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India as well as in England as "being agreeable to general equity and good conscience." In a case reported in the third volume of the Calcutta Weekly Notes, 323, Tottenham, J., on the same subject, observes:—"The enlargement of, or the removal of incumbrances from, the estate of a mortgagor effected by himself will generally enure to the benefit of the mortgagee by increasing the value of his security." It appears to us, therefore, that if the plaintiff in this suit had in his claim specifically asked for a sale of the mortgaged property, and not for a sale of the mortgagee's rights in the property, the defence set up could not have been sustained, inasmuch as the acquisition of the equity of redemption by his mortgagee enured to his benefit, and so increased the value of his security. We were asked in the course of the argument to allow an amendment of the plaint by omitting in the prayer where they occur the words which have been translated "mortgaged," but which mean "mortgagee's rights." Under the circumstances we thought it to be just and equitable to do so, and we have allowed the amendment asked for. We think that the decisions of the lower Courts upon the main question will work substantial justice, and that with the amendment which we have allowed, the plaintiff is undoubtedly entitled to maintain his suit, and to the decrees which have been granted to him. Accordingly we dismiss the appeal with costs.

Appeal dismissed.

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July 26.

Before Mr. Justice Banerji and Mr. Justice Aikman.

BANKE BEHARI LAL (PLAINTIFF) v. POKHE RAM AND ANOTHER
(DEPENDANTS).*

Civil Procedure Code, section 17—"Cause of action"—Jurisdiction—Suit for a declaration that a compromise and a decree founded thereon are null and void as against the plaintiff, and for an injunction restraining execution.

Held that the term "cause of action" as used in section 17 of the Code of Civil Procedure does not necessarily mean the whole of the cause of action, but a suit to which section 17 applies may be instituted where some material portion of the cause of action arises. Murti v. Bhola Ram (1), Road v.

* First Appeal No. 162 of 1900, from an order of Munshi Shiva Sahai, Subordinate Judge of Cawnpore, dated the 15th of June 1900.

(1) (1893) I. L. R., 18 All., 165.

Brown (1), *Llewellyn v. Churni Lal* (2), *Bishunath v. Ilahi Baksh* (3), *Gopi Krishna Gossami v. Nilkomul Banerjee* (4), *Hills v. Clark* (5), *Laljee Lall v. Hardey Narain* (6), *Jackson v. Spittall* (7), *Vaughan v. Weldon* (8) and *Haramoni Dassi v. Hari Churn Chowdhry* (9) referred to.

The plaintiff came into Court, alleging that he was the adopted son of one Balmakund, having been adopted to him by Balmakund's widow, and that the defendants, who were trustees of the will of Balmakund, had entered into a collusive suit, which they had fraudulently compromised, with the result that one defendant had obtained from the Court a decree for a considerable sum payable out of the property left by Balmakund, which property the plaintiff claimed as his own. The decree-holder got the decree sent for execution to Cawnpore, and was seeking to execute it against the estate of Balmakund within the limits of the jurisdiction of the Subordinate Judge of Cawnpore. The plaintiff filed his suit in the Court of the Subordinate Judge of Cawnpore, and asked, in effect, that the compromise and the decree founded thereon might be declared to be null and void as against him, and that an injunction might be issued restraining execution of the decree. *Held* that, although the decree was passed in Calcutta, yet inasmuch as the property affected by the decree was in Cawnpore, and execution was being taken out there, a material portion of the plaintiff's cause of action arose in Cawnpore, and the Subordinate Judge of that place had jurisdiction to try the suit. *Nistarini Dassi v. Nando Lall Bose* (10) and *Hadjee Ismail v. Hadjee Mohamed* (11) referred to. *Soloman v. Abdool Aziz* (12) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Mr. *D. N. Banerji*, for the respondents.

BANERJI, J. (AIKMAN, J., concurring).—This is an appeal from an order of the Subordinate Judge of Cawnpore, returning the plaint filed by the appellant in that Court to be presented to the proper Court, upon the ground that the Court at Cawnpore had no jurisdiction to entertain the suit.

