it is a question between the plaintiff and a stranger to the suit. 1884

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That being so, we think that no appeal lay to the District Judge. The rule will therefore be made absolute; the decree of the District Judge will be reversed, and that of the Subordinate Judge restored with costs.

Rule absolute.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.

RUGHUNATH PANJAH AND OTHERS (PLAINTIFFS) *v.* ISSUR CHUNDER CHOWDHRY AND OTHERS (DEFENDANTS).* 1884 *December* 22.

Res-Judicata—Act XIV of 1882, *s.* 13—*Meaning of the words "Court of jurisdiction competent to try such subsequent suit."*

The words of s. 13 of the Civil Procedure Code, "in a Court of jurisdiction competent to try such subsequent suit," refer to the jurisdiction of the Court at the time when the first suit was brought.

Where therefore a suit was brought and decided in 1867 in the Court of a Deputy Collector, that Court being at the time of suit the only Court competent to try suits of the nature of the one brought, and subsequently a second suit, regarding the same subject and between some of the same parties and the representatives of others, was brought in 1881 in the Court of a Munsiff, which latter suit, if it had been brought in 1867, would have been cognizable by a Deputy Collector alone, *Held*, that the decision of the Deputy Collector was a bar to the second suit under s. 13 of the Civil Procedure Code.

The principle in *Gopinath Chobey* v. *Bhaghwat Pershad* (1) approved.

THIS was a suit to have it declared that the plaintiffs were entitled to recover rent from the defendants at the rate of Rs. 92 per annum for 53 bighas of land held under a *potta* dated 21st Bysack 1266, and for khas possession of 2 bighas 6 cottahs in excess of the lands mentioned in the *potta*.

It appeared that one Gunga Gobind Sinha was the dur-putni taluqdar of 53 bighas of land in mouzah Higuldiha, and that he

* Appeal from Appellate Decree No. 1791 of 1883, against the decree of Babu Radha Kristo Sen, Subordinate Judge of Bancoorah, dated the 3rd of April 1883, modifying the decree of Babu Ananda Nath Mozoomdar, Munsiff of Kotulpore, dated 19th of September 1881.

(1) I. L. R., 10 Calc., 697.

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obtained a decree for enhancement of rent against his ryots, Sonatún Maiti and others, in which decree Rs. 114 was the yearly rent fixed for the said 53 bighas of land.

Subsequently to this decree the tenure was purchased, in the name of defendant No. 1, by the defendants 2 to 7 at a sale in execution of a decree against Maiti and others; the defendants 2 to 7 then succeeded in obtaining from Gunga Gobind Sinha an abatement of rent of Rs. 22-8 and executed a *kabuliat* in the name of defendant No. 1, dated 21st Bysack 1266, for the said 53 bighas at Rs. 92 per annum.

In 1867 one Joygopal Panjah (defendant No. 9) sued for possession of 24 bighas of land, covered by this *potta*, stating that they were his rent-free *debutter* lands, and in this suit the defendants 1 to 7 and Gunga Gobind Sinha were made defendants; this suit was decided in favour of Joygopal Panjah. Subsequently to this latter suit the durputni passed into the hands of Rughunath Panjah (the present plaintiff), and he sued the defendants 1 to 7 in the Deputy Collector's Court for arrears of rent in respect of the lands held by them under the *potta* of 21st Bysack 1266. This suit was numbered 267 of 1867. The defendants in that case claimed an abatement of rent in consequence of the 24 bighas decreed to Joygopal Panjah. The abatement was allowed, and the jumma fixed at Rs. 41-11. Rughunath Panjah then brought a suit, being suit No. 549 of 1871, for enhancement of rent of the said lands, which suit was eventually on appeal dismissed by the High Court on the 21st March 1873, on the ground that the said *potta* was a *mokurari potta* in favor of the defendants, and that the rent therefore was not liable to enhancement. Some time subsequently to the decision in suit No. 267 of 1867, Rughunath admitted two other persons (the present plaintiffs Nos. 2 and 3) as co-sharers with him in the durputni taluq, and on the 23rd March 1881 Rughunath and his two co-sharers brought this present suit against defendants 1 to 7, asking (1) that the land held by the defendants under the *potta* of 21st Bysack 1266 might be declared liable to the payment of rent at the rate of Rs. 92 per annum as stipulated in the said *potta*, and (2) for a decree for arrears of rent for the years 1284 to 1286 at the same rate,

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and (3) for khas possession of 2 bighas 6 cottahs of land held by the defendants in excess of the land mentioned in the said *potta*.

