

time being, either in the way of confirmation or revision, the successive enjoyment of the members of the branch justifies the inference that the original grant, if made in lieu of maintenance, was intended to be a grant for the support of the collateral branch in perpetuity.

For these reasons we affirm the decree of the Lower Appellate Court and dismiss this appeal with costs.

NOTES.

[See the Notes to (1881) 4 Mad. 193 *supra*.]

[4 Mad. 372]

APPELLATE CIVIL.

The 29th August, 1881, and 18th January, 1882.

PRESENT :

SIR CHARLES A. TURNER, K.T., CHIEF JUSTICE, AND MR. JUSTICE
KINDERSLEY.

James Dorragh and Co.....(Plaintiffs), Appellants
and
Purshotum Devji.....(Defendant), Respondent.*

*Jurisdiction—Suit for balance due on account current— Place of payment not specified—
Cause of action.*

D and Co. carrying on business at C shipped goods to London for sale on account of P D and advanced money to P D against the shipments.

P D promised to pay the difference if the amount realised by the sales in London fell short of D and Co.'s advance, costs, and commission. No place of payment was specified.

[373] *Held* in a suit to recover money due on account of such short falls that the whole cause of action arose at C where D and Co. carried on business, where the promise was made, and where the money must be taken to have been payable.

THE plaintiff in this case, who carried on business under the name of James Darragh and Co., in British Cochin, sued the defendant whose residence and place of business was at Muttancheri, in the territory of the Native State of Cochin, to recover Rupees 16,251-2-0, the balance due upon account current on the 10th September 1880.

The defendant for several years had consigned goods through the plaintiff to London for sale, and the plaintiff used to advance moneys against the goods shipped to the defendant. It was agreed between the parties that if the sales realised less than the advances, charges, and commission, the defendant should pay the difference upon demand; but it was not stipulated that such payment should be made at any particular place. The principal items which made up the plaintiff's claim were for short falls on consignments to London, but one item in the account was a small claim on account of a transaction which took place at Aleppy in the Cochin State.

The defendant denied that he was indebted to the plaintiff.

The suit was filed in the Subordinate Judge's Court in British Cochin.

The defendant objected to the Court's jurisdiction on the ground that the whole cause of action did not arise within the jurisdiction of the Court, because

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the accounts current showed transactions between the parties regarding short falls in the sale of goods consigned to London by the defendant through the plaintiff as well as transactions at Aleppy and elsewhere.

The defendant's Attorney relied on *Subbaraya Mudali v. The Government and Cunliff* (1 M. H. C. R., 286); *Rajendra Rau v. Sama Rau* (1 M. H. C. R., 436); *Bhavanna Setti v. Sri Kamulu* (3 M. H. C. R., 222); *DeSouza v. Coles* (3 M. H. C. R., 384); and *Bava Meah Saib v. Khajee Meah Saib* (4 M. H. C. R., 218).

The plaintiff's Counsel cited *Luckmee Chund v. Zorawur Mull* (8 M. I. A., 291) and *Muhammad Abdul Kadar v. The East Indian Railway Company* (I. L. R., 1 Mad., 375).

[374] The Subordinate Judge considered that the decisions cited by the plaintiff were not applicable to this case; that the meaning of the words 'cause of action' was clearly explained by BITTLESTON, J., and HOLLOWAY, J., in *DeSouza v. Coles* and held that the whole cause of action had not risen within his jurisdiction, because, as to part of the claim, the sales had taken place and the loss accrued in London and part of the cause of action arose there; and as to another part of the claim, that the Aleppy Court had jurisdiction. The suit was dismissed on this ground.

The plaintiff appealed to the High Court.

The Advocate-General (Hon. P. O'Sullivan for Appellant.

Mr. Grant for Respondent.

The Court (TURNER, C.J., and KINDERSLEY, J.) delivered the following

Judgment:—It appears the plaintiffs made advances to the defendant or, on his guarantee, procured such advances for him at British Cochin on goods shipped through the plaintiffs. It was agreed that the defendant should repay to the plaintiffs, on demand, the equivalent of the amount by which the sale moneys realized on each consignment, fell short of the advances, commission, and expenses made or incurred in respect of that consignment.

No place of payment being stipulated, it must be held payment was to be made at Cochin. We are of opinion the whole cause of action arose at Cochin, the promise was made there, the promise was to be performed there, and the promise was broken there.

Excluding the sum of Rs. 28 claimed on account of the dealing at Aleppy and the interest charged on it, we reverse the decree of the Court below; and, to enable us to pass a fresh decree, we direct that the Court below do try and do return a finding on the second issue, within two months from this date, on the evidence on the record, or on such further evidence as it may deem proper to admit. On the return of the finding seven days will be allowed for filing objections.

(Upon receiving the return of the Subordinate Judge in the plaintiffs' favour as to the amount due and after a reference to arbitration on the question whether the plaintiffs' London charges were fair, the full amount claimed was decreed.)

NOTES.

[There is a learned discussion on this subject in *Hukm Chand's C.S.P. C.*, pp. 303-306, and it may be very usefully consulted.

See also (1887) 11 Bom., 649.]