He cannot claim to be paid his bill until the suit has been carried to its final termination, unless his professional relation to his client has been sooner put an end to. And clearly any other course would be liable to lead to great inconvenience and confusion.

In the present instance, we have a party to an appeal who finds his case on the board of the day, and who, although he has paid a considerable sum by way of fees and has given a pleader a vakalutnamah, is still unrepresented in Court.

We think we ought to do what we can to discourage a practice of this kind, and we therefore express our opinion that the acceptance of a vakalutnamah by gentlemen practising in this Court should in all cases be unconditional.

Mitter, J.—I concur.

The 1st June 1870.

Present:

The Hon'ble J. B. Phear and Dwarkanath Mitter, *Judges.*

Jurisdiction—Construction of a former judgment.

In the matter of

Dibakur Soondur Roy, *Petitioner.*

Baboo Chunder Madhub Ghose for Petitioner.

Construction.—The judgment of the Division Bench reported in 10 Weekly Reporter, page 38, (Shoudaminee Dassee *versus* Ram Chand Baidoo) was not intended to lay down that the High Court had no jurisdiction to entertain an appeal from a lower Court of regular appeal in the event of that Court's decision being passed without jurisdiction.

Phear, J.—We think that we ought not to grant this application.

The case varies materially from that reported in 10 Weekly Reporter, page 38, for there the Deputy Collector never pretended to determine any question of title between the parties. In the present instance, he certainly did so most specifically. He laid down an issue and came to a finding upon it, and that having taken place, it follows from a long current of decisions, which it is now too late to inquire into, that the appeal did lie from the Deputy Collector to the Judge.

I wish to take this opportunity of saying that the judgment of the Division Bench which is reported in 10 Weekly Reporter is somewhat unguarded in the language used. It certainly does appear to go the length of laying down that this Court has no jurisdiction to entertain an appeal from a lower Court of regular appeal in the event of that Court's decision being passed without jurisdiction. But it undoubtedly was not the intention of the Judges of that Bench (I can speak for them because I delivered the judgment) to go to this length. The judgment was an oral judgment directed to the particular facts of the case then before the Court, and it was only intended to express that the Court could not entertain the appeal on the merits. This Court having come to the opinion that the Lower Appellate Court had passed a judgment without jurisdiction, the function of this Court, the Court of special appeal, was limited to determining the case on that point. Under the circumstances of that particular case, so far as I recall them, it was desirable for the ends of justice that the decree of the Lower Appellate Court should be quashed and got entirely out of the way, and it was for that reason that the order of this Court was made in the particular form which it there took.

We reject this application.

Mitter, J.—I concur.

The 1st June 1870.

Present:

The Hon'ble J. B. Phear and Dwarkanath Mitter, *Judges.*

Affidavit—High Court's powers of supervision.

In the matter of

Biddyabuttee Dossia and another, *Petitioners.*

Baboo Kishen Dyal Roy for Petitioners.

An application to the High Court to exercise its extraordinary powers in respect to a finding of the Moonsiff that a summons had *not* been served, which finding was disputed by the petitioners, was refused, because the affidavit on which they came into Court omitted to state that the summons *was* served.

Phear, J.—We ought not to exercise the extraordinary power of this Court which is invoked on the present application unless we see that it is really necessary for the purpose of doing justice between the parties.

Now, the matter in dispute is whether or not the summons was served on the defendant in a suit filed about six years ago. The present applicants have no ground to stand upon unless in fact that summons *was* served, because a Court competent to determine that point between them and the defendant has judicially decided that the summons was *not* served. But the petitioners entirely omit in the affidavit of the facts on which they come before this Court, to swear that notwithstanding the finding of the Moonsiff to the contrary, the summons *was* served on the defendant. No one apparently thinks fit to vouch on oath for the truth of their case.

It does not appear to us, therefore, that there is sufficient reason for our exercising the extraordinary powers of this Court in favor of the petitioners, and we accordingly reject this application.

Mitter, J.—I concur.

The 1st June 1870.

Present:

The Hon'ble J. B. Phear and Dwarkanath Mitter, *Judges.*

High Court's power of superintendence.

In the matter of

Khenumkuree Dabee and another, *Petitioners,*

versus

Ranee Shurut Soonduree Dabee, *Opposite Party.*

Mr. J. S. Rochfort for Petitioners.

Baboo Gopal Lall Mitter for Opposite Party.

Where a Deputy Collector who had passed an informal decree refused to execute it on application, the decree-holder was held to be entitled to an order from the High Court, in the exercise of the powers it possesses under Section 15 of the Charter Act, directing the Deputy Collector to do his duty.

Phear, J.—THE petitioner in this case is one of several defendants in a suit. The respondent is the sole plaintiff. In that suit a decree was passed in these terms:—"Suit dismissed with costs;" and appended to the decree was a schedule specifying the plaintiff's costs and the costs of each of the defendants. The petitioner applied to the Deputy Collector in whose Courts the decree was passed for execution of the decree for costs against the plaintiff.

The Deputy Collector said that he saw no decree for costs, or for payment by the plaintiff of costs to the petitioner, defendant.

Thereupon, a rule *nisi* was granted, calling upon the respondent to show cause why the Deputy Collector should not be directed to execute the petitioner's decree for costs.

It cannot, we think, be seriously questioned but that the decree to which we have referred really was a decree ordering the plaintiff to pay the petitioner the costs which were specified in the schedule to the decree, as the costs of the petitioner.

The decree was no doubt informal, but this was obviously the effect of it; and the Court which passed that decree was bound in law to execute it on the application of the petitioner.

It is, however, urged in argument before us that the decision of the Full Bench, reported in 5 Weekly Reporter, page 25, Miscellaneous Rulings (DaCosta *versus* Hall), lays down that in a case like this the parties must abide by the decision of the Deputy Collector, and that this Court cannot interfere by the exercise of the powers granted to it by Section 15 of the Charter Act.

It appears to me that the decision of the Full Bench by no means goes to the extent which is contended for. There, the Sudder Ameen having sold certain moveable property in execution of a decree afterwards set aside that sale and made a re-sale. The purchaser, a third party, and not one of the parties to the suit, appealed against this order of the Sudder Ameen to the Judge, and it was held, both by the Judge and by this Court on special appeal, that no appeal lay against the order of the Sudder Ameen at the instance of a third party; and the judgment of this Court given by the Full Bench also said that in such a case this Court could not interfere under the powers given to it by Section 15. The parties to the suit made no complaint. So far as they were concerned, there was nothing to indicate that the Courts below had not done their duty, and we think it is obvious that the Court could not, on the