

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Krishna Behari Roy v. Bunwari Lall Roy
(now Brojeswari Chowdranee) and another,
from the High Court of Judicature at Fort
William, in Bengal; delivered Wednesday,
17th November, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS was a suit brought by the Appellant, claiming to be the heir of Goursoonder Roy, to set aside an adoption of the Respondent Bunwari Lall, alleged to have been made by the widow of Goursoonder Roy. One of the defences set up by Bunwari Lall and by his mother, who was joined in the suit as Defendant, was that the question of the validity of the adoption of Bunwari Lall had been already decided in a former suit, to which the present Appellant Krishna Behari Roy was a party. An issue was raised upon that defence. Now it appears that a former suit had occurred which was of this nature: Bunwari Lall had brought an action against some putneedars who claimed under putnee leases granted by his adoptive mother. The ground on which he sought to set aside the leases was that she had exceeded her power in granting them, inasmuch as she had only a widow's estate. It is not necessary to state more respecting the object of that suit. An issue was raised in it upon the question whether Bunwari Lall had been validly

adopted. The present Appellant and Plaintiff Krishna Behari Roy intervened in that suit, upon the ground that he was the heir of Goursoonder Roy and, as the heir, had a right to intervene to dispute the title of Bunwari Lall as his adopted son. It does not appear very clearly at what period of the suit that issue was raised—whether before or after Krishna Behari Roy intervened—but undoubtedly it was raised, and is in substance the same as the issue raised in the present suit. The issue was tried, and the Principal Sudder Ameen found against the intervener and in favour of the adoption. He also found in favour of the putneedar, that the putnee could not be set aside. The putneedar having a decision in his favour was, of course, satisfied with that decree, but Krishna Behari Roy being dissatisfied with the finding upon the issue as to the adoption, appealed to the Civil Judge. On this appeal the decision of the Principal Sudder Ameen was affirmed. Again he appealed from the Civil Judge to the High Court, which, after fully hearing the case upon the issue of adoption, affirmed the decisions of the Courts below. There exists, therefore, a final and complete judgment upon the issue raised either at the instance of Krishna Behari Roy, or which he adopted, on the very question which he seeks again to raise in this suit.

Both the Courts below have held that the present suit is barred by reason of the judgment in the former one. The ground of the present appeal is that they are wrong, inasmuch as, it is said, that the case does not come within Section 2 of Act VIII. of 1859. Now the section is this:—“The Civil Courts
 “ shall not take cognizance of any suit brought
 “ on a cause of action which shall 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.” Their Lordships are of opinion that
 the expression “cause of action” cannot be
 taken in its literal and most restricted sense. But
 however that may be, by the general law, where
 a material issue has been tried and determined
 between the same parties in a proper suit, and
 in a competent court, as to the status of one
 of them in relation to the other, it cannot, in
 their opinion, be again tried in another suit
 between them.

It is not necessary for their Lordships to go at
 length into the reasons for their decision, because
 those reasons appear in a recent judgment of this
 Board in the case of *Soorjomonee Dayee v. Sud-
 danund Mohapatter*. In that judgment it is said,
 after reference to the second clause of Act VIII,
 “Their Lordships are of opinion that the term
 “ ‘cause of action’ is to be construed with
 “ reference rather to the substance than to the
 “ form of action, and they are of opinion that in
 “ this case the cause of action was in substance
 “ to declare the will invalid, on the ground of
 “ the want of power of the testator to devise the
 “ property he dealt with. But even if this
 “ interpretation were not correct, their Lord-
 “ ships are of opinion that this clause in the
 “ Code of Procedure would by no means prevent
 “ the operation of the general law relating to
 “ *res judicata*, founded on the principle ‘*nemo*
 “ ‘*debet bis vexari pro eadem causa.*’ This law
 “ has been laid down by a series of cases in this
 “ country with which the profession is familiar.
 “ It has probably never been better laid down
 “ than in a case which was referred to in the
 “ 3rd Volume of Atkyns, *Gregory v. Moles-*
 “ *worth*, in which Lord Hardwicke held that
 “ where a question was necessarily decided in
 “ effect, though not in express terms, between

“ parties to the suit, they could not raise the
 “ same question as between themselves in any
 “ other suit in any other form; and that
 “ decision has been followed by a long course
 “ of decisions, the greater part of which will be
 “ found noticed in the very able notes of Mr.
 “ Smith to the case of the Duchess of
 “ Kingston.”

A decision of the High Court of Bengal has been referred to, the case of *Sheikh Rahmatulla v. Sheikh Sarintulla Kagghi*, in the 1st Bengal Law Reports, page 68, as having a contrary tendency. All their Lordships desire to say of it is that, as reported, it does not appear to be consistent with their judgment in the former appeal to which I have referred, nor with their opinion in the present case. The decision is of so recent a date that they desire to say no more upon it.

On reference to some notes of Mr. Broughton on this section of Act VIII. of 1859, it appears that the decisions have not been uniform in the Courts in India. Several of them are opposed to that referred to.

It was suggested by Mr. Cave that the former judgment ought not to be binding, because certain witnesses having been examined before the present Appellant intervened in the suit, he was refused the opportunity of cross-examining them. Their Lordships think that such an objection is no answer to the defence arising from the former judgment. If there had been any miscarriage of that kind, the matter was one for appeal in that suit. The objection does not appear to have been raised in the appeals which were successively made in that suit to the Civil Judge and to the High Court; but whether it was so raised or not, their Lordships think that they cannot affect the operation of the final judgment, which must be taken to have been rightly given.

In the result, their Lordships will humbly advise Her Majesty to dismiss this appeal, and to affirm the judgments below with costs.

