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judgment-creditors. But no such priority is allowed under the present Procedure Code, Act X of 1877. It seems to us that this point, *viz.*, that attachment before judgment does not take priority over the vesting order, has been distinctly ruled in *In the matter of Gocool Doss Soonderjee, an Insolvent* (1) *Bank of Bengal* v. *Newton* (2), and *Gamble* v. *Bholagir* (3). In the last case Sir Richard Couch says distinctly, that an attachment before judgment "cannot be regarded as the inception of an execution, or as binding the goods in such a manner as to exclude the right of the Official Assignee accruing after such attachment, but before judgment and warrant for execution."

We, therefore, set aside the judgment of the District Judge and direct that the execution be stayed as against Gobind Chand Dugur and Sitab Chand Dugur with costs.

Appeal allowed.

Before Mr. Justice Pontifex and Mr. Justice Field.

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April 7.

ROGHOONATH MUNDUL AND ANOTHER (PLAINTIFFS) *v.* JUGGUT BUNDHOO BOSE (DEFENDANT)

Res judicata—Suit for Rent—Suit for Measurement—Civil Procedure Code (Act X of 1877), s. 13.

In a suit by ryots against their zemindar, praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit for rent by the zemindar against the ryots, the ryots had alleged that the amount of rent and the extent of land had been overstated by the zemindar, but the Court decided that the ryots were bound by a jummabundi signed by them, and refused to try whether the extent of land had been overstated.

Held, that the present suit was not barred as *res judicata*.

THE facts of this case sufficiently appear from the judgments.

* Appeal from Appellate Decree, No. 244 of 1880, against the decree of Baboo Gungachurn Sircar, Subordinate Judge of Dacca, dated the 24th of September 1879, affirming the decree of Baboo P. N. Banerjee, First Munsif of Moonshegunge, dated the 15th August 1878.

(1) 1 Ind. Jur., N. S., 327. (2) 12 B. L. R., App., 1
(3) 2 Bom. H. C., 146.

Baboo *Boikantnath Doss* for the appellants.

Baboo *Chunder Madhub Ghose* and Baboo *Bussunt Coomar Bose* for the respondent.

The following judgments of the Court (PONTIFEX and FIELD, JJ.) were delivered:—

PONTIFEX, J.—We think the decision of the lower Appellate Court in this case must be reversed. It appears that the defendant in the present suit instituted a suit, No. 43 of 1877, against the present plaintiffs, claiming that rent to the amount of Rs. 27-2-3-2-2 was due to him, in respect of former years on account of a certain quantity of land. The present plaintiffs, who were defendants in that suit, alleged that the amount of rent and the extent of land; had both been overstated by the plaintiffs. In deciding that suit the Subordinate Judge held, that the present plaintiffs, who were defendants in that case, were bound by a jummabundi which they had signed, and which stated the amount of rent as claimed in that plaint, and being so bound, the Subordinate Judge refused to try whether the extent of land had been overstated or not by the then plaintiffs. After the decision of that case the present suit was instituted, in which the plaintiffs pray, notwithstanding the former decision, that their land may be measured, and that their rent may be charged according to the strict measurement of the land.

Both the Courts below have held that this suit is barred, the previous decision being *res judicata*. Now, if a measurement had been ordered in the former suit, and if upon such measurement it had been found that the present plaintiffs held the quantity of land which they were alleged to have held in the former suit, that would have been a *res judicata*, unless the plaintiffs proved subsequent relinquishment of part of the land. Speaking for myself I think it doubtful whether, in the former suit, which was for *arrears* of rent, the present plaintiffs, as defendants, were entitled to insist that a measurement of land should be had. They, it seems to me, were bound to pay, for the past years, the rent which they were accustomed to pay until

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they took proceedings to get the rent adjusted according to the actual quantity of land in their holding. But whether that is so or not, we think, according to the proper construction of s. 13 of the new Procedure Code, that the former decree cannot be treated as *res judicata*, for, admitting for the sake of argument that the measurement of the land had been a matter directly and substantially in issue in that suit under explanation 2, yet it cannot be said that such matter was heard and finally decided by the Judge in the former suit, and not having been heard and finally decided, the decree in the former suit would not affect this suit as *res judicata* under s. 13. I think, therefore, that the case should go back to the Court of first instance to proceed with the case. The costs in this appeal will be costs in the cause.

FIELD, J.—I am of the same opinion. The question of the quantity of land in the ryots possession was determined in the former suit upon a jummabundi signed by the ryots. The entry in this jummabundi so signed by them, had merely the effect of an admission of the quantity of land in their possession at that particular time. It seems clear to my mind, that that admission as to the quantity of land then in their possession, cannot estop them from showing in the present case the quantity of land which they now occupy. The former suit was brought to recover rent which had fallen due before its institution. The present suit (although the plaint contains much that might well have been omitted) is substantially a suit for abatement. It is a suit which has no concern with rent which has already fallen due; but seeks to have it determined, for the purposes of the future, what rent the ryot is bound to pay to his landlord. Section 19 of the Rent Law provides, that a ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him. The provisions of this section are peculiarly applicable to a case in which rent is paid at so much per bigha, kani, or other local unit of measurement. Where rent is computed and paid in this manner, the ryot is entitled to have a measurement at any time; and if the result

of such measurement shows that he holds less land than he has been paying rent for, he is entitled to an order for abatement, which will have prospective effect. In the present case the jummabundi signed by the ryots, and upon which the previous suit for rent was decreed, contains the daghs comprising the ryot's jumma and the rent of each particular dagh. The ryots called upon their landlord to produce another jummabundi, which contains further the area of each dagh, and the rate of rent payable therefor. I think that these two jummabundis may fairly be taken together; and, taking them together, it is clear, that the ryots pay their rent in this case at a certain rate per kani, and this being so, it is clear that the quantity of land in each dagh, and the total quantity of land in the occupation of the ryots, is an essential factor in determining the rent to be paid by them; in other words, that the rent previously paid by them has been adjusted with reference to the quantity of land held by them. They now seek to show, for the purpose of future years, and the rent to be paid by them hereafter, that the quantity of land held by them can be proved by measurement to be less than the quantity for which rent has been previously paid by them. Section 19 of the Rent Act clearly gives them the right to have this question determined; and in seeking to have this question determined, they are not attempting to adjudicate over again the question determined in the former rent suit which was concerned only with the quantity of land in their possession during the years for the rent of which that suit was brought.

Appeal allowed.