

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Misir
Raghobardial v. Rajah Sheo Baksh Singh,
from the Court of the Judicial Commissioner
of Oude, delivered 15th July 1882.*

Present :

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The suit which is the subject of this appeal was brought upon a bond, dated the 21st of November 1875, given by the Respondent for Rs. 12,000, stated therein to have been borrowed from the Appellant, the principal to be repaid within three years, and interest to be paid monthly at the rate of Rs. 1. 8 per cent. per month. The three years having expired, the plaintiff was filed on the 7th of December 1878 in the Court of the Deputy Commissioner of Sitapur. The Defendant (the now Respondent) pleaded "want of full consideration, and that in " a previous suit for Rs. 1,665, interest on this " bond, the issue regarding consideration was " decided in favour of Defendant, the Court " deciding that Defendant had received only " Rs. 4,790 and not Rs. 12,000," which decision was upheld on appeal. Upon this a preliminary issue was framed by the Court as follows :—" Is " the issue regarding consideration a *res judi-* " *cata* (Section 13, Act 10 of 1877) between

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“ the parties ? ” The decision of the Deputy Commissioner upon this issue was in favour of the Defendant, and judgment was given for the balance found to be due of the principal sum of Rs. 4,790 and the interest thereon. From this decree there was an appeal by the Plaintiff to the Judicial Commissioner of Oudh, who dismissed it, and the Plaintiff has appealed to Her Majesty in Council from that dismissal.

The suit for interest was brought in December 1877, in the Court of the Assistant Commissioner of Sitapur, it being alleged that Rs. 4,140 was due for interest on a bond for Rs. 12,000, and it being admitted that the Defendant had paid Rs. 2,475, the balance of Rs. 1,665 was claimed. The jurisdiction of the Assistant Commissioner was limited to suits where the amount or value of the subject matter did not exceed Rs. 5,000, and the Defendant objected that, if the Plaintiff insisted on the validity of the bond, the case could not be tried before him. The Assistant Commissioner held that the case was beyond his jurisdiction, but, upon an appeal to the Commissioner, his order dismissing the suit was cancelled, and it was remanded for trial on the merits. The case was then tried by the Extra Assistant Commissioner, and evidence having been given on both sides, he found that the principal sum due on the bond was Rs. 4,790, and that the Plaintiff was entitled to interest thereon, and the Plaintiff having admitted the receipt of Rs. 2,475 on account of interest, which exceeded the sum he found to be due for interest by Rs. 822. 7. 9, he dismissed the suit. An appeal from this decision to the Commissioner was dismissed, and an application made to the Judicial Commissioner to allow an appeal from that order was rejected by him.

The question now before their Lordships depends upon the construction of Section 13 of

Act X. of 1877. Before considering that question, it will be well to refer to the state of the law in India when that Act was passed. Section 2 of Act VIII. of 1859, the Code of Civil Procedure for which Act X. of 1877 was substituted, provided that the Civil Courts should not take cognizance of any suit brought on a cause of action which should have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim. It is clear that this section would not have applied to the present case, the cause of action in the two suits—the non-payment of interest in one and the non-payment of principal in the other—being different. In fact, when the first suit was brought the cause of action in the second had not arisen. But independently of this provision in the Code of Procedure, the Courts in India have adopted the rule laid down in the *Duchess of Kingston's* case, and have applied it in a great number of cases. It was recognized as the law in India by this Board in *Khagowlee Sing v. Hossein Bux Khan*, 7 Bengal Law Rep., 673, where, after quoting the passage in the *Duchess of Kingston's* case in which the rule is stated, their Lordships say, "There is nothing technical or peculiar to the law of England in the rule as so stated. It was recognized by the civil law, and it is perfectly consistent with the second section of the Code of Procedure, under which this case was tried."