The facts which gave rise to the suit, as alleged by the plaintiff, are these:—One Balmakund, who owned considerable property at Cawnpore, died on the 5th of March, 1895, leaving his widow, Musammat Lachhmi Bibi, and no issue. He made a will appointing four persons, namely, the defendants Pokhe Ram

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| (1) (1888) L. R., 22 Q. B. D., 128. | (7) (1870) L. R., 5 C. P., 542. |
| (2) (1882) I. L. R., 4 All., 423. | (8) (1874) L. R., 10 C. P., 47. |
| (3) (1888) I. L. R., 5 All., 277. | (9) (1895) I. L. R., 22 Calc., 833. |
| (4) (1874) 13 B. L. R., 461. | at p. 840. |
| (5) (1874) 14 B. L. R., 367. | (10) (1899) I. L. R., 26 Calc., 891. |
| (6) (1882) I. L. R., 9 Calc., 105. | (11) (1874) 13 B. L. R., 91. |
| • • • | (12) (1879) 4 C. L. R., 365. |

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and Jaggi Lal, and Lala Murlidhar and Lala Hardayal, trustees for the purpose of carrying out the provisions of the will. He also authorized his widow to adopt a son. Probate of the will was granted by the High Court of Calcutta on the 27th of November, 1895, to the defendants and Lala Hardayal. On the 5th of May, 1896, the plaintiff was adopted by the widow of Balmakund, and by virtue of this adoption the plaintiff succeeded to the whole of the estate left by Balmakund. On the 25th of November, 1895, the defendant No. 2, Jaggi Lal, executed an agreement in favour of the first defendant, Pokhe Ram, whereby he agreed to pay to that defendant rupees one lakh out of the estate of Balmakund and Rs. 20,000 out of his own personal funds. On the basis of this agreement Pokhe Ram instituted a suit in the High Court of Calcutta for the recovery of the amount mentioned above against Jaggi Lal, defendant No. 2, and Hardayal. The latter died during the pendency of the suit. The other parties to it, namely, Pokhe Ram and Jaggi Lal, entered into a compromise, to the effect that the amount of a decree which had been obtained by Jaggi Lal, defendant No. 2, against Pokhe Ram, defendant, should be set off against the sum of one lakh of rupees claimed in the suit, and that the balance should be paid out of the estate of Balmakund. A decree was passed in accordance with the terms of the compromise by the High Court of Calcutta. The defendant, Pokhe Ram, caused the said decree to be sent for execution to the Court of the District Judge of Cawnpore, and on the 26th of June, 1899, made an application for execution to that Court, seeking to recover the sum of one lakh of rupees mentioned above out of the estate of Balmakund. Thereupon the present suit was instituted. The plaintiff asserts that the agreement of the 25th of November, 1895, and the compromise made in the suit brought on the basis of it were collusive and were entered into by the defendants in violation of the provisions of the will of Balmakund, and in excess of the authority vested in the defendants, that the decree passed in accordance with the compromise was obtained collusively; that the agreement was without consideration, and that the said document and the decree referred to above, in so far as they relate to the property left by Balmakund are illegal, void and

ineffectual, and prejudicial to the interests of the minor plaintiff. The plaintiff prays for the following reliefs:—

- (a) that it be declared that the sum of one lakh of rupees, which the defendant No. 2 agreed to pay to the defendant No. 1, and in respect of which the defendant No. 1 obtained a decree from the Calcutta High Court forms part of the estate of Balmakund, and that the plaintiff is the owner thereof;
- (b) that the agreement dated the 25th of November, 1895, as well as the decree which was passed on the basis of it, are null, void and ineffectual against the plaintiff;
- (c) that an injunction be issued to the defendants restraining the first defendant from realizing the said sum of one lakh of rupees, and the second defendant from paying it.

It was urged on behalf of the first defendant that the suit was not cognizable by the Subordinate Judge of Cawnpore. This plea has prevailed in the Court below, and the plaint has been returned to be presented to the proper Court.

The learned Subordinate Judge has rightly held that as both the defendants do not reside, or carry on business, or personally work for gain within the local limits of the Court's jurisdiction, and as the leave of the Court was not obtained, and the defendant who does not reside in Cawnpore, did not acquiesce in the institution of the suit in the Cawnpore Court, clauses (b) and (c) of section 17 of the Code of Civil Procedure did not apply. He does not state whether, in his opinion, clause (a) is applicable or not. He has made some observations which to me are unintelligible; but I must assume that he has held that the cause of action for the suit did not arise within the jurisdiction of this court.

