

The 4th January 1869.

*Present :*

The Hon'ble G. Loch and Dwarkanath Mitter, *Judges.*

**Ex-parte judgment—Cross-examination of plaintiff's witnesses.**

Case No. 2466 of 1868.

*Special Appeal from a decision passed by the Judge of the 24 Pergunnahs, dated the 10th June 1868, affirming a decision of the Subordinate Judge of that District, dated the 6th January 1868.*

Shahzada Pakaktar (one of the Defendants),  
*Appellant,*

*versus*

Jakirram Bhokath (Plaintiff), *Respondent.*

*Baboo Mohendronath Mitter for Appellant.*

*Baboo Debendro Narain Bose for Respondent.*

Where a defendant, when duly summoned, fails to appear without lawful excuse, the Court may at once pass judgment *ex parte*. But if the defendant has entered appearance and filed a written statement, it cannot be called an *ex-parte* case, and if the Court proceeds to take the evidence of the plaintiff's witnesses, the defendant is entitled to cross-examine them.

*Loch, J.*—THE Lower Courts have held that the defendant, when duly-summoned to appear, failed to attend without lawful excuse. We think that this Court cannot interfere with this finding. But it is urged in the second place that the procedure followed by the Subordinate Court is not in accordance with the provisions of Section 170 of Act VIII. of 1859, which provides that in such a case "the Court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the Court may deem proper under the circumstances of the case." The Subordinate Judge did not pass judgment against the party who failed to appear, as he might have done under the provision of the law quoted above; but he ordered that the case should be heard *ex parte*, and he refused to allow the vakeel of the defendant to cross-examine the witnesses of the plaintiff. The Judge in appeal held that the order of the Lower Court was right.

We think that, on the defendant's failing to appear without lawful excuse, the Judge might at once have passed judgment against him. But if he proceeded to take the evidence of the plaintiff's witnesses, the defendant, who had entered appearance, was entitled to cross-examine them by his vakeel, and the Subordinate Judge was wrong in

treating the case as an *ex-parte* one; for, as the defendant had appeared and filed a written statement, it could not be called an *ex-parte* case. If not an *ex-parte* case, the defendant was entitled to cross-examine the plaintiff's witnesses.

We think that the case must go back to the first Court to allow the defendant's vakeel an opportunity to cross-examine the plaintiff's witnesses.

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The case is accordingly remanded to the first Court to allow the defendant's vakeel to cross-examine the plaintiff's witnesses.

The 4th January 1869.

*Present :*

The Hon'ble G. Loch and F. A. Glover,  
*Judges.*

**Choses in action—Suit.**

Case No. 105 of 1868.

*Regular Appeal from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 5th March 1868.*

Munrunjun Singh and another (Defendants),  
*Appellants,*

*versus*

Leelanund Singh and others (Plaintiffs),  
*Respondents.*

*Baboos Chunder Madhub Ghose and Luckhee Churn Bose for Appellants.*

*Mr. R. E. Twidale and Baboo Unnoda Pershad Banerjee for Respondents.*

Choses in action are assignable by Civil Courts in this country, which are not merely Courts of law, but also Courts of equity. The purchaser of a decree-holder's rights and interests in decreed land may sue to recover possession, even if the thing purchased has no actual existence, but rests in mere possibility; if legally saleable, it was equitably an assignable chose of action.

*Glover, J.*—THE circumstances of this case are as follows:—

Kalee Churn and Mudoor Pershad sued the defendants in this case for possession of certain lands of Mouzah Kochee, and obtain-