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reason stated by the learned Officiating Chief Justice in the order of reference, we cannot accede to the contention that the common law remedy by way of specific relief is taken away by necessary implication.

In addition to the cases cited in the order of reference, we may refer to the decision in *Shuttrughon Das Coomar* v. *Hokna Showtal*(1) in which it was held that a suit for compensation for wrongful seizure of cattle will lie in a Civil Court notwithstanding that under the Cattle Trespass Act, I of 1871, a special remedy is provided for the recovery of compensation by resorting to the Magistrate. See also *Shankar Sahai* v. *Din Dial*(2).

If the decision in *Mahomed* v. *Lakshmipati*(3) is in conflict with our view in this case, we are unable to accept it as correct.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1903. November 30.

SESHAGIRI ROW (PLAINTIFF), APPELLANT,

v.

NAWAB ASKUR JUNG (DEFENDANT), RESPONDENT.*

Letters Patent—Art. 12—"*Cause of action*"—*Promise made out of the jurisdiction of High Court to pay within the jurisdiction—Breach—Suit on Original Side—Jurisdiction.*

Defendant, at Hyderabad, undertook (as was assumed for the purposes of the case) to pay plaintiff within the jurisdiction of the Madras High Court a sum of money alleged to be due for services which had been rendered at Hyderabad or other places outside the jurisdiction. The alleged promise had not been performed and plaintiff brought this suit on the Original Side of the Madras High Court, no leave having been obtained:

Held, that the Court had no jurisdiction to try the suit. The words "cause of action" in article 12 of the Letters Patent, mean all those things which are necessary to give a right of action, and in a suit for a breach of contract the High Court has no jurisdiction, where leave has not been obtained, unless it is proved that the contract as well as the breach of it occurred within the local limits of it jurisdiction.

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(1) I.L.R., 16 Calc., 159. (2) I.L.R., 12 All., 400.
(3) I.L.R., 10 Mad. 368.

* Original Side Appeal No. 9 of 1903 presented against the decree of Mr. Justice Boddam in Original Suit No. 97 of 1902.

SUIT for money. Plaintiff sued defendant for remuneration for services alleged to have been rendered by plaintiff to defendant. The case only came before the Court at this stage on the question of jurisdiction, the facts, for the purpose of deciding this question, being assumed to be as follows:—The alleged services had been rendered at Hyderabad and other places outside of the jurisdiction of the Original Side of the High Court. The alleged promise had been made in Hyderabad, and by it, defendant had undertaken to pay to plaintiff in Madras the amount due. This promise had not been performed. Leave to institute the suit had not been obtained. The learned Judge, sitting on the Original Side, delivered the following judgment:—"In this case, it is admitted that the contract was made in Hyderabad. The plaintiff's cause of action is stated to be a promise made in Hyderabad by the defendant to pay the plaintiff in Madras Rs. 25,000 for work said to have been previously done by the plaintiff for the defendant at Hyderabad and elsewhere outside the jurisdiction of this Court. The contention on the part of the plaintiff is that inasmuch as there has been a breach of the promise to pay in Madras, this Court has jurisdiction without leave having been obtained to sue here irrespective of where the promise was made, that the breach of contract constitutes the whole cause of action irrespective of where the contract was made. I am of opinion that the words in article 12 of the Letters Patent "cause of action" mean all those things which are necessary to give a right of action and that in a suit for breach of contract, this Court has no jurisdiction where leave has not been given unless it is proved that the contract as well as the breach of it occurred within the local limits of the Court." He dismissed the suit.

Plaintiff preferred this appeal.

Mr. *D. Chamier*, for appellant, cited the judgment of Holloway, J., in *DeSouza* v. *Coles*(1), *Luckmee Chund* v. *Zorawur Mull*(2), *Muhammad Abdul Kadar* v. *East Indian Railway Company*(3).

The Advocate-General (Hon. Mr. *J. P. Wallis*) for respondent, was not called upon.

JUDGMENT.—We think that the view of the learned Judge is correct (*Mulchand Joharimal* v. *Suganchand Shivdas*(4)) and is in

(1) 3 Mad. H.C.R., 384 at p. 407.
(2) 8 Moo. I.A., 291.
(3) I.L.R., 1 Mad., 375.
(4) I.L.R., 1 Bom., 23.

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accordance with the preponderance of authority as to the meaning of the words "cause of action" in article 12 of the Letters Patent. We dismiss the appeal with costs.

Attorney for the appellant—Mr. *S. Subbayya Chetti.*

Attorney for the respondent—Mr. *James Short.*

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1903. December 2.

ISACK JESUDASEN PILLAI (PETITIONER), APPELLANT,

v.

DIVAN BAHADUR RAMASAMY CHETTY (OFFICIAL LIQUIDATOR OF THE MADRAS BUILDING SOCIETY), RESPONDENT.*

Indian Companies Act—VI of 1882, s. 156—Notice to creditors to prove claims—Failure by creditor to prove within time limited—Claimant excluded from benefit of previous distribution.

A creditor of a company in liquidation failed to bring in his claim by the date announced by the official liquidator for claims to be made. He subsequently applied that his claim might be admitted:

Held, that the creditor was not precluded from coming in at a later stage. The only penalty for failure to come in within the time stated in the notice was that prescribed by the latter part of the section, namely, that the claimant would be excluded from the benefit of any distribution made before his debt was proved.

CLAIM by a creditor of a company in liquidation to share in distribution of assets. The official liquidator of the company advertised on 7th April 1902 that creditors were required to prove their debts or claims on or before 4th August 1902, and that, in default, they would be excluded from the benefit of any distribution made before such debts should be proved. Petitioner failed to lodge his claim before the date fixed. Subsequently he applied by summons in Chambers to be permitted to rank as a claimant against the assets of the company. The summons was dismissed.

Petitioner preferred this appeal.

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* Original Side Appeal No. 16 of 1903, presented against the order of Mr. Justice Boddam, dated the 1st day of May 1903, on Miscellaneous Petition No. 4 of 1901.