Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.

1875 *Sept.* 2.

NOBO DOORGA DOSSEE AND ANOTHER (PLAINTIFFS) *v.* FOYZBUX CHOWDHRY (DEFENDANT).*

Res judicata—Act VIII of 1859, *s.* 2—*Suit for Rent—Subsequent Suit for Abatement of Rent.*

The plaintiff obtained a putni lease of certain villages from the defendant in 1861 at an annual rent, and in 1865 was evicted from a portion of the property: she took no steps to obtain an abatement; but inasmuch as she did not pay any rent for the year 1871, the defendant brought a suit against her for the rent of that year. The plaintiff set up the defence that she was entitled to an abatement of Rs. 155 from her rent; the 155 rupees representing the annual value of the property which she had lost in consequence of the eviction. In that suit it was decided that the amount of abatement she was entitled to was Rs. 42. No appeal was made against that decision. In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent she claimed the precise measure of abatement, *viz.*, Rs. 155, which she had claimed in the suit brought against her by the defendant. *Held*, that the question was *res judicata*, it having been raised and decided in the former suit.

IN this case the defendant granted to the plaintiff a permanent putni settlement of certain villages under a lease dated in 1861, at an annual rent of Rs. 1,548 and a premium of Rs. 7,654. In the year 1865, the plaintiff was evicted from a portion of this property; whereupon she brought a suit against the defendant to recover from him a proportionate part of the premium, and certain mesne profits. For this she obtained a decree; the Court especially finding, that this decree would not affect the plaintiff's right to an abatement in her rent for the future. The plaintiff took no immediate steps to obtain any abatement; but inasmuch as she did not pay any rent for the year 1871, the defendant brought a suit against her for the rent due in that year. In that suit the present plaintiff set up as a defence, that she was entitled to an abatement of Rs. 155 from her rent, that Rs. 155 representing the annual value of the property which

* Special Appeal, No. 2546 of 1874, against decree of the Subordinate Judge of Zilla Rajshahye, dated the 24th of June 1874, affirming decree of the Munsiff of Pubna, dated the 29th of August 1873.

she had lost in consequence of the eviction. On this suit coming on for trial the Judge went carefully into the question of abatement; and he decided, that the amount should be Rs. 42 instead of the Rs. 155 claimed by the plaintiff. No appeal was made against that decision. The plaintiff now sued for a permanent abatement of her rent, laying the measure of abatement at Rs. 155; and the defence was that the suit was barred by the decision in the former suit.

Baboo *Issurchunder Chuckerbutty* for the appellant.—The former judgment being on a different cause of action is no bar to the hearing of this suit. In the former case a deduction was claimed from the rent due for one year only. The matter came in question collaterally as the suit was one for rent. In this suit the plaintiff seeks to fix the rate at which he is to pay rent for future years. The deduction is on the same ground, but the cause of action in each case is a distinct and separate cause of action. In such a case a previous judgment is no estoppel. See *The Duchess of Kingston's case* (1); *Khugowlee Sing* v. *Hossein Bux Khan* (2); *Chunder Coomar Mundul* v. *Nunnee Khanum* (3); *Mussamut Edun* v. *Mussamut Bechun* (4). The test is whether the same evidence would support both cases, *Hunter* v. *Stewart* (5), where the same question was allowed to be litigated only on a different ground. In the case of *Nelson* v. *Couch* (6), it was held that to constitute a good plea of *res judicata*, it must be shown that the former suit was one in which the plaintiff might have recovered precisely that which he seeks to recover in the second. The plaintiff could not have obtained what she seeks in this suit, *viz.*, an abatement for future years.

Baboo *Mohini Mohun Roy* for the respondent.—There is an estoppel in this case on the face of the facts. The plaintiff does not claim to have become entitled to a deduction on account of any alteration of circumstances since the

(1) 2 Smith's L. Ca., 6th Ed., 679.
(2) 7 B. L. R., 673.
(3) 11 B. L. R., 434.
(4) 8 W. R., 175.
(5) 8 Jur., N.S., 317.
(6) 15 C.B., N.S., 99.

1875

NOBO DOORGA DOSSEE v. FOYZBUX CHOWDHRY.