We have therefore to determine whether, within the meaning of clause (a) of section 17 of the Code of Civil Procedure, the cause of action arose within the local limits of the jurisdiction of the Court below. In determining this question, we have further to consider whether the expression "cause of action" in the section means the whole cause of action or a material part of it. The term "cause of action" is not defined in the Code of

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Civil Procedure, but it was held by a Full Bench of this Court in *Murti v. Bhola Ram* (1) following *Read v. Brown* (2) that "a plaintiff's cause of action consists of every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court." In placing this interpretation on the words "cause of action" the Court did not consider its applicability with reference to the provisions of section 17 of the Code. This Court, however, held in *Llewellyn v. Chunni Lal* (3) that "the term cause of action as used in section 17 comprehends a material portion of the cause of action." The same view was held in *Bishunath v. Ilahi Bakhsh* (4), and the decisions of the Calcutta High Court are also to the same effect. See *Gopikrishna Gossami v. Nilkomul Banerjee* (5), *Hills v. Clark* (6), *Lalji Lal v. Hardey Narain* (7). In coming to this conclusion the Courts adopted the interpretation placed by the Courts in England on a similar expression in the 18th section of the Common Law Procedure Act, 1852, in *Jackson v. Spittall* (8) and *Vaughan v. Weldon* (9). In my opinion the amendment of section 17 by the addition to it of explanation III by Act No. VII of 1888, so far from introducing any change in the section as interpreted in the rulings to which I have referred, indicates that the words "cause of action" in this section are not so limited as to mean the whole cause of action, but include any material part of it. This view is supported by the observations of Macpherson and Banerjee, JJ., in *Haramoni Dassi v. Hari Churn Chowdhry* (10) to the effect that "the expression "cause of action" has been used in section 17 in a restricted as well as in some respects in an elastic sense, so as to include the facts constituting the infringement of the right, but not necessarily all those constituting the right itself." Any other conclusion would, it seems to me, cause immense hardship. In cases in which all the defendants do not reside within the jurisdiction, if the whole cause of action of the plaintiff has not arisen within the

(1) (1893) I. L. R., 16 All., 165.

(2) (1888) L. R., 22 Q. B. D., 128.

(3) (1882) I. L. R., 4 All., 423.

(4) (1883) I. L. R., 5 All., 277.

(5) (1874) 13 B. L. R., 461.

(6) (1874) 14 B. L. R., 367.

(7) (1882) I. L. R., 9 Calc., 105.

(8) (1870) L. R., 5 C. P., 542.

(9) (1874) L. R., 10 C. P., 47.

(10) (1895) I. L. R., 22 Calc.,

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jurisdiction of a single Court but a part of the cause of action has arisen within the jurisdiction of one Court and another part within the jurisdiction of another Court, the plaintiff would be without remedy were we to hold that the expression "cause of action" in section 17 means the whole cause of action. This certainly could not have been intended by the Legislature. If therefore in this case a material part of the plaintiff's cause of action arose within the district of Cawnpore, the Court below had, in my judgment, jurisdiction to entertain the suit.

I am of opinion that, if the allegations contained in the plaint are true, a material part of the plaintiff's cause of action did arise within the local limits of the lower Court's jurisdiction. If it be true that the agreement of the 25th of November, 1895, the compromise made in regard to it, and the decree passed on the basis of the compromise were fraudulent and collusive, it is competent for every Court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud, "and it matters not whether the impeached judgment has been pronounced by an inferior tribunal or by the highest Court of Judicature in the realm." This was held in the recent case of *Nistarini Dassi v. Nundo Lall Bose* (1), and I have no hesitation in expressing my entire concurrence with the view of the law therein laid down. If the allegation of fraud and collusion made by the plaintiff be established, the Court below would be competent, if it otherwise had jurisdiction over the suit, to declare that the compromise and the decree in question are void and ineffectual as against the plaintiff. The plaintiff does not ask the Court to set aside the decree of the Calcutta High Court, and therefore the ruling in *Bibee Solomon v. Abdool Aziz* (2), on which the learned counsel for the respondent relies, has no application. In so far as the said decree and the compromise on which it was founded are alleged to have infringed the plaintiff's right, the cause of action arose in Calcutta, where the decree was made and the compromise was admittedly entered into. The mere fact, however, of the passing of the decree did not materially affect the plaintiff until it was put into execution

(1) (1899) 11 L. R., 26 Cal., 391 at p. 308. • (2) (1879) 4 C. L. R., 366.

