

(1878) 03 CAL CK 0011

Calcutta High Court

Case No: None

Gopee Mohun
Mozoomdar

APPELLANT

Vs

Hills

RESPONDENT

Date of Decision: March 21, 1878

Citation: (1878) ILR (Cal) 790

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

We think that there must be a remand in this case. There were two questions for consideration: one was whether there had been an uniform payment of rent for twenty years, and, if so, whether the presumption which the law directs to be drawn from an uniform payment of rent for twenty years had been rebutted by "the plaintiff. The previous decision is not conclusive upon either of these two points. One of these questions was not and could not be gone into in the previous suit. It has nothing whatever to do with the former case whether the landlord received different rates of rent at some earlier period. No doubt the Court in that former case did express an opinion that, for twenty years, rent had been paid at an uniform rate; but even that was not a question in issue in the former suit, and in such a manner as to make the decision in the former suit conclusive upon that point. The District Judge will have to consider the case upon the evidence on the record, and determine whether or not he agrees with the Munsif, who has found in favour of the defendant, that this is a tenure the rent of which cannot be enhanced.