

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sir Rajah Row Venkata Mahipati Gangadhara Bahadur (Rajah of Pittapur) v. Sri Raja Venkata Mahipati Surya and another, from the High Court of Judicature at Madras; delivered February 25th, 1885.*

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Present:

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

Upon the several questions of fact which were raised in this suit there are two concurrent findings. As to one portion of the claim there is the finding of the Court which tried the case in the first instance; and as to the other portion there is the finding of the Court which tried the case upon remand. The High Court concurred with those respective findings. It is contended, however, that the High Court threw the onus of proof upon the Defendant, whereas it ought not to have been so thrown. But the Court did not throw the onus upon the Defendant as a matter of law but merely in drawing their own conclusions from the evidence upon matters of fact.

Their Lordships see no reason to think that the High Court erred in point of law or in point of fact in arriving at conclusions similar to those which had been come to by the Courts below.

The only remaining question then is whether, by reason of the non-claim in respect of the personal property in 1872, when the action was brought in respect of the estate called Viravaram, the Plaintiffs were by section 7, Act VIII. of 1859,

precluded in 1875 from bringing this action in respect of the personal property.

Their Lordships are of opinion that the claim in respect of the personalty was not a claim falling within section 7 of Act VIII. of 1859. That section does not say that every suit shall include every cause of action, or every claim which the party has, but "every suit shall include the whole of the claim arising out of the cause of action,"—meaning the cause of action for which the suit is brought. The claim in respect of the personalty was not a claim arising out of the cause of action which existed in consequence of the Defendants having improperly turned the Plaintiffs out of possession of Viravaram. It was a distinct cause of action altogether, and did not arise at all out of the other. It is not like the case of one conversion of several things. There the act of conversion of the several things is one cause of action, and you cannot bring an action for the conversion of one of the things, and a separate action for the conversion of another. The conversion of the whole is one claim and one cause of action.

The case which Mr. Doyne cited from the 11th Moore's Indian Appeals, page 553, decides "That the correct test is, whether the claim in a new suit is in fact founded on a cause of action distinct from that which was the foundation of the former suit." Their Lordships are of opinion that the claim in respect of the personalty was founded on a cause of action distinct from that which was the foundation of the former suit.

For the above reasons their Lordships are of opinion that the Plaintiff was not barred by section 7 from maintaining his present suit, and they will, therefore, humbly advise Her Majesty to affirm the Judgement of the High Court, and to dismiss this Appeal. The Appellant must pay the costs of this Appeal.