By section 31 it is enacted that whenever a deposit on account of rent shall have been made no suit shall be brought against the person making the deposit on account of any rent which accrued due prior to the date of the deposit, unless the suit be instituted within six months from the date of the service of the notice required by section 47. The rent for the first of the three years became due on the 12th April 1883, for the second on the 11th April 1884, for the third on the 12th April 1885. The deposits were made on the 10th April 1883, the 8th April 1884, and the 11th April 1885, all before the expiration of the year when the rent became due. The words of the Act are plain that the deposit must be of rent which accrued due prior to the date of the deposit. They do not admit of any other construction. The first Court disallowed the rent for the part of the fourth year on the ground that it was not due, and made a decree for rent for the three years at the rate which had been fixed for the year in the previous suit. The High Court, on appeal, affirmed that decree, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this appeal. The appellant will pay the costs of the appeals.

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SURJA KANT ACHARYA *v.* HEMANTA KUMARI.

Appeals dismissed.

Solicitors for the appellant: Messrs. *Barrow* and *Rogers*.

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Norris.

BAKSHI AND ANOTHER (PLAINTIFFS) *v.* NIZAMUDDI AND OTHERS (DEFENDANTS).*

1892 *December* 8.

Res judicata—Rent suit Decree as to rent payable for former years—Evidence of rent payable.

The plaintiffs sued the defendants for rent of a certain jote, claiming a higher rent than the defendants admitted. The High Court in second

* Appeal from Appellate Decree No. 1053 of 1891, against the decree of Baboo Kalli Prosunno Mookerjee, Subordinate Judge of Tippera, dated the 30th of March 1891, modifying the decree of Baboo Kalli Puddo Mookerjee, Munsiff of Moaradnagore, dated the 19th of February 1890.

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appeal gave a decree at the lesser rate admitted by the defendants. Subsequently the plaintiffs again sued the defendants in regard to the same jote for arrears of rent for subsequent years at the rate claimed in the former suit. The defendants contended that the rate of the rent as regards this jote was by virtue of the judgment of the High Court in the previous suit *res judicata* as between themselves and the plaintiff.

Held, that where in a rent-suit a Judge tries the question and gives judgment on the question "what is the yearly rent," and makes that the foundation of his judgment, that decision is *res judicata* between the parties. The previous judgment of the High Court, therefore, operated as *res judicata*.

Hurry Behari Bhagat v. *Pargun Ahir* (1) followed.

PER NORRIS, J.—Even if the judgment of the High Court did not operate as *res judicata*, still it was some evidence of the rate of the rent of the previous year.

THE facts of this case were as follows:—

The plaintiffs sued to recover the rent of a certain jote at the rate of Rs. 52-12 per annum. The defendants admitted the holding, but stated that the rent was not Rs. 52-12 per annum, but Rs. 15-6-6 and stated that the whole of the rent had been paid. Prior to this there had been another suit between the same parties concerning the same *jote*, and in that case also the plaintiffs had claimed rent at the rate of Rs. 52-12 per annum, the defendant contending as in this suit that the amount due should be calculated at the rate of Rs. 15-6-6. The lower Appellate Court in deciding that case gave a decree at the rate of Rs. 52-12. Acting on that decision the Munsiff in the present case gave a decree at the same rental. The defendants then appealed to the Subordinate Judge. In the meantime the previous suit had been appealed to the High Court, and the decree of the lower Appellate Court was modified, a decree being passed at the rate of Rs. 15-6-6. The Subordinate Judge basing his decision in the present suit on the decree of the High Court, gave the plaintiffs a decree at the rate of Rs. 15-6-6. The plaintiffs being dissatisfied with this decision appealed to the High Court.

Baboo *Debendro Nath Banerjee* for the appellants.

Moulvie *Seraj-ul-Islam* for the respondents.

(1) I. L. R., 19 Calc., 656.

