

transfer its authority was very limited. If that case were now law to the full extent of the decision, it would follow that a great many Acts of the legislature which have been acted upon as laws for years past, and are acted upon now, were altogether illegal.

I am, therefore, of opinion that Act XXII of 1869, the principle of which I cannot distinguish from that of the Acts which I have mentioned, was a law which the legislature were justified in passing, and which did, in conjunction with the notification which was made under it, effectually remove the districts in question from the jurisdiction of the High Court. But as the majority of the Court are of a contrary opinion, the appeal made by the prisoners will be entertained, and the records will be sent for.

It is much to be desired that this adverse judgment, and the vast importance of the question which it involves, may induce the Government of India to take this case, if it is open to them to do so, on appeal to the Privy Council.

1877

EMRESS  
v.  
BURAH AND  
BOOK SINGH.

IN THE  
MATTER OF  
THE PETITION  
OF BURAH  
AND BOOK  
SINGH.

*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, Mr. Justice Macpherson, Mr. Justice Markby, and Mr. Justice Ainslie.*

GOBIND CHUNDER KOONDOO AND OTHERS (PLAINTIFFS) v. TARUCK  
CHUNDER BOSE AND OTHERS (DEFENDANTS).\*

1877  
Sept. 12.

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

The plaintiffs brought this suit to establish, as against the defendants, their title to certain land in the occupation of a tenant. In a previous suit instituted by one of the present defendants against the tenant for rent, one of the present plaintiffs (representing the right now claimed by all of them) intervened as a defendant, on the ground that he was the person entitled to the rent, and failed to establish his claim. *Held*, following the Full Bench case

\* Special Appeal, No. 794 of 1876, against a decree of Baboo Srinath Roy, Subordinate Judge of Zilla Furreedpore, dated the 14th of February, 1876, affirming a decree of Baboo Unnoda Nath Mozoomdar, Officiating Munsif of Bhunga, dated the 6th July, 1875.

1877

GOBIND  
CHUNDER  
KOONDOO  
v.  
TARUCK  
CHUNDER  
BOSE.

of *Hurri Sunhur Mookerjee v. Muktarum Patro* (1), that the plaintiffs in this suit were barred by the judgment in the former suit.

When once it is made clear that the self-same right and title is substantially in issue in two suits, the precise form in which either suit was brought, or the fact that the plaintiff in the one case was the defendant in the other, became immaterial.

THIS case was referred to a Full Bench by Garth, C. J., and Mitter, J., by the following order:—

“This was a suit brought by the plaintiffs to recover possession of a one-anna share of a certain jote. In the year 1871, the plaintiffs claimed to be entitled to a 15-anna share of the said jote, and the defendant No. 1 to a one-anna share thereof. In that year the superior landlord of the jote sued some persons other than the defendant No. 1 for rent of the entire jote, and obtained a decree against them, under which the said tenure was put up for sale, and purchased by the defendant No. 4, who again sold the same share to all the plaintiffs in the name of the plaintiff No. 1. The defendant No. 1 then brought a suit (No. 1174 of 1872) for arrears of rent of the one-anna share against the occupying tenant of the jote, Mohun Chunder Dass, in which suit the plaintiff No. 1 intervened as a defendant, upon the ground that he, and not the present defendant No. 1, was entitled to the rent claimed. Thereupon the question was raised in that suit, whether the then plaintiff (the defendant No. 1), or the then defendant (the present plaintiff No. 1) was entitled to the rent as owner of the one-anna share; and that question was adjudicated upon and decided against the present plaintiff. The intervening defendant in that case (the present plaintiff No. 1) claimed to be the owner of the entire jote, by virtue of the said sale to him on behalf of all the present plaintiffs; and the only question in this suit is, whether the plaintiffs (by virtue of that sale) are the owners of the one-anna share of the jote as against the defendant No. 1, the plaintiff in the former suit?

