attached :—(1881) 4 Mad. 131 ; (1887) 11 Mad. 280 ; (1892) 16 Bom. 608, where it was held that the plaintiff was entitled to one relief though not for both in the same suit.

II. ATTACHMENT IS NOT DISPOSSESSION—

(1881) 4 Mad. 131 : (1894) 18 Mad. 405.

III. JURISDICTION DETERMINED BY THE AMOUNT FOR WHICH ATTACHMENT IS MADE—

The question of jurisdiction is determined by the amount for which the property is attached and not by the value of the property :—(1906) 30 Mad. 335.]

[4 Mad. 134.]

APPELLATE CIVIL.

The 5th September, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Devarakonda Narasamma.....(First Defendant), Appellant

and

Devarakonda Kanaya.....(Plaintiff), Respondent.*

Res judicata—Civil Procedure Code, Section 13, Clause 1, Section 204—Expression of opinion in judgment as to facts in issue, but unnecessary to decide for decree—Costs.

In order to see whether a question is "*res judicata*" within the meaning of Section 13 of the Code of Civil Procedure, the former decree and the questions decided thereby must alone be considered.

The words in Section 13 of the Code of Civil Procedure, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under Section 204 of the Code of Civil Procedure by the Court of First Instance.

Niamut Khan v. *Phadu Buldia* (I. L. R., 6 Cal., 319), and *Lachman Singh* v. *Mohan* (I. L. R., 2 All., 497) dissented from.

Where a plaintiff improperly brings a defendant before a Court and this suit is dismissed, the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff's claim.

THE plaintiff in this case sued to have his reversionary right to the estate of one Surya Narayana (deceased) declared, making the two widows of the deceased, who were in possession, defendants. Waste and alienations by the defendants were alleged.

The first defendant, the senior widow, in answer set up the title of Achanna, a boy adopted by her, under an authority alleged to have been given by the deceased at the time of his death.

The second defendant alleged that the deceased had authorized her jointly with the first defendant to adopt a son, and that one Papaya had been adopted by them and that Papaya was, and the plaintiff was not, the heir.

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* Appeal No. 23 of 1881 against the decree of E. C. G. Thomas, District Judge of Vizagapatam, dated 19th October 1880.

[135] The District Judge settled the following issues :—

(1) as to the plaintiff's right to the declaration ;

(2) as to the authority given to the defendants to adopt :

(3) as to the adoption of *Papaya* ;

(4) as to the adoption of *Achanna.*

The suit was dismissed on the 28th January 1879 as the plaintiff's *status* was not proved, but on 29th August a review was admitted, the plaintiff being decreed to pay all costs of suit up to date, and the case was disposed of as follows :—

" Plaintiff has not proved his case.

" The defendants for their part not only denied plaintiff's heirship, but declared themselves to have been given authority to adopt and to have each adopted a son.

" The property at stake yields a rental of Rs. 1,200 a year, and is worth between Rs. 20,000 and Rs, 30,000 ; yet, for these important transactions of authorization and adoption in this wealthy family, none of the usual guarantees for credibility are forthcoming. Though many educated persons swear they were present, there is no written record of either event : no notice to the authorities, no presence of village officials, &c.

" Plainly the whole statements of each of the defendants is an after-thought and a fabrication to meet the claim of the plaintiff.

" Suit dismisssd. Parties to bear their own costs."

The first defendant appealed to the High Court on the following grounds.—

(1) The plaintiff having failed to establish his case on the first issue, the Judge went out of his way to find on the other issues.

(2) The first defendant proved the adoption.

(3) She had 24 witnesses present, and would have called them all but for the Judge's remarks on the plaintiff's case.

(4) She was entitled to her costs of the first hearing, Rupees 1,025-4-0, which the Judge directed to be paid in admitting the review.

(5) As to the costs of the second hearing, *viz.*, Rs. 133, the Judge has given no reason why he should not have allowed them.

Mr. *Shaw* for Appellant.

[136] The Respondent was not represented.

The arguments in this case appear in the Judgment of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

Judgment.—We think there was no sufficient reason why the defendant should not have had her costs paid by plaintiff, who improperly brought her into Court, and we shall amend the decree in this respect.

The first defendant also desires to appeal against the determination of the second, third, and fourth issues by the District Judge, as, having regard to the view taken of the plaintiff's case, it was altogether unnecessary to decide them.

It was argued by Mr. *Shaw* that, by Section 204* of the *Civil Procedure Code*, the Court is confined to the determination of such issues only as are necessary to the decision of the suit. But it appears to us that this section, while it renders it imperative upon the Court to pronounce its opinion upon such issues as may be necessary for the disposal of the suit, does not disable the Court from determining the other issues also. It would be very inconvenient in the case of an appeal, if the opinion of the Judge were not expressed upon the conclusions to be derived from the evidence as to points other than those upon which he considers the suit may be disposed of, and it has always been the practice of the Courts to use a discretion as to pronouncing an opinion on all the questions in issue, even though some of them may not be deemed material to the decision which the Judge finds himself in a position to pronounce.

The first defendant, Mr. *Shaw* represents, is apprehensive that the expression of the Judge's opinion in the judgment as to the adoption said to have been made by her may be held to be *res judicata* upon that point in any suit hereafter instituted. As to this we are of opinion that to see whether a matter is *res judicata* you must look to the former decree. If the decree does not decide the question, it is not *res judicata*. Certain recent decisions appear to have held that the first clause of Section 13, *Civil Procedure Code*, precludes a second trial between the same parties of matters which have been in issue and upon which the Judge has expressed his opinion in a former suit. We do not agree in this view. The words " has been heard and finally decided by such Court " apply not to the expression of opinion in the judgment, but to what has **[137]** been decided by the decree. The decree in the present case simply decided that plaintiff's suit should be dismissed, the grounds for that decision being that plaintiff was not sufficiently near in the line of heirs to be entitled to the declaration sought. We allow this appeal, as already stated, as to costs; and the appellant will have the costs of this appeal.

NOTES.

[I. 'RES JUDICATA'—DIRECTLY AND SUBSTANTIALLY IN ISSUE—

In (1895) 17 All. 174 it was held that it was only that finding which in the logical sequence, must have been found first that would operate as *res judicata* and not others.

See also 9 I. C. 983=8 A. L. J., 409.

See contra—(1897) 24 Cal. 900.

II. ISSUE NOT MATERIAL—NO 'RES JUDICATA'—

(1) 2 M. W. N. 188=9 I. C. 787.

III. WHEN ISSUE IS NOT THE BASIS OF DECREE—

No *res judicata*:—( ) 16 C. W. N. 877=16 C. L. J. 9=15 I. C. 453. *See* also 14 Bom. L. R. 1142.]

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*[Sec. 204:—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.]

Court to state its decision on each issue. Exception.