APPEAL FROM ORIGINAL CIVIL.

Before Jenkins C.J., and Woodroffe J.

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Feb. 4.

SUDAMDIH COAL Co., LD.

v.

EMPIRE COAL Co., LD.*

Jurisdiction—'Suit for land or other immoveable property," construction of—Letters Patent, 1865, cl. 12—Trespass—Compensation for wrong to land—Wrongful cutting and removal of coal—Civil Procedure Code (Act V of 1908), s. 16—Civil Procedure Code (Act VIII of 1859), s. 5—Venue.

The expression "suits for land or other immoveable property" in clause 12 of the Charter of 1865 cannot be construed as being limited to suits for the recovery of land in its strict sense, but must be construed as extending to a suit for compensation for wrong to land, where the substantial question is the right to the land.

APPEAL by the plaintiff company, (Sudamdih Coal Co., Ld.,) from the judgment of Fletcher J.

The plaintiff company and the defendant company who have their registered offices in Calcutta were the owners of adjoining collieries situate in Sudamdih in the district of Manbhoom in the province of Bihar and Orissa. The boundary between the plaintiffs' and the defendants' properties was demarcated superficially by pillars. It was alleged by the plaintiffs, but denied by the defendants, that the plaintiffs had left as a protection a barrier of twenty-five feet along the eastern boundary of its property.

The plaintiffs further alleged that in the month of June 1913 the defendants cut through the plaintiffs' barrier into their property thereby causing mud and water to flow into their colliery, and that the

* Appeal from Original Civil, No. 78 of 1914, in Suit No. 549 of 1914.

defendants had worked and carried away a quantity of the plaintiffs' barrier and other coal. On the 28th and 29th June a joint survey was held and it was ascertained that the defendants had encroached on the plaintiffs' property. By reason of the defendants' wrongful acts the working of the plaintiffs' colliery had been seriously affected, and their coal had become damaged and water-marked and greatly depreciated in value. The plaintiffs claimed the sum of Rs. 2,744 as the value of their coal extracted by the defendants and the sum of Rs. 50,000 as damages.

In their written statement the defendants denied that they had cut through the plaintiffs' barrier into the plaintiffs' property or that by reason of any negligent or improper act or omission on their part any mud or water was caused to flow into the plaintiffs' colliery, or that they worked into or carried away any quantity of the plaintiffs' barrier or other coal. The defendants further denied that it was ascertained by the joint survey that they had encroached on the plaintiffs' property, or that the working of the plaintiffs' colliery had been affected, or their coal had become depreciated, by any wrongful act on the part of the defendants.

The defendants submitted that this Court had no jurisdiction to try this suit, as this suit had been instituted for the purpose of getting control of and establishing title to land outside its jurisdiction.

The suit was set down for settlement of issues. On the 25th August 1914, FLETCHER J. dismissed the suit on the ground that this Court had no jurisdiction to try the case.

His Lordship's judgment was as follows :—

"This suit is down for the settlement of issues. The suit has been brought by the plaintiff company to recover damages from the defendant company. The allegations in the plaint are that the plaintiff company and

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the defendant company are the owners of adjoining collieries. The plaintiff company, alleges that it left a barrier of 25 feet along the eastern boundary of its property as a protection for its mine. They also allege that on some date between the 16th June 1913 and the 1st of July 1913 the defendant company cut through their barrier and thereby caused a large influx of mud and water into the plaintiff company's colliery whereby the plaintiff company suffered damage. The question therefore is, has this Court jurisdiction to try a suit of this nature? It seems to me that this Court has no jurisdiction. The case is a suit for land. I cannot distinguish the present case from the decision in *Lodna Colliery Co., Ld.*, v. *Bipin Bihari Bose* (1). The material fact in this case will be whether the plaintiff company can prove the ownership of the barrier of 25 feet of coal which they allege they left along the eastern boundary of their own property. That is the basis of the cause of action, no case being set up in the plaint that the defendant company had negligently worked their own property; that being so, the decision in this case will involve the trial of the title to this barrier of 25 feet which it is alleged had been left along the eastern boundary of the plaintiff's property. That is a suit for land not within the jurisdiction of this Court under clause 12 of the Letters Patent constituting this Court. That being so, this Court has no jurisdiction to try this case. The plaint discloses no cause of action which this Court is competent to try. This suit will therefore be dismissed with costs."

From this judgment the Sudamdih Coal Co., Ld. appealed.

