

1929.
 HARDAYAL
 RAM DASS
 RAY
 v.
 BENGAL
 AND
 NORTH-
 WESTERN
 RAILWAY.
 FAZL
 Ali, J.

or that the railway employees may not relax it in any particular case. In any case the question as to whether goods have been actually delivered to the Railway Company or not is a question of fact which is to be proved by evidence in each case, and in my opinion the rule referred to by the learned Counsel does not dispense with the necessity of such evidence in cases in which it has been proved that the consignment notes have been actually made over to a railway servant. It may be that acceptance of the consignment notes will in certain cases be considered to be some evidence of acceptance of goods, but, as the lower appellate court has pointed out, it cannot be held that it must necessarily in all cases be treated as equivalent to acceptance of the goods.

The appeal therefore fails and is dismissed, but in the circumstances of the case there will be no order as to costs.

DAS, J.—I agree.

S. A. K.

Appeal dismissed.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

(On a difference of opinion between Ross and Chatterjee, JJ.)

1929.

JYOTIBATI CHAUDHURAIN

Feb., 25.

v.

LAKSHMESHWAR PRASAD CHAUDHURI.*

Court-fees Act, 1870 (Act VII of 1870), section 7 (iv)(f), and Schedule II, Article 17(vi)—suit by a member of joint Hindu family, for partition—prayer for rendition of accounts by karta—suit, whether essentially one for partition—karta, whether liable to render accounts.

A karta of a joint Hindu family is not responsible to the other members of the family for the management of the joint

*First Appeal no. 185 of 1925. In the matter of court-fee.

family property in respect of the income derived therefrom and the expenditure incurred by him, and, therefore, is not liable to render accounts.

Sreemuty Soorjeemoney Dossey v. Denobundoo Mullick(1) *Raja Strucherla Ramabhandra v. Raja Strucherla Verabhandra Suryanarayana*(2), *Parmeshwar Dube v. Gobind Dube*(3), *Gobind Dube v. Parmeshwar Dube*(4) and *Sri Ranga Thathachariar v. Srinavasa Thathachariar* (5), referred to.

Therefore, a suit by a co-parcener for partition of the joint family properties and for rendition of accounts by the karta is essentially a suit for partition, and the court-fee is leviable under Article 17(vi), Schedule II of the Court-fees Act, 1870. The mere fact that a prayer is made in the plaint for rendition of accounts by the karta and for recovery of the sum found due to the plaintiffs cannot convert the suit into one for accounts under section 7(iv) (f) of the Act.

Kshetranath Banerjee v. Kali Dasi(6) and *Pochalal Ranchhod v. Umedram Kalidas*(7), followed.

Appeal by the defendants.

The facts of the case material to this report are stated in the following judgments—

Ross, J.—The question is as to the amount of court-fee payable on this appeal. The suit was a suit for partition brought by the plaintiffs against the karta of a joint family. They sought partition of the moveable and immoveable properties and an account. There has been, besides a decree for partition of the immoveable property, a decree against the defendant for Rs. 60,426-1-11½. This sum is made up as follows:

Bonds	...	...	Rs. 35,432-5-0	...	...	The total amount found due by the defendant on account of bonds was Rs. 41,586 from which Rs. 5,153-11-0 was deducted as the value of bonds allotted to the plaintiffs.
Articles	...	...	Rs. 1,657-13-0	...	...	The value of the plaintiffs' share of the moveables.
Milkiat	...	..	Rs. 22,335-15-11½	...	...	This represents income from 1810—1830.

The appellant has paid a court-fee of Rs. 15. The Stamp Reporter reports that there is a deficit court-fee due of Rs. 1,860.

(1) (1861-64) 9 Moo. I. A. 123.

(2) (1899) I. L. R. 22 Mad. 470; L. R., 26 I. A. 167.

(3) (1916) I. L. R. 43 Cal. 459.

(4) (1921) 2 Pat. L. T. 365.

(5) (1927) I. L. R. 50 Mad. 866.

(6) (1916-17) 21 Cal. W. N. 784.

(7) (1928) A. I. R. (Bom.) 476.

1929.
 JYOTIRATI
 CHAUDHRI.
 RAIN
 v.
 LAKSHMESH-
 WAR
 PRASAD
 CHAUDHRI.

1929.

