1885

QUEEN-EMPRESS v. RAM SARUP.

I think it desirable here to observe that I am unable to agree in the opinion expressed by one of my learned colleagues at the hearing of the case, that *illustration* (*g*) of s. 235 of the Criminal Procedure Code applies merely to the case of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot.

Illustrations are furnished from ordinary and not from extraordinary cases, and it is in the highest degree improbable that seven rioters should, each with his own hands, cause grievous hurt, and also assault a public servant engaged in suppressing the riot; but it is not improbable that one of the seven rioters should commit both of the said offences; and there is, I think, no room for doubt that the convictions under ss. 147, 325 and 152 of the Indian Penal Code, referred to in *illustration* (*g*) of s. 235 of the Criminal Procedure Code, relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.

My reply to the reference is, that for the reasons above stated, as well as for the reasons stated in my judgment in *Queen-Empress* v. *Dungar Singh* (1), the separate sentences that were passed under ss. 147 and 325 of the Indian Penal Code, in the case before us, were not illegal.

APPELLATE CIVIL.

1885
May 14.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

MUHAMMAD MALIK KHAN (DEFENDANT) *v.* NIRHAI BIBI AND OTHERS (PLAINTIFFS)*.

Suit for profits in respect of several years—Court-fees—Distinct causes of action—Distincts subjects—Act VII of 1870 *(Court-fees Act), s.* 17*—Civil Procedure Code, ss.* 43, 44.

In an appeal in a suit for recovery of profits under s. 93 (*h*) of the N.-W. P. Rent Act, in respect of several years, the proper court-fee leviable on the memorandum of appeal is one calculated on the aggregate amount of the profits claimed, and not one calculated separately on the amount of profits claimed for each year.

---

* Stamp reference in First Appeal No. 97 of 1885.

(1) *Ante*, p. 29.

1885

MUHAMMAD MALIK KHAN v. NIRHAI BIBI.

THIS was a case referred to the Court by the Registrar under s. 5 of the Court-fees Act.

The reference was in these terms :—

"The office has laid this memorandum of appeal before me for determination of the question whether the court-fee paid is sufficient. The suit is one for recovery of profits under s. 93 (*h*) of the Rent Act for the years 1286—88 fasli. The plaintiff-appellant has calculated the court-fee on the aggregate amount of the claim, Rs. 9,541, and paid Rs. 455. The fee payable on this basis is Rs. 465, and thus in any case there is a deficiency of Rs. 10 ; but if the proper method of calculation be that the fee should be levied separately on the amount of profits claimed for each year, it would be Rs. 205, and Rs. 190, and Rs. 170, that is, Rs. 565, and there is a deficiency of Rs. 110.

The case is on all fours with the case of *Mahip Narain* v. *Jagat Narain* (1) in which Straight, J., directed that the court-fee should be calculated on the latter basis. The reason for that decision was, that it had been held in the cases of *Raja Sutto Churn Ghosal* v. *Obhoy Nand Dass* (2) and *Ram Soondur Sein* v. *Krishno Chunder Goopto* (3) that arrears of rent for successive years are severed and distinct causes of action, in respect of which a plaintiff might institute separate suits, and that therefore, under the construction placed by the Full Bench on s. 17 of the Court-fees Act in *Mul Chand* v. *Shib Charan Lal* (4), such arrears formed "distinct subjects" in the light of that section.

The Calcutta High Court has, however, more recently held that the cases referred to above are overruled by s. 43, Act X of 1877 (now Act XIV of 1882), and that the *illustration* to that section treats a claim to all arrears of rent as a single cause of action—*Taruck Chunder Mukerji* v. *Panchu Mohini Debya* (5). This latter decision is, moreover, in accordance with a decision of the Madras High Court—*Chockalinga Pillai* v. *Kumara Viruthalam* (6). It is evident that in such cases there is but one contract, and although each item as it falls due constitutes a debt which

(1) N.-W. P. Legal Remembrancer, 1880, H. C. Series, p. 124.
(2) 2 W. R., 31.
(3) 17 W. R. 380.
(4) I. L. R. 2 All. 676.
(5) I. L. R. 6 Calc. 791.
(6) 4 Mad. H. C. Rep. 334.

1885

MUHAMMAD MALIK KHAN v. NIRHAI BIBI.

might be sued for when due, the understanding is that, if unsued for, it shall be added to other items due when the suit is brought, and shall form one entire demand, the aggregate constituting but one cause of action. The same principle is not confined to cases where there is one separate contract, but is extended to the case of tradesmen's bills in respect of which there may have been separate contracts, but in which one item is so connected with another that the dealing is intended to be continuous—*Grimbly* v. *Aykroyd* (1). S. 17 of the Court-fees Act was evidently not meant to apply to a case where there are various items based on one agreement, but which are intended to form one entire demand, but rather to cases where there are several and independent claims based on different titles, which, with the leave of the Court under s. 44, Civil Procedure Code, have been united in one suit.

I think therefore that the decision in *Mahip Narain* v. *Jagat Narain* (2) should be reconsidered, and refer the case to the Court under s. 5 of the Court-fees Act.

Mr. *Amir-ud-din*, the *Senior Government Pleader* (Lala *Juala Prasad*), Munshi *Hanuman Prasad*, and Munshi *Sukh Ram*, for the appellants.

STRAIGHT and BRODHURST, JJ.—We are of opinion that the proper fee leviable is the one calculated on the aggregate amount of the profits claimed.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Tyrrell.

1885
May 15.

DAMODAR DAS (PLAINTIFF) *v.* WILAYET HUSAIN (DEFENDANT)*.

Majority—Capacity to contract—Muhammadan over 16 *years of age before Act IX of* 1875 *came into force—Muhammadan Law—Act IX of* 1872 (*Contract Act*), *s.* 11—*Act XL of* 1858 (*Bengal Minors Act*) *s.* 26—*Act, IX of* 1875 (*Majority Act*), *s.* 2 (*c*).

In a suit upon a bond executed on the 5th June, 1875, by a Muhammadan who at that date was sixteen years and nine months old, the defendant pleaded that at the time when the bond was executed, he was a minor, and that the agreement was therefore not enforceable as against him.

Held that the defendant, having at the date of the execution of the bond, reached the full age of sixteen years, and so attained majority under the Muham-

* First Appeal No. 80 of 1884, from a decree of Muhammad Abdul Qayum, Subordinate Judge of Bareilly dated the 10th May, 1884.

(1) 1 Exch. 479.

(2) N.-W. P. Legal Remembrancer, 1880, H. C. Series, p. 124.