health, or safety or a riot or affray. Such an order cannot be made merely for the protection of property.

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In the present case, taking the Assistant Magistrate's finding at the highest, it cannot amount to more than this, that the bund in question diminishes the supply of water to the land lying at a lower level.

Order quashed.

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice Tottenham.

LALJEE LALL (DEFENDANT) *v.* HARDEY NARAIN (PLAINTIFF).*

1882 *June* 1.

Cause of Action—Jurisdiction—Contract—Promissory Note—Place of Performance—Code of Civil Procedure (Act X of 1877), s. 17, Illus.

Where a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note.

The illustrations to s. 17 of the Code of Civil Procedure afford no safe guide as to what is meant in the Code by the term "cause of action."

Gopi Krishna Gossami v. *Nil Komul Banerjee* (1), *Muhammad Abdul Kadar* v. *E. I. Railway Co.* (2), and *Vaughan* v. *Weldon* (3) followed.

IN this case the material portion of the judgment appealed from was as follows:—

"This is a suit to recover money due on a promissory note, dated the 3rd of October 1876. The defendant denies its genuineness, and contends that this Court has no jurisdiction to entertain this suit. The first point to be determined is, whether this Court has jurisdiction to entertain this suit. The facts stand thus:—The plaintiff is a banker in the district of Monghyr, where he has his principal place of business and his books of account; where he had, on other occasions, made payments for the defendant; and where, as an agent of the defendant, he paid

* Appeal from Original Decree, No. 263 of 1880, against the decree of Baboo Jogesh Chunder Mitter, Officiating Second Subordinate Judge of Bhagalpore, dated the 31st July 1880.

(1) 13 B. L. R., 461; S. C., 22 W. R., 79.

(2) I. L. R., 1 Mad., 377.

(3) L. R., 10 C. P., 48.

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for him Government revenue, &c. But the note in suit was said to have been executed in the district of Durbhunga. No money was paid on it, it being in lieu of two others and for other sums due on other accounts. The plaintiff further contends—a contention which the defendant denies—that the defendant promised to pay the money at his central place of business at Monghyr. In this state of facts, and under the rule laid down in the case of *Gopi Krishna Gossami* v. *Nil Komul Banerjee* (1) and *Luckmee Chund* v. *Zorawur Mull* (2), I think this Court has jurisdiction to entertain the suit. 'The practical rule as to jurisdiction,' says Mr. Justice Markby in the former case, 'which has gained the most general acceptance, is that which allows the plaintiff to bring the suit either in the Court of the place where the contract was made, or in that of the place where it was to be performed.' Where no place of performance is prescribed by the agreement, Mr. Justice Birch points out, 'what we have to look to is the intention of the parties. If from the surrounding facts and the acts of the parties we can ascertain what place was in their contemplation the place of performance, the Courts of that place have jurisdiction.' Here, beyond doubt, the contract was made at Durbhunga, but leaving out of our consideration for a moment the alleged agreement of a payment at Monghyr, let us see what the intentions of the parties were. Here the plaintiff is a banker; his central place of business is at Monghyr, where he receives money due to him and pays what is due from him. The notes in lieu of which this note was executed were paid at Monghyr; other payments that were made for the defendant were also made at Monghyr. It was apparently an accidental circumstance that this note was executed at Durbhunga. The accounts of the defendant were kept by the plaintiff at Monghyr. The Government revenue that is paid by the plaintiff for the defendant is paid at Monghyr. These facts prove beyond the shadow of a doubt that the intended place of performance was at Monghyr. If again to those facts we add the presumption that the obligor is bound to seek the obligee and tender the money at the resi-

(1) 13 B. L. R., 461; S. C., 22 W. R., 79.
(2) 8 Moore's I. A., 291.

dence of the latter, I think there can be no reasonable doubt that the place of fulfilment thought of by the parties was at the plaintiff's banking firm at Monghyr. The plaintiff, however, goes further. He sets up an oral agreement, and proves by the evidence of his witnesses that it was specially agreed that the performance should be at Monghyr. Taking also the light afforded by the conduct of the parties as evidenced by the correspondence between them, that agreement seems to be probable, as otherwise the plaintiff could not have asked for payment at his own place of business."

