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My opinion is, that the appeal in the present case has abated, and cannot be permitted to proceed farther. I think that the High Court has, however, the right to call for the record, and make such order thereon as it may deem to be due to justice. I do not understand that my opinion is required by my brothers Melvill and Kemball on the question whether such a case has been made as to render it desirable that the record should be brought up.

April 29. PER CURIAM:—The appeal abates.

Order accordingly.

[ORIGINAL CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Sir Charles Sargent, Knt., Justice.

March 23.

CASSUM JOOMA' BY HIS CONSTITUTED ATTORNEYS KHIMA' DOLLA' & Co., TRADING UNDER THE NAME OF KHIMA' DOLLA', (PLAINTIFF) *v.* THUCKER LILA'DHUR KISSOWJEE (DEFENDANT).*

Splitting cause of action—Tradesman's account—Act IX. of 1850, *Section* 34—*Small Cause Court jurisdiction.*

A tradesman cannot, by keeping separate accounts of his dealings with a customer, split his cause of action so as to bring his suit within the jurisdiction of a Small Cause Court in the Presidency towns.

THIS was a case referred for the opinion of the High Court, under section 7 of Act XXVI. of 1864, by J. O'Leary, First Judge of the Court of Small Causes at Bombay.

The plaintiff sued to recover from the defendant the amount due on an adjusted account for goods sold and delivered. The adjustment was admitted, and also the fact that the obligation to pay, arising under it, had never been discharged. The defendant was indebted to the plaintiff on six different accounts, each of which had been separately adjusted. The accounts extended over the period between the month of July 1874 and February 1877, and the aggregate amount due, at the date of the last adjustment, was Rs. 4,540-8-3. Each of the accounts was kept in a separate book, and it appeared that payments had been made in respect of some

* Suit No. 12,398 of 1877.

of the later accounts so as to keep the amount due in respect of them, under the sum of Rs. 1,000. The present suit was brought to recover Rs. 967-12-0, which was the amount due upon the earliest of the accounts. The adjustment of this account had taken place on the 7th July 1874.

On the 18th May 1877, Cassum Joomá, by deed, assigned the total amount (Rs. 4,540-8-3) due to him from the defendant to the firm of Khimá Dollá. The deed recited that the debt was due on foot of several accounts, signed and adjusted by the defendants, and it specified the different accounts and the amount due on each. It purported to assign "all that the said sum of Rs. 4,540-8-3," and it contained the usual power to sue for and recover "the said sum of Rs. 4,540-8-3."

By a letter of 4th January 1877 the defendant received notice of the assignment, and was called upon to pay to Khimá Dollá "the sum of Rs. 4,540-8-3, being the total amount due."

The case stated by the First Judge, contained the following observations :—

"For the defendant it was contended that the plaintiff, Cassum Joomá, having assigned all his interest, could not, either in person or by attorney, sue for and recover the same, and it was further contended that, if Khimá Dollá & Co. were to be regarded as plaintiffs, their claim was for a sum exceeding Rs. 1,000, and that they could not sue in this Court without abandoning the excess.

"I was of opinion that, as the suit was constituted, the plaintiff might have a decree.

"The case was not argued before me with reference to the judgment of Couch, C.J., in the case of *Blackwell & Co.* v. *Sumár Ahmed*, (6 Bom. H. C. Rep. O. C. J. 88,) as to whether the letter of 4th June 1877 did not consolidate the claims.

"It will be observed that the adjustment sued upon, was made on July 7th, 1874, so that more than three years have now elapsed from the date of the adjustment. I would have been willing to make any amendment in the case as to names of parties, or otherwise, necessary for the purposes of justice.

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"Cassum Joomá was in Court assenting to the carrying on of the suit.

"I gave judgment for the plaintiff for the sum of Rs. 967-12-0 and costs, and I certified plaintiff's costs, Rs. 34. At the request of defendants' solicitor I gave the above judgment contingent upon the opinion of the High Court on the question—whether, under the above state of facts, this Court was competent to make a decree in the case against the defendant."

Inverarity for defendant:—The assignment made the debt a debt due to Khimá Dollá. The debt assigned is a debt of Rs. 4,540, and the only power given is a power to sue for that sum. We say the notice of the 4th June 1877 consolidated the claim. There is only one cause of action in respect of all six accounts, and the plaintiff is attempting to split his demands contrary to *Grimbly* v. *Aykroyd*.(1) The test is, whether the whole claim could not have been included in one count. The case is not distinguishable from the case of *Blackwell & Co.* v. *Sumár Ahmed*(2). *Wickham* v. *Lee*(3) was also cited.

B. Tyabji for plaintiff:—The transactions were distinct, and the parties have throughout treated the accounts as separate, which they were entitled to do. Payments have accordingly been made in respect of the subsequent accounts, leaving the amounts due on the prior accounts undiminished. The accounts are in separate books. These circumstances show the intention of the parties. The cases show that the course of dealing is to be regarded by the Court.

WESTROPP, C. J.:—We think that this is the case of a tradesman's running account, and, therefore, falls within the authority of *Grimbly* v. *Aykroyd*.(4)

Cassum Joomá, the creditor, appears, indeed, to have kept separate accounts, in the hope of being thereby enabled to split his demand, and to sue on each of them in the Court of Small Causes, and thus to frustrate the law which prohibits the splitting of a cause of action. We must decline to co-operate with him in attaining that object.

(1) 1 Ex. 479. (2) 6 Bom. H. C. Rep. 88, O. C. J. (3) 12 Q. B. 521.
(4) 1 Ex. 479.

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Reverse the judgment of the Small Cause Court, and let a non-suit be entered.

The plaintiffs must pay the cost of the suit and of this reference.

Order accordingly.

Attorneys for the plaintiff :—*Messrs. Balcrishna and Bhugwandás.*

Attorneys for the defendant :—*Messrs. Lynch and Tobin.*

[ORIGINAL CIVIL.]

(FULL BENCH.)

Before Sir M. R. Westropp, Knt., Chief Justice, Mr. Justice Bayley, Mr. Justice Kemball, and Mr. Justice Green.

May 1.

SAVITRIBA'I, WIDOW OF DHA'KJI BA'LCRUSTNA (ORIGINAL PLAINTIFF), APPELLANT, *v.* LUXIMIBA'I, WIDOW OF GANOBA' ANANTA, AND SADA'SIV GANOBA' (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Maintenance—Nephew's widow.

In the Island or Presidency of Bombay, a Hindu widow, voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from him at the time of his death, nor is she entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands.

The doctrine, that in certain relationships, and independently of the possession of ancestral estate, maintenance is a legal and imperative duty, while in other relationships it is only a moral and optional duty, discussed.

Semble—A Hindu widow, who has received a full share as and for her maintenance, cannot, when she has exhausted it, enforce from the relatives of her husband, or from the family estate, a further allotment, or a money allowance for maintenance.

Semble—The *stridhan* of a Hindu widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her.

S, a Hindu widow voluntarily living apart from her husband's family, sued his paternal uncle, the nearest surviving male relative of her husband, for a money allowance as maintenance. *Held* that such suit was unsustainable for either of the two following reasons, viz. : 1. That the defendant was separated in estate from the plaintiff's husband at the time of his death. 2. That at the institution of the suit the defendant had not in his hands any ancestral estate, or any estate which had belonged to the plaintiff's husband.

* Suit No. 325 of 1873. Appeal No. 261.