

1878
January 10.

FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner,
and Mr. Justice Spankie.*

CHAMAILI RANI (DEFENDANT) *v.* RAM DAI (PLAINTIFF).*

Act VII of 1870 (Court Fees' Act), ss. 17, 27—Act VIII of 1859 (Civil Procedure Code), ss. 8, 9.—Multifarious Suit.—“Distinct Subjects”—Plaint—Memorandum of Appeal.

Held (SPANKIE, J., dissenting) that the words “distinct subjects” in s. 17 of Act VII of 1870 mean distinct causes of action or distinct kinds of relief.

Per SPANKIE, J.—Such words mean every separate matter distinctly forming a subject of the claim.

THE defendant in this suit having preferred an appeal to the High Court against the decree of the Court of first instance after the time allowed by law, the Court called upon the respondent to show cause why the appeal should not be admitted after such period. The respondent preferred a petition to the Court stating that the memorandum of appeal was insufficiently stamped, the appellant having paid in respect thereof a Court fee of Rs. 610, whereas under s. 17 of Act VII of 1870 a fee of Rs. 808-12-0 was chargeable. Under the order of the Court the following report was made by the Assistant Registrar :

“ The claim embraces different subjects, and under s. 17 of the Court Fees' Act the Court fees should apparently have been calculated on each subject-matter, and not on the aggregate value, as has been done. The fees should be calculated as follows :

		<i>Court-fees.</i>			
		Rs. a. p.		Rs. a. p.	
1.—For possession (on five times the jama)	4,315	1 2	245	0 0
2.—For a house, value	4,100	0 0	230	0 0
3.—For wasilat	5,248	3 2	285	0 0
4.—For damages	648	0 0	48	12 0
Total		14,306 4 4		808 12 0	

On the aggregate amount the stamp is sufficient, but this apparently is not correct as stated above. It should have been calculated under s. 17 of the Court Fees' Act, and the stamp is therefore insufficient by Rs. 198-12-0.”

* Miscellaneous Application, No. 32B of 1877.

The Court (STUART, C.J., and SPANKIE, J.) referred to the Full Bench for an opinion as to the meaning of the words "distinct subjects" in s. 17 of Act VII of 1870.

Mr. Colvin and Pandit *Ajudhia Nath*, for the appellant.

Munshi *Hanuman Prasad*, Pandit *Bishambar Nath*, and Mir *Zahur Husain*, for the respondent.

The following judgments were delivered by the Full Bench :

STUART, C.J.—It appears to me that the meaning of the words "distinct subjects" in s. 17 of Act VII of 1870 is shown with sufficient clearness in that section itself, when it states that "the plaint or memorandum of appeal shall be chargeable with the *aggregate amount* of the fees to which *the plaints or memoranda of appeal in suits embracing separately each of such subjects* would be liable under this Act." This I think can only mean that the two or more distinct subjects are to be so chargeable as being distinct causes of action. The words "*plaints or memoranda of appeal in suits*" in the section show this to my mind conclusively, and it is not enough that the distinct subjects should be merely separate and distinct matters embraced in the claim.

But on the other hand I am of opinion that this interpretation of s. 17 of the Court Fees' Act does not in the least degree affect the correctness of the calculation submitted by the office in the case which has given rise to this reference, for it is very clear to me that each of the separate distinct subjects mentioned in the report might be separate causes of action in separate suits, and therefore whether viewed in that light or merely as distinct and separate matters of claim, the correct fee chargeable in the case is that suggested by the Assistant Registrar.

TURNER J.—Seeing that the fee to be charged in such cases is the aggregate of the fees to which the plaints in suits embracing separately each of the subjects would be liable under the Act, I am inclined to think that "distinct subjects" mean distinct causes of action or distinct kinds of relief; *e.g.*, if a suit is brought for the recovery of an inheritance, although the inheritance might consist of distinct properties and properties differing in kind, the fee would be computed on the aggregate value of the one subject of suit. But where a suit is brought (i) for the recovery of an inheri-

1878

CHAMALLI
BANK
P.
RAM DAL

1878

CHAMAILI
RANI
vs.
RAM DAI.

tance, (ii) for an injunction, and (iii) for the amount of a bill of exchange accepted by the defendant, each of these three subjects would be distinct, and the fee chargeable would be the aggregate of the fees chargeable in respect of each subject if sued for in a separate suit. On the report now submitted by the office it is not possible to determine the proper fee. When the record is before the Court it can be ascertained what are the subjects to which the appeal relates.

PEARSON, J.—I concur in the view taken by my learned colleague Mr Justice Turner.

SPANKIE, J.—I adhere to the opinion which I expressed when this question was argued by Pandit Ajudhia Nath before the referring Bench, which opinion I believe the learned Chief Justice shared. But it became necessary to refer the question as a doubt had been expressed elsewhere as to the meaning of the words “distinct subjects” in s. 17 of the Court Fees’ Act.

I regard the words as meaning every separate matter distinctly forming a subject of the claim. The section runs thus: “Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.” The fee to which each of the distinct subjects embraced by the suit is liable, if a separate suit were brought, is first to be ascertained and then the aggregate amount of all the items is to be charged. The words “multifarious suits” in the margin have no reference to s. 8 of Act VIII of 1859 in the sense suggested by the learned pleader for appellant, that we are to read the words “two or more distinct subjects” as if they were “two or more distinct causes of action;” and the second clause in s. 27 that “nothing in the former part of the section shall be deemed to affect the power conferred by the Code of Civil Procedure, s. 9” simply affirms what is laid down in s. 9 that, where two or more causes of action are joined in the same suit, and the Court shall be of opinion that they cannot conveniently be tried together, the Court may order separate trials of such causes of action to be held.

I would reply that the Assistant Registrar has calculated the fees strictly in accordance with the provisions of s. 17 of Act VIII of 1870.