1880
June 28.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

RAGHOBIR SINGH (PLAINTIFF) *v.* DHARAM KUAR AND ANOTHER (DEFENDANTS).*

Multifarious Suit—Court-fees on Plaint and Memorandum of Appeal—Act VII of 1870 (Court Fees Act), ss. 7, 8, 17, sch. i, No. 1.

The rule laid down in s. 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of No. 1, sch. i of that Act, and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is, under that proviso, Rs. 3,000.

THE plaintiff in this suit claimed possession of the "Landhora estate" and all the rights appertaining thereto, valued at Rs. 21,46,006-2-0; and mesne profits of that estate from the 1st January, 1871, to the date of the institution of the suit, the 15th January, 1877, valued at Rs. 10,00,000. He stated that his cause of action arose in April, 1868, the date of his dispossession. He paid in respect of his plaint an institution-fee of Rs. 3,000; and on appeal to the High Court from the decree of the Court of first instance dismissing the suit, he paid in respect of his memorandum of appeal a similar court-fee. The Office of the High Court reported to the taxing-officer that the proper court-fees had not been paid on the plaint and memorandum of appeal, the report being as follows:—"The court-fee leviable on each of the two distinct subjects embraced in the suit and the appeal would amount to Rs. 3,000, or Rs. 6,000 for the entire claim; but the plaintiff-appellant has paid only Rs. 3,000, both on the plaint and the memorandum of appeal: there is then a deficiency of Rs. 3,000 in each, or Rs. 6,000 in both instances." The decision of the taxing-officer was as follows:—"Under the recent Full Bench ruling—*Mul Chand* v. *Shib Charan Lal* (1)—the suit embraces two 'distinct subjects' within the meaning of s. 17 of the Court Fees Act. I am in doubt, however, how far the proviso to art. 1, sch. i, affects the operation of that section. Probably the words 'not otherwise provided for in this Act' in art. 1,

* First Appeal, No. 120 of 1878, from a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 28th May, 1878.

(1) I. L. R., 2 All., 676.

column 1, contemplate the case provided for in s. 17. If so, the office-report would be right, and a deficiency of Rs. 3,000 in this Court, and of the same amount in the lower Court, would have to be made good." The question raised by the taxing-officer was referred to the Full Bench for consideration.

Mr. *Howard*, the *Senior Government Pleader* (Lala *Juala Prasad*), and Munshi *Hanuman Prasad*, for the appellant.

Messrs. *Conlan* and *Colvin*, Pandit *Bishambhar Nath*, and Babu *Oprokash Chandar Mukarji*, for the respondents.

The following judgments were delivered by the Full Bench:

STUART, C. J.—A difficulty, rather merely logical than material, presses on my mind in this case. We have already ruled in a Full Bench case—*Chamaili Rani* v. *Ram Dai* (1)—that, where a plaint embraces different subjects of claim which are so many distinct causes of action, the court-fee shall be the aggregate of the fees separately chargeable on the separate causes of action, or, in other words, such causes of action as could separately and singly be the subject-matter of separate and distinct suits. And applying this ruling it might fairly and consistently be argued that the proviso in sch. i, No. 1, in the Court Fees Act, "that the maximum fee leviable on a plaint or memorandum of appeal shall be Rs. 3,000" applied to plaints or memoranda of appeal when the cause of action was a single subject of claim. But this view of the Court Fees Act would in many cases work so extravagantly as to make the court-fee payable under it rather in the nature of a penalty, as remarked by Straight, J., than as reasonable stamp duty, and I therefore willingly support the opinions of my colleagues on the point. As to the words "not otherwise provided for in this Act," I have little doubt they refer to the plaints and memoranda of appeal mentioned in sch. ii of the Act.

PEARSON, J.—The words "otherwise provided for in this Act" apparently refer to the provisions made for plaints and memoranda of appeal in certain suits in sch. ii. The rule laid down in s. 17 regarding multifarious suits must, in my opinion, be held to be subject to the proviso at the end of art. 1, sch. i.

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

1880

RAGHOBIR SINGH v. DHARAM KUAR.

SPANKIE, J.—I concur with Mr. Justice Pearson and my colleagues generally.

OLDFIELD, J.—By s. 17, Court Fees Act, "where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal is chargeable with the aggregate amount of fees to which the plaint or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act."

Art. 1, sch. i, gives the amount of fees chargeable on plaints or memoranda of appeal not otherwise provided for in the Act. Art. 1 is as follows:—"Plaint or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court, except those mentioned in s. 3;" and the proper fee is stated and reference is made to the table annexed to the schedule for ascertaining the proper fee leviable on the institution of a suit; and at the end of art. 1 is this proviso: "Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees." The question before us is whether this proviso applies to limit the fee chargeable on a plaint or memorandum of appeal of the nature of those mentioned in s. 17; and it is contended that it does not, as they are taken out of the operation of art. 1, sch. i. by being "otherwise provided for in the Act," that is, provided for by s. 17.