The learned Judge then found that the note sued on was genuine, and decreed the plaintiff's claim, whereupon the defendant appealed to the High Court. The plaint, which was filed on the 17th of September 1879, described the defendant as a resident of the city of Durbhunga, and the note sued on ran as follows:—

"On adjustment of accounts as per former note-of-hand, and on account of payment of Government revenue, &c., the sum of Rs. 34,500 (thirty-four thousand and five hundred) is found due to you by me. I shall pay this amount, principal, with interest at 14 annas per cent. per mensem, within one year, and shall then take back this note-of-hand. For this purpose I execute this note-of-hand, that it may be of use when required. I acknowledge the note-of-hand for Rs. 34,500, which I have executed.

LALJEE LALL."

Mr. *Branson* and Baboo *Chunder Madhub Ghose* for the appellant.

Mr. *Evans*, Baboo *Mohesh Chunder Chowdhry*, and Mr. *Twidale* for the respondent.

The following authorities were referred to:—For the appellant:—*Winter* v. *Way* (1), Beng. Reg. II of 1803, and *Sieveking Droop & Co.* v. *Foche* (2). For the respondent:—*Hills* v. *Clark* (3), *Gopi Krishna Gossami* v. *Nil Komul Bauerjee* (4), *Hadjee Ismail* v. *Hadjee Mahomed* (5), *Mulchand Joharimal* v.

(1) 1 Mad. H. C., 200.
(2) 9 W. R., 215.
(3) 14 B. L. R., 367.
(4) 13 B. L. R., 461; S. C., 22 W. R., 79.
(5) 13 B. L. R., 91.

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Suganchand Shivdas (1), *DeSouza* v. *Coles* (2), and *Sami Ayyangar* v. *Gopal Ayyangar* (3).

Cur. ad. vult.

The judgment of the Court (CUNNINGHAM and TOTTENHAM, JJ.) was delivered by

CUNNINGHAM, J.—This action is brought on a promissory note made at Durbhunga in the Mozufferpore District, but payable (as the evidence appears to us sufficiently to prove that the parties intended) in the Monghyr district. A plea is raised to the jurisdiction of the Bhagalpore Court, on the ground that the cause of action, within the meaning of s. 17 of the Code, did not arise within the local limits of its jurisdiction. This raises the question whether, when a contract is made in one place for fulfilment in another, a suit for the breach can, under s. 17 of the Code, be brought in the district where performance was intended to take place and the breach occurred, or whether the cause of action includes not only the breach on which the suit is brought, but the contract and other circumstances which, together with the breach, go to constitute the plaintiff's right to sue.

Conflicting decisions have been given by the English Courts as to the meaning of the corresponding words in the Common Law Procedure Act, 1852, s. 18, the latter of the two just mentioned views being taken in *Sichel* v. *Borch* (4), *Allhusen* v. *Malgarejo* (5), and *Cherry* v. *Thomson* (6); the former in *Jachson* v. *Spittal* (7), and ultimately by agreement in *Vaughan* v. *Weldon* (8).

On the Original Side of this Court the provisions in the Letters Patent enabling a suit to be brought, "with the leave of the Court," if the cause of action has arisen wholly or partially within the local jurisdiction, has been understood as suggesting the inference that "cause of action" means, for the purposes of suits on the Original Side, the contract as well as the breach;

(1) I. L. R., 1 Bom., 23.
(2) 3 Mad. H. C., 384.
(3) 7 Mad. H. C., 176.
(4) 33 L. J., Ex., 179.
(5) L. R., 3 Q. B., 340.
(6) L. R., 7 Q. B., 573.
(7) L. R., 5 C. P., 542.
(8) L. R., 10 C. P., 48.

and this view appears to have been taken on the Original Side of the Bombay, and until recently, of the Madras High Courts; see *Sugan Chand Shivdas* v. *Mulchand* (1). But on the Appellate Side there are decisions which we consider binding upon us, under which the rule laid down has been that the cause of action may, for the purposes of giving local jurisdiction to a Mofussil Court, be deemed to arise at the place where performance ought to take place, and where the breach occurs, a construction which corresponds to that agreed to by the English Judges in *Vaughan* v. *Weldon* (2), adopting the decision of the Judges of the Common Pleas in *Jackson* v. *Spittal* (3) as to cases under the Common Law Procedure Act, 1852.

