

**(1868) 11 CAL CK 0004**

**Calcutta High Court**

**Case No:** None

Aga Mohammed Jaffer Tehrani

APPELLANT

Vs

Mirza Nazirullah

RESPONDENT

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**Date of Decision:** Nov. 21, 1868

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### **Judgement**

Sir Barnes Peacock, Kt., C.J.

We are of opinion that the Kingdom of Ava is not the territory of a native prince or State in alliance with the British Government within the meaning of Section 177 of Act VIII of 1859, for we are not aware of any treaty of alliance between the two Governments. The case, therefore, appears to fall within section 178, and we have directed a commission to issue under that section. If the witnesses be examined upon oath or affirmation, the evidence will be admissible without consent of parties upon proof being given in the Recorder's Court of such fact as is required by section 179<sup>2</sup> of Act VIII of 1859 to be proved, in order to render the depositions capable of being read in evidence. We have no power to compel the witnesses to attend before the commissioner for examination, or to take any oath or affirmation, or to give evidence. If the evidence be given on oath or affirmation, as required by the commission, the evidence will be admissible. The weight to be attached to it will be matter for the Recorder to decide.

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When the witness is not within the jurisdiction of the Sudder Court or the Supreme Court, but within the British territories or the territories of any Native Prince or State in alliance with the British Government.	Sec. 177:--When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the Sudder Court or of Her Majesty's Supreme Court, hut within the British territories in India, or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its motion or on the representation of any of the parties to the suit, issue a commission for the examination of the witness; provided that, if the suit be pending in any court subordinate to the principal Civil Court of a district, such subordinate Court shall not issue the commission, but the principal Civil Court of the district may issue the commission on the application of the subordinate Court.
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<p>Commission to be returned with the depositions of the witnesses.</p>	<p>Sec. 179:--After the commission has been duly executed, it shall be returned, together with the deposition of the witness who may have been examined there under, to the Court out of which the commission issued, unless otherwise directed by the order for issuing the commission, in which case it shall be returned in terms of such order, and the commission and the return thereto, and the deposition of the witness who may have been examined under such commission shall in all cases form part of the record of the suit. But no deposition taken under a commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, with collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorise the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.</p>
<p>When depositions may be read in evidence.</p>	