

1895
FOOLKISSORY
DASSEE
v.
NORIN
CHUNDER
BRUNJO.

proved that the proceedings were between the same parties and the issues were substantially the same. If this is shewn, and if it is shewn that the witness is dead, then his deposition in the prior proceedings becomes admissible in the subsequent proceedings.

According to the evidence of the plaintiff's son the charge was made at the instance of his mother, the present plaintiff. Whether that evidence is true or not is another question; but it is in evidence that the person prosecuting was the plaintiff.

Then as to the issues. The issues in this case are whether the plaintiff was in possession of the premises in suit when the defendant entered into possession, and whether the defendant's entry was an unlawful ouster of the plaintiff. The Police Court charge against the defendant was one of unlawful trespass. To establish that it was necessary to show that the plaintiff was in possession, that the defendant unlawfully ousted her, and that he did so with criminal intent. It thus appears that the issues in both proceedings were the same, except that there was an additional issue in the police proceedings.

For these reasons I think the evidence is admissible.

Attorney for the plaintiff: Babu Kedarnath Mitter.

Attorneys for the defendant: Messrs. Kallynath Mitter and
Surbadhicarry.

C. H. G.

CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Rampini.

RAGHU SINGH AND ANOTHER (PETITIONERS) v. ABDUL WAHAB
(OPPOSITE PARTY). *

1896
February 11.

Cattle Trespass Act (I of 1871), sections 20 and 22—Order by a Magistrate other than the Magistrates specified in section 20—Criminal Procedure Code (Act X of 1882), section 192—Power of District Magistrate to transfer cases to a Subordinate Magistrate.

Section 192 of the Criminal Procedure Code (Act X of 1882) does not authorize a District Magistrate to transfer for trial to a Subordinate Magistrate cases which are not within the powers of that Magistrate to try either under section 28 of the Code or under some special or local law.

* Criminal Revision No. 27 of 1896.

A District Magistrate cannot transfer to any Magistrate cases under section 20 of the Cattle Trespass Act (I of 1871), which are triable only by the two classes of Magistrates specified in that section.

1896

RAGHU SINGH

v.

ABDUL
WAHAB.

An order awarding compensation under section 22 of the Act passed by any other Magistrate is illegal, and cannot be cured by the provisions of section 529, or section 537 of the Criminal Procedure Code.

THE complainant, Abdul Wahab, made a complaint to the Magistrate of the District of illegal seizure of his cattle under section 20 of the Cattle Trespass Act (I of 1871). The District Magistrate made the case over for trial to Mr. Lloyd, a Deputy Magistrate with second-class powers, who awarded Rs. 44-4 as compensation to be paid by the petitioners to the complainant. This order was passed under section 22 of the Act. The petitioners obtained a rule from the High Court to show cause why this order should not be set aside, on the ground that the Deputy Magistrate was vested with only second-class powers, and was consequently not competent to make the order passed by him.

Mr. P. L. Roy and Babu Bidhu Bhusan Ganguli appeared on behalf of the petitioners.

Mr. P. L. Roy.—Section 20 of the Cattle Trespass Act renders it imperative that a complaint of illegal seizure of cattle should be made before the Magistrate of the District, or any other Magistrate who is authorized to receive and try charges without reference by the Magistrate of the District. Section 22 authorizes the Magistrate to award compensation after adjudication. It is clear that the Magistrate who is entitled to receive complaints must try the case and not any other Magistrate. See *In the matter of Ketabdi Mundul* (1). The Deputy Magistrate in his explanation has stated that this case was transferred to his file by the District Magistrate under the provisions of section 192 of the Criminal Procedure Code, and therefore he had jurisdiction to try the case. But under that section a District Magistrate can transfer for trial to a Subordinate Magistrate only cases which are within the powers of that Magistrate under section 28 of the Code, or under some special or local law, to try. The illegal order passed by the Deputy Magistrate cannot be held to be cured by anything contained in the Code of Criminal Procedure. Section 529 has no

(1) 2 C. L. R., 507.

1896
 RAGHU SINGH
 v.
 ABDUL
 WAHAB.

application, because that section deals with the taking cognizance of an "offence" by a Magistrate not empowered by law to do so. In this case the petitioners have not been charged with any "offence" as defined in section 4, clause (b) of the Criminal Procedure Code. Illegal seizure of cattle does not amount to an "offence." See *Kottalanada v. Muthaya* (1). Section 537 cannot apply, for it deals with irregularities committed by "Courts of competent jurisdiction." Here the Magistrate who passed the order was not a Court of competent jurisdiction.

The following judgment was delivered by the High Court (GHOSE and RAMPINI, JJ.) :—

The petitioners in this case have been ordered by Mr. Lloyd, Deputy Magistrate of Purneah, who is a Magistrate exercising second-class powers, to pay the sum of Rs. 44-4 as compensation to a certain person, named Abdul Wahab, for the illegal seizure of his cattle. This order has been passed under section 22 of Act I of 1871. The petitioners have obtained a rule to show cause why this order should not be set aside, on the ground that the Deputy Magistrate was vested with only second-class powers, and was consequently not competent to make the order passed by him.