JYOTIBATI
CHAUDHURAI
v.
LAKSEMESH
WAR
PRASAD
CHAUDHURI.

ROSS, J.

The question is whether this is a suit for accounts within the meaning of section 7(iv)(f) of the Court-fees Act. The leading case on the subject is *Parmeshwar Dube v. Govind Dube*(1) where the nature of the account to which a karta of a joint family is liable has been stated; and it was held by Fletcher, J., on a review of the authorities, that in an ordinary suit for partition, in the absence of fraud or other improper conduct, the only account the karta is liable for is as to the existing state of the property divisible, and that the parties have no right to look back and claim relief against past inequality of enjoyment of the members or other matters. Reference was made in the judgment to the decision of the Judicial Committee in *Raja Setrucherla Namabhadra v. Raja Setrucherla Virabhadra Suryanarayana*(2) where the view was accepted that the karta of a joint family is liable only to account as to the then existing state of the property in a suit for partition. See also *Sri Ranga Thathachariar v. Srinivasa Thathachariar*(3) and *Tadibullu Tammireddi v. Tadibullu Gangireddi*(4) where *Parmeshwar Dube's* case(1) was followed, and it was observed, "The other members of the family are not bound to accept the statement of the manager as to what the properties consist of, and the enquiry directed by the Court should be conducted in the manner usually adopted to discover what in fact the property consists of and not what the manager says it is. In such a case it is open to the members of the family to show that the expenditure which the manager says has been incurred has not been incurred or that the savings out of joint family funds have not been entered in the accounts." See also *Nilaran Chandra Mukerji v. Nirurama Devi*(5). The principle, therefore, is, that in the absence of fraud or other improper conduct, the karta is accountable only for the existing state of the property. This is not, therefore, a suit for accounts in the sense in which that expression is used in section 7(iv)(f) of the Court-fees Act. The karta's account is merely a part of the proceedings in the partition of the estate.

The two cases referred to by the Stamp-reprinter [*Sitaram v. Hanuman Prasad*(6) and *Beni Madhab Sarbar v. Gobind Chandra Sarbar*(7)] do not decide this question. The first is the decision of a single Judge and merely refers incidentally to the matter of court-fee; and in the second case all that was held was that the plaintiff, who had estimated his relief and had paid court-fee thereon, had paid a sufficient court-fee. The question now for decision was not in issue in either of these cases.

Parmeshwar Dube's case(1) came before this Court in appeal from the final decree [*Gobind Dube v. Parmeshwar Dube*(8)]. The plaintiff had been awarded Rs. 4,000 and he claimed more from the karta; and the question was as to the amount of court-fee payable on the appeal.

(1) (1916) I. L. R. 43 Cal. 459.

(2) (1899) I. L. R. 22 Mad. 470; L. R., 26 I. A. 167.

(3) (1927) I. L. R. 50 Mad. 876.

(4) (1922) I. L. R. 45 Mad. 281.

(5) (1921-22) 26 Cal. W. N. 517 (528).

(6) (1927) 8 Pat. L. T. 145.

(7) (1917-18) 22 Cal. W. N. 660.

(8) (1921) 2 Pat. L. T. 365.

The Taxing Officer thought that the ordinary fee on a partition suit was payable, but he referred the matter to the Taxing Judge who held that the suit being merely a suit for partition, the court-fee of Rs. 10 was sufficient.

It is contended by the Government Pleader that paragraph 7 of the plaint makes an allegation of fraud. In my opinion it does not. The passage is as follows:—

"The plaintiffs have also come to know that by making various sorts of Gholmal, defendant no. 1 has misappropriated lots of money and moveable properties on account of which the plaintiffs do not like to live jointly with defendants."

That is no allegation of fraud, and the account that is prayed for in prayer no. 4 to the plaint is not an account based upon fraud. That this is the correct interpretation of the plaint would appear from the facts that in the preliminary decree the account that was ordered was the ordinary karta's account "showing the existing state of affairs"; and in the judgment of the High Court on appeal from the preliminary decree it was pointed out that the karta had to account to the co-parceners for the joint family assets that were in his hands.

In my opinion this is an ordinary suit for partition and the court-fee paid is sufficient. But as my learned brother takes a different view it is ordered that the papers be laid before the Chief Justice.

