

(1881) 01 CAL CK 0002

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Dabee Pershad

RESPONDENT

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Date of Decision: Jan. 31, 1881

Acts Referred:

- Evidence Act, 1872 - Section 33
- Presidency Magistrates (Court- Fees) Act, 1877 - Section 158

Citation: (1881) ILR (Cal) 532

Hon'ble Judges: Prinsep, J

Bench: Single Bench

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### Judgement

Prinsep, J.

The deposition is inadmissible. Section 76 of the High Courts' Criminal Procedure Act contemplates that evidence, when taken upon commission, if intended to be used in the High Court, must be taken upon an order made by that Court under that section. The terms of Section 158 of the Presidency Magistrates' Act, quoted by Mr. Phillips, refer only to the record of the trial or enquiry before the Magistrate. The evidence taken by a commission issued by order of a Magistrate could not here be admissible u/s 33 of the Evidence Act.