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I. L. R., 30 Mad., 96, is the correct and equitable view. The respondent in this case seeks to bring certain property within the operation of his decree. Its value is Rs. 800 (this being less than the amount of the decretal debt) and that is the value of his cross-objections. He must, therefore, pay an *ad valorem* fee on the value of this property. He seeks more than a mere declaration. There is consequential relief in his demand, *viz.*, an order that the property be sold if the decretal debt be not paid. He will, therefore, pay the *ad valorem* fees as noted above. I allow one month to make good the deficiency.

*Order accordingly.*

### APPELLATE CIVIL.

*Before Mr. Justice Tuddall and Mr. Justice Chamier.*

RAM KISHAN (DEPENDANT) v. PIARI LAL (PLAINTIFF).\*

*Act No. XX of 1847—(Copyright Act) sections 7 and 12—Copyright—Suit for damages for infringement of copyright—Jurisdiction.*

A suit to recover damages for infringement of copyright does not lie in the court within the jurisdiction of which the plaintiff, but not the defendant, resides. Neither is the possessor of a pirated copy of a copyright work bound to deliver it to the owner of the copyright wherever he (the owner) may happen to reside.

THE facts of this case were as follows:—

A suit was filed by one Piari Lal in the court of the District Judge of Aligarh, on the allegation that the plaintiff had a copyright in a book entitled "*Kok Shastra*" and that the defendant, Hakim Ram Kishan, had infringed this copyright by printing, publishing and selling an imitation of his book in Urdu and also in Gurmukhi. The reliefs he sought were two-fold; first, that a permanent injunction might be issued against the defendant restraining him from printing, publishing or selling the offending book; and secondly, that the defendant might be ordered to deliver up all the unlawfully printed copies of the books or failing this to pay damages to the plaintiff. The books by printing, publishing and selling which the defendant was said to have infringed the copyright of the plaintiff were printed, published and sold at Lahore where the defendant

\* First Appeal No. 146 of 1909, from a decree of H. J. Bell District Judge of Aligarh, dated the 23rd of March, 1909.

resided and carried on business. One of the defences to the suit was that the District Judge of Aligarh had no jurisdiction to try the case. It was not proved that the defendant or his agent had been in possession of the offending books within the jurisdiction of that court. The court below, however, decreed the suit, holding that it had jurisdiction to try the case. It held "that the plaintiff has a legal right to demand that the defendant shall deliver to him all copies of any book that may infringe his copyright. The place of delivery is not regulated by the Contract Act, and it is not suggested that the plaintiff gave the defendant instructions to make delivery at any particular place; neither side has brought to notice any enactment or authority on the point. In the circumstances it would appear to be reasonable to hold that the place of delivery should have been Aligarh. Now non-delivery gives a right to claim damages, and if the books should have been delivered in Aligarh, failure to give delivery in Aligarh gives the plaintiff one cause of action arising in Aligarh." The defendant appealed.

*Babu Purushottam Das Tandan*, for the appellant:—

The only section which gives jurisdiction to a court in matters of copyright is section 7 of the Indian Copyright Act. That section definitely lays down that all suits in respect of infringement of a copyright are to be instituted in the highest court of original civil jurisdiction within whose limits the offending books have been printed, published or sold. There is no question of contract here. In the presence of the special enactment, no general law in regard to jurisdiction would be applicable. Now there is no finding that the defendant by his agent or otherwise was in possession of the offending books within the jurisdiction of the court at Aligarh. That court, therefore, cannot try the case. The view that under section 12 of the Copyright Act, the defendant should have delivered all copies of the offending books at Aligarh and that failure to give such delivery furnished a cause of action at Aligarh, is, it is submitted, incorrect. All that section 12 says is that the proprietary right in such books shall vest in the owner of the copyright. But it is the lookout of the owner to get his property from the person in

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whose possession it is ; it is not the duty of the latter person to find out the owner and deliver it to him wherever he may be. He relied on *MacMillan v. Shamsulma Moulvi Zaka* (1). That case was one under the English Copyright Act [Stat. 5 and 6, Vict., Cap. 215], but the provisions in regard to jurisdiction are exactly the same there as in the Indian Act, and section 12 of the Indian Act has also its counterpart in the English Law. The case in the Bombay High Court is on all fours with the present case.

No one appeared for the respondent.

TUDBALL and CHAMIER, JJ:—This is an appeal by the defendant in the suit against a decree passed by the District Judge of Aligarh. The plaintiff respondent is the proprietor of the copyright in a book called *Kok Shastra*. The defendant appellant has printed and is or was selling a work on the same subject and under the same title. The court below has found that the appellant's book is in infringement of the respondent's copyright and has decreed that the appellant shall either deliver up all the pirated copies of the book now in his possession or pay the respondent Rs. 600 as damages for the detention thereof. It has also granted an injunction restraining the appellant from further infringing the copyright.