Mr. J. E. Bagram (with him *Mr. Buckland*), for the appellants. The decision of Fletcher J. in this case is based on his decision in *Lodna Colliery Co., Ld.* v. *Bepin Behari Bose* (1): the learned judge declined jurisdiction on the ground that in England a *clausum fregit* action was regarded as local. In *British South Africa Company* v. *Companhia de Mocambique* (2) the law was elaborately discussed and the House of Lords decided that a suit for trespass in Africa could not be instituted in England: that case however was not decided on the highly technical ground relating to venue which prevailed in England and which formerly determined that a suit for trespass

(1) (1912) I. L. R. 39 Calc. 739. (2) [1893] A. C. 602.

should be brought where the trespass took place; the Court declined jurisdiction because it did not take cognizance of foreign land laws and consequently could not recognise infringements of such laws as constituting causes of action. Now the High Court has general jurisdiction and can take cognizance of causes of action relating to land in the mofussil: this appears from the circumstance that such a suit can be transferred for trial to this Court.

[JENKINS C.J. At the time the Charter was passed the Code of Civil Procedure of 1859 was in force. The section in that Code referring to "suits for land" was subsequently replaced by similar sections in successive codes. Section 16 of the present Code describes what was meant by "suits for land."]

It is submitted that the Codes subsequent to that of 1859 varied the rule therein contained and did not enact the section in an amplified form. The mere fact that a question of title may arise for decision does not oust this Court's jurisdiction. Whether this Court has jurisdiction or not, depends on the nature of the relief sought.

[WOODROFFE J. Can you by claiming a particular form of relief by a side-wind get this Court to determine a question of title?]

There is nothing to prevent me. The Charter does not prevent this Court from trying a suit in which an issue relating to title arises. The test is whether by means of the suit the plaintiff seeks either to acquire a right or control over land or any interest in land, or to prevent the defendant from doing acts which if persisted in, will eventually deprive the plaintiff of land or some interest in land. Nearly all the authorities become reconciled if this view be adopted: *East Indian Railway Co.* v. *Bengal Coal Co.* (1),

(1) (1875) I. L. R. 1 Calc. 95.

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Delhi & London Bank v. *Wordie* (1), *Kellie* v. *Fraser* (2) where the Court enforced an award affecting land at Darjeeling, *Sreenath Roy* v. *Cally Doss Ghose* (3), which was a suit for specific performance, *Peary Mohun Ghosaul* v. *Haran Chunder Gangooly* (4), where a claim for damages for trespass to land, was held not to be a suit for land.

[JENKINS C.J. That was a Small Cause Court suit and the decision depended on the consideration of the particular sections of the Small Cause Courts Act.]

See also *Krishna Prosad Nag* v. *Maizuddin Biswas* (5), *Land Mortgage Bank* v. *Sudurudeen Ahmed* (6), which was a vendor's suit for specific performance of a contract for the sale of land and for damages for breach of such contract, where the decision turned on the nature of the relief sought, *Bapuji Raghunath* v. *Kumarji Edulji Umrigar* (7). *Crisp* v. *Watson* (8) was a decision under the Civil Procedure Code and is only an authority for the proposition that a claim for damages is not enforceable by personal obedience. If the Code requires that the infringements of rights to immoveable property should be redressed locally, it does not follow that the Charter regarded suits for compensation for infringement of such rights as suits for land. In *Bagram* v. *Moses* (9), the Court exercised jurisdiction.

[JENKINS C.J. That was a decision of the Supreme Court, which exercised the jurisdiction of an English Court.]

It has always been treated as an authority. In the case of a nuisance, this Court exercised jurisdiction,

(1) (1876) I. L. R. 1 Calc. 249.
(2) (1877) I. L. R. 2 Calc. 445.
(3) (1879) I. L. R. 5 Calc. 82.
(4) (1885) I. L. R. 11 Calc. 261.
(5) (1890) I. L. R. 17 Calc. 707.
(6) (1892) I. L. R. 19 Calc. 358.
(7) (1890) I. L. R. 15 Bom. 400.
(8) (1893) I. L. R. 20 Calc. 689.
(9) (1863) 1 Hyde 284.

though the land was in Howrah: *Rajmohun Bose* v. *East Indian Railway Co.* (1), *Halford* v. *East Indian Railway Co.* (2), *Chintaman Narayan* v. *Madhavrao Venkatesh* (3). English Courts foreclose lands outside the jurisdiction: *Paget* v. *Ede* (4). The distinction in England between local and transitory actions has no application here. The English system is highly technical. Rules regarding venue and choice of Courts in which suits should be brought were peculiar to the English system: Smith's Leading Cases, 11th edition, Vol. I, p. 608, per Lord Mansfield in *Mostyn* v. *Fabrigas* (5), also *Shelling* v. *Farmer* (6), *Lodna Colliery Co., Ld.*, v. *Bipin Behari Bose* (7) on which the decision in the present case is based is distinguishable: the question of possession was *bona fide* in issue in that case. On a proper construction of the pleadings in the present case, no question of title or possession is put in issue. The defendants deny having cut into the plaintiffs' barrier: this denial assumes that the barrier was the plaintiffs', and relates to the *factum* of cutting into it. The demarcation by boundary pillars is admitted by the defendants: the only question to be ascertained is whether the underground workings of the defendants are on this side or that of the line of pillars. In *Juggodumba Dossee* v. *Puddomoney Dossee* (8) jurisdiction was exercised on the ground that "no provision of any land is claimed and no decree bearing directly upon land or any interest in land has been given."