In my opinion this contention will not hold good. It is true that by the terms of art. 1, sch. i, that article will not apply to a plaint or memorandum of appeal "otherwise provided for in the Act," but those words mean a provision fixing the amount of fees chargeable, and a plaint or memorandum of appeal will not come under the operation of art. 1, sch. i, for which a proper fee has been provided in some other part of the Act. Now s. 17 of the Act makes no provision of this kind for the proper fee to be charged; it merely lays down a general rule that, where a suit embraces two or more distinct subjects, the plaint shall be charged with the aggregate amount of fees to which the plaint or memoranda of appeal in suits embracing separately each of such subjects would be liable under the Act. S. 17 does not pretend to fix the amount of the fee, but, on the other hand, expressly refers to other parts of the Act for

1880

RAGHOBI SINGH v. DHARAM KUAR.

the amount, that is, to the schedules, which alone deal with the amount; and the general rule in s. 17 becomes necessarily governed by rules as to the amount of the fee to be found in the schedules, and among them by the proviso in art. 1, sch. i, limiting the amount of fee on a plaint or memorandum of appeal of the nature of those referred to in s. 17; for no other part of the Act deals with the amount, and, if the article is to be applied, it must be applied in its integrity, and with the proviso which it contains fixing a maximum fee leviable, a proviso which is in no way inconsistent with the application of the general rule contained s. 17, but which governs its application.

In the case before us therefore the court-fee will be limited to Rs. 3,000.

STRAIGHT, J.—I am entirely of the same opinion as Mr. Justice Oldfield, and I quite agree in the view he expresses as to the position occupied by s. 17 of the Court Fees Act towards the other provisions in the body of the Act itself and in the schedules, relating to the mode in which fees payable in suits are to be computed. Ss. 7 and 8 specifically declare the rates at which relief by suit of a particular class or character, therein defined, is to be calculated. The category of likely causes of action is as far as can be exhausted, but in order to guard against the possibility of cases arising, for which no provision had been made, sch. i, art. 1 of the Act, is so expressed as to include "any plaint or memorandum" of any kind or description other than that contemplated by ss. 7 and 8. The words "not otherwise provided for in this Act," in my judgment, relate back to those two sections, and not to s. 17, and it therefore appears to me that the proviso at the end of art. 1 of sch. i applies generally and fixes the maximum fee leviable on *any* plaint or memorandum of appeal at Rs. 3,000. In reference to this it may be remarked that the Legislative authorities might naturally enough have intended to fix some limitation to the tax on institution of litigation; they certainly could not have had in view the establishment of an impost of so elastic and indefinite a kind as the machinery of the Courts could only be set in motion for very large claims by persons of very great wealth. A fee of Rs. 3,000 would seem to be a reasonable one, and

1880

AGHOBIR SINGH v. DHARAM KUAR.

it would partake of the nature of a penalty for praying in aid the assistance of the legal tribunals. No other provision relating to the point is to be found in the Court Fees Act, except in the schedule, as already mentioned; and, as it is impossible to understand any principle of justice or equity or any rule of construction by which the proviso as to the Rs. 3,000 should be confined merely to the suits detailed in art. 1, I think it must be taken to apply generally and to establish the maximum amount of court fees that may be charged for any suit.

1880
August 2.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

SANGAM RAM (DEFENDANT) *v.* SHEOBART BHAGAT (PLAINTIFF).

Sale in Execution of decree—Order setting aside sale—Suit to set aside such order—Act VIII of 1859 *(Civil Procedure Code), ss.* 256, 257.

Certain immoveable property was put up for sale in the execution of *B's* decree and was purchased by him. Subsequently, on the same day, such property was put for sale in the execution of *S's* decree and was purchased by him. *B* objected to the confirmation of the sale to *S* on the ground that *S's* decree had been satisfied previously to such sale, and the Court executing the decrees made an order setting aside such sale on that ground. *S* thereupon sued *B* to have such order set aside, and to have such sale confirmed, and to obtain possession of such property. *Held* that, inasmuch as such order had not been made under s. 257 of Act VIII of 1859, but had been made at the instance of a purchaser under another decree, and *B's* decree, as a matter of fact, had not been satisfied, *S's* suit to have such order set aside was maintainable.

The lower Court having given *S* a decree awarding possession of such property, as well as a declaration of his right to have such sale confirmed, the High Court set aside so much of that decree as awarded possession of such property (1).

Behari Bhagat, the father of the plaintiff in this suit, was holder of two decrees against one Abadi Begam, one for ,812-2-10, and the other for Rs. 5,151-15-6, both decrees en- the mortgage of property belonging to the judgment- In the course of the execution of the decree for Rs. 5,151, agat and Abadi Begam came to a compromise, under

al, No. 479 of 1879, from a decree of J. W. Power, Esq., Judge of 31st January, 1879, reversing a decree of Maulvi Muhammad Subordinate Judge of Ghâzipur, dated the 20th June, 1878.

i v. *Alimullah*, I. L. R., 1 All., 272, and the cases cited in