In *Gopi Krishna Gossami* v. *Nil Komul Banerjee* (4) a contract was made at Serampore, for certain transactions to be carried on in Calcutta, *A* agreeing to advance funds on condition of repayment with interest within a certain date. The money was paid partly in Serampore and partly in Calcutta. A suit was brought in the Hooghly Court for recovery of the balance of the sum advanced, and it was urged that, as the whole of the cause of action did not arise within the local jurisdiction, an action would not lie. Markby and Birch, JJ., held, that the action might be brought in the place where the money was to have been paid, referring to the decision of the Privy Council in *Luchmee Chund* v. *Zorawur Mull* (5), in which it was held that the central place of business of the contracting firm, being the place where the books were kept, the accounts would have to be balanced, and the payment of the balance, if any, made, was the place where the plaintiff's action lay. This view was also taken by a Full Bench at Agra, *Prem Shook* v. *Bhekoo* (6). The same view was adopted in *Hills* v. *Clark* (7), where Jackson, J., held, that where a contract was made in Moorshedabad for seed to be delivered in Nuddea and to be paid for, on delivery, by an order to be sent to plaintiff at Moorshedabad on receipt of the goods, a suit for nonpayment would lie in the Moorsheda-

(1) 12 Bom., 123.
(2) L. R., 10 C. P., 48.
(3) L. R., 5 C. P., 542.
(4) 13 B. L. R., 461; S.C., 22 W. R., 79.
(5) 8 Moore's I. A., 291.
(6) 3 Agra, 242.
(7) 14 B. L. R., 367.

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bad Court. In this case the authorities were considered and reliance appears to have been placed on the views expressed by Holloway, J., in *DeSouza* v. *Coles* (1).

The same view was taken by Morgan, C. J., and Innes, J., in *Sami Ayyangar* v. *Gopal Ayyangar* (2). In that case the defendant executed in the Tanjore district a mortgage of land situated in the Trichinopoly District. In order to make it enforceable, the deed required registration in the Trichinopoly district. The suit was brought to compel the defendant to register, and it was held that though the contract was made in Tanjore, the cause of action had arisen in Trichinopoly, inasmuch as, from the nature of the act to be performed, it was the place of the fulfilment of the obligation. It is true that in this case the obligation on which the action was brought arose directly from a statutory requirement, instead of, as in the case before us, from contract; but this does not in our opinion affect the application of the rule laid down.

In *Muhammad Abdul Kadar* v. *E. I. Railway Co.* (3), Kernan and Kindersley, JJ., adopted, even in a case on the Original Side of the Court, the rules laid down in *Gopi Krishna Gossami* v. *Nil Komul Banerjee* (4) and *Vaughan* v. *Weldon* (5). We consider ourselves accordingly bound by authority, unless it can be shown that the state of the law has been altered by subsequent legislation. As to this it is contended that the illustrations given to s. 17 of the Code of Civil Procedure are to be read as adopting and sanctioning the view that the cause of action embraces the contract as well as the breach, and that, consequently, where the contract is made in one place and the performance is to take place in another, no local jurisdiction arises.

This is not in our opinion the proper inference to be drawn from the illustrations. The Legislature has, in the Code of Civil Procedure, thought fit not to define "cause of action." This omission may have arisen from the circumstances that different views were held in different Courts on the point, and that the

(1) 3 Mad. H. C., 384.
(2) 7 Mad. H. C., 176.
(3) I. L. R., 1 Mad., 377.
(4) 13 B. L. R., 461; S. C., 22 W. R., 79.
(5) L. R., 10 C. P., 48.

framers of the Act did not consider it desirable on that occasion to lay down one uniform rule. At any rate there is no definition of "cause of action," nor any illustration immediately directed to pointing out where the cause of action arises and where it does not. This being so, it appears to us that the illustrations are intended merely to illustrate the rules laid down in the section,—1st, that a suit may be brought either where the cause of action arose, or the defendant resides or carries on business; and 2nd, that where there are several defendants, the action may be brought either where the cause of action arose or any one of the defendants resides or carries on business, provided the leave of the Court be obtained or the other defendants acquiesce.

In both instances the illustrations appear to us to avoid the question as to what constituted "cause of action" by giving facts which, on any theory, would be held to constitute it: and the utmost that, in our opinion, can fairly be inferred from their language, is that there is no intention to show that the narrower definition is the one sanctioned by the Code. This, however, falls entirely short of laying down a rule on the subject, and leaves the matter where it previously was.

We therefore do not consider that the illustrations have modified the previously existing state of the law, and this being so, we are bound to follow the previous judgments of the Court, which appear to lay down the more convenient rule and to be sanctioned by the concurrence of several of the other High Courts and the resolution of the English Judges in *Vaughan* v. *Weldon* (1).

As to the question of the payments alleged by the defendant and the other points raised in appeal, we concur in the view taken by the original Court.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

(1) L. R., 10 C. P., 48.