to think that, in all probability, a decree ought to have passed against the defendants of the first part. No attempt was made on the part of the defendants to show that the plaintiff had done any act whereby the liability of the defendants of the first part to guarantee to the plaintiff the payment of the rents for the years named had been discharged. But the appellant has not brought before us the Ikrarnama on which he sues, and, consequently, we are not in a position to pass any opinion on the subject. It is certain that the Ikrarnama has not been properly considered by the Principal Sudder Ameen, and the case must, therefore, be remanded to him for trial upon that point.

The defendants of the second part, the Ticcadars, have been made respondents, and are mentioned in a summons issued from this Court. But that summons has not been served upon them, and the manner in which it has been dealt with is such as to cause in our minds considerable anxiety as to the mode in which summonses issuing from the Court of the Principal Sudder Ameen of Zillah Tirhoot are served. On reading the return, it appears that the peada did not meet with the respondents or any member of their family, and he therefore attached the Itlanama to a house facing towards the east in the village in which they are represented by the plaintiff to be residing; but there is nothing to show that they ever resided in that village, or that the summons was ever brought to their notice, or that it was likely that it would ever be so. Every summons not actually served on the party or his recognised agent must be stuck up on the house in which such party is actually residing and dwelling. Section 55 of Act VIII. of 1859 lays down the proper course of proceeding in cases where a defendant or respondent cannot be found. It directs that the summons should be returned to the Court, and an order should be obtained from the Court, under section 57, as to the mode of service.

We cannot, in the absence of the parties of the second part, reverse the judgment against them; but we send the case back to the Principal Sudder Ameen, and desire to express our opinion in very strong terms upon the exceeding impropriety and want of care on his part, not only in passing a decree against parties without any evidence, but actually making them liable for the costs of the defendants of the first part, when very probably these parties have never been summoned at all, or had any notice of the present proceedings.

The appellant must pay the costs of this appeal, which has been rendered infructuous by his own neglect in not bringing before us the Ikrarnamah on which he sued.

The case is remanded to the Principal Sudder Ameen for trial.

The 14th June 1866.

Present:

The Hon'ble G. Campbell and A. G. Macpherson, *Judges.*

Attendance of Witnesses (Duty of Civil Court to enforce)—Power of High Court to interfere.

Case No. 3 of 1866.

Special Appeal from a decision passed by Mr. A. Pigou, Judge of Hooghly, dated the 31st August 1865, modifying a decision passed by Moulvie Nazeerooddeen Mahomed, Additional Principal Sudder Ameen of that District, dated the 16th June 1863.

Nilmonee Banerjee (Plaintiff), *Appellant,*

versus

Shurbo Mungola Debee (Defendant), *Respondent.*

Baboo Kishen Succa Mookerjee for Appellant.

Baboo Romesh Chunder Mitter for Respondent.

Every Court is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses.

The Judge below having, without the slightest reference to the interests of the parties concerned and to the facts of the case, refused to grant a coercive process to enforce the attendance of plaintiff's witnesses upon the irrelevant ground that, sitting as a Civil Court, he could not criminally punish the witnesses for non-attendance, the High Court interfered and remanded the case to the Judge with directions to give the plaintiff an opportunity of producing his evidence.

This case was remanded for a more complete trial, and the order was especially made that an opportunity should be given to the parties to produce further evidence. The Judge appointed the case for hearing on the 29th of August last. On that day, the plaintiff represented that his witnesses had not attended, and prayed that a coercive process might be issued for their attendance, and the hearing adjourned. Upon this, the Judge passed the following singular order:—

"The Court is of opinion that such attachment is useless; for, if they did appear

"after such attachment, the Court could, "under the Penal Code, inflict no punish-"ment on them."

It seems to us that this order is, on the face of it, wrong and bad. If the Judge, in his discretion with reference to the circumstances of the case, had refused to grant an adjournment, it might have been difficult for us to interfere on special appeal. But when the Judge has, without the slightest reference to the interest of the parties concerned and to the facts of the case, refused to grant a coercive process to enforce the attendance of witnesses, upon the irrelevant ground that, sitting as a Civil Court, he could not punish the witnesses for their non-attendance criminally, we think that we can interfere; and accordingly again remand the case, with directions that an opportunity be given to the plaintiff to produce his evidence, and that the Judge do thoroughly and carefully carry out the spirit of the former, remand order, and try the case fully. Every Court is bound in justice to render all reasonable assistance to a party to enforce the attendance of his witnesses.

The 14th June 1866.

Present:

The Hon'ble G. Loch and L. S. Jackson, *Judges.*

Jurisdiction—Partition.

Case No. 3181 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of Chittagong, dated the 23rd August 1865, modifying a decision passed by the Moonsiff of Howalah, dated the 3rd February 1864.

Mohsun Ali and others (some of the Defendants), *Appellants,*

versus

Nuzum Ali (Plaintiff) and others (Defendants), *Respondents.*

Baboo Mohinee Mohun Roy for Appellants.

Baboo Mottee Lal Mookerjee for Respondents.

A Civil Court can only determine the right to partition of an estate paying revenue to Government. The partition itself can be made by the Collector alone under Regulation XIX., 1814.

Loch, J.—In this case, the only point for a Civil Court to determine is, whether the plaintiff has a right to a partition or not if that question was disputed. It had no authority to make the partition itself, or to direct that a partition be made by any local form in use in the district among private parties. A partition of an estate paying revenue to Government can only be made by the Collector under Regulation XIX. of 1814. The plaintiff was at liberty to apply to the Collector for that purpose. We, therefore, reverse that part of the order of the lower Court which directs the partition to be made under what is called Gola-Bhag.

The appellant will get his costs.

Jackson, J.—I agree. Looking at the certificate and the annexed description of what the plaintiff purchased, it is manifest that he acquired, not merely the specific portion of land, so many kanees, as contended by the special appellant's vakeel, but all the rights of the judgment-debtor, Makur Ali, whatever they were in the talook. If, therefore, Makur Ali had any right of partition, the plaintiff, who succeeded to him, must be also entitled to it. But the application ought to have been made to the Collector, and not to a Civil Court.

The 14th June 1866.

Present:

The Hon'ble G. Loch and L. S. Jackson, *Judges.*

Limitation—Cause of Action—Non-suit.

Case No. 3145 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of Chittagong, dated the 27th July 1865, affirming a decision passed by the Sudder Moonsiff of that District, dated the 20th June 1864.

Haradhun Dey (one of the Defendants), *Appellant,*

versus

Ram Doss Dey (Plaintiff), *Respondent.*

Baboo Gopal Lal Mitter for Appellant.

Baboo Roopnath Banerjee for Respondent.

A non-suit gives no new cause of action.

It is perfectly clear that, in this case, at least 21 years and 4 months, and possibly a much longer period, had elapsed between the accruing of the cause of action and the bringing of the present suit in December 1861.