witnesses from one house to another "just as if they were a "theatrical company. Proceedings of that kind are open to the "utmost suspicion." This is an observation which ought never to have been made. The Head Constable testifies to the difficulty of finding respectable persons in the neighbourhood in which the dacoity took place. We can see no reason for supposing that the conduct of the Police in this connection was influenced by any improper motives. In the tenth paragraph of the summing up, the Sessions Judge charges the Head Constable with the direct breach of the Police Regulations in that when he went to the *attom* in the course of the search of the sixth prisoner's house, he had a loose shirt on. It is not apparent even according to Venkateswara Patter's evidence, that there was any breach of the Police Regulations, because he does not say that the Head Constable's body was not examined before he began the search, and that is the effect of the Regulation to which we suppose the Sessions Judge refers. However that may be, the Head Constable was not examined about it, and it was therefore unfair to make this charge against him. We are of opinion that there has been a misdirection by the Sessions Judge with reference to the evidence touching the searches of the houses of the third, fourth, fifth and sixth prisoners, and the misdirection is a material one. We set aside the acquittal of all the prisoners, and direct them to be retried by the Sessions Judge of North Malabar.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

ARUNACHALAM CHETTY (PLAINTIFF), APPELLANT,

v.

MEYYAPPA CHETTY AND OTHERS (DEFENDANTS NOS. 1, 3 AND 4), RESPONDENTS.*

1897. October 20, 21, 22. November 16.

Civil Procedure Code—Act XIV of 1882, *ss.* 13, 42, 43, 462—*Sanction to compromise a suit against a minor—Suit to set aside a consent decree for want of sanction —Previous suit to set aside decree on the ground of fraud on guardian* ad litem.

A suit instituted in 1879 against a minor was compromised by the plaintiff and the guardian *ad litem*, and a decree for the plaintiff was passed by consent. In 1882 the minor sued by his next friend to have the consent decree set aside

* Appeal No. 32 of 1897.

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on the ground that it had been obtained by fraud practised on the guardian *ad litem*. That suit was dismissed. In 1884 an application was unsuccessfully made in the original suit objecting that the compromise had been entered into without the sanction of the Court. The minor having attained majority now sued to have the consent decree set aside on the ground that it had not been sanctioned by the Court under Civil Procedure Code, section 462:

Held, (1) that the Court by passing the consent decree had not, *ipso facto*, sanctioned the compromise under Civil Procedure Code, section 462, and that the present suit was not barred by the order dismissing the application in 1884;

(2) that the suit was barred by the decree in the suit of 1882 for the reason that the want of sanction might and ought to have been made a ground of attack in that suit.

APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of Madura (East), in Original Suit No. 50 of 1895.

The facts of the case appear sufficiently for the purposes of this report from the judgment of Subramania Ayyar, J. The Subordinate Judge dismissed the suit and the plaintiff preferred this appeal.

The Acting Advocate-General (Hon. *V. Bhashyam Ayyangar*), *Desikachariar* and *Ganapathi Ayyar* for appellant.

Sundara Ayyar and *Venkatsubbaramayya* for respondent No. 1.

SUBRAMANIA AYYAR, J.—Murugappa Chetti, the deceased father of the present first defendant (first respondent), sued the present plaintiff (appellant) in Original Suit No. 42 of 1879 for a sum of money alleged to be due by the father of the plaintiff, the late Ramasami Chetti. The plaintiff, being then a minor, was represented in the suit by his mother and guardian *ad litem*. At first she contested the suit, but during the trial she entered into a compromise consenting to the sum claimed being decreed against the estate of the plaintiff, the father of the first defendant giving up his costs. A decree was given in accordance with the compromise. In 1882 litigation again arose between the plaintiff and the first defendant's father. One Palaniappa Chetti, as the next friend of the present plaintiff, instituted Original Suit No. 48 of 1882 against the first defendant's father for the purpose of setting aside the decree in the previous suit No. 42 of 1879 on the ground that it had been obtained by fraud practised on the plaintiff's guardian *ad litem*. In the course of the suit Palaniappa Chetti was removed from the position of next friend and the present third defendant was appointed in his stead. The third defendant carried on the litigation with the result that the suit was dismissed, it being found that no fraud was made out. Another attempt to get rid of

