sentence passed on Kumudini Kanta, and we direct that a re-trial be also held in his case.

1900

KUMUDINI KANTA GUHA v. THE QUEEN-EMPRESS.

We would point out to the Magistrate that it will be for him to consider whether, having regard to the facts of the case, separate trials should be held in respect of the charge relating to the note of Rs. 500.

D. S.

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

A. T. RICKETTS, MANAGER OF PACHETE ENCUMBERED ESTATE (PLAINTIFF) v. RAMESWAR MALIA AND ANOTHER (DEFENDANTS).*

1900 *Aug.* 2.

Res judicata—Evidence—Presumption—Landlord and Tenant—Suit for Road and Public Works cesses—Cess Act (Bengal Act IX of 1880), ss. 34, 35, 36, 41—Valuation roll, publication of—Liability to pay cess for rent paying land.

Previous decrees for cesses at a certain rate obtained by a landlord against a tenant, do not operate as *res judicatæ* in a subsequent suit for cesses claimed at a higher rate, although they are admissible as evidence in the suit and may raise a presumption in favour of the tenant.

Liability to pay road cess, so far as rent-paying lands are concerned, does not depend upon the publication of the valuation roll under s. 34 of the Cess Act. *Bhugwati Kuweri Chowdhrani* v. *Chutter Singh* (1) followed; *Ashanullah Khan Bahadur* v. *Trilochan Bagchi* (2) distinguished.

THE plaintiff brought this suit for recovery of rent and cesses in arrear amounting to Rs. 135-15 annas for the years 1300 to 1302 B. S., and part of the year 1303 B. S. The rent was claimed at the rate of Re. 1 per annum, and the cesses at the rate of Rs. 28 per annum. The claim was in respect of a *mehal*, mouzah Koilamara, under *khas* collection, held by the defendants, appertaining to the zemindari of the Pacheto Encumbered Estate, under the management of the plaintiff, and included damages.

* Appeal from Appellate Decree, No. 2057 of 1898, against the decree of Babu Kader Nath Mozumdar, Subordinate Judge of Burdwan, dated the 23rd June 1898, modifying the decree of Babu Dandodhari Biswas, Munsif of Ranigunge, dated the 2nd of September 1897.

(1) (1898) I. L. R., 25 Calc., 725.
(2) (1886) I. L. R., 13 Calc., 197.

1900

RICKETTS v. RAMESWAR MALIA.

The defendants, while admitting the rent to be Re. 1 per annum, contended that for the said rent, road cess could not be claimed at more than half an anna; that in a previous rent suit, No. 541 of 1893, brought by the Maharaja of Pachete, although Rs. 28 was claimed as cesses per annum, according to re-valuation, yet on adjudication, the sum of Rs. 5-9-10 gundas was fixed by the Court as the amount of cesses payable by the defendants; and as the plaintiff had mentioned no re-valuation in the plaint, the claim for cesses at a higher rate was not maintainable.

The plaintiff produced a copy of a valuation roll prepared under s. 34 of the Cess Act. It showed the valuation of the *mehal* to be Rs. 451-10 annas.

The Munsif, relying upon the valuation roll, and holding that there was nothing to show that it had been *modified*, decreed the claim for cesses at the rate of Rs. 28 per annum. He also held that the decision in the former suit did not operate as *res judicata*.

On appeal by the defendants, the Subordinate Judge modified the decree of the Munsif and decreed cesses at the rate of Rs. 5-9½ annas only, admitted by the defendants. He held that as in the previous suit above referred to, the plaintiff relied upon the valuation roll now relied upon, but his contention was overruled and cesses decreed at the rate of Rs. 5-9½ annas per annum, as alleged by the defendants, and as the same amount had been decreed in an earlier rent suit, the plaintiff was not entitled to recover cesses at a higher rate. He also held that as the valuation roll had not been prepared after the previous decrees and had not been duly served as required by law, it did not help the plaintiff.

The plaintiff appealed to the High Court.

Babu *Ram Charan Mitter*, for the appellant.