Mussumat Edun v. Mussumat Bechun, 8 Calcutta Weekly Reporter, 175, may be referred to as the leading case on this subject. In that case the Chief Justice, Sir Barnes Peacock, held that the two Courts must be Courts of concurrent jurisdiction, and "in order to make the decision of one Court final and conclusive in another Court, it must be a decision of a Court which

“ would have had jurisdiction over the matter “ in the subsequent suit in which the first decision is given in evidence as conclusive.” As to what is a Court of concurrent jurisdiction, it is material to notice that there is in India a great number of Courts, that one main feature in the Acts constituting them is that they are of various grades with different pecuniary limits of jurisdiction, and that by the Code of Procedure a suit must be instituted in the Court of the lowest grade competent to try it. For instance, in Bengal, by the Bengal Civil Courts Act, No. VI. of 1871, the jurisdiction of a munsif extends only to original suits in which the amount or value of the subject matter in dispute does not exceed Rs. 1,000. The qualifications of a munsif and the authority of his judgment would not be the same as those of a district or of a subordinate judge, who have jurisdiction in civil suits without any limit of amount. In their Lordships’ opinion it would not be proper that the decision of a munsif upon (for instance) the validity of a will or of an adoption in a suit for a small portion of the property affected by it should be conclusive in a suit before a district judge or in the High Court for property of a large amount, the title to which might depend upon the will or the adoption. Other similar cases are mentioned in the judgment of the Chief Justice. It is true that there is an appeal from the munsif’s decision, but that upon the facts would be to the District Court and not to the High Court. And that the decision should be conclusive would be still more improper as regards many other of the various Courts in India, the qualifications of whose Judges differ greatly. By taking concurrent jurisdiction to mean concurrent as regards the pecuniary limit as well as the subject matter, this evil or inconvenience is avoided;

and although it may be desirable to put an end to litigation, the inefficiency of many of the Indian Courts makes it advisable not to be too stringent in preventing a litigant from proving the truth of his case. It appears to their Lordships that if this case had arisen before the passing of Act X. of 1877, the High Courts in India would have rightly held that the decision of the Extra Assistant Commissioner in the first suit was not conclusive as to the amount of the principal sum due on the bond.

Section 13 of Act X. of 1877 is as follows :—

“ No Court shall try any suit or issue in which
 “ the matter directly and substantially in issue
 “ has been heard and finally decided by a Court
 “ of competent jurisdiction, in a former suit
 “ between the same parties, or between parties
 “ under whom they or any of them claim, liti-
 “ gating under the same title.”

The intention seems to have been to embody in the Code of Procedure, by Sections 12 and 13, the law then in force in India, instead of the imperfect provision in Section 2 of Act VIII. of 1859. And, as the words of the section do not clearly show an intention to alter the law, their Lordships do not think it right to put a construction upon them which would cause an alteration.

The first suit was for Rs. 1,665, for interest only, the principal not being then due, and the matter in issue was whether that sum was due. The Plaintiff alleged that it was for interest on a bond for Rs. 12,000, which the Defendant denied, and thus an issue was raised as to the consideration for the bond, but this was a collateral rather than a direct issue in the suit. The Plaintiff might have succeeded without having a finding upon it if he had proved an admission by the Defendant that the sum claimed was due for interest, or had shown that the Rs. 2,475 had

been expressly paid on account of the larger sum which he said the Defendant owed for interest. If the decision of the Assistant Commissioner is conclusive he will, although he could not have tried the question in a suit on the bond, have bound the Plaintiff as effectually as if he had jurisdiction to try that suit. Their Lordships think this was not intended, and that by Court of competent jurisdiction Act X. of 1877 means a Court which has jurisdiction over the matter in the subsequent suit in which the decision is used as conclusive, or, in other words, a Court of concurrent jurisdiction. In the judgment delivered by this Board in 7 Bengal, L. R., p. 680, it said that the *eadem causa petendi* and judgment of a Court of competent or concurrent jurisdiction were both wanting in that case. This seems to show what was considered to be a competent Court. Their Lordships think that Section 13 of Act X. of 1877 should be so construed, and consequently they will humbly advise Her Majesty that the orders of both the Lower Courts should be reversed, and the suit be remanded for trial on the merits. The Respondent will pay the costs of this appeal.
