

*Before Mr. Justice Markby and Mr. Justice Prinsep.*

RAM TARRUN KOONDOO (PLAINTIFF) v. HOSSEIN BUKSH  
(DEFENDANT).\*

1878  
April 5.

*Causes of Action, Joinder of—Splitting Demands—Amendment—Relinquishment—Act VIII of 1859, s. 7—Act X of 1877, s. 43.*

Where a plaintiff originally sued for a certain sum upon his khatta-books, and an objection was taken by the defendant that he ought to have sued upon a certain hatchitta, whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hatchitta, in addition to the amount he claimed upon his khatta-books,—*Held*, that when the plaintiff amended his plaint by suing upon the hatchitta, his causes of action, which, when the suit was originally framed, were distinct, became united; that there was no “relinquishment” in the original suit within the terms of Act VIII of 1859, s. 7 (with which s. 43, Act X of 1877, corresponds), and that the plaint was rightly amended.

*Mohummud Zahoor Ali Khan v. Thakooranee Rutla Koer* (1) followed.

THIS was originally a suit for the recovery of the sum of Rs. 650-12, brought in the Court of the Munsif of Sealdah, on account of the price of khesaree due on a khatta-book balance. The plaintiff also brought another suit in the Sealdah Small Cause Court to recover the sum of Rs. 164 on account of the balance of the price of grain sold by him to the defendant. The defendant in the Small Cause Court objected that the suit instituted there could not proceed, inasmuch as he had given a hatchitta to the plaintiff, which would show that the two accounts were not separate, but were one account, and that there was a splitting up of the cause of action. The Judge of the Small Cause Court held the objection to be valid, and struck off the case under Act VIII of 1859, s. 7. Thereupon the plaintiff filed a supplemental plaint in the Munsif’s Court enhancing his claim by Rs. 164. The defendant pleaded that the plaintiff having at first omitted to sue for this sum could not include it in the present suit. This plea

\* Special Appeal, No. 777 of 1877, against the decree of Baboo Kishto Mohun Mookerjee, Officiating Second Subordinate Judge of the 24-Pargannas, dated the 6th of April 1877, modifying the decree of Baboo Dwarka Nath Mitter, Munsif of Sealdah, dated the 19th of February 1877.

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was overruled by the Munsif, who gave the plaintiff a decree for the whole amount claimed. On appeal the Subordinate Judge, considering that the plaintiff's claim as regarded the Rs. 164 was barred by s. 7 of Act VIII of 1859, modified the order of the lower Court, and gave the plaintiff a decree for Rs. 650-12. From this decree the plaintiff appealed to the High Court.

Baboo *Doorga Doss Dutt* for the appellant.

Baboo *Golap Chunder Sirkar* for the respondent.

MARKBY, J.—It is impossible to distinguish this case from the decision in *Mohummud Zahoor Ali Khan v. Thakooranee Rutta Koer* (1). There the suit, as originally brought against nine persons, was held by the Privy Council to have been wholly misconceived; but they, nevertheless, thought that there was in all probability a good cause of action against one of those defendants upon a bond, and thereupon they make this order. They say: "they have come to the conclusion that the fairer course is to do what the Judge of the Court of first instance might, under the Code of Procedure, have done at an earlier stage of the cause,—namely, allow the appellant to amend his plaint so as to make it a plaint against Rutta Koer alone for the recovery of money due on a bond." That is precisely what has been done here. The plaintiff originally sued upon his khatta-books. There was an objection by the defendant that the plaintiff ought not to have sued upon his khatta-books, but that he ought to have sued upon the hatchitta. Whether that was a valid objection or not we need not now consider, nor need we consider whether it was that objection which induced the plaintiff to take the course he did. What he did was this, he asked the Court to be allowed to sue upon the hatchitta. The Munsif, as he was clearly entitled to do under the authority of the decision I have referred to, allowed the suit to proceed upon the hatchitta, and the Subordinate Judge was wrong when he expressed an opinion that the Munsif was prevented from doing this by the provisions of s. 7 of the Procedure Code.

(1) 11 Moo. I. A., 468.

Section 7 applies to a totally different state of things, and in no way prevents the Munsif from making this order.

The judgment of the lower Appellate Court must, therefore, be set aside, and that of the Munsif restored. The case will stand decreed upon the hatchitta for the sum of 814 rupees and 12 annas. The special appellant will get his costs of this appeal and of the Courts below.

PRINSEP, J.—The error of the Subordinate Judge seems to have been caused by his taking the causes of action to have been irrevocably united by the execution of the hatchitta; as the suit was originally laid, the causes of action were distinct. When, however, the plaintiff sued on the hatchitta, they became united, and therefore, as the suit was originally laid, there was no relinquishment within the terms of s. 7 of the Code of Civil Procedure as has been held by the Subordinate Judge.

*Appeal allowed.*

*Before Mr. Justice McDonell and Mr. Justice Broughton.*

KHOOB LALL AND ANOTHER (DEFENDANTS) v. JUNGLE SINGH  
(PLAINTIFF).\*

1878  
May 13.

*Insufficiently stamped Document—Act XVIII of 1869, s. 20—Admission by Court—No Right of Appeal.*

The question of the admissibility of an insufficiently stamped document once admitted as evidence by a Court can form no valid ground of appeal.

*Enayetoolah v. Shaihh Meajan* (1) followed.

THE plaintiff, the present respondent, brought a suit to recover Rs. 999-5-9 on a *teep* executed by the defendants on the 5th Kartick 1283 F. S. (17th October 1875).

The defendants objected to the *teep* being received in evidence as being insufficiently stamped, and further denied its execution. The lower Court held that the *teep* was not a promissory note, but a letter of agreement as defined by art. 11,

\* Special Appeal, No. 1691 of 1877, against the decree of R. J. Richardson, Esq., Judge of Zilla Tirhoot, dated the 2nd of May 1877, affirming the decree of Baboo Dwarka Nath Bhattacharjee, Munsif of Mozufferpore, dated the 16th of September 1876.