The defendants 8 and 9 intervened, claiming that some of their *debutter* lands had been claimed by the plaintiffs in the suit, and they were accordingly made defendants in the suit. Defendants 1 to 7 pleaded amongst other matters *res-judicata* as regarded the first and third prayers of the plaint. The Munsiff held that the suit No. 267 of 1867 was a bar to the plaintiffs' suit, inasmuch as the decree in that suit passed by the Deputy Collector, and confirmed on appeal, had definitely settled the amount of rent payable by the defendants to be Rs. 41-8, and that although in that suit the present plaintiffs Nos. 2 and 3 were not parties, yet they must be regarded as being representatives in interest of Rughunath to the extent of the shares to which they were admitted as co-sharers, and further held that the suit No. 549 of 1871 precluded the plaintiffs from claiming any higher rate of rent than that allowed in suit No. 267 of 1867; he also held that the 2 bighas 6 cottahs of land were included in the *potta*, and gave the plaintiffs a decree for arrears of rent at the rate of Rs. 41-8.

The plaintiffs appealed to the Subordinate Judge, who held that the question as to whether the plaintiffs were entitled to rent at Rs. 92 per annum was *res-judicata*, and he therefore dismissed the appeal, making, however, a small modification of the Munsiff's decree, which is immaterial for the purposes of this report.

The plaintiffs appealed to the High Court.

Babu *Mohini Mohun Roy* and Babu *Nilmadhub Sen* for the appellants, contended that s. 13 of the Civil Procedure Code did not apply, inasmuch as the Deputy Collector's Court in 1867 was a Court of different jurisdiction from that of the Munsiff who tried this present case, and the first suit therefore could be no bar to the present suit.

Babu *Guru Das Banerji* and Babu *Koruna Sindhu Mukerji* for the respondents.

Judgment of the Court was delivered by

GARTH, C.J., (MACPHERSON, J., concurring).—The only ques-

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tion which we have to decide in this case is whether the former judgment is a *res-judicata*.

The plaintiffs sue for the rent of a tenure at the rate of Rs. 92 a year; and the answer of the defendants is, that many years ago, in the year 1867, a suit was brought by the plaintiffs for the rent of this same tenure at the rate which they now claim; and the answer which the defendants then made was, that the lease originally professed to grant more land than the lessors had any right to convey, and consequently the defendants claimed a deduction on the ground that some 24 bighas, which were covered by the *potta*, had been taken out of their hands by some one who had a better title to it than the plaintiffs; and the result of that suit, which was tried before the Deputy Collector, was, that an abatement of rent was made in favour of the defendants, and the jumma was assessed at Rs. 41-11.

The defendants set up this judgment obtained before the Deputy Collector as a bar to this suit, and the Subordinate Judge has held that the defence is a good one.

The defendant contends that the Subordinate Judge was wrong. He argues, that according to the true meaning of s. 13 of the Code of Civil Procedure, where the Court in which the second suit is brought is a Court of different jurisdiction from that in which the first suit was brought, then s. 13 does not apply; and therefore as the Deputy Collector's Court in the year 1867 was a Court of different jurisdiction from that of the Munsiff who tried this case, the decision in the first suit is no bar.

We think that this is not the true meaning of s. 13. The question which we have now to determine appears to have arisen in a somewhat different form in the case of *Gopinath Chobey* v. *Bhaghwat Pershad* and another, decided by MITTER and NORRIS, JJ., and reported in I. L. R., 10 Calcutta, 697.