CHATTERJI, J.—The question for consideration is as to the amount of court-fee payable in this appeal filed by the defendant. The plaintiff brought a suit for partition of joint family properties and rendition of accounts by the defendant no. 1 who is said to have been the manager of the joint family. He paid a court-fee of Rs. 10 for the purposes of partition and also a court-fee of Rs. 175 on Rs. 3,000 which, subject to the adjustment of accounts, was assessed as the amount due by the defendant no. 1 to the plaintiff. The plaintiff obtained a preliminary decree for partition and accounts. The defendant filed an appeal to this Court against the preliminary decree and paid a court-fee of Rs. 185 on the memo. of appeal; Rs. 10 for partition and Rs. 175 for the amount valued in the plaint relating to the accounts. The appeal was dismissed, and a final decree has been passed by the Subordinate Judge directing partition and also holding the defendants liable to the plaintiff to the extent of Rs. 60,426 and odd annas. And he realised the requisite court-fee on this amount, decreed after investigation and adjustment of accounts, from the plaintiff. The defendant has now preferred the present appeal with a court-fee of Rs. 15 treating the decree under appeal as a final decree in a mere suit for partition.

The point for consideration is whether this court-fee is sufficient, or a separate court-fee is leviable on the sum of Rs. 60,426 and odd in respect of which a decree has been passed against the defendant no. 1 after the taking of accounts.

It is urged by the learned Advocate for the appellant that the amount found due arises out of existing property which is divisible and, therefore, the court-fee is payable as in the case of a simple suit for partition. Reliance is placed by him on *Parmashwar v. Gobind*(1), *Ranga v. Sri Nivas*(2) and *Nibaran Chandra Mukherji v. Nirupama Devi*(3). These rulings lay down that in an ordinary suit for partition,

(1) (1916) I. L. R. 43 Cal. 459.

(2) (1927) I. L. R. 50 Mad. 866.

(3) (1921-22) 28 Cal. W. N. 517.

1929.

JYOTIBATI
CHAUDHURI
RAIN
T.
LAKSHMESH-
WAR
PRASAD
CHAUDHURI.

ROSS, J.

1929. in the absence of fraud or other improper conduct, the only account the karta is liable for is as to the existing state of the property divisible; the parties have no right to look back and claim relief against past inequality of enjoyment of the members or other matters. But the karta is the accountable party, and the enquiry directed by the Court must be conducted in the manner usually adopted to discover what in fact the property now consists of, not what the karta says it is.

JYOTIBATI
CHAUDHURI
RAIN
v.
LAKSHMESH-
WAR
PRASAD
CHAUDHURI.
CHATTERJI,
J.

These authorities merely lay down the principle which the Court has to follow in adjusting the accounts and rendering the manager liable. They do not lay down as to whether a separate court-fee is or is not leviable on the claim for accounts. It is one thing to fix the principle of accountability and quite another thing to state what principle would govern the amount of Stamp Duty payable.

The case of *Sitaram v. Hanuman*(1) shows that a separate court-fee on the estimated value of the amount claimed as due on adjustment of account from the manager in a partition suit was directed to be paid. In the case of *Beni Madhab v. Gobind*(2) also a separate court-fee was levied for the claim for accounts in a suit for partition. These are clear authorities that a separate court-fee is payable in respect of the claim relating to the rendition of accounts.

It is true that in *Parmeshwar Dube's* case(3), which came to this Court in appeal from a final decree [*Parmeshwar Dube v. Gobind Dube*(3)] the Taxing Officer was of opinion that it was an ordinary suit for partition and no further court-fee was payable and on a reference by him the Taxing Judge held that a court-fee of Rs. 10 was sufficient. This is what the Taxing Judge stated in connection with the Stamp reference: "I adhere to my former opinion that each of these suits must be looked at on its merit, and if indeed it is a plain suit for partition the court-fee thereon is Rs. 10. If it is in essence a suit to obtain a decree for money or a decree for immoveable property then an ad valorem court-fee must be paid. There is no doubt and it is conceded by the learned Vakil for the appellant that at the outset the suit before us was a suit to recover moveable property but that form has been removed by the High Court by its judgment in the case when it first came before it. The preliminary decree now made is a plain preliminary decree for partition such as was contemplated in Surjmani Dassi's case in 9 Moore's Indian Appeals, 123. Being now merely a partition suit a court fee of Rs. 10 is sufficient."

