The 4th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Rent-suits—Judgments.

Case No. 1523 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of Purneah, dated the 31st March 1870, affirming a decision of the Deputy Collector of that District, dated the 27th November 1869.

Dhunraj Koonwar (Defendant), *Appellant,*

versus

Ooggur Narain Koonwar (Plaintiff), *Respondent.*

Baboo Tarucknath Dutt for Appellant.

Baboo Obinash Chunder Banerjee for Respondent.

Unless the circumstances of one rent-suit are on all fours with those of another, it is a serious error for a Court to refer to its judgment in one case for the reasons of its decision in another case.

Bayley, J.—We think that in this case the judgment of the Lower Appellate Court, so far as it regards the plaintiff's claim to enhanced rent for 12-16th of 1276 must be reversed.

The plaintiff sued for arrears of rent at the old rate for 1274 and 1275, and at an enhanced rate for 1276. As to the arrears claimed at the old rate for 1274-1275, the plaintiff got a decree, and no appeal was made by the defendant on that point. The claim as to enhanced rate was on the grounds, (1) of the increased productiveness of the soil, (2) of the increased value of the produce, and (3) of the defendant paying at a lesser rate of rent than the *prevailing* rate as paid by the same class of ryots for lands with similar advantages in the neighbourhood.

It was, under the ordinary rules of pleading, for the plaintiff to prove these allegations.

In regard to the first two grounds of enhancement, however, the plaintiff's pleader here gives up the case. The only remaining question is whether the plaintiff has proved the last ground of enhancement, *viz.*, whether the rate paid by the defendant was less than the prevailing rate as paid by the same class of ryots for adjacent lands with similar advantages, and whether on this ground plaintiff could get a decree at the enhanced rate sued for for the 12-16th of 1276.

We have heard all the evidence adduced by the plaintiff on this point, and it is clear that plaintiff does not by it prove that the rate claimed by the plaintiff (Rupee 1 6 annas per beegah) is paid by the *same class of ryots* for adjacent lands with similar advantages and is the *prevailing* rate, that is to say, the rate paid by so large a majority of the same class of tenants for such lands as would justify one to hold the rate claimed to be the "*prevailing*" rate. Upon this ground, therefore, the plaintiff, being unable to prove his claim to the enhanced rate, must fail to obtain a decree in this case for the 12-16th of 1276.

Another objection taken to the judgment of the Lower Appellate Court is, that there is no decision by that Court on the contested question as to what was the standard measurement pole of the pergunnah. It is true that there was a dispute on this point before the Ameen who preferred to the Collectorate and adopted the pole thence received as the standard pole, but still it was for the Lower Appellate Court to adjudicate in this suit for enhanced rent the question whether such pole was the standard of measurements for the particular pergunnah or division in which these lands were. No decision whatever has been come to by the Lower Appellate Court on this point.

There is also no decision by the Lower Appellate Court on the question, distinctly raised before it by the defendant, *viz.*, whether certain lands claimed by the plaintiff as subject to enhancement were liable to assessment at all, the averment of defendant being that they were lakheraj land. But, be it as it may, it is sufficient to say that the Lower Appellate Court has given the plaintiff a decree to enhanced rent at the rate of Rupee 1-6 annas without any evidence as to that being the "*prevailing*" rate *generally* paid, and not only by five or six witnesses, by the same class of ryots for lands adjacent, with similar advantages. It is true that, while, on the one hand, the defendant's written statement was a clear averment of his right under Section 4, Act X. of 1859, for having held at one uniform rate from the time of the Permanent Settlement, yet, on the other, defendant's

deposition and that of his agent on oath was a little contradictory to that statement; but it was for the plaintiff to prove his case before he could rely on the weakness of the defendant's case.

As the plaintiff, therefore, has failed to prove his claim to enhanced rent of 12-16th or 1276, the judgment of the Lower Appellate Court on this point must be reversed, and the plaintiff's suit dismissed.

Each party will bear his own costs in all the Courts.

This decision, however, must not be understood to prejudice any future claim that the plaintiff may have to enhanced rent. It simply dismisses the plaintiff's present claim to enhanced rent for 12-16th of 1276, because the plaintiff has failed to prove the particular grounds which he urged in this particular case.

We will only add that in this case the Lower Appellate Court has seriously erred in referring to his judgments in other cases for his reasons for the decision of this case. When a plaintiff sues several defendants under Act X. of 1859, the separate tenants are in a position to make, and often do make, quite separate defences. The Lower Appellate Court, therefore, should always see how far the circumstances of one case are really on all fours to those of another before it refers to the judgment in the one for that in another.

The 4th January 1871.

Present:

The Hon'ble F. B. Kemp and G. C. Paul, *Judges.*

Survey-maps—Evidence.

Case No. 1314 of 1870.

Special Appeal from a decision passed by the Judge of West Burdwan, dated the 3rd June 1870, affirming a decision of the Moonsiff of Bistopore, dated the 17th February 1870.

Gudadhur Banerjee and others (Plaintiffs), *Appellants,*

versus

Tara Chand Banerjee and others (Defendants), *Respondents.*

Mr. M. M. Dutt and *Baboo Bangshee Dhur Sein* for Appellants.

Baboo Rash Beharee Ghose for Respondents.

In a case involving a boundary-dispute, a survey-map, if not conclusive evidence, is evidence of an important character which ought to be looked into and considered.

Kemp, J.—Looking to the plaint in this case, the cause of action appears to be that the defendant cut down trees belonging to the jungle mehal Mouzah Bashdeopore, the property of the plaintiffs. The defendants set up an independent title, stating that the lands were not included in the plaintiff's talook; that they really belonged to the debuttur lands of Baboo Brijo Kishore Singh; and that those lands had been purchased by them in execution of a decree against the said Baboo Brijo Kishore Singh. Looking to the judgment of the first Court, it is very clear that the first Court treated this suit as a boundary-dispute, for the issues were whether the jungle in suit has been held khas by the plaintiffs as belonging to their putnee talook, or whether it was the ancestral rent-free property of Baboo Brijo Kishore purchased by the defendants. The first Court states that the plaintiffs produced no documentary evidence in support of their title, and with reference to the witnesses the Moonsiff says that they are men of low caste and tenants of the plaintiffs, and therefore he considers their evidence not trustworthy. It appears that an Ameen was deputed to hold a local investigation in this case, and as the plaintiffs could not with their plaint file the survey-map which was subsequently filed—inasmuch as they could not, until the defendants put in their written statement, know that the case would be in the nature of a boundary-dispute—this map, to which it is alleged the predecessors of the defendants and the plaintiffs were parties, was put in, and the Moonsiff ordered the Ameen to enquire into and compare the survey-map, if two days' fees were put in by the plaintiffs. It appears that the plaintiffs paid these fees. But the Judge, on appeal, held that this survey-map could not be received as evidence in the case.

We are of opinion that in a case of this description which involves a boundary-dispute, a survey-map, if not conclusive, is evidence of an important character which ought to be looked into and considered. It is not evidence which it was within the power