

1893

KALU
v.
LATU.

unnecessary, his predecessor in title having already by the decree in the former suit obtained such declaration, and he having been substituted in her place in that decree. That being so, the plaintiff clearly has made out his title to the land in dispute; and that title was a subsisting title at the date of the institution of this suit, as the Lower Appellate Court has found in this case that the dis-possession of the plaintiff's predecessor in title took place within 12 years before that date.

The plaintiff, therefore, having a subsisting title is, in our opinion, entitled, though out of possession, to maintain the present suit so far as it seeks to recover mesne profits. The cases of *Dyamoyee Dayee v. Modhoo Soodun Mytee* (1) and *Dwarkaram Misser v. Jogessur Lall* (2) may be cited as authority in favour of this view.

The remand order made by the Lower Appellate Court should therefore be affirmed, so far as it directs the trial of the suit on the merits, in respect of the claim for mesne profits. The prayer for a perpetual injunction must be disallowed, as no case is made out in the plaint for such relief.

The result is that, subject to the modification indicated above, the order of the Lower Appellate Court is affirmed, and this appeal dismissed, but without costs, as the respondent did not appear.

c. s.

Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Amir Ali.

1894
Jan. 4.

C. W. GRIFFITHS (PETITIONER) v. TEZIA DOSADH (OPPOSITE PARTY).
Criminal breach of contract—Breach of contract of service—Act XIII of 1859, s. 2,—Statute & Geo. IV., Cap. 34, s. 3—Autrefois convict.

A conviction for breach of contract of service under s. 2, Act XIII of 1859, is a bar to any subsequent conviction on the same contract for a further breach for not returning to service.

One Tezia Dosadh, a tea garden coolie, entered into a contract, under Act XIII of 1859 on the 16th May 1893, whereby she

* Criminal Revision No. 8 of 1894, against the order passed by Babu Jagat Chandra Das, Extra Assistant Commissioner of Cachar, dated the 3rd October 1893.

(1) 3 W. R., 147.

(2) 21 W. R., 276.

undertook to work on the Cossipur tea estate for a period of 313 days, and she received Rs. 14 on account of the work so to be performed under the contract. On the 18th of May 1893 she refused to carry out the said contract and left the estate. On the 26th of June she was prosecuted by the manager of the estate for fraudulently and wilfully refusing to carry out her contract after having received an advance of Rs. 14 thereon, and on the 29th of July 1893 she was sentenced to one month's rigorous imprisonment. On the 28th of August Tezia Dosadh was released from jail and did not return to the Cossipur tea estate to fulfil her contract. On the 31st of August the manager of the estate again complained to the Extra Assistant Commissioner that Tezia Dosadh had not returned, and asked that she might again be tried. The Extra Assistant Commissioner dismissed the complaint under section 203 of the Criminal Procedure Code, on the ground that the accused having once been tried and punished for refusal to fulfil her contract, could not again be tried for the same offence. The manager then moved the Deputy Commissioner on revision under s. 435 of the Criminal Procedure Code, and he, holding that the contract was still in force, remitted the case to the said Extra Assistant Commissioner, with instructions to him to call upon Tezia Dosadh to fulfill her contract. The Extra Assistant Commissioner again dismissed the complaint on the 3rd of October 1893. The complainant being dissatisfied with the second order of dismissal petitioned the High Court in the exercise of its powers of revision for a rule to show cause why the order should not be set aside.

Mr. *Henderson*, Mr. *Orr*, and Babu *Prasanna Gopal Roy* appeared for the petitioner.

Mr. *Henderson* :—The question is whether a servant who has once been convicted for a breach of contract under Act XIII of 1859 can be again convicted for not returning to service. A second conviction would be perfectly legal. The Magistrate in this case has refused to convict, on the ground that the previous conviction is a bar to any subsequent prosecution under the Act. That is wrong, for the contract continues although the servant has once been convicted. The offence consists in a breach of a still subsisting contract of service. The Legislature contemplates that the servant should return to service, otherwise the servant

1894

 GRIFFITHS
 v.
 TEZIA
 DOSADH.

