

case disposed of by the latter. But the rule that, if no charge is drawn up, there can be no judgment of acquittal or conviction, is subject to the exception of cases provided for in Explanation I to s. 216 of the Code. That Explanation is that the omission to prepare a charge shall not invalidate a charge, if in the opinion of the Court of appeal or revision, no failure of justice has been occasioned thereby. In the case decided by the Deputy Magistrate, although a charge may not have been formally drawn up, the accused were called upon to answer to the charge preferred against them by the complainants. There is no pretence for saying that any failure of justice was occasioned by the omission to draw up a formal charge; nor was that the ground on which the application under s. 298 was preferred to the Officiating Magistrate, or on which he proceeded to retry the accused. The alleged misappreciation of evidence by the Deputy Magistrate was the ground of the Officiating Magistrate's proceedings. Those proceedings being illegal by reason of the previous acquittal of the accused on the same charge are hereby cancelled, the sentence passed by the Officiating Magistrate on the petitioners is annulled, and their immediate release is ordered.

1880

 EMPRESS
INDIA
v.
GURDU

 APPELLATE CIVIL.

1880
August 3

Before Mr. Justice Pearson and Mr. Justice Oldfield.

AMAR NATH, GUARDIAN OF LACHMI NARAIN, A MINOR (PLAINTIFF), v.
THAKUR DAS AND OTHERS (DEFENDANTS).*

Suit for specific moveable Property or for compensation—Court-fees—“Multifarious Suit”—Act VII of 1870 (Court Fees Act), s. 7, cl. i, and s. 17.

A, to whom a certificate of administration in respect of the property of a minor had been granted in succession to *B*, whose certificate had been revoked, sued *B* claiming the delivery of specific moveable property of various kinds belonging to the minor, which had been intrusted to *B* and *B* detained, or the value of each kind of property as compensation in case of non-delivery. Held that the suit did not embrace “distinct subjects” within the meaning of s. 17 of the Court Fees Act, 1870, and the court-fees payable in respect of the plaint in the suit should be computed, under cl. i, s. 7 of that Act, according to the total value of the claim.

* First Appeal, No. 64 of 1880, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Saharanpur, dated the 30th January, 1880.

1880

AMAR NATH,
GUARDIAN OF
LACHMI
NARAIN
v.
THAKUR DAS.

THE plaint in this suit, which was instituted in the Court of the Subordinate Judge of Saharanpur, stated that one Lachmi Narain, a minor, was the owner of the moveable property described in the schedule annexed to the plaint; that Bal Kuar, defendant No. 1, had been granted a certificate of administration to the property of the minor, the defendants Nos. 2, 3, and 4 giving security for the delivery of the minor's property by the defendant No. 1 when required by the District Court; that on discovering that the defendant No. 1 was acting dishonestly in the discharge of her duties, the plaintiff applied for the revocation of the certificate to her and for the grant of a certificate to himself, and the District Court, on proof of the dishonesty of the defendant No. 1, on the 31st March, 1879, revoked the certificate granted to her and granted a certificate to him; that the District Court ordered the defendant No. 1 to make over the property of the minor to the plaintiff, but she objected to make over the property described in the schedule annexed to the plaint, and the Court disallowing her objections on the 31st May, 1879, directed the plaintiff to sue for such property or compensation for its detention; and that the cause of action for the recovery of such property arose on that date, and for compensation on the 17th January, 1879. The plaintiff prayed accordingly "that Rs. 29,709-14-0 in cash, and Rs. 2,376 damages, total Rs. 32,085-14-0, after deducting Rs. 2,783-11-3½, the amount of expenditure, under the order of the Court; Rs. 25,000 the amount of the bills of exchange; the gold ornaments entered in the list, or Rs. 1,439-4-0; mercantile goods entered in the list, or Rs. 331-11-0 their value; miscellaneous articles entered in the list, or Rs. 318-12-9 their value; utensils entered in the list, or Rs. 218-9-3, their value; articles of daily use entered in the list, or Rs. 9-3-3, their value; Rs. 12,138-13-3 realized from debtors by Bal Kuar in part of Rs. 97,022-7-0, the debts due under account-books, together with Rs. 971 damages; grain entered in the list, or Rs. 1,432-12-6, its value; deeds of mortgage and bonds (44 in number) for Rs. 17,741-8-0, or the said amount; 11 deeds of sale and deeds of gift for Rs. 2,288-7-6 entered in the list, or Rs. 500 damages; in all Rs. 70,167-10-0 be directed to be paid to the plaintiff by the defendant." With reference to s. 7, cl. i, of the Court Fees Act, 1870, the plaintiff paid in respect of his plaint an institution