This case is therefore a decision on the facts and circumstances relating thereto, and does not decide any principle.

Apart from authorities, it is clear to me that it is a suit not only for partition of joint property but also for rendition of accounts by the manager. In paragraph 7 of the plaint it is stated:

"That the plaintiffs have also come to know that by making various sorts of gomal, defendant 1 has misappropriated lots of money and immoveable properties on account of which the plaintiffs do not like to live jointly with the defendants."

After stating that they are entitled to get their share in all the properties of the joint family separated from the remaining share they proceed to claim that,

"The plaintiffs are further entitled to ask the defendant no. 1 to render account for the period of his management."

(1) (1927) 8 Pat. L. T. 145.

(2) (1917-18) 22 Cal. W. N. 669.

(3) (1916) I. L. R. 43 Cal. 459.

The use of the word " further " is significant. In the next paragraph 8, the plaintiffs date this cause of action from the day when the defendants refused partition of the joint family properties and also from the day when the defendant no. 1 refused to render accounts, and, as already stated, they paid a separate court-fee for the purposes of adjustment of accounts.

In paragraph 11, the plaintiffs pray for relief as to partition and in clause 4 they make the following prayer :

" That defendant no. 1 may be directed to render accounts to the plaintiffs of all the properties of the joint family showing their receipts and expenditure from the beginning of the period of his management up to the date of the passing of the decree in this suit, that on an adjustment of account, decree may be passed in favour of the plaintiffs against the defendant for the amount which may be found due to the former by the latter, and that if the plaintiffs' claim be found to be in excess then the same may be also awarded to them on taking the additional court-fee."

Section 7, paragraph (4), clause (f), of the Court-fees Act provides that court-fee is payable in a suit for accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. A suit for partition is clearly maintainable without a prayer for rendition of accounts as against the manager. Therefore the mere fact that the prayer for rendition of accounts has been made along with the prayer for partition will not make the suit a mere suit for partition.

It is settled law that if a party's suit is to recover possession of, or establish his title to, the share which he claims in the property, he has to pay an ad valorem stamp duty on the value of the same. If, however he is already in possession of his estate and all that he wants is to obtain partition, which is merely a change in the form of enjoyment of the property, it is impossible to say what will be the value to the plaintiff and, therefore, he has got to pay in such a case a fixed stamp duty under Schedule II, article 17, clause (6). This clause deals with a suit where it is not possible to estimate in money value the subject-matter in dispute, and which is not otherwise provided for by the Court-fees Act. But where the plaintiff claims that he is entitled to ask the defendant to render accounts for the period of his management and prays that the defendant may be directed to render accounts of the receipts and expenditure during the entire period of his management and seeks to obtain a specific sum of money to be ascertained by an adjustment of account, it cannot be said that such a relief claimed cannot be estimated in money value. Then, this clause (6) of article 17 can be called into aid only where a particular suit is not otherwise provided for by the Act. Now, a suit for accounts is provided for by section 7, paragraph (4), clause (f), of the Court-fees Act. There is no exception that the suit for account must not be one against the manager of a joint Hindu family. We must take the words in the Statute as they exist, and I am satisfied that the plaintiffs were bound in the present suit to pay a separate court-fee in respect of their claim relating to rendition of accounts without which the money would not have been available. This is especially so in this particular case where the plaintiff make charges of misappropriation and other improper conduct against the defendant no. 1, the alleged manager; and the Commissioner (whose report is accepted by the court) finds that the defendant no. 1 tried his best to cheat the plaintiff in every possible way.

1929.

JYOTIBATI
CHAUDHURAI
RAIN
v.
LAKSHMESH-
WAR
PRASAD
CHAUDHURI.
CHATTERJI,
J.

1929.

JYOTIBATI
CHAUDHURI
v.
LAKSHMESH-
WAR
PRASAD
CHAUDHURI.
CHATTERJI,
J.

Again, the court-fee is payable on the memo. of appeal under article 1, Schedule I, of the Court-fees Act upon the amount or value of the subject-matter in dispute. In the present case, the plaintiffs have obtained a decree for Rs. 60,426 against the defendant no. 1. The decree might be right or wrong. The principle adopted by the Subordinate Judge might be justifiable or might not be so, but the fact remains that a decree for this amount has been passed against the defendant after an adjustment of accounts. This is the injury sustained by the appellant and from which he seeks relief by an appeal to this Court. The loss of a party determines the amount of court-fee payable and there can be no question that the defendant has sustained loss or injury by reason of the decree of the Lower Court to the extent of Rs. 60,426 and odd annas. In my opinion there can be no escape from the conclusion that court-fee is payable on the aforesaid amount.