Even if it be held that a suit for compensation for trespass to land is a suit for land, the plaintiffs were entitled to a decree for the value of their coal removed

(1) (1872) 10 B. L. R. 241.
(2) (1874) 14 B. L. R. 1.
(3) (1869) 6 Bom. H. C. App. 29.
(4) (1874) L. R. 18 Eq. 118.
(5) (1774) 1 Cowp. 161.
(6) 1 Strange 645.
(7) (1912) I. L. R. 39 Calc. 739.
(8) (1875) 15 B. L. R. 318, 329.

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by the defendants. This is a cause of action in trover and such a suit has never been regarded as local: see Halsbury's Laws of England, Vol. XX, pp. 538, 1372, 1373, 1376, also *Powell* v. *Rees* (1). The circumstance that in order to give effect to a claim for money, the title of land may be required to be incidentally decided, does not make the suit one for land.

Sir S. P. Sinha (with him *Mr. A. K. Sinha*), for the respondents. It is true the defendants admit that the boundaries between the properties are demarcated by pillars, but the pillars are wrongly shown on the plans. The boundaries *are* in dispute. The expression "suits for land or other immoveable property" in clause 12 of the Charter has the same wide significance as in section 16 of the Code and includes all suits mentioned therein [*Nalum Lakshimikantham* v. *Krishnasawmy Mudaliar* (2)] with the possible exception of clause (*f*). A distinction is drawn between local and transitory actions in the Code—the former referring to land, the latter including other actions. Actions of a "real" nature fall within the purview of section 16 of the Code—actions of a transitory nature under section 20. At the time of the passing of the Code of 1859 and the Charter of 1861, a distinction was drawn between local and transitory action in England and it was this distinction which it was intended to impress on the Code and the Charter. "Suits for land" must mean suits of a local nature, which must be brought where the *venue* is. The principle of the distinction has greater force in this country than in England, as here the High Court has no jurisdiction over land say in Manbhoom, whereas in England, the King's Courts of Justice have jurisdiction over all land in England. In *British*

(1) (1837) 7 A. & E. 426. (2) (1903) I. L. R. 27 Mad. 157.

South Africa Company v. *Companhia de Mocambique* (1), the plaintiffs rested their case on a claim for damages, admitting that they could not get a declaration of title to land. The suit was dismissed. This Court has no more jurisdiction over land in Manbhoom than the English Court had jurisdiction over land in South Africa. In view of the English authorities, it cannot be contended that clause 12 of the Charter cannot include the class of suits indicated by sub-clause (*e*) of the Code, namely, suits for compensation for wrong to immoveable property: see *Vaghoji* v. *Camoji* (2). The argument that so long as the Court can act *in personam*, it has jurisdiction, is unsound; even English Courts of Equity refused to recognise that doctrine. Equity did not give relief *in personam* unless priority was established by contract, fraud or trust. Section 16 of the Code reproduced the law governing the jurisdiction of the English Courts even after the extension of the Courts of Equity. The jurisdiction of the High Court on its Original Side, under clause 12 of the Charter, is the same as that of Mofussil Courts under section 16 of the Code and the same as that of English Courts. The earlier authorities are discussed in *Zulekabai* v. *Ebrahim Haji Vyedina* (3). The substantial question in dispute, in the present case, is whether the strip of coal land which the defendants are working, belongs to them or the plaintiffs. Is that not substantially a suit for land? It does not alter the nature of the suit, by the plaintiffs purporting to claim not the land, but the *price* of the land. *Ebrahim Ismail Timal* v. *Provas Chander Mitter* (4) is a direct authority for the proposition that no suit will lie where damages are claimed for trespass. The last mentioned case supplies the answer to the argument based on *assumpsit*.

(1) [1893] A. C. 602.
(2) (1904) I. L. R. 29 Bom. 249.
(3) (1912) I. L. R. 37 Bom. 494
(4) (1908) I. L. R. 36 Calc. 52.

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[JENKINS C.J. referred to *Vinayak* v. *Krishnarao* (1).]

