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but deliberately refused to do so on account of a possibility of having to pay their costs, and she must take the consequence of her own *laches*. Moreover, the Court has no knowledge as to the *status* of these ladies whether or no they are minors, married or unmarried.

The Subordinate Judge's decree will, therefore, be amended. The plaintiff will recover a third share of the amount collected under Ala Baksh's decree, *minus* the share of her two daughters, which amount will be ascertained and determined in the execution of this decree. The amount so recovered from the plaintiff will be returned to the Collector, and added to the sum already in deposit on account of Ala Baksh's decree. The costs of this appeal will be assessed proportionately.

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

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SARAT CHANDRA ROY KANUNGO (PLAINTIFF) *v.* THE COLLECTOR OF CHITTAGONG (DEFENDANT.)*

Evidence—Local Enquiry by Ameen.

The report of an Ameen and evidence recorded on a local enquiry are evidence in the suit, and there is no legal objection to the parties to the suit agreeing that the evidence should be taken before the Ameen, and that the matters in dispute should be referred to him for enquiry.

Baboos *Chandra Madhab Ghose* and *Srinath Banerjee* for appellant.

Baboo *Jagadanand Mookerjee* for respondent.

The judgment of the Court was delivered by

JACKSON, J.—The decision of the lower Appellate Court is clearly erroneous. Plaintiff sued to recover possession of some lands from which he had been dispossessed in execution of a decree made in favor of the defendant against a third person, under section 15 of Act XIV. of 1859. In the course of the proceedings, the plaintiff filed a list of witnesses which is tantamount to an application for summons, and by order of the Court an Ameen was deputed to hold a local enquiry, and report.

It seems that the main point in dispute was, whether that which the plaintiff sues to recover was really land or water. Witnesses were not summoned, and, consequently, no oral evidence was taken by the Court; but the Ameen examined witnesses on the spot, and made a report which was taken into consideration by the Court. On that report, and on certain papers put in by plaintiff, the Sudder Ameen gave him a decree.

The Judge in his decision says, "The Sudder Ameen ordered a local enquir "before examining any witnesses in the Court, and it appears he examined none "at all in Court at any time. This was not a proper course. Plaintiff raised "no objection however, nor did his Counsel in appeal until this Court pointed "out the omission."

* Special Appeal, No. 866 of 1868, from a decree of the Additional Judge of Chittagong, reversing a decree of the Sudder Ameen of that district.

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Now, undoubtedly, in disputed cases of title, it is advisable that the witnesses who are to prove the defendant's or the plaintiff's case should be examined in open Court. At the same time the report of an Ameen and the evidence recorded on a local enquiry by an Ameen, are evidence, and, if, as we can gather in this case, the parties choose to agree that the evidence shall be taken before the Ameen, and that the matters in dispute shall be referred to an Ameen for enquiry, there is no legal objection to such a course, and the Judge ought, therefore, in this case to have referred to the evidence taken by the Ameen and also to his report, and if he thought that the witnesses named by the plaintiff ought to have been examined in Court, he should have sent the case back to the Sudder Ameen with directions accordingly. We, therefore, reverse the order passed by the Additional Judge on this appeal, and remand the case to his Court, in order that it may be retried as directed.

Before Mr. Justice L. S. Jackson and Mr. Justice Glover.

1868
Dec. [illegible]

HARISH CHANDRA CHUCKERBUTTY (DEFENDANT) *v.* TARA CHAND SHAHA (PLAINTIFF.)*

Evidence—Depositions.

Secs. [illegible] and [illegible]3, Act I. of 1872.

Depositions of witnesses in a former suit are not admissible in evidence when those witnesses are living, and their oral evidence is procurable.

Baboo *Umesh Chandra Banerjee* for appellant.

Baboo *Girija Sankur Mosoomdar* for respondent.

JACKSON, J.—I think that the plaintiff did not give the evidence in this case which could entitle him to a verdict. He alleged that defendant had brought against him a false and malicious charge, and he, therefore, sued for damages, the facts alleged being that the defendant had laid information before the Police respecting a theft stated to have been committed in his house, which had caused the Police to search the house of the plaintiff; that on such search, property was found, which the defendant claimed as his, and stated that it had been stolen from his house; that, in fact, the property in question had been previously pledged by the defendant to the plaintiff; and that, in consequence of such pledge being established to the satisfaction of the Magistrate, plaintiff was, accordingly, discharged, and the property restored to him. If those facts had been proved in the Civil Court as alleged, there can be no doubt that the Court might have justly inferred malice, and have given plaintiff a decree. It seems that the plaintiff gave no evidence of the facts which were relied upon as raising the presumption of malice, and did not prove the previous pledge, but seems to have adduced, for the purpose of proving the principal facts, copies of the proceeding before the Magis-

* Special Appeal, No. 1858 of 1868, from a decree of the Subordinate Judge of Furreedpoor, in Dacca, reversing a decree of the Moonsiff of that District.