
(1873) 02 CAL CK 0002

Calcutta High Court

Case No: None

Kewata Mug

APPELLANT

Vs

Nobocoomar Doss

RESPONDENT

Date of Decision: Feb. 28, 1873

Judgement

Sir Richard Couch, Kt. C.J.

1. An objection was taken that the decree being for a sum less than Rs. 1,000, the award of costs was erroneous, because there was no certificate under s. 9, Act XXVI of 1864. Now a certificate under that section may, according to the words of it, be given at any time. The words do not require that it should be given immediately. It says that costs shall not be allowed unless the Judge gives a certificate. The case, then, is that the learned Judge has made a decree for costs in express terms; he says "there will be a decree accordingly with costs on scale 2;" but he has omitted to determine the question whether "by reason of the difficulty, novelty or general importance of the case, the action was fit to be brought in the High Court." We think that is an omission which, the case having come before us in appeal, we are at liberty to supply; and if we consider that the action was fit to be brought in this Court, we may, acting as an Appellate Court, supply what has been omitted. We may determine any question which it was essential to determine, and may certify that it was a proper action to be brought in the High Court. We have no hesitation in doing that because we have ascertained from the learned Judge that, if his attention had been called to the necessity of a certificate, he would have granted it. The appeal must be dismissed with costs on scale No. 2.