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purposely, and was probably a clerical error on the part of the pleader. However this may be, there is no doubt that the provisions of s. 310A do not apply to mortgage decrees, and that the order by the District Judge is entirely wrong and must be set aside.

We accordingly decree this appeal, with costs.

M. N. R.

*Appeal decreed.*

*Before Mr. Justice Rampini and Mr. Justice Pratt.*

1900  
 June 18 &  
 21.

BHUGWANBUTTI CHOWDHIRANI (PLAINTIFF) v. A. H. FORBES,  
 EXECUTOR TO THE ESTATE OF THE LATE A. J. FORBES (DEFENDANT).<sup>o</sup>

*Res judicata—Civil Procedure Code (Act XIV of 1882), s. 13—Competency of Court to try subsequent suit—Pecuniary jurisdiction—Suit of a Small Cause Court nature—Issue decided in a previous suit not subject to second appeal.*

In order to make a matter *res judicata*, it is not necessary that the two suits must be open to appeal in the same way. *Rai Charan Ghose v. Kumud Mohan Dutt* (1) followed.

A plaintiff cannot evade the provisions of s. 13 of the Code of Civil Procedure by joining several causes of action against the same defendant in the subsequent suit and instituting it in a Court of superior jurisdiction.

IN a suit instituted by one A. H. Forbes, the present defendant, against one Bhugwanbutti Chowdhirani, the present plaintiff, it was sought to obtain a refund of Rs. 124 annas 13 being the excess amount of road and public works cesses wrongfully recovered from him in respect of a *putni* taluk which he held under the said Bhugwanbutti Chowdhirani. The suit was instituted in 1894 in the Court of the Munsif of Purnea. The Munsif decreed the suit, holding that the plaintiff in that suit was not liable to pay road and public works cesses at the enhanced rate claimed. This decision was confirmed on appeal by the District

<sup>o</sup> Appeal from Appellate Decree No. 1030 of 1898, against the decree of D. Cameron, Esq., District Judge of Purnea, dated the 10th of February 1898, affirming the decree of Babu Chakradhar Prasad, Subordinate Judge of that District, dated the 11th of August 1897.

contention, has cited the cases of *Bholabhai v. Adesang* (1), *Govind v. Dhondbarav* (2), *Vithinga Padayachi v. Vithilinga Mudali* (3) and *Misir Raghobardial v. Sheo Baksh Singh* (4) which, it is said, lay down that to make a matter *res judicata* the two suits must be open to appeal in the same way. Mr. Bounerjee on the other hand, has called our attention to the case of *Rai Charan Ghose v. Kumud Mohun Dutt* (5) which is a decision of this Court and in which the contrary view has been held. We agree with the views expressed in this last mentioned case and must, therefore, follow it.

As to the objection on the ground of the incompetency of the Munsif, who decided the former suit, to decide a suit of the value of the present suit, it appears that the claim on account of road cess and public works cess was below Rs. 1,000, and was therefore within the competency of a Munsif to try. The plaintiff in this suit joined several causes of action against the same defendant together, and hence instituted her suit in the Subordinate Judge's Court. She therefore joined together several suits. She cannot be allowed to evade the provisions of s. 13 in this way. It would have been perfectly competent for a Munsif to try the plaintiffs present suit for road cess and public works cess.

The appeal, therefore, fails. We dismiss it with costs.

M. N. R.

*Appeal dismissed.*

*Before Mr. Justice Rampini and Mr. Justice Pratt.*

LALNARAIN SINGH AND ANOTHER (JUDGMENT-DEBTORS) v. MAHOMED RAFIUDDIN (DECREE-HOLDER).<sup>2</sup>

1900.  
June 28.

*Appeal—Order dismissing objections to the execution of decree—Dismissal for default—“Decree”—Civil Procedure Code (Act XIV of 1882 as amended by Act VII of 1888 and Act VI of 1892), ss. 2, 244 (c), 540, 647.*

Appeal from Order No. 2 of 1900, against the order of W. H. Vincent, Esquire, District Judge of Bhagalpur, dated the 22nd of September 1899, affirming the order of Babu Harakrishna Chatterjee, Subordinate Judge of Monghyr, dated the 29th of April 1899.

(1) (1884) I. L. R., 9 Bom., 75.

(2) (1890) I. L. R., 15 Bom., 104.

(3) (1891) I. L. R., 15 Mad., 111.

(4) (1882) I. L. R., 9 Calc., 439 ; L. R., 9 I. A., 197.

(5) (1897) I. L. R., 25 Calc., 571.