On this difference of opinion between Ross and Chatterji, JJ. the case was laid before a third Judge for decision.

Sambhu Saran and L. K. Jha, for the appellant.

A. B. Mukerjee, Government Pleader, for the Crown.

25th Feb.,
1929.

JWALA PRASAD, J.—The question in this case is as to the amount of court-fee payable on the memorandum of appeal, and it has come to me on account of difference of opinion between Ross and Chatterji, JJ.

The plaintiff is a member of a joint Mitakshara family. The defendant no. 1, his uncle, has been karta of that family from the time of the plaintiff's father. On 31st August, 1911, defendant no. 1 brought a suit for partition, but that suit failed inasmuch as all the family properties were not included. The plaintiff then suspecting the bona fides of the defendant instituted the present suit for partition giving a list of such of the properties as he could ascertain and asking for a disclosure of all the properties belonging to the joint family. In paragraph 7 of the plaint he gives the reason for bringing the action for partition in the following words:

"The plaintiffs have also come to know that by making various sorts of gholmal, defendant no. 1 has misappropriated lots of money and moveable properties, on account of which the plaintiffs do not like to live jointly with the defendants."

After specifying the shares which the plaintiffs claimed in the properties, the plaintiffs say: 1929.

"The plaintiffs are further entitled to ask defendant no. 1 to render account for the period of his management."

In the reliefs the plaintiffs seek that the properties be allotted to them according to their share by partition and separate possession over the same be allotted to the plaintiffs and

JYOTIBATI
CHAUDHURI
v.
RAIN

LAKSHMESH-
WAR
PRASAD
CHAUDHURI.

JWALA
PRASAD, J.

"the defendant no. 1 be directed to render an account to the plaintiffs of all the properties of the joint family showing their receipts and expenditure from the beginning of the period of his management up to the date of the passing of the decree in the suit, and that on an adjustment of account a decree may be passed in favour of the plaintiffs against the defendants for the amount which may be found due to the former by the latter."

On the 25th April, 1919, the Subordinate Judge passed a preliminary decree for partition, directing defendant no. 1 to render an account

"showing the existing state of affairs".

Defendant no. 1 appealed to this Court on amongst others the ground that as a karta of the family he was not liable to render any account and that no decree for accounts could be passed against him. His contention was overruled, and it was held that in spite of the fact that the previous suit of 1911 operated as a separation of interest between the parties he was still as a karta of the family liable to account

"to the co-parceners for the joint family assets that are in his hands".

The commissioner submitted his report on the 8th September, 1924, which was confirmed by the Court and the suit was ordered to be decreed in accordance therewith on the 25th November, 1924. The amount decreed against the defendant came to Rs. 60,426-1-11½. The plaintiffs had paid Rs. 185, as court-fee on the plaint, consisting of Rs. 10 in respect of relief for partition and Rs. 175 in respect of Rs. 3,000 estimated as due to them on accounting, stating that

1929.
 JYOTIBATI
 CHAUDHURI
 RAIN
 v.
 LAKSHMESH-
 WAR
 PRASAD
 CHAUDHURI.
 J WALA
 PRASAD, J.

they would pay more court-fee if a larger sum should be found due to them. On 20th March, 1925, they paid the deficit court-fee. The total court-fee paid by them amounted to Rs. 1,722. The defendant no. 1 filed an appeal to this Court on the 24th February, 1925, on a court-fee of Rs. 15 only. This was reported by the Stamp Reporter to be sufficient, and the appeal was admitted on the 15th December, 1925. In July, 1928, the Stamp Reporter reported that the memorandum of appeal was insufficiently stamped and that the former report of 1925 was submitted through mistake and inadvertence. The matter was therefore placed for decision under section 28 of the Court-fees Act before a Bench presided over by Ross and Chatterji, JJ. Ross, J. held that the court-fee paid was sufficient, it being merely a suit for partition; whereas Chatterji, J. held that the court-fee paid was insufficient, the suit being not only for partition but also for an account and the appellants were consequently liable to pay ad valorem court-fee on Rs. 60,426 odd decreed against him and in favour of the plaintiffs.