fee of Rs. 1,300 computed according to the total amount of the claim, *viz.*, Rs. 70,167-10-0. The Subordinate Judge was of opinion that under s. 17 of that Act the plaint was chargeable with the aggregate amount of fees to which the plaints in separate suits for the different items of the claim would have been liable, such amount being Rs. 3,167; and he directed the plaintiff to supply the deficiency within a certain time. The plaintiff having failed to supply the deficiency as required, the Subordinate Judge made an order rejecting the plaint. The grounds on which the Subordinate Judge decided that the institution-fee should be computed according to the provisions of s. 17 of the Court Fees Act were as follows:—"Having taken the petition of plaint into consideration, I see that the plaintiff's claim is for the recovery of cash, damages, amount of bills of exchange, jewelry, mercantile goods, utensils, deeds of mortgage, sale, &c., and for the money which Bal Kuar realized from the debtors by means of the account-books, and such being the case, the claim involves several causes of action—*vide* s. 17, Act VII of 1870. This case is similar to the precedent quoted in the margin."—*Chamaili Rani v. Ram Dai* (1).

The plaintiff appealed to the High Court.

Pandits *Bishambar Nath* and *Ajudhia Nath*, for the appellant.

Mr. *Leach*, for the respondents.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.) was delivered by

OLDFIELD, J.—We are of opinion that the court-fees were properly paid on the amount of the claim, Rs. 70,167-10-0, under cl. i, s. 7 of the Court Fees Act, and that s. 17 of the Act does not apply. It has been ruled by the Full Bench of this Court in *Mul Chand v. Shib Charan Lal* (2) that the meaning of that section is that distinct subjects are to be separately chargeable with court-fees, as being claims or causes of action which have been united in one suit for the purposes of jurisdiction or convenience of procedure. The claim in this suit does not embrace distinct subjects in the above sense. It is for the recovery of money and various articles left in the custody of one of the defendants, for whom the other defend-

(1) I. L. R., 1 ALL., 552.

(2) I. L. R., 2 ALL., 676.

1880

AMAR NATH
GUARDIAN
LACHMI
NARAIN
vs
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1880

SHAR NATH,
SIBDIAN OF
LACHMI
NARAIN
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IAKUE DAS.

ants became sureties, and the equivalent in value of the articles as damages is sought as an alternative relief. There is but one and the same cause of action in respect of the matter to which the suit relates. We reverse the order of the lower Court and allow this appeal with costs, and direct the Subordinate Judge to restore the case on the register and dispose of it on the merits.

Cause remanded.

1880
August 9.

Before Mr. Justice Oldfield and Mr. Justice Straight.

SIBTA (DEFENDANT) v. BADRI PRASAD AND OTHERS (PLAINTIFFS).*

Hindu Law—Daughter's Son—Succession.

According to Mitakshara law a daughter's son takes his maternal grandfather's estate as full proprietor, and on his death such estate devolves on his heirs and not on the heirs of his maternal grandfather. His *gotraja-sapindas*, or the persons related to him through his father, have, therefore, preferential right to succeed him to the persons related to him through his mother.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case.

Munshis *Hanuman Prasad* and *Kashi Prasad*, for the appellant.

Messrs. *Conlan* and *Chatterji*, for the respondents.

The High Court (OLDFIELD, J., and STRAIGHT, J.,) made the following order remanding the case :—

OLDFIELD, J.—The property in suit belonged to one Chotey Lal : at his death it descended to his widow Chandan Kuar, and at her death to Nand Lal, the son of Chotey Lal's daughter. He was succeeded by his widow Inda ; and she died on the 29th August, 1878, having executed a deed of gift in favour of the appellant, Sibta, one of the defendants. The plaintiffs are related to Nand Lal through his mother the daughter of Chandan Kuar, and they claim the property by setting aside the deed of gift. The defence on the part of Sibta is that Nand Lal, who had absolute power over the property, made a will by which he bequeathed it absolutely to Inda, who made a gift of it to the defendant, and the plaintiffs have

* Second Appeal, No. 1182 of 1879, from a decree of W. Tyrrell, Esq., Judge of Bareilly, dated the 12th April, 1879, affirming a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 19th December, 1878.