

ORIGINAL CIVIL.

*Before Mr. Justice Sale.*FOOLKISSORY DASSEE (PLAINTIFF) v. NOBIN CHUNDER
BHUNJO (DEFENDANT).1895
June 20.*Evidence Act (I of 1893), section 33—Deceased Witness—Criminal trial, Deposition in—Admissibility of in civil suit—Specific Relief Act (I of 1877), section 9.*

A prosecution was instituted by *S* against *N* at the instance and on behalf of *F* for criminal trespass in respect of a certain house, and on his own behalf for assault and insult. *S* gave evidence at the trial in support of these charges. *F* subsequently brought a civil suit against *N* for possession of the same house under section 9 of the Specific Relief Act. *S* died before the institution of the civil suit. At the trial of the civil suit the deposition of *S* in the Criminal Court was tendered by *F* as evidence on the issue of possession. *Held*, that *S* being dead and the proceedings being between the same parties and the issues being substantially the same, the deposition of *S* was admissible.

A PROSECUTION was instituted in March 1894 by one Salikram against the defendant, at the instance and on behalf of the plaintiff, for criminal trespass in respect of the house and premises No. 100-4-H-1, Machooa Bazar Street, in the town of Calcutta, under section 448 of the Indian Penal Code, and on his own behalf for assault and insult under sections 352 and 504 of the Penal Code. Salikram gave evidence at the trial in support of these charges. Subsequently, on the 17th May 1894, a civil suit was instituted by the plaintiff against the defendant for possession of the same premises under section 9 of the Specific Relief Act and for damages. Salikram died before the civil suit was instituted. During the trial of the civil suit, the deposition of Salikram was tendered on behalf of the plaintiff as evidence on the issue of possession.

Mr. Dunne and Mr. J. G. Woodroffe for the plaintiff.

Mr. O'Kinealy and Mr. Avetoom for the defendant.

An objection was raised on behalf of the defendant that the deposition was inadmissible.

SALE, J.—I think I must hold that it is admissible under section 33. In order to be admissible under that section it has to be

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.