the decree in suit No. 42 of 1879 was made in 1884 by an application purporting to be made in that case itself. In the application the point taken was that the compromise was entered into without the sanction of the Court as required by section 462 of the Civil Procedure Code; but the Subordinate Judge, who heard the application, rejected it holding that, in effect though not expressly, sanction had been given. An appeal was preferred to the High Court against the order rejecting the application. The appeal was, however, dismissed for the reason that against such an order no appeal lay. The plaintiff, having since come of age, has instituted the present suit praying that the decree in suit No. 42 of 1879 be set aside and the sums collected in execution of the decree be made good to him by the first defendant. In the Lower Court the plaintiff relied in support of his case, both on the fraud by which his mother was said to have been induced to enter into the compromise and on the want of sanction. He further alleged that suit No. 48 of 1882 was a mere sham proceeding carried on in collusion between the plaintiff's next friend on the one hand and the first defendant's father on the other, and that, therefore, the adjudication therein was not binding upon the plaintiff. On all the main questions raised, the Lower Court found against the plaintiff and dismissed the suit.

Here on appeal the learned Advocate-General, on behalf of the plaintiff, did not press the ground taken against the finding of the Lower Court that the fraud alleged with reference to the decree in suit No. 42 of 1879 was not established. He contended, however, that the Lower Court was wrong in holding that the compromise had been sanctioned and urged that the decree in suit No. 42 of 1879 should be vacated on the ground of want of sanction.

We agree with the Advocate-General that no sanction was given for the compromise as alleged for the first defendant. There is absolutely nothing to show that any application for sanction was made to the Court. The little evidence that has been adduced upon the point clearly indicates that the decree was passed upon the compromise without the Court considering or determining the question whether sanction should be accorded or refused. It is scarcely necessary to add that the mere passing of the decree on the compromise does not amount to sanction being given within the meaning of the law. And in the circumstances of this case it would be wrong for the Court to presume on the ground of lapse

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of time that sanction was given. The plaintiff would, therefore, be entitled to the principal relief claimed if he is not, as was urged for the respondent, precluded from relying on the absence of sanction either by the order of 1884 already referred to, or by the decision in Original Suit No. 48 of 1882. That the order of 1884 does not operate as a bar is quite clear. The question whether sanction was given or not, being one going to the very root of the decree passed on the compromise, was such as could not be raised in *execution* of the decree. The order was, therefore, one which did not come under section 244 of the Civil Procedure Code. No doubt if an application for review of the decree, passed on the compromise, had been made to the Judge, who passed the decree, he could have entertained the application and set aside the decree for the reason that the requisite sanction had not been given. But the application, on which the order of 1884 was passed, was made to the successor of the Judge who passed the decree. The successor had, under section 624 of the Civil Procedure Code, no power to entertain an application for review on the ground of absence of sanction. The order thereon was, therefore, manifestly *ultra vires* and could not affect the plaintiff.

The next and the real question in the case is whether the plaintiff is precluded from relying upon the want of sanction by the decision in Original Suit No. 48 of 1882. In arguing that the plaintiff was not so precluded, the Advocate-General questioned the Lower Court's finding that the last-mentioned suit was not a sham and collusive proceeding. We are, however, unable to accede to the contention. The sole evidence on the point is that of the third defendant. The story that, without any intelligible reason for the vile conduct which the third defendant imputes to himself, he joined the first defendant's father and others to defraud the plaintiff, the infant son of the third defendant's late master and kinsman, is so improbable that we cannot but reject it. The Lower Court was, therefore, in our opinion, right in discrediting the third defendant's testimony and coming to a conclusion on the point against the plaintiff.

