

The 3rd December 1874.

Present :

The Hon'ble W. Markby and Romesh
Chunder Mitter, *Judges.*

Arbitration—Procedure.

Case No. 264 of 1873.

*Regular Appeal from a decision passed by
the Deputy Commissioner of Maunbhoom
dated the 30th June 1873.*

Muddun Mohun Singh (Plaintiff), *Appellant,*

versus

Kanaye Dass Chuckerbutty and others
(Defendants) *Respondents.*

Baboo Bhowanee Churn Dutt for Appellant.

Baboo Nil Madhub Sen for Respondents.

Where an arbitration failed and the record came back into the Deputy Commissioner's Court, that officer was held to have had no power to dismiss the suit with costs, without giving notice to the parties or fixing a date for hearing of the suit.

Markby, J.—IN this case it appears to us that the judgment of the Lower Court cannot possibly be supported. According to the facts as they appear before us, the arbitration having failed, the record came back into the Deputy Commissioner's Court on the 30th June 1873, and immediately and without giving any notice or fixing any date for the hearing of the suit, the Deputy Commissioner had no power whatever to do this. He was bound to fix a day on which the case should be properly called on and disposed of after hearing the parties if they should appear.

The judgment of the Deputy Commissioner will therefore be set aside, and the case remanded to him for rehearing. Costs will abide the ultimate result.

The 7th December 1874.

Present :

The Hon'ble W. Markby and Romesh
Chunder Mitter *Judges.*

Possession.

Case No. 648 of 1874.

*Special Appeal from a decision passed by
the Officiating Judge of Chittagong, dated
the 31st December 1873, reversing a decision
of the Moonsiff of Rungunniah, dated the
28th April 1873.*

Tarinee Churn Musaddee and others (Defend-
ants), *Appellants,*

versus

Jabar Ali (Plaintiff), *Respondent.*

Baboo Aukhil Chunder Sen for Appellants.
Baboo Gopeenath Mookerjee for Respondent.

In a suit to set aside a decree where plaintiff seeks to recover possession on the strength of his title, the Court is bound to try the question of title.

Markby, J.—It seems to us that the opinion expressed by the former District Judge in his order of remand of the 16th July 1873, that no issue of title ought to be allowed to be adjudicated upon between the parties in this case, is not correct. The plaintiff comes to Court to recover possession on the strength of his title. It is quite true that he asked the Court to set aside a decree, but he also asked that his title should be gone into. The first Court had gone into that title and found that it was not established. It is quite clear to us (and indeed in the latter part of the remand order the District Judge seems to have thought so) that the Court had not only clearly a right to try the question of title, but that it was bound to do so. The case must, therefore, be remanded to the District Judge in order that the question of title may be adjudicated upon. Whether under the circumstances of this case, it now having been ascertained that the defendant had ousted the plaintiff from possession by this fraudulent contrivance, it would not be right to call upon the defendant to prove his title, is quite a different matter. All that we say is that the title of the plaintiff must be adjudicated upon.

The costs will abide the result.