first suit, but that the abatement allowed was not properly come to. The issue there was whether the plaintiff was entitled to abatement, and if so, to what extent. It was her fault if she did not place evidence before the Munsif who tried the case, and there was no appeal. In the Full Bench case of *Chunder Coomar Mundul* v. *Nunnee Khanum* (1), it was held that the decision of the Collector was not binding in a subsequent suit because there was no concurrent jurisdiction, but here there is a concurrence of jurisdiction as to those matters which both the Civil Court and Revenue Court can decide. The principle upon which the abatement was claimed in the former suit for that one year is the same as that upon which it is now claimed for all future years. That decision necessarily decides in effect, though not in express terms, the very question here raised. The matter is therefore *res judicata*—see *Soorjomonee Dayee* v. *Suddanund Mohapatter* (2) and *Mohima Chunder Mozoomdar* v. *Asradha Dassia* (3). [Baboo *Issurchunder Chuckerbutty*.—That case was overruled by the Full Bench decision in *Hurri Sunkur Mookerjee* v. *Muktaram Patro* (4).] In *Rakhal Das Sing* v. *Sreemutty Heera Motee Dossee* (5), it was decided that although the suit related to the rent of one year, the decision applied also to rent for other years. In *Mohesh Chunder Bandopadhya* v. *Joykishen Mookerjee* (6), the Munsif decided that the tenant's plea of holding being rent-free was made out. Afterwards, when the landlord sued, he was held to be concluded. The decree made by the Revenue Courts would not be binding from want of concurrence of jurisdiction, but decrees made by the Civil Court in rent suits, since the transfer of rent suits to the Civil Courts, are as good as decrees in other cases under the Code.

Baboo *Issurchunder Chuckerbutty* in reply.—The effect of the decision in *Hurri Sunker Mookerjee* v. *Muktaram Pattro* (4) is to overrule some of the previous cases on this question. No doubt, where the matter is necessarily decided in the former suit, there would be an estoppel, but the

(1) 11 B. L. R., 434.
(2) 12 B. L. R., 304.
(3) 15 B. L. R., 251.
(4) 15 B. L. R., 238.
(5) 23 W. R., 282.
(6) 15 B. L. R., 248.

matter now in dispute could not have been decided in that case either in express terms or otherwise, because the Court had no jurisdiction to try it. The decision therefore was not the decision of a competent Court.

GARTH, C.J. (after stating the facts as above, continued):—

The plaintiff brings this suit for the purpose, as she says, of obtaining an abatement of her rent for the future; and she claims in this suit the precise measure of abatement, Rs. 155, which she had claimed in the suit brought against her by the defendant. The defendant's answer is, 'this question which you now seek to raise, has already been decided between us in the former suit. You claimed the same abatement then as you do now. You attempted to establish it upon the same grounds. You went into the question, not as if the abatement were for one particular year, but for the whole remainder of your interest; and from the very nature of the question, you could not have gone into it upon any other basis.' The plaintiff's reply to this is—'no. Your claim then was for the rent of one year only: my defence must necessarily have been confined to that one year; and the result could not bind either of us for the future.' This contention raises a very nice point upon the doctrine of estoppel; as to which during the argument I confess that I personally have felt considerable difficulty.

There is no doubt as to what the law is upon the subject of estoppel. The difficulty is, in applying that law to such a case as the present. Each year's rent is in itself a separate and entire cause of action, and if a suit be brought for a year's rent, a judgment obtained in that suit, whatever the defence might be, would seem only to extend to the subject-matter of the suit; and leave the landlord at liberty to bring another suit for the next year's rent, and the tenant at liberty to set up to that suit any defence she thought proper.

But it is said, on the other hand, that in the former suit between the defendant and the plaintiff, the entire question of what ought to be the permanent abatement of rent during the whole period of the lease, was substantially and necessarily tried and determined, and that they are neither of them at liberty to

1875

NOBO DOORGA DOSSEE v. FOYZBUX CHOWDHRY.

reopen that question. The principle upon which the abatement was made, the value of the land, the measurements, and other circumstances which form the materials upon which the Judge would estimate the amount of the abatement, would be applicable to one year as well as to another, and what was a just and proper abatement for the year 1871 would be an equally just and proper abatement in each succeeding year.

There certainly appears to be great weight in this reasoning, and there is no doubt that substantial justice will be done by adopting it.

Even assuming that the judgment in the former suit were not binding between the parties as an actual estoppel, it would afford such cogent evidence between them upon the point, that the Judge in this suit (in the absence of some entirely fresh materials) would be perfectly right in acting upon it; and we cannot doubt, that if we were to send the case back to the lower Appellate Court with this intimation, the Judge would act upon it, as a matter of course; and the parties would only be put to additional expense to no purpose.

But happily, we are not without authority in this Court to guide us in coming to a conclusion. The cases which were cited in argument by the defendant's pleader—*Mohima Chunder Mooozmdar* v. *Asradha Dassia* (1) and *Rakhal Doss Singh* v. *Sreemutty Heera Motee Dossee* (2)—seem very much in point; and we think that we ought to act upon them. In one of those cases, the suit was brought by a landlord for one year's rent. The answer was, the land is rent-free—and a decree was passed against the landlord upon that ground. Another suit was afterwards brought by the landlord for another year's rent; and it was held, that as between the parties, it had been decided, that the land was rent-free; and that this decision was binding upon them not only for the one year, but for all future years.

In accordance with this, we hold that the question of abatement of rent has been determined in the former suit between these parties not only for one year 1870, but for all future years. The appeal will therefore be dismissed with costs.

Appeal dismissed.

(1) 15 B. L. R., 251. (2) 23 W. R., 282.