Before Mr. Justice McDonell and Mr. Justice Field.

MERJAH JANAND AND ANOTHER (DEFENDANTS) *v.* KRISHTO CHUNDER *alias* KINOO LAHARY. (PLAINTIFF).* 1884 *February* 12.

Res-judicata—Decision of Collector in measurement proceedings—Bengal Act VIII of 1869, s. 18—Jurisdiction of Collector.

If a Collector professing to proceed under the provision of s. 38, Bengal Act VIII of 1869, does not ascertain the existing rates of rent, but proceeds to assess the rents, in other words to determine what rates are in his opinion fair and equitable, he exceeds his jurisdiction and his proceedings are null and void. But if he has properly exercised the jurisdiction conferred on him by that section, his proceedings are conclusive between the parties in a subsequent suit for rent.

IN this case it was held that it did not plainly appear in the face of the proceedings that the Collector had not properly exercised the jurisdiction conferred upon him. The facts of this case are sufficiently stated in the judgment of the Court (MCDONELL and FIELD, JJ.)

Baboo *Nil Madhub Bose* for the appellants.

Baboo *Grija Sunkur Moozumdar* for the respondent.

FIELD, J.—This was a suit for rent. It was brought upon the basis of a *jamabandi* or rent-roll which was drawn up by the Collector in previous proceedings under the provisions of s. 38 of Bengal Act VIII of 1869. The only point which has been pressed upon us is that the proceedings of the Collector and the *jamabandi* drawn up by him were *ultra vires*, and that the defendants in the present case are not bound by them, because the Collector did not *ascertain* the existing rates of rent

* Appeals from Appellate Decree Nos. 1073 and 1079 of 1882, against the decrees of Baboo Nobin Chunder Ghose, Rai Bahadur, First Subordinate Judge of Zillah Mymensingh, dated the 30th of March 1882, affirming the decree of Baboo Bepin Chunder Rai, Rai Bahadur, Additional Munsiff of Netrcona, dated the 25th of November 1880.

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(that being what s. 38 empowered him to do), but *assessed* rates, which were really enhanced rates. Several previous decisions of this Court have been referred to in the course of the argument by the learned vakeel for the appellant. We think there can be no doubt that if a Collector, professing to proceed under the provisions of s. 38 of the Rent Act, does not *ascertain the existing rates*, but proceeds to *assess* rates, in other words, proceeds to determine what rates are in his opinion fair and equitable, he exceeds his jurisdiction and his proceedings are null and void. On the other hand, if the Collector exercises properly the jurisdiction conferred upon him by the section, then we think that his proceedings are conclusive between the parties in any subsequent suit for rent. There is a distinction between those cases in which the tenants have appealed against the proceedings had under s. 38, and another class of cases in which the proceedings had under s. 38 were sought to be used as evidence in a subsequent suit for rent. It is clear that in the first class of cases, questions might be raised which could not properly be raised in the second class of cases. In the second class of cases the proceedings of the Collector are used as a judgment, to show that the question as to the rates of rent is *res-judicata* between the parties. It is a rule laid down by the Evidence Act in accordance with principles long established that the judgment of any Court when offered in evidence in a subsequent proceeding may be shown to have been made without jurisdiction, and therefore to be void. In exercising the special powers conferred by s. 38, the Collector is bound to conform strictly to the provisions of the section, and if it plainly appears on the face of his proceedings that he did not so conform, a finite effect cannot be given to those proceedings and the judgment in which they have been embodied. What we have then to consider in the present case is whether it plainly appears on the face of the proceedings of the Collector that he was not properly exercising the jurisdiction conferred upon him by s. 38. We have read those proceedings, and it appears to us that it does not so appear. There are expressions used in the Collector's decision and in the judgment of the Judge to whom an appeal was preferred against that decision, which may appear equally

applicable to *ascertaining* or *assessing* rent; but when these expressions are read with the context, it does not appear to us that the Collector or the Judge did otherwise than *ascertain* the then existing rates of rent. In one passage the District Judge says: "The ryots of the mahal, the Amin said, had not, on account of the enmity which existed, given the exact rates, but he *ascertained* the rates from certain persons who had previously been ryots in the mahal." It also appears that certain previous *butwara* proceedings were used by the Amin, and these *butwara* proceedings would show the then existing rates, not recent or new enhanced rate. It therefore appears to us that there is nothing on the face of the proceedings to show that the Collector did otherwise than ascertain the existing rates, and that the Collector's proceedings and the *jamabandi* are binding on the ryots.

Then it is argued that it appears from one passage in the District Judge's judgment in the proceedings under s. 38, that the question of the Collector exceeding his jurisdiction was raised, and that the Judge declined to entertain it. If this were so, if the question was raised and the Judge declined to entertain it, it would be impossible to say that the question so raised, but not heard and determined, was *res-judicata*. The passage relied upon is this: "From the Collector's order the present appeal is preferred. The first ground of appeal is to the effect that, inasmuch as the petitioner moved the Civil Court with the intention of illegally enhancing the rent of ryots, his petition was liable to be rejected. The intention however of the petitioner cannot now be considered, the present appeal being from the order of the Collector and not from that of the Subordinate Judge, admitting the right of the petitioner to an order under s. 38 of Act VIII of 1869." What the intention of the petitioner under s. 38 may have been is not material. The question which would have been material, and which does not appear to have been raised in the passage, which I have just cited, is whether the landlord was unable to measure the land comprised in his estate, by reason that he could not ascertain who were the persons liable to pay rent to him in respect of such land. There is no allegation that, although he alleged himself to be unable to

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ascertain the persons liable to pay rent, he might have ascertained who those persons were if he had wished to do so. This being so it appears to us that there is nothing in the passage relied upon by the appellant's vakeel to show that the question of jurisdiction was raised, and that the District Judge in the former proceedings declined to entertain it. This appeal must therefore by dismissed with costs. This judgment will apply to No. 1079.

Appeal dismissed.