

(1870) 07 CAL CK 0001

Calcutta High Court

Case No: None

Edwards

APPELLANT

Vs

Muller

RESPONDENT

Date of Decision: July 6, 1870

Judgement

Phear, J.

Said, after some consideration, he was of opinion that the evidence was not admissible. Not having been taken before the Court, the deposition was not admissible, except by consent. It was usual, in cases of this sort, for parties to waive objection on this ground at the time that the order for the commission was obtained; but it appeared that nothing of the kind took place in this instance.⁽²⁾

⁽¹⁾ Act VIII of 1859, s. 173.--"If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown, to the satisfaction of the Court, why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party, or of the witness at any time, after the institution of the suit, to take the examination of such witness forthwith or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence. The witness shall be examined, and his deposition shall be taken down in writing in the manner herein before prescribed; and the deposition so taken down may be read in evidence at any hearing of the suit."

⁽²⁾ The attention of the Court does not appear to have been called to the inherent jurisdiction of a Court of Equity to issue a Commission to take evidence de bene esse. See Gresley on Evidence in Courts of Equity, p. 90; Bowden v. Hodge, 2 Swanston, 258; Cox v. Champneys, 6 Mad. and Gel., 262; and see Mitford on Pleading (fourth edition), pp. 52, 149, 150, and cases there cited; and Jeremy's Equity, p. 272.