

only four shares purchased by the whole of the purchasers whose shares were to be disposed of accordingly, and likewise that the judge has not determined the plea of limitation on the objections taken out. We therefore admit both special appeals and remand the case to the judge for re-trial with reference to the foregoing remarks.

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[965] *The 4th June, 1857.*

PRESENT: H. T. RAIKES, B. J. COLVIN AND J. H. PATTON ESQRS., *Judges.*

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" CASE NO. 587 OF 1856.

Special Appeal from the decision of Mr. M. S. Gilmore, Judge of Cuttack, dated 4th December 1855, confirming a decree of Gopeenath Dass, Sudder Ameen of that district, dated 28th June 1855.

JOOGULKISHORE KUR (*Defendant*), *Appellant* v. MUDHOOSOODUN DEY  
(*Plaintiff*), *Respondent*.

[Act XIX of 1853, section 24—*Court's power to apprehend absent witnesses—Discretion of Court.*]

Construction of section 24, Act XIX of 1853. It is not obligatory upon the courts before apprehending absent witnesses to satisfy themselves that their evidence is material to the case.

*Vakeel of Appellant*—Baboo Sumbhoonath Pundit.

*Vakeel of Respondent*—Baboo Meherchunder Chowdree.

THIS case was admitted to special appeal on the 28th November 1856, under the following certificate recorded by Messrs. A. Sconca and J. S. Torrens:—

"The judge has decided that section 6, Regulation IV of 1793 is in no wise superseded or modified by section 24, Act XIX of 1853, which lays down rules for enforcing the attendance of witnesses, and that no compulsory process can issue under that section without the party summoning the witness, shall prove to the satisfaction of the court on oath, that the evidence sought was material to the case.

"Petitioner in special appeal urges that there has been a failure of justice in his case, owing to the court of first instance not having enforced the attendance of the witnesses prayed for and that the judge's decision on the point is opposed to law. We admit the special appeal to try the question."

#### JUDGMENT.

We find that the sudder ameen required petitioner to depose on oath to the necessity of the evidence of the absent witnesses, which he failed to do. Section 24, Act XIX of 1853, certainly does not prescribe an oath for this purpose, but as the sudder ameen had authority to satisfy himself of the necessity of the attendance of any witnesses, and he was not satisfied by petitioner, on this point he had full discretion not to take steps for the apprehension of the absent witnesses. Section 24 says that the court shall have full power and authority to apprehend witnesses not attending after service of summons, but it does not render it obligatory upon the court to take such a step in all cases without consideration of the [966] propriety or necessity of it. At the same time if a court were in its discretion to order apprehension of an absent witness without the oath of the party naming him as to the necessity of his appearance, it would not be acting illegally. We reject the appeal with costs.

The 4th June, 1857.

PRESENT: H. T. RAIKES, B. J. COLVIN AND J. H. PATTON, ESQRS.,  
*Judges.*

CASE NO. 625 OF 1856.

Special Appeal from the decision of Moulvee Mahomed Nazim Khan Bahadoor, Principal Sudder ameen of Dacca, dated 6th February 1856. reversing a decree of Alee Newaz, Acting Moonsiff of Dacca, dated 11th July 1855.

MR. T. HICKEY (*Plaintiff*), *Appellant v.* ISSURCHUNDER DASS  
(*Defendant*), *Respondent*

[Stamp—Objection in appeal as to insufficient stamp—Not allowable—Act IX of 1854.]

Case remanded, for an issue on its merits. Objection to the stamp valuation being invalid by Act IX of 1854.

*Vakeel of Appellant*—Moulvee Murhamut Hossein.

*Vakeel of Respondent*—None.

THIS case was admitted to special appeal on the 9th December 1856, under the following certificate recorded by Messrs. J.H. Patton and D.I. Money:—  
“The suit is for price of safflower as per a receipt; laid at rupees 149-15-2, principal and interest.

“The moonsiff gave a decree in favour of the plaintiff upon the merits. The principal sudder ameen considered the receipt in the nature of a bond, and upon the ground of insufficiency of stamp, dismissed the plaint.

“The petitioner pleads that this decision is contrary to the provisions of Act IX of 1854.

“We admit the appeal to try whether the principal sudder ameen was not wrong, with reference to Act IX of 1854, and the ruling of this court in the case of Junardun Senaputtee, appellant, of the 30th April 1855, in taking cognizance of the want of stamp, and dismissing the suit, when the court of first instance had decreed for the plaintiff upon the merits.”

#### JUDGMENT.

The principal sudder ameen has considered the receipt to have been drawn upon an insufficient stamp, and also refers to the appa- [967] rent insufficiency of the proof adduced before the lower court in support of it, but ultimately appears to take the infraction of the stamp law as the strongest ground for dismissing the claim.

As, however, that was a point, which under the law referred to in this certificate, was not open to question in the lower appellate court, we must hold the judgment to have been erroneous, and remand the case to the principal sudder ameen for decision on the merits only.

The case is accordingly remanded.