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and the amount awarded by the decree was sought to be realized from the estate of Balmakund, of which the plaintiff claims to be the owner. The execution of the decree and the application for the realization of the amount of it are the acts of the defendant which infringe the rights of the plaintiff, and afford him his principal cause of action. Those acts were done in the district of Cawnpore, where the property also is situated. A material part of the plaintiff's cause of action, therefore, arose in that district. In this respect the present case is similar to that of *Hadjee Ismail v. Hadjee Mahomed* (1). That was a suit brought in Calcutta for the cancelment, on the ground of fraud, of a release executed in Calcutta in regard to property, part of which was situated in Bombay. It was held that a part of the cause of action arose in Bombay, and that the whole cause of action did not arise in Calcutta. Sir Richard Couch, C.J., in delivering the judgment of the Court, said:—"The fraudulent representations which led to the execution of the release may have been made, and the release may have been executed here; but the cause of action in this case consists of more than that. It includes the effect of the release upon the plaintiff's share of the property. If there had been no property, the execution of the release would not have injured the plaintiff in any way. In order to constitute a cause of action, there must be an injury to him from the operation of the release. Then where did the release take effect? where was it operative? The property was in Bombay . . . and that part of the cause of action arose there. In such a case as the present I think the cause of action in respect of the immovable property arose in the place where the release took effect." Applying the same reasoning to the present case, the cause of action arose in the Cawnpore district where it was sought to enforce the decree. As I have said above, if execution of the decree was never applied for, the mere passing of it would not have materially injured the plaintiff. It is the injury to him arising from the enforcement of the decree which constitutes his cause of action, and as that was done in the Cawnpore district, a substantial portion of his cause of action arose in that district, and the Court below had jurisdiction

(1) (1874) 13 B. L. R., 91.

to entertain the suit. In my opinion that Court has erred in ordering the plaint to be returned. I would allow the appeal, set aside the order of the Court below, and remand the case to that Court, with directions to receive back the plaint, re-admit the suit under its original number in the register, and dispose of it according to law. I would direct the costs hitherto incurred to follow the event. I may add that I do not agree with the learned Subordinate Judge in his opinion that section 20 of the Code of Civil Procedure is inapplicable to a case like the present.

Appeal decreed and cause remanded.

Before Mr. Justice Blair and Mr. Justice Aikman.

BINDRABAN BEHARI (DEFENDANT) v. JAMUNA KUNWAR

(PLAINTIFF) AND GANGA KUNWAR (DEFENDANT).*

Act No. XV of 1877 (Indian Limitation Act), Schedule ii, Article 129—Limitation—Suit against representative of deceased pleader to recover money received by the pleader in his professional capacity on behalf of a client.

Held that a suit to recover from the son of a deceased pleader, as representative of his father, money which had been received by the pleader in his professional capacity on behalf of a client, was governed as regards limitation by Article 120 of the second schedule to the Indian Limitation Act, 1877.

THE plaintiff in this case had been a client of the defendant's father, who was a pleader. The defendant's father had been employed by the plaintiff to obtain for her a certificate for collection of debts, and, in connection with that matter, a sum of Rs. 800 in cash had been deposited on her behalf by one Ram Chandra, her brother and general attorney, as part of the security given by the plaintiff. Subsequently, a security of immovable property was given, and the Rs. 800 were withdrawn by the plaintiff's pleader. The pleader died without making over the money to the plaintiff. Within three years from his death, the plaintiff instituted the present suit to recover the money withdrawn as above described from the son of the deceased pleader. She also named as a defendant the representative of Ram Chandra, who, however, did not appear. The Court

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* Second Appeal No. 1236 of 1900 from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 10th of July, 1900, reversing a decree of Babu Jagat Narayan, Munsif of Koil, dated the 19th of December, 1899.