

the Court Fees Act. The decision of the officer exercising jurisdiction under Act XXVIII of 1860 is a decision of a Civil Court or a Revenue Court, and we apprehend it is a decision of a Revenue Court. It is a summary decision in that, strictly speaking, there is no appeal from it. It may be contested by regular suit. The suit so brought is brought to alter a summary decision of a Revenue Court, and, if the plaintiff secures the alteration he desires, he has no need of any other remedy.

We set aside the order of the Judge and direct him to hear the appeal. The appellant's costs of this appeal will be recovered from the respondent if he eventually succeeds in his suit, otherwise he will bear them himself.

#### NOTES.

[The distinction between the question of class to which the suit belongs and of the valuation of a suit in the class has been adopted in (1894) 4 M. L. J., 183; (1890) 14 Mad., 169; (1896) 19 All. 165; (1890) 12 All., 129. See, also, (1901) 28 Cal., 334; (1882) 12 C. L. R. 148.

For the distinction drawn by the Bombay High Court, see (1886) 10 Bom., 610; (1890) 15 Bom., 82; (1892) 17 Bom., 56; (1898) 23 Bom., 486.]

[4 Mad. 209.]

#### APPELLATE CIVIL.

*The 18th July and 27th September, 1880.*

PRESENT:

MR. JUSTICE KINDERSLEY AND MR. JUSTICE TARRANT.

M.R.R. M. Muthaya Chetti.....(Defendant), Appellant  
*and*

John Harrison Allan.....(Plaintiff), Respondent.\*

*Jurisdiction Letters Patent, Section 12—Carrying on business by agent.*

Section 12 of the Letters Patent of the Madras High Court does not, in order to give jurisdiction, require a defendant personally to carry on business within the local limits of Madras.

[210] THIS was a suit instituted in the High Court upon a Charter party, made at Calcutta by an agent of the defendant, by which the plaintiff's ship "Copenhagen," then lying at Madras, was hired to sail at once to Akyab, take in a cargo of rice, and proceed to Negapatam or Jaffna.

Upon arrival at Akyab the defendant's agent neglected to load the ship, and the master was obliged to leave the port without any cargo.

The plaintiff claimed 11,000 rupees damages.

The defendant, *inter alia*, pleaded that the Court had no jurisdiction as he resided in Madura, but admitted that he had an agent in Madras for the purpose of his business.

The case was tried by the Chief Justice (Sir CHARLES TURNER) on 22nd November 1880.

The Advocate-General (Hon. P. O'Sullivan) and Mr. Wedderburn for the Plaintiff.

\* Appeal No. 1 of 1881 against the decree of the High Court on the Original Side, dated 22nd November 1880.

Mr. *Spring Branson* for the Defendant.

Upon the question of jurisdiction Section 12 of 24 and 25 Vic., C. 104, runs as follows:—"And we do further ordain that the said High Court of Judicature at Madras, in the exercise of its ordinary original civil jurisdiction, shall be empowered 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, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees."

Mr. *Spring Branson* relied upon the following passage in the judgment of the Chief Justice (Sir COLLEY SCOTLAND) in *Subbaraya Mudali v. The Government* (1 M. H. C. R., 286):—

"Dwelling is a personal act and the working for gain is expressly required to be personal, and we think a personal attendance to [211] business was intended. It could not have been intended that the carrying on of business was to be taken in its most general sense. If that were so, a man living at Calcutta or Bombay, or any other distant place, and there carrying on in person his business, might, because of his carrying on business here by a gumastah, clerk or agent, or by occasional visits only, be sued in this Court at the discretion of the plaintiff without any regard to the place where the cause of action arose. This evident inconvenience and hardship could not have been intended by the Letters Patent; the intention must have been that the words 'carrying on business' should be taken with some limits; and we think that when read with the other words of the clause, the proper construction is, that to give jurisdiction there must be the regular carrying on of business by the defendant personally within the local limits," and cited *Framji Kavasji Marker v. Hormasji Kavasji Marker*. (1 Bom. H. C. R. 220) *Mitchell v. Hender* (23 L. J. Q. B., 273), and *Khinji Chaturbhaj v. Sir Charles Forbe* (8 Bom. H. C. R., 113).

The *Advocate-General* referred to the following passage in the judgment of the Chief Justice (Sir COLLEY SCOTLAND) in *Chinnamal v. Tubukannatammal* (3 M. H. C. R., 148)—"Giving proper effect to the other words of the provision, the section, I think, requires that the defendant should at the time of the commencement of the suit carry on within the local limits of the Court's jurisdiction some independent regular business in person, as in the case of *Mitchell v. Hender* (23, L. J. Q. B., 273), or at any office or other fixed place of business (see *Rolfe v. Learmonth*, 14 Q. B., 196), either personally or by clerks or servants employed by the defendant and conducting the business under his control and in his individual or partnership name," and pointed out that the word "personally" in Section 12 of 24 and 25 Vic., C. 104, should naturally come before the words "carry on business," if the contention of the appellant was correct, and that it could hardly have been intended that the large firms which carry on business by Attorneys resident in the city, in many cases, should not be liable to be sued unless the cause of action arose within the local limits.

The **Judgment** of the Court (TURNER, C.J.) upon this point was as follows:—"I hold this Court has jurisdiction to entertain this [212] suit in

virtue of the jurisdiction conferred on the Court by its Letters Patent over all persons carrying on business within what are known as the limits of the original jurisdiction of the Court.

“Although persons working for gain within those limits are not liable to the jurisdiction of the Court unless they personally work within the limits, there is nothing in the provisions of the Letters Patent which confines the jurisdiction of the Court to persons who *personally* carry on business within the limits, and the omission of the term “personally” before the words “carry on business,” and its introduction before the words “work for gain,” offered a strong argument that it was not intended the former words should be so limited. The authority of the ruling to the contrary in *Subbaraya Muddali v. The Government* (1 M. H. C. R., 286) is overruled by the observations of the same learned Judge in *Chinnammal v. Tulukannatammal* (3 M. H. C. R., 146).”

Judgment was given for plaintiff for the amount of damages claimed and costs.

The defendant appealed.

Mr. *Spring Branson* for Appellant.

The Advocate-General (Hon. *P. O'Sullivan*) and Mr. *Wedderburn* for Respondent.

The same arguments were addressed to the Court in support of the appeal upon the question of jurisdiction.

The Judgment of the Court (KINDERSLEY and TARRANT, JJ.) was reserved till 27th September and delivered by KINDERSLEY, J.

**Judgment** :—We think that the Court had jurisdiction to entertain this suit, as the evidence shows that the defendant at the time of the commencement of the suit carried on business within the local limits of the ordinary original jurisdiction of the Court, which, under Section 12 of the Letters Patent, is sufficient to give jurisdiction. The defendant himself in his evidence says that he carries on business in several places by means of agents, and that his agent in Madras is Subramaniah Chetti, and we agree with the learned Chief Justice, that Section 12 does not require persons to personally carry on business within the limits specified.

(Upon the other questions in the case, which are of no importance for the purpose of this report, the Court confirmed the original decree and dismissed the appeal with costs.)

Solicitors for Appellant: *Grant and Lding.*

Solicitors for Respondent: *Barclay and Morgan.*

#### NOTES.

[See (1912) 39 Cal., 568=13 I. C., 705; (1911) 10 I. C., 895, where a similar question arose.

See, also, (1888) 12 Bom. 507; (1893) 17 Bom., 662, where this case was followed.]