1894

GRIFFITHS
v.
TRZIA
DOSADE.

would have it in his power to get rid of his contract by his wilful absence, and thus he would be taking advantage of his own wrong. The Magistrate should have convicted. This very matter has been discussed in England, and the cases there decided show that under the English Statute 4 Geo. IV., Cap. 34, section 3 (which is practically identical in its terms with the Indian Act), a servant who has been convicted for absenting himself from his master's service, if he refuse to return to the same service, may be again convicted: See *Uwain v. Clarke* (1) and *Cutler v. Turner* (2). The Indian Act is based upon the English Statute, and should be construed in the same way. The principle laid down in the English cases ought to be followed in this country, otherwise employers of labour would be under a great disadvantage, and it would be hard upon the master when he engages a servant, say for three years, if the servant could by being once punished for his breach of contract get rid of it, and so by his wrongful act the master should lose his service for the rest of the time.

No one appeared on the other side.

The judgment of the Court (PRINSEP and AMEER ALI, JJ.) was as follows:—

This is a case under Act XIII of 1859, in which the Magistrate has refused to act against a cooly woman under contract to a tea garden, who has already been committed to prison under the Act, but who on expiry of the sentence has again refused to perform her contract. Mr. Henderson on the authority of some English cases—*Uwain v. Clarke* (1) and *Cutler v. Turner* (2) under the English Statute 4 Geo. IV., Cap. 34, section 3—contends that a person under contract is liable for successive breaches of the same contract. These cases in our opinion are not completely in point, owing to the difference between the Statute and the Indian Act. The two cases cited proceed on the terms of the Statute. The parts of the Statute upon which the judgments were delivered are not to be found in the Indian Act, and the reasons given for those judgments are consequently not applicable. It is sufficient to state that there is no power given by the Indian Act, as by the English Statute, to discharge a person from liability under the contract, so

(1) L. R., 1 Q. B., 417.

(2) L. R., 9 Q. B., 502.

as to show that unless such order be passed, the contract can still be enforced. The object of the Indian Act, moreover, is stated in the preamble to be to punish fraudulent breaches of contract, as well as to enable a contractor to obtain a more speedy remedy than by recourse to the Civil Courts, which would ordinarily have jurisdiction, so as to afford him relief.

We cannot hold that it is the intention of the Legislature that a contumacious labourer under contract should be liable to imprisonment for several terms for several breaches so as to end in his imprisonment until the term of his contract has expired. This might be the consequence of a persistent refusal to perform a contract for labour for a specific term.

We accordingly approve the law laid down by the Magistrate. From the terms of the order of the Magistrate under which the cooly woman has already suffered imprisonment, it would seem that sentence was summarily passed. It is, however, not quite clear what the terms of the order were. We would point out that a Magistrate's order should at the option of the complainant be either for repayment of the advances made (in whole or in part at the Magistrate's discretion), or for performance of the contract, and that it is only on failure to comply with such order that a sentence of imprisonment can be passed. The application is rejected.

G. S.

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Rampini.

KAMINI KANT ROY, MINOR, BY HIS NEXT FRIEND AND GUARDIAN
AD LITEM CHANDRA MOHAN DEY ROY (DEFENDANT) v. RAM NATH
CHUCKERBUTTY (PLAINTIFF).*

1893
August 4.

*Withdrawal of suit—Civil Procedure Code (Act XIV of 1882), s. 373—
Institution of fresh suit.*

Where *A* instituted a suit to establish his right to sell certain property in satisfaction of a decree against *B*, but withdrew the suit without having obtained leave to bring a fresh suit, and subsequently instituted

* Appeal from Appellate Decree No. 1336 of 1893 against the decree of Babu Ram Gopal Chaki, Subordinate Judge of Mymensingh, dated 4th of May 1892, affirming the decree of Babu Uma Charan Kur, Munsif of Kishoregunge, dated the 10th of July 1891.

1894
GRIFFITHS
v.
TEZIA
DOSADH.