Admittedly if it is a suit for partition, the court-fee paid on the memorandum of appeal is sufficient under Article 17, clause (vi), Schedule II of the Court-fees Act; whereas if it is a suit for accounts, an ad valorem court-fee is leviable under section 7(iv) (f) of the Act. Unquestionably this is primarily a suit for partition. The contention, however, is that there has been a prayer in the plaint for rendition of account and for recovery of the sum found due to the plaintiffs on accounting. The argument is that a simple suit for partition is chargeable under Article 17 of Schedule II of the Court-fees Act; but if an additional claim is made for accounts, then an additional court-fee must be paid under section 7(iv) (f) of the Act. In support of the contention that it was a suit for partition and for accounts, reliance is placed on the averments contained in paragraphs 5 and 7 of the plaint and relief no. 4. The defendant no. 1 in this

case is the karta of a joint Mitakshara family. Now such a karta is not responsible to the other members of the family for the management of the joint family property in respect of the income derived therefrom and the expenditure incurred by him. He is the sole master of the situation and is not in any way controlled by the junior members of the family. He has to use his own discretion unfettered in any way, and controlled only by his own sense of right or wrong. He is neither a trustee nor an agent and is not accountable to the members of the family. If any member happens to be dissatisfied with him, his remedy is to separate from the family and to ask for a partition. He is entitled to his share in the family properties, moveable and immoveable, including cash, that may be in existence at the time of partition. He cannot ask for an account of a preceding period, except for the purpose of determining the properties including cash in the hands of the karta so as to be available for partition. The position given to a karta under the Hindu Law was affirmed by their Lordships of the Judicial Committee in *Sreemutty Soorjeemoney Dossey v. Denobundoo Mullick*(¹). In the case of *Raja Setrucherla Ramabhadra v. Raja Strucherla Virabhadra Suryanarayana*(²) the Judicial Committee assumed the position that in a partition the karta would usually be liable only to account as to the existing state of the property. This has now become settled law and is not capable of being re-opened. In the case of *Parmeshwar Dube v. Gobind Dube*(³), Fletcher, J. upon a review of the authorities on the subject concluded as follows: "The result of these authorities I think is that in an ordinary suit for partition in the absence of fraud or other improper conduct, the only account the karta is liable for is as to the existing state of the property divisible. The parties have no

1929.

JYOTIBATI
CHAUDHURI
v.
LAKSHMESH-
WAR
PRASAD
CHAUDHURI.

JWALA
PRASAD, J.

(1) (1861-64) 9 Moo. I. A. 123.

(2) (1899) I. L. R. 22 Mad. 470, P. C.; L. R. 26 I. A. 167.

(3) (1916) I. L. R. 43 Cal. 459.

1929. right to look back and claim relief against the past inequality of enjoyment of the members or other matters.”

JYOTIBATI
CHAUDHU.

BAIN

o.

LAKSHMESH-

WAR

PRASAD
CHAUDHURI.

JWALA

PRASAD, J.

The final decree in this case was dealt with by the Patna High Court in *Gobind Dube v. Parmeshwar Dube*(1); vide also *Sri Ranga Thathachariar v. Srinavasa Thathachariar*(2). Ordinarily, therefore, there can be no suit for accounts against a karta. He can be asked not to render an account as an agent on behalf of the other members, but only to disclose the properties including cash in his hands and that might necessitate looking into the accounts. A disclosure of property is not rendition of account, the word “account” in a suit for partition and accounts against a karta being used for convenience sake, and not in the legal sense to bring it within the expression used in section 7(iv) (f) of the Court-fees Act. Section 7(iv) (f) applies to a suit for account. The test is : “Can a junior member, without claiming partition, bring a suit for accounts against a karta? If he cannot, then the relief as to accounts becomes subsidiary to the principal relief of partition. Therefore it will not be correct to say that wherever there is a relief asking for accounts in the sense of disclosure as to the existing state of the family finances, the suit embraces two subject-matters, namely, a partition and an account. A suit for accounts implies a liability to account. In the case of *Kshetranath Banerjee v. Kali Dasi*(3) it was pointed out that there cannot in essence be a suit for accounts by the plaintiff against the defendant, unless the defendant is under a liability to render accounts to the plaintiff. The fact that in a suit for recovery of money the account may have to be looked into, does not bring the suit for accounts under section 7(iv) (f) of the Court-fees Act. The relationship between the plaintiff and the defendant should be such as to entitle the plaintiff to claim as

(1) (1921) 2 P. L. T. 365.