What then is the effect of the decision in that suit (No. 48 of 1882) upon the plaintiff's right to impeach the decree in suit No. 42 of 1879? Is it a bar to the plaintiff's present suit? In urging that it was not, the Advocate-General contended that the right to avoid the compromise on the ground of want of sanction was

exercisable only by the plaintiff on his ceasing to be a minor, but not by any next friend on his behalf. There is, however, absolutely nothing in the language of section 462 of the Civil Procedure Code to warrant the view that the right to impeach a compromise entered into contrary to its provisions is of the peculiar character contended for. Nor was any authority cited to support that contention. And in reply to the argument that if persons, interested in a minor, were not allowed to question a compromise entered into on his behalf without the requisite sanction, minors would, in general, be very seriously prejudiced, all that the Advocate-General could and did say was that it is perhaps open to Courts to treat such a matter as one involving an election on the part of the minor concerned, and to determine whether in the interest of the minor the compromise shall or shall not be repudiated. It is scarcely necessary to observe that no statutory provision giving to Courts authority to exercise such special and extraordinary power exists, and in the absence of such provision no tribunal in the country can take action of the kind suggested. The Advocate-General next contended that, even supposing the right to impeach the compromise for want of sanction may be exercised by a next friend, such want of sanction was not a matter which might and ought to have been made a ground of attack under explanation II of section 13, Civil Procedure Code. His arguments on this point may be shortly stated thus:— On the analogy of the decision of the Judicial Committee in *Pittapur Raja* v. *Suriya Rau*(1), relating to the construction of section 7 of the Civil Procedure Code of 1859 corresponding to section 43 of the present Code, a plaintiff is not required under section 13 of the latter Code to combine all the causes of action available at the date of the suit and which would entitle him to the relief therein claimed. What section 13 obliges a plaintiff to do is to rely upon all the grounds necessarily connected with the particular cause of action on which the plaintiff chooses to sue. In determining what such grounds are Courts should have regard to such cases as *Cooke* v. *Gill*(2) and *Read* v. *Brown*(3), explaining what constitutes a cause of action. According to them the want of sanction now relied on did not form a constituent part of the cause of action alleged in suit No. 48 of 1882 which was founded

(1) I.L.R., 8 Mad., 520. (2) L.R., 8 C.P., 107. (3) L.R., 22 Q.B.D., 128.

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on fraud alone. The evidence required to sustain such a suit is not the same as that required to support a suit wherein the ground of attack is entirely different, viz., want of sanction. The compromise, though in fact a single act, yet in point of law, amounted to a violation of two distinct rights vested in the plaintiff, and on the authority of *Brunsden* v. *Humphrey*(1), the plaintiff must be held not precluded by an adjudication in the suit, instituted with reference to the violation of one of those rights, from maintaining a subsequent suit in regard to the violation of the other right. Lastly, if the want of sanction was a matter which might and ought to have been made a ground of attack in the suit of 1882, still, as it was not adjudicated upon, it could not be held on the authority of *Kailash Mondul* v. *Baroda Sundari Dasi*(2) to operate as *res judicata*.

The argument on the other side was briefly as follows:—Such cases as *Cooke* v. *Gill*(3) and *Read* v. *Brown*(4) deal with what a cause of action is with special reference to questions connected with venue. The definition of a cause of action adopted with reference to such questions is not a proper guide in dealing with matters bearing on *res judicata*. Nor are the cases decided under section 7 of Act VIII of 1859 or section 43 of the present Code pertinent in cases like the present. Even under section 2, Act VIII of 1859, which expressly used the term, 'cause of action' their Lordships of the Judicial Committee put upon that term a wide interpretation in *Woomatara Debia* v. *Unnopoorna Dassee*(5), where they held that the plaintiff who failed to obtain judgment for the possession of land claimed by her in her first suit as taufir or accretion could not bring a fresh suit claiming the same land as property belonging to her taluk according to the true boundary line. Their Lordships in their judgment referred to the rule that when a man claims an estate and the defendant being in possession resists that claim, he is bound to resist upon all the grounds that it is possible for him according to his knowledge then to bring forward (*Srimut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Odaya Taver* v. *Katama Natchiar*(6)) as one fully applicable to plaintiffs also—a proposition which is adopted in explanation II, section 13. Finally, supposing the narrow view contended for by

(1) L.R., 14 Q.B.D., 141. (2) I.L.R., 24 Calc., 711. (3) L.R., 8 C.P., 107.
(4) L.R., 22 Q.B.D., 128. (5) 11 B.L.R., 158. (6) 11 M.I.A., 50.

the Advocate-General were correct, still the cause of action alleged in Original Suit No. 48 of 1882 was precisely the same as that now relied on, and that the fraud on which suit No. 48 of 1882 rested and the want of sanction on which stress is now laid were nothing more than different ways of supporting but one alleged infringement of the plaintiff's right.