Kellie v. *Fraser* (2) is not in conflict with *Delhi and London Bank* v. *Wordie* (3): see Woodroffe's Civil Procedure Code, p. 157, note 4.

Mr. Bagram, in reply. In *British South Africa Company* v. *Companhia de Mocambique* (4) the reason why the House of Lords dismissed the suit was that the English Court would not assume jurisdiction in the case of an invasion of right depending on a foreign rule of law affecting land, such right being unknown to the English law: the Lord Chancellor adopted the argument of Sir H. James that it was a matter of procedure.

[JENKINS C.J. It appears to me that the test proposed by clause 12 is not one of form but one of substance. A suit brought in trespass for the purpose of having title to land tried, is a suit for land.]

In *Ilderton* v. *Ilderton* (5) the English Court entertained a suit for dower, although incidentally it had to decide the issue of the validity of a Scotch marriage: see also *Norris* v. *Chambers*(6). In passing the Charter, the Legislature intended to distinguish not between *local* and *transitory* actions, but between *real* and *personal* actions. *Whitaker* v. *Forbes* (7), *Sydney Municipal Council* v. *Bull* (8), *In re Hawthorne, Graham* v. *Massey* (9), 2 *Dicder* v. *Amsterdamsch Trustees Kantoor* (10) were also referred to.

JENKINS C.J. This is an appeal from a judgment of Mr. Justice Fletcher who has dismissed the suit with

(1) (1901) I. L. R. 25 Bom. 625.
(2) (1877) I. L. R. 2 Calc. 445.
(3) (1876) I. L. R. 1 Calc. 249.
(4) [1893] A. C. 602.
(5) (1793) 126 Engl. Rep. 476.
(6) (1860) 29 Beav. 246.
(7) (1875) L. R. 10 C. P. 583.
(8) [1908] 1 K. B. 7, 12.
(9) (1883) L. R. 23 Ch. D. 743.
(10) [1902] 2 Ch. 132.

costs. This was done on a preliminary hearing upon settlement of issues, and the only question involved is whether this is a *suit for land or other immoveable property* within the meaning of clause 12 of the Letters Patent. That clause was intended to define the original jurisdiction of the High Court as to suits, and it empowered the Court "to receive, try and determine suits of every description, if, in the case of *suits for land or other immoveable property*, such land or property shall be situated . . . . . within the local limits of the ordinary original jurisdiction of the High Court."

The matter in dispute here relates to a mining property outside the jurisdiction so defined. But on behalf of the plaintiff it is contended that having regard to the pleadings it cannot be said that it is a *suit for land or other immoveable property*. The question is what was intended by that expression. It appears to me that it was not a mere formal test that was proposed—a test to be determined by the precise form in which a suit might be framed; but that regard was to be had to the substance of the suit, and I cannot help thinking that the particular expression was used, because there was its equivalent in the Civil Procedure Code of 1859, section 6. Indeed, it is a matter of common knowledge that the Secretary of State's despatch forwarding the Letters Patent to this Court makes special reference to that circumstance. The course of decisions on the Charter shows that the description cannot be limited to suits for the recovery of land in its strict sense, and as to that there can be no dispute: and, running on parallel lines with that, we find the Code of Civil Procedure of 1859 developed in 1877, so as to embrace a number of topics which perhaps would not in strictness be regarded as *suits for land*. and it is instructive to

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observe what they are. They are suits for the recovery of immoveable property (with or without rent or profits), suits for the partition of immoveable property, suits for foreclosure, or redemption of a mortgage of immoveable property, suits for the determination of any other right to or interest in immoveable property, and suits for compensation for wrong to immoveable property. This appears to me to be in accordance with principles of general if not universal, application according to which *suits for land* in its strict sense must come before the Court where the land is situate. The system on which our procedure is based, the English procedure, regards a suit for damages for trespass to land in the same way, and, it is interesting to notice that Chancellor Kent in his commentaries on American Law states that 'an injury to real property is local as to jurisdiction, and trespass on real property situated in one State cannot be sued for in another.' Therefore, it seems to me that we are not giving a construction that is opposed to the general trend of legal thought, if we hold that *suits for land* at any rate extend to a suit of this kind, which is a suit for compensation for wrong to land, when, as I hold to be the case here, the substantial question is the right to the land. In my opinion, the suit is one to which clause 12 of the Letters Patent applies in the sense I have indicated and therefore it was rightly dismissed. The appeal should therefore be dismissed with costs.

WOODROFFE J. I agree.

Appeal dismissed.

Attorneys for the appellants: *Leslie & Hinds.*

Attorneys for the respondents: *Orr, Dignam & Co.*

J. C.