Babu *Lal Mohun Das*, for the respondents.

1900, AUGUST 2. The judgment of the High Court (RAMPINI and PRATT, JJ.) was as follows:—

This is an appeal against a decision of the Subordinate Judge of Burdwan, dated the 23rd of June 1898.

1900

RICKETTS v. RAMESWAR MALIA.

The suit is one for arrears of road and public works cesses, The plaintiff states that the amount of cesses due per annum from the defendants is Rs. 28. The defendants say that the sum they are liable to pay on this account is Rs. 5-9½ annas only.

The Subordinate Judge has given effect to the contention of the defendants. He says that in two previous suits the plaintiff had recovered cesses from the defendants at the rate of Rs. 5-9½ annas, and that, therefore, the plaintiff is not entitled to recover cesses at a higher rate than Rs. 5-9½ annas which has hitherto been decreed and realized on behalf of the plaintiffs.

In addition to these previous decrees there is a valuation roll, Exhibit I, produced as evidence in the case, upon which the Court of first instance relied, and according to which the Munsif says the plaintiff is entitled to Rs. 28 as cess. The Subordinate Judge, however, rejected this valuation roll as of no effect, because it "was not duly served as required by law" and that "it purports to be served by the serving peon of the Collectorate in the presence of one *chowkidar* only, whereas the law provides otherwise under s. 35 of the Cess Act." The learned pleader for the appellant urges (*i*) that the Subordinate Judge is wrong in the view which he takes of the effect of the previous decisions, and (*ii*) that he is wrong in rejecting the valuation roll (Exhibit I), as of no effect, in this case.

In our opinion there is great force in these pleas.

The amount of road cess payable by landlords and tenants is not fixed for all time. It is a variable quantity changing from year to year, according to the valuation of the estate made by the Collector and the rates fixed by him for the levy of cesses for the year. Therefore, because the plaintiff obtained decrees for cesses at the rate of Rs. 5-9½ annas on two previous occasions, it does not follow that he is to get cesses at that rate for ever. No doubt these decrees are admissible in evidence in this case, and there is a presumption in favour of the defendants that they are liable to pay cesses at the rate of Rs. 5-9½ annas. But these decrees go no further. They do not have the effect of *res judicatæ*, and the Subordinate Judge is in error in saying that these decrees show that the plaintiff is not entitled to recover at a higher rate.

1900

RICKETTS v. RAMESWAR MALIA.

Then, the Subordinate Judge appears to be wrong in saying that the valuation roll (Exhibit I) is of no effect, because it was not duly served. Liability to pay road cess, so far at least as rent-paying lands are concerned, does not depend upon the publication of the valuation roll. This may be the case as regards rent-free lands, as was held in the case of *Ashanullah Khan Bahadur* v. *Trilochan Bagchi* (1), but this is not the rule with regard to rent-paying lands, as has been held in the case of *Bhugwati Kuweri Chowdhrani* v. *Chutterput Singh* (2), in which it is said that having regard to "the provisions of ss. 36 and 41 of the Road Cess Act, the publication of a valuation roll is not a condition precedent to the attaching of liability to pay road cess for rent-paying lands."

The pleader for the respondent urges that the valuation roll (Exhibit I) relates to the year 1885, and that, therefore, it existed and was produced in the previous suits between the parties. That may be so; but that does not render it valueless now. We are not informed for what reason the Judge who disposed of the previous suits did not give effect to the valuation roll. It might not have been properly put in evidence in those cases. But whatever the reason may have been which led the Court in the previous suits not to rely upon that roll, there is no reason why it should not be relied upon in the present case, if it is admissible in evidence and properly put before the Court, and is not shown to be superseded by any later valuation roll.

For these reasons we set aside the decision of the Subordinate Judge, and remand the case to him for a fresh decision with regard to these observations.

The costs will abide the result.

M. N. R. *Appeal allowed; case remanded.*

(1) (1886) I. L. R., 13 Calc., 197.
(2) (1898) I. L. R., 25 Calc., 725.