of his failure to prove the rates. No one will contend but that if the second suit had been brought in the same Collector's Court, that Collector must have given effect to his own previous judgment, and on proof of the rates and of the notice must have given the plaintiff his decree. But in the meantime Act VIII of 1869 is passed by the Bengal Council, and the suggestion is that, as the plaintiff has been obliged to bring his suit in a Court possessing a wider jurisdiction, therefore that Court, whice is only trying the suit which but for Act VIII the Collector would have tried, is at liberty to ignore the previous judgment, and decide for itself on the same evidence. But it may be doubted whether wider jurisdiction is a term properly applicable here; for if I have correctly stated the effect of Act VIII and Act X of 1859 passed almost at the same moment, then the result of the passing of the Beng. Act VIII of 1869 may have been to give the Civil Courts their old jurisdiction plus that of the Collectors, and this may possibly account for the introduction, otherwise difficult to understand. of the direction given in s. 42 that suits under the Act shall be entered in a separate register.

This notion may not be in precise accord with what I said in *Jallaloodden* v. *Burne* (1), but the question is so little one of

(1) *Before Mr. Justice Jackson and Mr. Justice Ainslie.*

The 13*th May* 1872.

JALLALOODDEN (PLAINTIFF) *v.* J. BURNE, MANAGER, COURT OF WARDS, DURBHANGA (DEFENDANT).*

Act VIII of 1859—*Beng. Act VIII of* 1869—*Jurisdiction—Rent.*

The defendant took from the plaintiff's ancestor a small portion of endowed land for a garden, and in consideration thereof paid him a certain fixed amount of grain for his maintenance and support, and subsequently that payment was commuted into a monthly allowance of Rs. 3-8, which was regularly paid till 1276, and then stopped. To a suit under Beng. Act VIII of 1869, to recover the amount, the defence was that a suit for a claim of such a nature could not be brought under that Act, but the objection was overruled, and the plaintiff held entitled to recover the amount sued for.

THE Maharaja of Durbhanga, who was at that time Maharaja Chutter Singh Bahadur, having occasion for one biga two katas of land, part of an endowment held by the plaintiff's ancestor, on which land the Maharaja desired to make a garden, took and occupied it, and in consideration

* Special appeal, No. 1390 of 1871, against a decree of the additional Judge of Zilla Tirhoot, dated the 7th September 1871, reversing a decree of the Munsif of that district, dated the 15th June 1871.

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principle, and belongs so much to the domain of conjecture, that one may be well excused for slightly altering his opinion upon

of such occupancy paid in the first instance a certain fixed amount of grain, and subsequently that amount of grain was commuted to a monthly allowance of Rs. 3-8, which was paid regularly for a series of years down to Falgun 1276, payment thereafter being withheld.

The plaintiff sued in the Munsif's Court to recover the same. The question was raised whether the suit was a suit for rent or for an allowance in the nature of charity, and consequently whether it was a suit under Beng. Act VIII of 1869 or no.

The Munsif, considering the suit to be really a suit for rent, and finding that the amount was actually due to plaintiff, gave him a decree save only for a small portion of the claim, namely the allowance for one month previously paid, which the plaintiff had by some mistake included in his claim.

On appeal to the Additional Judge, it was chiefly urged that the suit could not be looked upon as a rent suit. The Judge held that it was not, and consequently could not be brought under Beng. Act VIII of 1869, and he ordered it to be struck off the file of cases under the Act.

The plaintiff then preferred the present appeal to the High Court.

Moonshee *Mahomed Yusoof* for the appellant.

Baboo *Unoda Persad Banerjee* for the respondent.

The judgment of the Court was delivered by

JACKSON, J. (who, after stating the facts and reading the judgment of the Subordinate Judge, continued):—I very much lament that in the lower Appellate Court so flimsy a defence should have been allowed to prevail, and also that it should have been urged here on behalf of the Court of Wards.

The Maharaja for his own purposes wanted the plaintiff's land. The plaintiff's ancestor agreeing to give the land, which apparently he could not alienate, the Maharaja, as a sop for his own vanity, fixes probably a larger allowance than usual to be paid, and in consideration of this, the owner of the land acquiesces in its being called "charity" instead of rent. This amount continues to be paid for a number of years till the occupier or lessee suddenly thinks fit to stop it, and the question is raised whether this amount was charity or rent. It is in fact the consideration stipulated to be paid for the defendant's occupation of the land. The circumstance of the plaintiff's ancestor having been a fakir in no respect affects the plaintiff's right to recover the equivalent so agreed upon, by whatever name it be called. The question whether the suit is one under Beng. Act VIII of 1869 or not appears to be of the most frivolous character.

The Bengal Legislature, when it Passed Act VIII of 1869, restoring to the Civil Courts the jurisdiction of which they had been for a time deprived, and empowering them to try suits for rent and others of a kindred nature, thought fit to direct that the suits instituted under the provisions of the Act should be entered in a separate register. This provision, however, was introduced obviously for statistical purposes, and not for the purposes of separating into parts the jurisdiction exercised by one Court.

it on further consideration—and in fact the system founded upon these two Acts never had time to be consolidated and made certain. The Courts were long occupied in efforts to make it work harmoniously; and before it had existed quite ten years, it was swept away.

But it may be said the evil will not go far, for the decision which the parties may now obtain will be final and conclusive: but the plaintiff may fairly object to being told that finality steps in just at the point where he has been defeated.

It is not represented that in this instance the defendant was at any particular disadvantage before the Collector, nor did he seek the aid of the Civil Court while it was yet distinct, for the purpose of obtaining any declaration as to his lakhiraj title. He so far acquiesced in the adverse result; and it is proposed now to give the effect of a successful resort to the Civil Court to a merely repeated defence with a dishonest averment superadded.

It seems to be supposed that injustice will follow from having parties bound by the decisions of the Revenue Courts, but seeing that in general precisely the same appeal was provided in these cases as from decisions of the Civil Courts, I cannot see much ground for apprehension.

But this I do see plainly that, if the transfer of rent suits to the Civil Courts is to be held as affording an opportunity for re-opening every question of title or quasi-title that has been supposed to be set at rest by Collector's decisions, there will be many thousands of controversies set loose, and serious confusion will ensue.

My opinion is that a decision in a previous and similar suit upon an issue raised substantially in the same manner, by parties in a Revenue Court, is binding upon them as evidence in a subsequent suit which but for the passing of Beng. Act VIII of 1869 would also have been brought in a Revenue Court.

I cannot conceive how the plaintiff's allegation that the suit was brought under Beng. Act VIII of 1869 should render it liable to be struck off in order that he might bring a fresh suit under Act VIII of 1859 in the same Court and on the same cause of action, even supposing that the suit was not really a rent suit.

The plaintiff is unquestionably entitled to the amount for which he sues and we therefore set aside the decree of the lower Appellate Court and restore that of the Munsif.