The following judgments were delivered by the Court (PETHERAM, C.J., and NORRIS, J.)

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PETHERAM, C.J.—This is a suit brought by the plaintiffs against the defendants to recover the rent of a jote, and the rent claimed is at the rate of Rs. 52-12 a year. The defendant Nizamuddi in his written statement, admits the holding, but states that the rental is Rs. 15-6-6 instead of the larger sum, and goes on to say that everything has been paid. The matter came before the Munsiff in the first instance, and he decreed the suit at the rental alleged by the plaintiffs on the ground that, in a prior suit brought by the plaintiffs against the defendants in respect of the same holding, the first Court of appeal had decreed the plaintiffs' rent at that rate. From that judgment the defendants appealed, and the matter then came before the Subordinate Judge, and he decreed the appeal and modified the decree by giving the plaintiffs a decree for the amount of rent at Rs. 15-6-6 only, on the ground that the decree, upon which the plaintiffs had relied in the first Court, had in the meantime been reversed by this Court, and that the decree, as it then stood, was for the smaller amount only. From that decision the plaintiffs have now appealed, and their only ground really is that the decision in the prior suit cannot be given in evidence to show what is the rental in this suit. Now, that is a question upon which there has been a considerable amount of discussion, but the last case on the subject which is reported is the case of *Hurry Behari Bhagat* v. *Pargun Ahir* (1). In that case the learned Judges held that, where in a rent-suit a Judge tries the question and gives judgment on the question, "what is the yearly rent," and makes that the foundation of his judgment, that becomes *res judicata* between the parties. That, as I said just now, is the last case on the subject, and is a case which we are bound to follow, and consequently it has been necessary to do, as was done in that case, viz., to examine the judgment of this Court upon which the Subordinate Judge acted in giving a decree for the smaller sum. When one comes to examine that judgment, it appears that, as in the case of *Hurry Behari Bhagat* v. *Pargun Ahir* (1) the Judges in arriving at the conclusion at which they arrived, as to the amount of money due

(1) I. L. R., 19 Calc., 656.

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from the defendants to the plaintiffs, tried and decided the question judicially, what was the yearly rent at which the tenure was held by the defendants under the plaintiffs. They having done that, as in the other case, this case falls exactly within the authority of that case. Consequently, the conclusion at which the learned Subordinate Judge arrived upon these materials was correct, and the materials upon which he arrived at it were rightly and properly before him. In the result this appeal must be dismissed with costs.

NORRIS, J.—I concur in holding that this appeal should be dismissed. I think I ought to say, because I entertain a somewhat strong opinion on the subject, an opinion not shared in any degree by the Chief Justice, that even if the judgment of the High Court—a judgment of Mr. Justice Ghose and myself, which the Chief Justice says, having been arrived at upon the authority of the case decided by Mr. Justice Pigot and Mr. Justice Gordon, operates as *res judicata*—does not operate as such, still it is some evidence as to the rate of rent of the previous year. But I distinctly wish it to be understood that this is an expression of my own opinion, and that it is not shared in by the Chief Justice.

C. S. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Mr. Justice Norris.

1893 March 15.

FATIMA BIBI v. DEBNAUTH SHAH.*

Minor, right of, to contract—Contract by a minor—Specific performance of contract, Right of minor to enforce—Contract Act (IX of 1872), s. 11.

A minor in this country cannot maintain a suit for specific performance of a contract entered into on his behalf by his guardian.

Flight v. *Bolland* (1) followed.

Semble, having regard to the provisions of section 11 of the Contract Act (IX of 1872), a minor in this country cannot contract at all.

Mahamed Arif v. *Saraswati Debya* (2) and *Hanmant Lakshman* v. *Jayarao Narsinha* (3) referred to.

* Original Civil Suit No. 366 of 1892.

(1) 4 Russ., 298. (2) I. L. R., 18 Calc., 259.
(3) I. L. R., 13 Bom., 50.