(2) (1927) I. L. R. 50 Mad. 866.

(3) (1916-17) 21 Cal. W. N. 784.

a matter of right an account from the defendant. It has been pointed out in the case of *Pochalal Ranchhod v. Umedram Kalidas*(¹) that the expression "suit for an account" has been taken from the English Law where it had a special and technical meaning. I do not think that in any circumstance a suit for partition by a junior member against the karta of the family can become a suit for accounts even if fraud or improper conduct is pleaded. These words used in the judgment of Fletcher, J. in the case referred to above only mean that when fraud or improper conduct is proved, the karta will be liable to disgorge the property appropriated by him by means of the fraud or improper conduct and would bring it into the common hotch pot to be distributed among the other members. In other words, he would not be permitted to take advantage of his fraud and conceal any property which really belonged to the joint family. For that purpose he will have to render an account with respect to such property. Supposing he purchases some property out of the family income in the farzi name of a third person. He has committed fraud and has acted dishonestly in shielding the property. He will be liable to bring that property into the common hotch pot and to render an account in respect thereof; but that will not convert the suit into a suit for accounts so as to bring it within section 7(*iv*) (*f*) of the Court-fees Act. Allegations such as those made in paragraph 7 of the plaint do not at all change the character of the suit. That only gives the reason for the plaintiffs to bring a suit against the defendant as karta of the family, the plaintiffs suspecting him of unfair dealings. The Court below gave the plaintiffs a decree for Rs. 60,426-1-11½ consisting of Rs. 36,432-5-0 as their share in the bonds that were found to be in existence at the time of partition and as belonging to the joint family. Another item is Rs. 1,657-13-0 representing the value of the plaintiffs' share in the ornaments, etc., the existing properties of the

1929.

JYOTIBATI
CHAUDHURI
v.
LAESHMESH-
WAR
PRASAD
CHAUDHURI.
JWALA
PRASAD, J.

(1) (1928) A. I. R. (Bom.) 476.

1929.
 JYOTIBATI
 CHAUDRU-
 RAIN
 v.
 LAKSHMESH-
 WAR
 PRASAD
 CHAUDHURI.
 JWALA
 PRASAD, J.

family at the time of partition. The last item Rs. 22,335-15-11½ unquestionably represents the existing income from the immoveable properties. The commissioner's account represents the existing state of affairs at the time of the partition of the properties that were found as belonging to the family at that time. Though it is expressed in figures, the aforesaid sum of Rs. 60,426 and odd is the value of the properties, etc., that fell to the share of the plaintiffs at the time of partition.

I would therefore hold that the present suit is one for partition and is governed by Article 17, clause (vi), of Schedule II of the Court-fees Act, and the memorandum of appeal is sufficiently stamped.

APPELLATE CIVIL.

Before Terrell, C. J. and Ross, J.

RAMBAHADUR SINGH

v.

1929.
 Jan., 25, 28,
 29, 30.
 Mar., 4.

MAHARAJA BAHADUR KESHAVA PRASAD SINGH.*

Estates Partition Act, 1897 (Bengal Act V of 1897), section 90 et seq and 119—final order by the Commissioner or Board—possession of estates delivered by Collector—section 94 (1)—order, whether can be challenged in Civil Court—Bihar and Orissa Board of Revenue Act 1913 (B. & O. Act I of 1913), section 6 (1)—“Review”, scope of—whether controlled by section 114, Code of Civil Procedure, 1908 (Act V of 1908).

When, on the receipt of a final order of the Board of Revenue, passed in the first instance or on review, the Collector gives possession to the several proprietors of the separate estates allotted to them under section 94 (1) of the Estates Partition Act, 1897, his action in so doing cannot be challenged in the Civil Court by reason of section 119 of the Act.

*Appeal from Original Decree no. 257 of 1924, from a decision of Babu Shyam Narayan Lal, Subordinate Judge of Shahabad, dated the 30th of May 1924.