Section 20 of Act I of 1871, as amended by Act I of 1890, authorizes a person, whose cattle have been seized under the Act to make a complaint within ten days to the Magistrate of the District, or to any Magistrate authorized to receive and try charges without reference by the Magistrate of the District; and section 22 provides that, if the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant reasonable compensation not exceeding Rs. 100 to be paid by the person who made the seizure or detained the cattle.

Now, the words "the Magistrate" in this section would seem to refer to the Magistrate previously mentioned in section 20, i.e., either the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District. It is not stated that Mr. Lloyd was either the District Magistrate or a Magistrate authorized to receive and try charges without reference by

(1) I. L. R., 9 Mad., 374.

the Magistrate of the District, but it has been said that the complaint in this case was made in the first instance to the Magistrate of the District who referred it to Mr. Lloyd under the provisions of section 192, clause 1, of the Criminal Procedure Code. But we think that section 192, clause 1, can only authorize a District Magistrate to transfer a case of which he has taken cognizance, to a Magistrate subordinate to him who is competent to try or dispose of it. Under this section a District Magistrate can transfer for trial to a Subordinate Magistrate only cases which are within the powers of that Magistrate under section 28 of the Code, or under some special or local law. He cannot authorize a Magistrate to try a case which is beyond that Magistrate's powers, or which he is not authorized by some provision of some law to try. Thus, under Act I of 1871 the Magistrate can, under section 192 of the Criminal Procedure Code, transfer to any Subordinate Magistrate any case coming under Chapter VI of the Act, as such cases are all apparently triable by any Magistrate (the words employed being *a* Magistrate, not *the* Magistrate); but we do not think he can, under that section, transfer to any Magistrate cases under section 20 of the Act, which would appear to us to be triable only by the two classes of Magistrate specified in that section [*vide In the matter of Ketabdi Mundul* (1)]. The order of Mr. Lloyd in this case would, therefore, seem to have been passed without jurisdiction.

We have considered whether the illegal order passed by the Magistrate in this case can be held to be cured by anything contained in the Code of Criminal Procedure. The only sections which have any bearing on the question are sections 529 and 537, clause (e). Section 529 declares that, if a Magistrate, not empowered by law in that behalf, takes cognizance of an offence under section 191, clause (a) or clause (b), his proceedings shall not on this account be set aside. But the Magistrate has not done this in this case. The petitioners have not been charged with any "offence," as defined in section 4, clause (p) of the Criminal Procedure Code. The illegal seizure of cattle does not amount to an "offence," [see *Kottalanada v. Muthaya* (2)]. Section 537 also cannot

1896
 RAGHU SINGH
 v.
 ABDUL
 WAHAB.

(1) 2 C. L. R., 507.

(2) I. L. R., 9 Mad., 374.

1896
 RAJHU SINGH
 v.
 ABDUL
 WAHAB.

apply, for it deals with irregularities committed by "Courts of competent jurisdiction." In this case it was not an irregularity, but an illegality which the Magistrate committed, and the Magistrate who passed the order under section 22 of Act I of 1871 was not a Court of competent jurisdiction. We are therefore constrained to make this rule absolute, which we accordingly do, setting aside the order of the Magistrate, directing the petitioners to pay Rs. 44-4 compensation.

S. C. B.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Gordon.

1896
 January 14.

JAGOBANDHU DEY PODDAR (DEFENDANT), v. DWARIKA NATH ADDYA (PLAINTIFF).^{*}

Right of suit—Probate and Administration Act (V of 1881), section 90 as amended by Act VI of 1889, sub-section (4)—Executor and residuary legatee, Power of—"Person interested in the property," Meaning of.

D, residuary legatee under a will, having obtained an order for grant of probate in his favour, sold certain properties covered by the will to *J*. In execution of a decree passed against *D* in his personal capacity, the properties were attached, and *J* preferred a claim on the ground of his purchase. The claim was allowed and the properties were released from attachment. In a suit brought by the decree-holder for a declaration that the properties were liable to be sold in execution of his decree, it was *held*—

(1) That the position of *D* under the will being not merely that of an executor but that of a residuary legatee as well, and the restrictions imposed upon *D* by the will being invalid under the ruling in *Ashutosh Dutt v. Doorga Churn Chatterjee* (1), *D* had power to make the alienation in favor of *J*.

(2) That the words "person interested in the property" in sub-section (4) of section 90 of the Probate and Administration Act (V of 1881), as amended by section 14 of Act VI of 1889, must mean a person interested independently of the executor whose alienation is sought to be avoided. The plaintiff deriving his interest as creditor of *D* in his personal capacity, and not as creditor of the estate of the testator, was not entitled to avoid the alienation under that section, even had it been invalid.

^{*} Appeal from Appellate Decree No. 1467 of 1894, against the decree of K. N. Roy, Esq., Officiating District Judge of Burdwan, dated the 21st of June 1894, reversing the decree of Babu Rajendra Kumar Bose, Subordinate Judge of that District, dated the 21st of March 1892.

(1) I. L. R., 5 Calc., 438 ; L. R., 6 I. A., 182.