

**(1921) 07 BOM CK 0010**  
**In the Bombay High Court**  
**Case No : Civil Reference No. 19 of 1920**

Hiralal Motichand

APPELLANT

Vs

Ganpat Lahanu

RESPONDENT

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**Date of Decision :** 01-07-1921

**Acts Referred:**

Court Fees Act, 1870 — Section 17

**Citation :** (1921) 23 BOMLR 995

**Hon'ble Judges :** Shah, J;Norman Macleod, J;Fawcett, J

**Bench :** Full Bench

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## Judgement

Norman Macleod, Kt., C.J.—This is a Reference by the First Class Subordinate Judge of Ahmednagar. The plaintiff sued to recover from the defendants nine items which stood debited in the Khata of the defendants in the plaintiff's books and which still remained undischarged after giving credit for the amounts paid by the defendants in discharge of the previous items of debit. It seems clear that the suit really was for the balance due on an account. The question was raised whether the Court-fees were not chargeable as if each item was a distinct subject, so that the aggregate amount of fees should be calculated as if a separate suit had been filed for each item.

2. In the case of Ramchandra v. Appaji (1887) P.J. 271 the plaintiff sued to recover a sum of Rs. 63-10-6 as the balance due to him by the defendant on a Khata, alleging that the amount claimed represented the aggregate sum payable in respect of seven separate transactions which took place on different dates. The Subordinate Judge referred the following question to the High Court? Whether the plaint was sufficiently stamped when it bore stamps of the aggregate value of the amount sued for and, if not, what additional stamp ought it to bear. The Court decided that the several items in the Khata constituted "distinct subjects" within the contemplation of Section 17 of the Court-Fees Act and were not connected so as to form one subject. A similar question arose in a very similar case, Vithaldas v. Narayan (1901) Civil Reference No. 9 of 1901,

decided by Jenkins, C.J. and Chandavarkar J, on 26 the September 1901(Unrep) where the plaintiff sued to recover on a Khata, a principal amount of Rs. 15-1-3 with interest. The Judge said there that the plaintiff had brought a suit upon the transactions noted in Schedules I, II and III. The plaintiff" paid Court-fees on the aggregate amount, and not on each transaction sued upon. The case of Ramchandra v. Apaji was referred to and must have been, before this Court when the reference was heard. But the Court consisting of Sir Lawrence Jenkins and Mr. Justice I Chandavarkar was of opinion that the Subordinate Judge was wrong in thinking that the Court-fees should be charged on each item, as the suit did not embrace two or more subjects, but only one. No reference was made in the judgment to the case of Ramchandra v. Apaji as the Court may have considered that they were not differing from the decision in that case.

3. But it seems that some doubt has arisen in the minds of the Subordinate Judges as to how; Court-foes should be calculated in the case of a suit for a balance due on an account: and it is desirable that there should be an authoritative decision on the subject It seems to me in a suit for a balance due on a Khata, which would ordinarily contain a number of items, each item does not constitute a distinct subject. The subject matter of the suit is the balance due on the account, and, therefore, in this case the Court-fee payable was the Court-fee on the aggregate amount and not on each item in the Khata.

Shah, J.

4. I agree.

Fawcett, J.

5. I agree. 1 think the general principle applicable is that laid down in Grimbly v. Ayhroyd (1847) 1 Ex. 479 and Bonsey v. Wordsworth (1856) 18 C.B. 325 which was followed in (1) Anderson, Wright & Go. v. Kalagarla Surjinarain I.L.R (1885) 12 Cal. 339 and (2) Kedar Nath Mitra v. Dinabhandu Saha. I.L.R (1915) Cal. 1043. This is that where a tradesman has a bill against a party for any account in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous, be that one item if not paid shall be united with another and form one continuous demand, the whole together forms but one cause of action and cannot be divided. In the present case, separate items, which make up the amount of the balance due, are connected in this way, so that there is one, cause of action and it follows that there is only one subject in the suit, which does not, there fore, embrace " two or more distinct subjects" within the meaning of Section 17 of the Court-Fees Act.