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the representative of another, and sued in fact and in substance as such, that other's estate is liable.

I have left myself scarce any time to go into No. 2.

As regards No. 2.—Those last three cases, it seems to me, establish that the father has against his son a right to alienate the ancestral estate for all debts not immoral or illegal.

If so, a suit against the father, and a decree and sale of his interest, would pass the entire estate discharged of the son's interests therein, provided it was for a debt neither illegal nor immoral.

It may, perhaps, be open to argument (though I doubt much if it is) that a debt for an unnecessary purpose may be an immoral debt.

This I suppose flows from that old law about the son's "pious duty" if it does not rest on a deeper principle, that sons were always personally liable for the father's debts quite independently of having derived any assets from them.

The question is, why should not the Court give effect to this position. It merely approximates to making the head of the family tenant in fee simple of the family estates.

I think all decisions that individualize property and make it a man's own to do with it what he will are in the right direction. Individual enterprise and energy are stimulated, and by improving the units you improve the mass.

The natural instincts of fathers are quite adequate to secure the interests of their sons being taken care of among other peoples, and why not among Hindus.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Kindersley.

1878. April 15.

MUHÁMMAD ABDUL KÁDAR AND ANOTHER (PLAINTIFFS) APPELLANTS *v.* THE EAST INDIAN RAILWAY COMPANY (DEFENDANTS) RESPONDENTS (1).

Contract to deliver, breach of—Cause of action—Jurisdiction.

Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras. The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract. No leave to sue (under Section 12 of the Letters

(1) Appeal No. 2 of 1878, from the decree of Sir W. Morgan, C.J., dated 11th December 1877.

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Patent) was obtained. The Court of First Instance dismissed the suit for want of jurisdiction. *Held*, on appeal, following *Gopikrishnagossami* v. *Nilkomul Banerjee* (1) and *Vaughan* v. *Weldon* (2) that the breach of contract having taken place at Madras the cause of action had wholly arisen within the jurisdiction of the High Court.

PLAINTIFFS brought the suit to recover the sum of Rupees 1,800, being damages sustained by them by reason of the neglect and default of the defendants in carrying and delivering for the plaintiffs within a reasonable time, at Madras, certain goods delivered by plaintiffs to defendants at Cawnpore for carriage to Madras.

The defendants denied their liability and alleged that no delay in the transmission of the said goods took place whilst the same were on the defendants' Railway. It appeared that the East Indian Railway extends only to Jubbulpore, at which station the goods had to be transferred to the G. I. P. line which conveyed them to Raichore from whence the Madras Railway took them to their destination.

The case came on for final disposal before Sir W. Morgan, C.J., on the 11th December 1877, and was by him dismissed on the ground that the Court had no jurisdiction.

The plaintiffs appealed on the ground that the decree dismissing the suit was contrary to law in that the whole cause of action (the non-delivery in Madras of the goods in the plaint mentioned) having arisen within the ordinary Original Civil Jurisdiction of the High Court at Madras, that Court had jurisdiction in the matter.

Mr. *Gould* and Mr. *Handley* for the Appellants.

Mr. *Johnstone* for the Respondents.

The Court delivered the following judgments :—

KERNAN, J.—The contract was made in Cawnpore to deliver goods in Madras.

The Defendant's Railway Company does not run into this jurisdiction.

The Chief Justice without going into the merits, dismissed the suit, holding that the cause of action did not arise within the jurisdiction. It is argued that, as part of the cause of action, viz., the making of the contract, appears on the pleadings to have accrued outside the jurisdiction, therefore, the whole cause of action did not arise within it, and as no leave was

(1) 13 Ben. L.R., 461. (2) L.R., 10 C.P., 47.

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obtained to sue, there is no jurisdiction to try the case. For many years the Courts in England and in India have been called upon to consider similar questions. It has been recently held in Bengal, (1) after review of all authorities on the subject that the action may be brought either in the place of the making of the contract or in the place of its performance, and that, in either place, a cause of action arises wholly. With this decision we quite agree, and look upon the question as being satisfactorily settled by that decision. Section 12 of the Letters Patent applies to cases in which the cause of action arises partly outside the jurisdiction, *e.g.*, if the contract of the Company in this case had been to deliver a portion of the goods, say, at Arconum, outside the jurisdiction, and a portion in Madras, and if the action was brought alleging, as breach, non-delivery at both places. In such cases, the cause of action could not be said to have arisen wholly in Madras, and leave should be obtained. Numerous cases of the like kind might be put, where leave should be obtained under Section 12, part of the cause of action having arisen outside the jurisdiction.

Here we consider the cause of action has arisen wholly within the jurisdiction. We, therefore, reverse the decree of the Chief Justice with costs, and direct the case to be tried on the issues.

KINDERSLEY, J.—I agree generally in the judgment of Mr. Justice Kernan. Section 12 of the Letters Patent gives jurisdiction to this Court, if the cause of action has arisen either wholly, or if leave shall have been first obtained, in part within the local limits of the ordinary original civil jurisdiction. In this case leave was not obtained. The question, therefore, is, whether the cause of action has arisen wholly within this jurisdiction. If we take the cause of action to include all those circumstances which together give a right of action, including, in the present case, the contract and the breach, it is conceded that the contract was made at Cawnpore. But it appears to me that the words "wholly or in part" are not based upon such an analysis of the cause of action. I think they rather relate to cases of several causes of action continued in one and the same suit, some of which have arisen out of the jurisdiction. Here the contract was to deliver skins at Madras, the performance was to be at Madras; and the breach was, therefore,

(1) 13 Ben. L.R., 461.

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at Madras, and until such breach occurred, the plaintiff had no cause of action.

Our attention was drawn to the controversy in the English cases terminating in *Vaughan* v. *Weldon* (1), in which all the judges agreed upon the construction of the 18th Section of the C. L. Pro. Act, 1852, that it was sufficient if the breach of contract arose within the jurisdiction. The words in that section are "a cause of action which arose within the jurisdiction, or a breach of a contract made within the jurisdiction." But I think we shall be safe in following this and the Bengal decision (2), and in holding that, the breach of contract having arisen at Madras, the cause of action has wholly arisen within this jurisdiction.

Appeal allowed.

Attorneys for the plaintiffs Messrs. *Branson* and *Branson*.

Attorneys for the defendants Messrs. *Barclay* and *Morgan*.

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Kindersley.

1878. January 19.

NARASÁYYA CHETTI (3RD DEFENDANT) APPELLANT *v.* GURUVAPPA CHETTI (PLAINTIFF) RESPONDENT (3).

Registration—Act VIII of 1871.

The words in Section 17 of the Registration Act (VIII of 1871) "present or future," "vested or contingent," point, not to the value or its ascertainment, but to the right or interest in the land which is to be created as a security. If the charge or interest created is of a value less than Rupees 100, registration is needless.

THE suit was brought for the recovery of Rupees 344-12-0 due on a mortgage bond. The plaintiff alleged that one Timma Reddi (deceased) and the second defendant executed to him on 3rd May 1873 a bond for Rupees 95, mortgaging nanjah lands, etc., and agreeing to pay Rupees 60 worth of paddy and ragi and Rupees 35 in cash within December 1873, in default to pay an increased quantity of grain and interest on the cash at the rate

(1) L.R., 10 C.P., 47. (2) 13 Ben. L.R., 461.

(3) Second Appeal No. 637 of 1877, against the decree of C. G. Plumer, District Judge of North Arcot, dated 30th July 1877, confirming the decree of the District Munsif of Tirupatti, dated 2nd March 1877.