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**(1880) 02 AHC CK 0002**

**Allahabad High Court**

**Case No:** None

Chedi Lal and Another

APPELLANT

Vs

Kirath Chand and Others

RESPONDENT

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**Date of Decision:** Feb. 2, 1880

**Citation:** (1880) ILR (All) 682

**Hon'ble Judges:** Robert Stuart, C.J; Straight, J; Spankie, J; Oldfield, J

**Bench:** Full Bench

**Final Decision:** Allowed

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### **Judgement**

Robert Stuart, C.J.

This case also came before us on the report of the office. It appears that there is no deficiency of court-fees in this Court, but that there is a deficiency to the extent of Rs. 18-6-0 on the part of the plaintiff in the Munsif's Court, and of Rs. 12-12-0 on the part of the defendant in the lower Appellate Court.

2. Pandit Bishambhar Nath for the appellants objected that this Court had no jurisdiction at this stage to entertain the question relating to the deficiency of court-fees reported by the Office, but I am clearly of opinion that Section 28 of the Court Fees" Act gives us full power for that purpose.

3. On the merits of the question respecting the court-fees to be charged, this case falls within the principle of the decision we have given on the same legal question in first appeal No. 15 of 1879 (See ante p. 676). According to the principle recognized in that case the report of the office in this case is clearly right, and the additional court-fees to be paid by both parties is ordered accordingly.

Straight, J.

4. I agree in the views and conclusions of the Chief Justice.

Spankie, J.

5. The learned Pandit Bishambhar Nath appears to question the power of this court to decide that a document found in the record of a case sent up in appeal or on reference, as for revision, to this Court should be properly stamped. With reference to fees in other Courts than the High Courts and Presidency Small Cause Courts, the pleader argues that our power of interference is limited by Section 12, Clause ii, of the Court Fees Act. But I would claim full power for the Court's interference, quite outside chapters II and III of the Act. Section 28 provides that no document which ought to bear a stamp under the Act shall be of any validity, until it has been properly stamped. The section deals with the case in which a document through mistake or inadvertence has been received, filed or used in any Court, without being properly stamped. Such a document may be returned at the outset by the presiding Judge of the Court in which it has been so received or filed or used, or if the document has been received, filed or used in a High Court, any Judge of that Court, may, if he thinks fit, order that such document may be stamped as he may direct. But the section does not say that the High Court Judge can interfere only when this document has actually been filed in his Court. If the document has been used in the High Court, and the original mistake or inadvertence which permitted its reception in a lower Court, without being properly stamped, comes to light in the High Court, any Judge of that Court may direct that it should be properly stamped, always having regard to the fact that it must be a document chargeable under the Court Fees Act. This construction appears to be quite reasonable and consistent with the concluding provision of the section, "and on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance." In fact, when the insufficiency of the stamp has been deducted and when a proper order has been made and carried out, the original mistake or inadvertence and all subsequent consequences of such mistake or inadvertence are cured.

6. On the other question my opinion in the reference regarding First Appeal No. 15 of 1879, *Mul Chand*, plaintiff (See ante p. 676), would govern this case.

7. The suit does not appear to be multifarious within the term of Section 17 of the Court Fees Act. It is one for Immovable property, and a claim for arrears of rent in respect of the property claimed is joined with it u/s 44, Rule a, to which Section 45 of the Procedure Code is subject. I do not think that the plaint would be chargeable as provided by s. 17 of the Court Fees Act. The application of Clause ii, Section 7 of the Court Fees Act seems altogether wrong; the plaintiff asks for house-rent in future, as he would ask for the mesne profits from the date of decree to the date of possession under the decree. It is not a claim for money in the meaning of Clause i; the rate is known, but not the sum that would be actually due when possession was given under the decree. Probably Section 11 of the Court Fees Act provides for this part of the claim.

Oldfield, J.

8. The suit in my opinion embraces distinct subjects of the nature of those referred to in Section 17, Court Fees Act. Here the claim for possession of the house and the claim for rent, which in this suit is by way of damages, arise out of different causes of action and might have been made subjects of different suits. So much of the claim as refers to future rent should be charged for court-fees under Clause i, Section 7, leviable under the provisions of Section 11 of the Act. The objection is quite untenable that this Court has no power to interfere to order that the documents shall be properly stamped, as full power to that effect is conferred by Section 28, Court Fees Act.