

APPELLATE CIVIL.

1881
June 29.*Before Mr. Justice Straight and Mr. Justice Jyrell.*PAHLWAN SINGH (PLAINTIFF) v. RISAL SINGH AND ANOTHER
(DEFENDANTS).**Res judicata—Act X of 1877 (Civil Procedure Code), s. 13—“Matter in issue”—
“Subject-matter” of suit—Bond—Interest.*

The obligee of a bond payable by instalments sued the obligor for four instalments, claiming with reference to the terms of such bond interest on such instalments from the date of such bond. The obligor contended in that suit that, on the proper construction of the bond, the interest on such instalments should be calculated from the dates of default. The obligee obtained a decree for interest as claimed. The obligee subsequently again sued the obligor for four instalments, again claiming interest on such instalments from the date of such bond. The obligee contended again in the second suit that interest should only be calculated from the dates of default. *Held* that the question as to the date from which interest due on the defaulting instalments was exigible under the terms of such bond was *res judicata*.

It is the “matter in issue,” not the “subject-matter” of the suit, that forms the essential test of *res judicata* in s. 13 of Act X of 1877.

THE plaintiff in this suit claimed Rs. 800, the amount of four instalments due on a bond dated the 12th October, 1865, and interest on such instalments from the date of such bond at the rate of eight annas per cent. per mensem. This bond was for Rs. 3,600 payable in eighteen annual instalments of Rs. 200. It contained the following condition: “On failure to pay an instalment interest at the rate of eight annas per cent. per mensem will be paid.” The plaintiff relied on this condition in support of his claim for interest from the date of the bond at the rate of eight annas per cent. per mensem on the amount of the instalments claimed by him. It appeared that the plaintiff had sued on the bond in 1876 for the amount of four instalments, and had then claimed interest on such instalments from the date of the bond at eight annas per cent. per mensem, relying on the condition in the bond set forth above. The defendants contended in that suit that it was intended by that condition that in case of default interest should be computed, not

* Second Appeal, No. 65 of 1881, from a decree of H. A. Harrison, Esq., Judge of Allahabad, dated the 16th September, 1880, affirming a decree of Babu Aubinash Chandar Banarji, Subordinate Judge of Allahabad, dated the 10th July, 1880.

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from the date of the bond, but from the date of default. The plaintiff obtained a decree in that suit for interest from the date of the bond. In the present suit the defendants again raised the defence that it was intended by the condition in the bond that interest should be computed from the date of default, not from the date of the bond, and the plaintiff was therefore not entitled to interest from the latter date. On behalf of the plaintiff it was contended that under s. 13 of Act X of 1877 the question as to the date from which interest should be computed was *res judicata*, and could not be raised and determined in the present suit. Both the lower Courts held that such question was not *res judicata*, and holding that on the proper construction of the condition the plaintiff was not entitled to interest from the date of the bond, but only from the date of default, disallowed the plaintiff's claim for interest computed from the date of the bond. On second appeal the plaintiff again contended that under s. 13 of Act X of 1877 the question as to the date from which interest should be computed was *res judicata*.

The Senior Government Pleader (Lala Jwala Prasad) and Pandit Ajudhia Nath, for the appellant.

Munshi Hanuman Prasad and Pandit Bishambhar Nath, for the respondents.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.,) was delivered by

STRAIGHT, J.—The main contention in this appeal is that the defendants-respondents, in the former suit brought against them by the plaintiff-appellant, might have pleaded that interest should be calculated from the date of defaulting instalments on such instalments, not from the date of the bond, and not having taken this plea, but interest from the date of the bond having been decreed against them, they are debarred now under s. 13 of the Civil Procedure Code from raising this issue. The lower appellate Court ruled that the defendants are not thus debarred, because "the subject-matter of the present suit is not the same as that of the first suit, which was for four instalments that fell due prior to the instalments the subject of the present

suit." But this issue was explicitly raised by the defendants in their answer to the first action, when they pleaded not only that the bond was forged, but that "the account of interest is also incorrect;" whereupon the first Court framed the issue: "Whether or not the claim for interest to the amount demanded is proper." It is true that the first Court finding the bond to be bad dismissed the suit without determining the subordinate question of the interest payable under its terms, and this point was necessarily not raised by the plaintiff's appeal to the District Court. But after the appeal to this Court that issue was specifically directed to be tried by the order of remand, and in his return the Judge found in terms "that the four instalments claimed are really due to the plaintiff," and a decree for them passed accordingly. No doubt the defendants in their original grounds of appeal to the High Court raised, among others, the definite plea on this subject that "the Judge was wrong in decreeing interest from the date of the deed." But in the objections filed to the finding on remand there was no specific complaint as to the decision with regard to interest. However, as a matter of fact, the appeal was dismissed *in toto*, the decree of the lower appellate Court being affirmed on the 13th June, 1877. It is pleaded in the present appeal on behalf of the respondents that, the subject-matter of the present suit being different from that of the suit that terminated on the 13th June, 1877, the provisions of s. 13 of Act X of 1877 do not apply, and in support of this position the respondents rely on the Full Bench ruling of this Court in appeal under s. 19, Letters Patent, No. 3 of 1880, decided the 9th March, 1881 (1). But that case is clearly distinguishable from the one before us, the matters in issue, as well as the causes of action, having been, as it was justly held, plainly fresh and substantially different from each other in the two cases then before the Court. The first of those cases was a simple suit for arrears of *nankar* allowance charged on a specific estate; the other suit was based on a pleading that the *nankar* holders had become proprietors by purchase of a portion of the estate thus charged, and that therefore the liability of the other proprietors in respect of the amount of the *nankar* charge should be proportionately diminished. But in the present appeal we are constrained to find that the issue

(1) Unreported.

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as to the date from which interest due on the defaulting instalments was exigible under the terms of the bond was directly and substantially in issue in the former suit between the same parties, and was heard and finally decided, and must therefore be held to be *res judicata*. The matter was alleged by the appellant and repudiated by the respondents in their respective positions, of plaintiff and defendants in the former suit on a claim in all respects similar both in subject-matter and cause of action. And the similar relief contained in the plaint was granted by the decree of that suit.

It is possible that the decision of the lower appellate Court has proceeded on an erroneous reading of s. 13, as would appear from its use of the phrase "subject-matter" of the suits now in question. The subject-matter in the sense of the thing sued for is of course different in each suit, but it is the "matter in issue" not the "subject-matter" of the suit that forms the essential test of *res judicata* in the section in question. "Matter in issue" is defined as matter from which either by itself, or in connection with other matter, the existence, non-existence, nature or extent of any right, liability, or disability asserted or denied in any suit or proceeding necessarily follows (Indian Evidence Act, s. 3). In the two suits of the parties now before us, one *common* matter in issue was the question of the liability of the obligors of the bond in regard to the amount of the interest secured thereby. That question was determined in the previous suit, and cannot be re-opened now. We must therefore modify the decree of the lower appellate Court, by allowing the appellant's claim in full, and decree this appeal with costs.

Decree modified.

Before Mr. Justice Straight and Mr. Justice Duthoit.

PANCHAM SINGH (DEFENDANT) v. ALI AHMAD (PLAINTIFF).*

Joint mortgage—Contribution.

P and *D*, in May, 1867, jointly mortgaged their respective two biswas shares of a certain village. In August, 1877, the mortgagee sued to recover the mortgage-money, by the sale of the mortgaged property, and obtained a decree. Before this decree was executed *L* obtained a decree against *D*, in execution of which his

* Second Appeal, No. 50 of 1881, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 13th September, 1880, affirming a decree of the Munsif of Etah, dated the 15th May, 1880.

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