

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 Dasee *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.