 and 274, for the latter of which it was substituted.

*Mr. Ingram* contended that Section 8 was extensive enough to include both procedure in applications under Section 273, and under Section 280.

*Norman, J.*, was of opinion that Section 8 of Act XXIII of 1861 applied only to applications made under Section 273 of Act VIII, *viz.*, for discharge from arrest in execution of a decree; and not to applications under Section 280, where the applicant has been actually committed, and is brought up from the jail. A week's time was granted, and the prisoner remanded.

Attorney for the Plaintiff: *Mr. Dover.*

Attorneys for the Prisoner: *Messrs. Carruthers & Co.*

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