The question there arose in this way. A suit was first brought to recover certain property, of which the value at that time was less than Rs. 1,000, and therefore the proper Court to try it was that of the Munsiff.

A second suit was afterwards brought, between the same parties in the Court of the Subordinate Judge, to recover the same

property, which had then risen in value and become worth more than Rs. 1,000; and it was contended that as the Munsiff could not have tried the second suit in consequence of the value of the property being more than Rs. 1,000, s. 13 did not apply. But Mr. Justice Mitter in delivering the judgment of the Court said this: "We are of opinion, that this construction of s. 13 is not correct. It is well known that in this country the value of landed property is increasing every day. A suit regarding a particular property may be, so far as the pecuniary value of it is concerned, properly cognizable by a Munsiff to-day, and ten years hence a suit for that property, having regard to its pecuniary value then, might not be cognizable by the Munsiff. But it would be unreasonable to hold, in a suit which might be brought ten years hence, that a decision between the same parties to-day passed by a Munsiff having full jurisdiction would not be *res-judicata* ten years hence. The reasonable construction of the words *in a Court of jurisdiction competent to try such subsequent suit*, seems to us to be that it must refer *to the jurisdiction of the Court at the time when the first suit was brought*; that is to say, if the Court which tried the first suit was competent to try the subsequent suit, if then brought, the decision of such Court would be conclusive under s. 13, although on a subsequent date by a rise in the value of such property, or from any other cause, the said Court ceased to be the proper Court, so far as pecuniary jurisdiction is concerned, to take cognizance of a suit relating to that property."

Accordingly the learned Judges in that case held, that the decision in the former suit was a *res-judicata* in the case then under discussion.

We entirely agree in the principle thus laid down, and we think it applies here. There is no doubt that the Court in which this suit is brought, and that in which the former suit was brought, are Courts of different jurisdictions; but at the same time the Court in which the former suit was brought was the only Court at that time competent to try suits of that kind, and if this very suit had been brought at that time, the Deputy Collector's Court would have been the only Court competent to try it.

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We think therefore the Subordinate Judge was right in holding that the decision in the former suit is a bar to this suit.

The appeal must therefore be dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Pigot.

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September 11.

COGGAN *v.* POGOSE.

Equitable Mortgage—Deposit of title deeds—Priority—Registration Act—Act III of 1877, *s.* 48.

A deposit of title deeds of certain property, under a verbal arrangement to secure payment of a debt, is not an "oral agreement or declaration relating to such property" within the meaning of s. 48 of the Registration Act.

THIS was a claim made in the administration suit of *Coggan* v. *Pogose*, against the estate of the defendant, by the representatives of the late J. P. Wise of Dacca. In 1873 Pogose was indebted to Wise in a sum of Rs. 75,000, being the amount of certain bills of exchange accepted by Wise for the accommodation of Pogose. By a verbal agreement made in 1873 between Wise and Pogose, the latter agreed to deposit, and did deposit, with the former a *Heba-bil-Ewaz* executed in his favour by one Nizamunissa Khatoon, and dated the 17th of July 1864, thereby, as claimed by Wise, "mortgaging to the said Josiah Patrick Wise the said Nicholas Peter Pogose's title and interest in the properties comprised in such *Heba-bil-Ewaz*," to secure payment of the said sum of Rs. 75,000.

By a stamped and registered instrument, dated the 4th day of July 1876, Pogose charged a portion of the same properties in favour of the Agra Bank to secure the payment of a sum of Rs. 25,000. On the 30th of June 1876, a similar charge had been made by him in favour of the Bank of Bengal to secure the payment of certain sums which amounted to upwards of Rs. 70,000. All the properties comprised in the *Heba-bil-Ewaz* had been made over to, and were in the possession of, the Official Trustee of Bengal. The question was, whether Wise's claim had priority over the claims of the Agra Bank and of the Bank of Bengal.