In support of the arguments urged on both the sides, decided cases other than those referred to in the above summary were also cited. It may be conceded that the language employed by Courts is not always uniform. The diversity which exists is probably due, speaking generally, to the difference in the standpoints from one or other of which the question is dealt with. These are well explained in *Narohari* v. *Anpurnabai*(1). There, West, J., observes:—

"Under systems such as the Roman Law or the English Common "Law, in which the development of legal rights and duties has "been greatly influenced by the re-action of a highly artificial "mode of procedure, appropriate forms of action can be found for "nearly all the ordinary cases which the legal consciousness of the "community recognizes as justifying an exercise of the coercitive "power of the State; but, as the variety of human relations greatly "exceeds that of the conceptions, upon which a system of actions "can be framed, it happens that the same transaction or group of "circumstances may furnish a ground for several different actions. "In such cases, different causes of action arise to the party injured; "but as it is felt that the same set of facts, which the mind at "once grasps as jurally integral, ought not to be made the basis of "repeated proceedings; the complaining party is allowed to frame "his complaint in various ways, and the rule obtains that all the "circumstances, which exists when the former of two actions is "brought and can be brought forward in support of it, shall be "brought forward then, not reserved for a second action arising "out of the same events. The cause of action is regarded as "identical, though the form of action differs on the second occasion, "and the test applied is whether the evidence to support both "actions is substantially the same (*Hitchin* v. *Campbell*(2); *Martin* "v. *Kennedy*(3)). Under a freer system of procedure, such as that "of the Equity Courts in England or of the Civil Courts in India, "second suits are to be admitted more sparingly than when the

(1) I.L.R., 11 Bom., 160 at p. 165. (2) 2 W. Bl., 827. (3) 2 Bos. & Pull., 69.

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"plaintiff has to proceed by set forms of action. As he can bring "forward his whole case unfettered by artificial restraints, and "seek all remedies that the Court can justly award upon the facts "proved, there is no reason why he should be permitted to harass "his opponent and occupy the time of the Courts by repeated "investigations of a set of facts which ought all to have been "submitted for adjudication at once. His cause of action, into "whatever Protean forms it may be moulded by the ingenuity of "pleaders, is to be regarded as the same, if it rests on facts which "are integrally connected with those upon which a right and "infringement of the right have already been once asserted as a "ground for the Court's interference." The wider view expressed in the latter part of the above quotation is evidently the view which the Judicial Committee had laid down in *Woomatara Debia* v. *Unnopoorna Dassee*(1) cited for the first defendant, and this is strengthened by the observation made by the same tribunal in *Kameswar Pershad* v. *Rajkumari Ruttan Koer*(2) that the state of the law at the time section 13 of the present Code was enacted, was that persons should not be harassed by continuous litigation about the same subject matter. There can be no doubt that explanation II to section 13 was put in to emphasize this wider view. And this is rendered as clear as it can possibly be by another section of the Code which, like explanation II, found a place for the first time in the Code of 1877, in which the provisions as to *res judicata* were amplified practically as they are now. That section is section 42 which provides that every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute and so to prevent further litigation concerning them. In short, the omission by the Legislature of the term 'cause of action,' upon which the point turned in section 2 of Act VIII of 1859 from the corresponding section of the present Act, the insertion therein of a more definite term, viz., 'matter directly and substantially in issue,' the introduction of the comprehensive words 'subjects in dispute,' in section 42 and the fact, that explanation II to section 13 puts the duty of the plaintiff with reference to the question under consideration on the same footing as that of the defendant, extensive as that had been, as laid down in the Sivaganga case (*Srimut Rajah Moottoo Vijaya*

(1) 11 B.L.R., 158. (2) I.L.R., 20 Calc., 79.

