

1882

MAHESH  
SINGH  
v.  
CHAUHARJA  
SINGH.

the face of the pleadings, and in accordance with the evidence given in the case. In estimating the measure of damages to be decreed, we think we may fairly take the principal sum with interest at the rate specified in the contract as a reasonable guide. We accordingly decree the appeal as regards Chauharja Singh with costs, and decree the plaintiffs' claim for Rs. 628-8-0 against him.

*Decree modified.*

1880  
January 26.

## FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Oldfield, and Mr. Justice Straight.*

DEO KISHEN AND ANOTHER (DEFENDANTS) v. MAHESHAH SAHAI AND OTHERS (PLAINTIFFS).\*

*Act X of 1877 (Civil Procedure Code), s. 561—Time for filing objections.*

The notice of objections referred to in s. 561 of the Civil Procedure Code must be filed not less than seven days before the date fixed for the hearing in the summonses issued to the parties.

THIS was a reference to the Full Bench by Pearson, J., and Oldfield, J., of the following question arising in this appeal:—

“Whether the law requires that the notice of objections referred to in s. 561 of the Civil Procedure Code shall be filed not less than seven days before the date fixed for the hearing in the summonses issued to the parties, or seven days before the date on which the first hearing of the case actually comes on?”

*Mir Zalur Husain*, for the appellants.

*Munshi Hanuman Prasad* and *Pandits Bishambhar Nath* and *Nand Lal*, for the respondents.

The following judgment was delivered by the Full Bench:—

PEARSON, J. (STUART, C. J., OLDFIELD, J., and STRAIGHT, J., concurring).—The day fixed for the hearing of an appeal is that fixed under s. 552 of Act X of 1877 and that alone. The hearing of the appeal may be adjourned to another day, but the latter is not, in the language of the law, the day fixed for the hearing of the appeal, which is only the day originally fixed for that purpose. In ss. 555,

\* First Appeal, No. 104 of 1879, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 30th June, 1879.

556 and 557 the day originally fixed for the hearing is plainly and carefully distinguished from any other day to which the hearing may be adjourned. S. 561 requires a respondent to file any objection he may wish to take to a decree which is the subject of an appeal not less than seven days before the day fixed for the hearing of the appeal. The words "the date fixed for the hearing" in s. 561 correspond with the words "the day so fixed" in ss. 555, 556 and 557, and refer to the day fixed for the hearing under s. 552 of the Code.

1880

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No doubt a day to which the hearing has been adjourned is also a day fixed for the hearing: but in the law, as has been pointed out, "the day to which the hearing has been adjourned" is distinguished from "the day fixed for hearing," and cannot be included in the latter expression.

Some appeals may be heard on the day fixed for the hearing. In others the hearing may be once or twice or more frequently adjourned. That some respondents should only have one opportunity of filing objections, and that others should have two or three or more numerous opportunities of so doing, and that the number of these opportunities should depend upon the accidents which prevent a Court from hearing an appeal on the day originally fixed for the hearing or on the days to which the hearing may have been adjourned, is a proposition which does not recommend itself to approval. A fixed and not a variable time within which objections may be filed is what the law may reasonably be understood to have established.

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## APPELLATE CIVIL.

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1881.  
July 1.

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*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.*

PHUL KUAR (DEFENDANT) v. SURJAN PANDEY AND OTHERS (PLAINTIFFS).\*

*Evidence—Examination of witnesses—Mode of taking evidence.*

Observations on the improper manner in which the evidence in cases is generally taken in the subordinate Courts, and in which it was taken in this case.

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\* First Appeal, No. 143 of 1880, from a decree of Hakim Rahat Ali, Subordinate Judge of Ghazipur, dated the 22nd September, 1839. Reported under the order of the Hon'ble the Chief Justice.