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nor Mangal Ram appears to have raised any claim to the property or to have questioned the validity of the adoption until after the decision of this Court of the 12th of June 1885, although Prem Sukh Das had died on the 3rd of December 1879. One may infer that the descendants of Ishar Das and relations of Chajju Ram, the natural father of Prem Sukh Das, never thought, until that decision of this Court, that the validity of the adoption of Prem Sukh Das could be questioned.

We dismiss, with separate sets of costs to Musammat Parbati and to Musammat Sundar, First Appeal No. 154 of 1889 and affirm the decree below. We dismiss, with separate sets of costs to Musammat Parbati and to Musammat Sundar, First Appeal No. 162 of 1889 and affirm the decree below.

Appeals dismissed.

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 December 2.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

KISHAN SAHAI (OBJECTOR) v. ALADAD KHAN AND ANOTHER,
 (DECREE-HOLDERS).*

*Civil Procedure Code, s. 13, Expl. II—Res judicata—Execution of decree—
 Principle of res judicata as applied to execution proceedings.*

Where a person on his own application was added as a party respondent to an appeal, and on the case in appeal being remanded under s. 562 of the Code of Civil Procedure for re-trial on the merits, practically took no steps whatever to defend the suit.—*Held* that he could not afterwards plead, by way of objection to execution of the decree, matters which ought to have formed part of his defence to the suit, had he chosen to defend it *Ram Karpal v. Rai Kauri* (1) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. T. Conlan and Pandit Sundar Lal, for the appellant.

Mr. Abdul Raoof, for the respondents.

EDGE, C. J. and TYRRELL, J.—This is an appeal arising out of the execution of a decree. One Aladad Khan brought his suit against Ismail Khan and others in which he claimed possession of

* First Appeal No. 9 of 1890, from a decree of Rai Piari Lal, Subordinate Judge of Meerut, dated the 12th November 1889.

(1) I. L. R. 6 All. 269.

his share of his father's estate. His suit was dismissed in the first Court on the finding that he was illegitimate. It finally came in appeal before this Court. Aladad Khan was the appellant, and during the pendency of the appeal in this Court, Lala Kishan Sahai, who is the appellant in this execution-appeal, presented a petition on the 11th May 1887 to this Court, alleging that he was the purchaser of the property in suit and asking to be made a respondent in the case, the case being the appeal. On the same day this Court passed an order under ss. 372 and 582 of the Code of Civil Procedure, adding him as a respondent in the suit. The result of the appeal here was that on the 7th April 1888, this Court allowed the appeal, holding that the plaintiff, Aladad Khan, was legitimate, and the suit was remanded under s. 562 of the Code of Civil Procedure for trial on the merits. Now, as we have said, that order of remand was made on the 7th April 1888. Kishan Sahai was a party to that order of remand. The 29th January 1889 was fixed in the Court below, we assume, for the hearing of the case, and on the 12th of that month Kishan Sahai presented an application (document No. 11) in which he asked for two months' time, on the ground that he had not his documentary evidence ready. On the 15th January 1889, the Subordinate Judge passed an order allowing Kishan Sahai one month's time and fixing the hearing for the 6th March 1889. The day before the 6th March, *viz.*, on the 5th March, Kishan Sahai presented an application alleging that he had been induced by false representations of the plaintiff, Aladad Khan, to advance the money on the property and asking that he might be brought in as a party to the suit under s. 32 of the Code of Civil Procedure, and be allowed to put in a defence, and that issues might be framed and the case tried as against him. On the 6th March 1889, the Subordinate Judge rightly held that as the High Court had made him a party to the suit, by its order to which we have referred, he must be regarded as a party until his name should be struck off, and that his position was not that of a party merely to the appeal, and refused the application. Now Kishan Sahai, if he had chosen to do so, could long before the 5th March 1889 have filed a written statement raising any defence which he

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had or thought he had. The suit as against him commenced from the time when he was made a party to it, and, for the matter of that, if he had been so disposed, he might have filed his written statement in this Court even during the pendency of the appeal. Kishan Sahai does not appear to have taken any steps prior to the 5th March 1889 to file a written statement, either in this Court or in the Court below, and it is to be observed that in the petition which he presented to this Court upon which the order of the 11th May 1887 was passed, he merely alleged his title as that of a purchaser holding a sale-certificate. Ultimately, the Subordinate Judge, on the re-trial of the suit under the order of remand of this Court, decreed the plaintiff's claim for possession. When the plaintiff proceeded to execute that decree Lala Kishan Sahai filed objections, seven in number, only one of which, namely, No. 6, is relied on here; indeed, there is nothing in the other objections. Now as to that, Lala Kishan Sahai should have raised as a defence the matter alleged in that paragraph 6, if it amounted to a defence at all. He should have done so either in this Court when the case was here or at the latest in the Court below in proper time. Under the circumstances, we are of opinion that it is a case which falls within the principle of explanation ii. of s. 13 of the Code of Civil Procedure. Although s. 13 may not in terms apply, by reason of the matter not having been decided in another suit, still, the Privy Council in an analogous case has told the Courts in India that the principle of law underlying s. 13 is to be applied to proceedings in the execution of decrees. The case to which we refer is *Ram Kirpal v. Rup Kuari* (1). In fact, until the Subordinate Judge was on the eve of deciding the suit before him on remand Lala Kishan Sahai never suggested apparently any such defence as that shadowed forth in paragraph 6 of his objections. We dismiss this appeal with costs.

Appeal dismissed.