Raganadha Bodha Gooroo Sawmy Periya Odaya Taver v. *Katama Natchiar*(1)),—all these are strong indications to show that the intention was to enlarge the scope of estoppel by record beyond the limits that would be admissible if the term 'cause of action' were construed in its literal and most restricted sense which, in *Krishna Behari Roy* v. *Brojeswari Chowdranee*(2), the Judicial Committee said should not be done. In this state of the law what matters might and ought to have been brought forward will depend upon the particular facts of each case. One test, as suggested by the Judicial Committee, is whether the matters are so dissimilar that their union might lead to confusion (*Kameswar Pershad* v. *Rajkumari Ruttan Koer*(3)). In the present instance it is quite clear that no such confusion could have arisen had the want of sanction been brought forward along with fraud in the previous suit, nor has any other valid objection been suggested against the two grounds being then combined. It would follow, therefore, that the want of sanction in question might and ought to have been made a ground of attack in Original Suit No. 48 of 1882 and should be taken to have been in issue in that suit as laid down in explanation II to section 13.

As regards the last argument of the Advocate-General it would be quite permissible to reply that explanation II, in authorizing a fiction that the matter contemplated was in issue, necessarily implies the further fiction that it was also adjudicated upon. But it is more satisfactory to say that the estoppel in question is different from that raised by an actual decision. In truth, the estoppel is that what might and ought to have been relied on in a former suit as a ground of attack or defence but was not, could not, in subsequent litigations between the parties, be brought forward for such purposes; and it is scarcely necessary to add that, notwithstanding the objections taken in some of the cases to the soundness of this doctrine, there is no doubt that it is founded on unquestionable grounds of expediency and public policy.

Before concluding, it is also well to point out that, assuming that the limited construction proposed by the Advocate-General were the correct one, even then, the cause of action on which the suit of 1882 was based, must clearly be held to be identical with that in the present suit. For, looking to the substance of the two actions, the dispute then was and now is as to the validity of the

(1) 11 M.I.A., 50. (2) L.R., 2 I.A., 283. (3) I.L.R., 20 Calc., 79.

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compromise embodied in the decree in suit No. 42 of 1879. No doubt the invalidity was sought to be established in the suit of 1882 on one ground, while in this suit it is sought to be established on another ground. But these grounds are only different means invoked for making out what is manifestly a single and indivisible infringement of the self-same right.

In either view, therefore, the conclusion must be that the plaintiff is debarred from relying on the want of sanction in question.

It is, therefore, not necessary to discuss the question of limitation. But if it were, we should decide that the suit was instituted within three years from the time the plaintiff attained his majority.

The appeal fails and is dismissed with costs.

DAVIES, J.—I concur throughout.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897. April 22. October 26. November 30.

SALEMMA (PLAINTIFF), APPELLANT,

v.

LUTCHMANA REDDI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Hindu Law—Stridhanam—Law of Inheritance—Enfranchisement of service Inam.

Land which formed the emolument of the office of moniegar was enfranchised in favour of a Hindu woman, who died leaving her surviving defendant No. 2 (her husband), the plaintiff (her unmarried daughter), and two sons and two married daughters who were not parties to this suit. The plaintiff sued to recover the land to which she claimed to be entitled under the Hindu Law of Inheritance:

Held, that the property belonged to the deceased as her stridhanam descendible to her heirs, and (without deciding what control, if any, defendant No. 2 had over the property) that the plaintiff was entitled to succeed according to the law of inheritance applicable to such property.

SECOND APPEAL against the decree of E. J. Sewell, Acting District Judge of North Arcot, in Appeal Suit No. 336 of 1895, reversing the decree of T. Swami Ayyar, District Munsif of Chittore, in Original Suit No. 395 of 1894.

This was a suit for land brought by the plaintiff who was the unmarried daughter of one Ellammal, deceased, and defendant No.

* Second Appeal No. 397 of 1896.