“Both the lower Courts have held that the plaintiffs are barred by the judgment in the former suit (by virtue of

(1) 15 B. L. R., 238; S. C., 24 W. R., 154.

s. 2, Act VIII of 1859), upon the ground that the self-same question which was there raised and decided is also raised in this suit.

1877

GOBIND  
CHUNDER  
KOONDOO  
"  
TARUCK  
CHUNDER  
BOSE.

“The question has now come before us on special appeal, and as there appear to be conflicting decisions of this Court upon it,—see *Mussamut Inderbuttee Kooer v. Shaikh Muhboob Ali* (1), *Mohima Chunder Mozoomdar v. Asradha Dossee* (2), *Deokee Nundun Roy v. Kali Pershad* (3),—and as the point is one of general importance, we think it right to refer the question to a Full Bench.

“The question is, whether, under the circumstances stated, the plaintiffs are barred by the judgment in the former suit?”

Baboo *Obhoy Churn Bose* for the appellants.

Baboo *Bungshidhur Sen* for the respondents.

The following cases were referred to in the course of argument:—*Mussamut Inderbuttee Kooer v. Shaikh Muhboob Ali* (1), *Mohima Chunder Mozoomdar v. Asradha Dossee* (2), *Deokee Nundun Roy v. Kalee Pershad* (3), *Dhonaye Mundul v. Arif Mundul* (4), *Shib Pershad Panah v. Muddun Mohun Doss* (5), *Aukhil Chunder Mookerjee v. Shib Narain Ghose* (6).

The judgment of the Full Bench was delivered by

GARTH, C. J.—I am of opinion that in this case the plaintiffs are barred by the former judgment. It is to be observed, that the present suit is not to recover khas possession of the property in question. The land is in the occupation of a tenant, and the plaintiffs' only object is to establish their title to it as against the defendant No. 1. We have, therefore, to see whether the right and title which is the subject of claim in this suit was not the very same right and title which was in issue between the same parties, and determined in the former suit. When once it is made clear, that the self-same right and

(1) 24 W. R., 44.

(4) 9 W. R., 306.

(2) 15 B. L. R., 251 note; S. C.,  
21 W. R., 207.

(5) 15 W. R., 415.

(3) 8 W. R., 366.

(6) *Id.*, 527.

1877

GOBIND  
CHUNDER  
KOONDOO  
v.  
TARUCK  
CHUNDER  
BOSE.

title was substantially in issue in both suits, the precise form in which the suit was brought, or the fact that the plaintiff in the one case was the defendant in the other, becomes immaterial.

Now, in this instance, the plaintiff in the former suit is the same person as the defendant No. 1 in this; and he sued to recover from the occupying tenant the rent of the property now in dispute. In that suit one of the plaintiffs (representing and claiming the same right under the same title which is now claimed by all the plaintiffs) intervened as a defendant, and he resisted the then plaintiff's claim to the rent, upon the ground that he (representing the present plaintiffs' interest) was entitled to it as the owner of the property. An issue was, accordingly, framed in that suit, as to whether the then plaintiff (the present defendant No. 1) was entitled to the rent as owner of the property in question as against the then defendant who represented the present plaintiffs. This question was contested between them in that suit upon the same title and materials which are now brought forward in the present suit, and the only difference is, that the plaintiff in that suit is the defendant in this.

On the other hand, it is argued by the appellant, that the claim in the former suit was for rent against the tenant; that the only issue in that case was whether the plaintiff was entitled to that rent, and that the question of title raised by the intervening defendant was only incidental to the main issue. But as between the plaintiff and the intervening defendant the question, and the only question, was that of title, and as the defendant in that suit chose to intervene and to raise that question between himself and the plaintiff, he, and those whom he represented, must take the consequences of their intervention.

Our decision in this case will be found entirely in accordance with the views expressed by the Full Bench in the case of *Hurri Sunkur Mookerjee v. Muktarām Patro* (1).

The appeal will be dismissed with costs.

(1) 15 B.L. R., 238; S. C., 24 W. R., 154.