The appellant contends that the suit was not maintainable in the Court of the District Judge of Aligarh, inasmuch as the appellant resides at Lahore and the cause of action arose there. Section 7 of the Indian Copyright Act, 1847, as it now stands, provides that "if any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright without the consent in writing of the proprietor thereof, or shall have in his possession *for sale or hire* any such books so unlawfully printed without such consent as aforesaid, such offender shall be liable to a suit in the highest local court exercising original civil jurisdiction." Upon this provision it is quite clear that a suit for damages for infringement of copyright can be brought only in the court within the local limits of whose jurisdiction the cause of action arises or in the court within whose limits the defendant resides. The respondent has not appeared

in this Court, but in the court below he seems to have contended that the suit was maintainable in Aligarh, because, although the appellant resides at Lahore, the cause of action arose at Aligarh where the respondent resides. He relies upon section 12 of the Copyright Act, which runs as follows:—"All copies of any book wherein there shall be copyright, and of which entry shall have been made in the said Registry book, and which shall have been unlawfully printed without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof." The learned Judge in the court below seems to have accepted the contention of the respondent that it was the duty of the appellant to deliver up all printed copies of the book in his possession to the respondent at Aligarh because the respondent resides at Aligarh or because the demand was made from Aligarh. We are unable to take this view. It seems quite clear that the place of residence of the person who makes the demand for surrender of pirated copies of a book or other work is altogether beside the question. If the respondent was justified in bringing his suit in Aligarh, it must be by reason of the fact that he called upon the appellant to deliver the books to him at Aligarh. But the law does not require a person in possession of pirated copies of a book to deliver them to the proprietor of the copyright at any place selected by him, no matter what the expense of doing so may be. It appears to us that there is no justification for imposing on a person in the position of the appellant a burden which the Legislature has not laid upon him. In this connection it must be remembered that section 12 of the Copyright Act applies as much to the innocent possessor of a pirated copy of a book as to the printer or publisher in possession of a whole edition of pirated copies of a book, and the same duty is cast upon both. We cannot think that it was the intention of the Legislature to require every person in possession of a pirated copy of a book to deliver it up to the proprietor of the copyright in the book at any place selected by the latter.

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In our opinion the cause of action in the present case arose at Lahore, where also the defendant appellant resides, and under section 17 of the Code of Civil Procedure, 1882, which was in force when the suit was brought, the suit should have been instituted in Lahore. We therefore allow this appeal, set aside the decree of the court below, and direct that the plaint be returned to the respondent in order that he may present it to the proper court. The respondent will pay the appellant's costs in this Court. The parties will have their own costs in the court below.

*Appeal allowed.*

*Before Mr. Justice Tudball and Mr. Justice Chamer.*

MUNNA LAL AND ANOTHER (DEFENDANTS) v. HAJIRA JAN (PLAINTIFF) AND ZOBALDA JAN (DEFENDANT).\*

*Pre-emption—Muhammadan law—Shafi-i-sharik—Shafi-i-khalit—Shafi-i-jar—Effect of perfect partition.*

When a mahal has been perfectly partitioned, no right of pre-emption under the Muhammadan law subsists in favour of the owner of one of the new mahals in respect of the other new mahal or any portion of it on the ground of vicinage alone. *Mahadeo Singh v. Mussamat Zeenut-un-nissa* (1), *Sheikh Mahomed Hossein v. Shaw Mohsin Ali* (2) and *Abdul Rahim Khan v. Kharag Singh* (3) referred to. Nor will the fact that a village chaupal has remained undivided give the owner of either of the new mahals a right of pre-emption against the owner of the other as a *shafi-i-khalit*. *Rahtab Singh v. Tahal Misser* (4) and *Shaikh Karim Buksh v. Kamr-ud-deen Ahmad* (5) distinguished. *Abdul Rahim Khan v. Kharag Singh* (3) and *Lalla Pariag Dutt v. Shaikh Bundeoh Hossein* (6) referred to.

But a right of pre-emption as *shafi-i-sharik* may subsist in relation to villages in large estates equally with houses, gardens and small plots of ground. *Sheikh Mahomed Hossein v. Shaw Mohsin Ali* (2) and *Shaikh Karim Buksh v. Kamr-ud-deen Ahmad* (5) referred to.

THE facts of this case are fully stated in the judgement of the Court.

The Hon'ble Pandit *Moti Lal Nehru*, Maulvi *Ghulam Mujtaba* and Dr. *Satish Chandra Banerji*, for the appellants.

The Hon'ble Pandit *Sundar Lal* and the Hon'ble Nawab *Muhammad Abdul Mujid*, for the respondents.

\* First Appeal No. 193 of 1908, from a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 21st of April, 1908.

(1) (1869) 11 W. R., C. R., 169.

(2) (1870) 6 B. L. R., 41.

(3) (1898) L. L. R., 15 ALL., 104.

(4) (1838) 10 W. R., C. R., 314.

(5) (1874) 6 N-W. P., H. C. Rep., 377.

(6) (1871) 15 W. R., C. R., 226.