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Nor is it necessary for us to determine whether article 116 or article 120 of the schedule to the Indian Limitation Act governs this case. If the correct view be that an agreement to refer a matter to arbitration is in effect a contract to do whatever the arbitrator shall direct, it may be that the suit before us is a suit for compensation for breach of contract, and is governed by article 116 because based upon a registered instrument. Otherwise, it is a suit of a nature for which provision is not elsewhere made and must be referred to the provisions of article 120. In either case the period of limitation is the same, and the suit is within time.

We accordingly set aside the decrees of both the courts below, and give the plaintiff a decree for a further sum of Rs. 543-10-0 in addition to the sum of Rs. 125-8-0 awarded by the first court. The plaintiff will get his costs in this court. In the lower appellate court the defendants respondents should bear the costs of their cross-objections which were dismissed ; otherwise the parties will pay and receive costs in both the courts below in proportion to failure and success. The decree will carry interest at 6 per cent. per annum from the date of the first court's decision as directed in the decree of the said court.

Appeal allowed.

Before Mr. Justice Tudball and Mr. Justice Piggott.

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July, 29.

SALIG RAM AND ANOTHER (PLAINTIFFS) *v.* CHAHA MAL (DEFENDANT).*

Act No. IX of 1872 (*Indian Contract Act*), *section* 212—*Principal and agent—Suit for compensation for loss caused by negligence of agent—Jurisdiction—Civil Procedure Code* (1908), *section* 20(*c*).

The plaintiffs who were grain-dealers, ordered the defendant, who was a commission agent at Karachi, to purchase some grain for them. The latter did so, and the plaintiffs sent him some money on account. In accordance with the direction of the plaintiffs the railway receipt for the goods purchased was sent by value payable post. By some mischance it did not arrive. The defendant instructed the railway authorities not to deliver the goods till the balance due to him was paid. The balance was paid by the plaintiffs to the defendant's agent at Delhi. The Railway officials at Hathras refused to deliver the goods without the defendant's consent and delay occurred. In the meantime the price of the particular kind of grain fell and the speculation resulted in a loss to the

* First Appeal No. 7 of 1911 from an order of H. M. Smith, Additional Judge of Aligarh, dated the 23rd of September, 1910.

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plaintiffs. *Held*, on suit by the plaintiffs for compensation instituted at Hathras, that the case was for compensation under section 212 of the Contract Act in respect of the direct consequences of the defendant's neglect and misconduct, and that the cause of action arose at Karachi and the suit therefore did not lie in the court at Hathras.

THE facts of this case were as follows:—

The plaintiffs, who were grain dealers at Hathras, on the 30th December, 1910, telegraphed to the defendant, who was a commission agent at Karachi, ordering two wagon loads of *juar* to be sent at once to Hathras. They sent 600 rupees by telegram and another 600 rupees by means of a hundi. The *juar* was despatched on the 2nd of January, 1911, and reached Hathras on the 12th of January. The railway receipt was, on the plaintiff's instructions, sent value payable for the balance due to the defendant, but for some reason it was not delivered to the plaintiff's and, owing to instructions given by the defendant to the railway authorities, the grain was not delivered to the plaintiffs until the 8th of February, 1911. Meanwhile the price of juar had fallen and the speculation resulted in a loss. The plaintiffs sued for compensation due on account of the alleged negligence of the defendant, and instituted the suit at Hathras. The court of first instance (additional Munsif of Hathras) decreed the claim in part. On appeal by the defendant the additional Judge of Aligarh held that the court at Hathras had no jurisdiction and ordered the plaint to be returned for presentation to the proper court. Against this order the plaintiffs appealed to the High Court.

Mr. *A. H. C. Hamilton*, for the appellants.

Munshi *Girdhari Lal Agarwala*, for the respondent.

TUDBALL and PIGGOTT JJ.—The plaintiffs appellants are residents of Hathras in the Aligarh district where they deal in grain. The defendant is a commission agent doing business at Karachi. The former brought the present suit in the court of the Munsif at Hathras (it was subsequently transferred to the court of the Additional Munsif of Aligarh) on the following allegation of fact:—In the end of December, 1910, grain being very dear at Hathras, they inquired by telegram from the defendant the price at which *juar* was selling at Karachi. The defendant wired the rate on the 27th

of December, 1910. On the 30th, December, 1910, they wired to him an order to purchase two waggon loads of *juar* at once and to despatch the same by rail to Hathras. They wired to him on the same day Rs. 600, and also sent him a *hundi* for Rs. 600. On the same date the defendant wired to say that he had purchased 500 maunds of *juar*. On the 2nd of January, 1911, the defendant wired to say that the goods had been despatched. They actually arrived at Hathras on the 12th of January. After receipt of the telegram of the 2nd of January the plaintiffs wrote to the defendant telling him to send the railway receipt and invoice to them by value payable post for the amount which might still be due to him. He, however, failed to send the railway receipt, but on the 16th of January he sent a post-card stating that he had sent it V. P. P. for Rs. 310-7-0, and that they should pay this amount and take the receipt. No receipt arrived. (Here we may note that it had been duly sent V. P. P., but owing to some error either in the address or on the part of the post office had not been delivered.) Correspondence followed. The defendant ordered the railway authorities not to deliver the goods. (He had not then received payment of the balance due.) On the 25th of January the plaintiffs paid the amount to the defendant by handing it over to an agent of his at Delhi. The Railway officials at Hathras refused to deliver without the defendant's consent and further delay occurred and the goods were not delivered until February 8th. In the meantime the price of the grain at Hathras fell and the speculation resulted in a loss to the plaintiffs. This loss they ascribe to defendant's negligence and misconduct in (1) not sending the railway receipt as ordered, (2) in ordering the railway authorities at Karachi not to deliver the goods, (3) in still delaying to order the delivery after the payment made on the 25th of January to his agent at Delhi.

Among other defences with which we have no concern, the defendant pleaded that the court at Aligarh had no jurisdiction to try the suit. The first court held that it had and partly decreed the claim. The lower appellate court held that the courts in Hathras had no jurisdiction and ordered the plaint to be

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returned for presentation in the proper court. Hence the present appeal.

The sole question for decision is, whether the cause of action in whole or in part arose at Hathras, *vide* section 22(*c*) of the Code of Civil Procedure, which applies to the facts of the present case. The case is clearly one for compensation under section 212 of the Contract Act in respect of the direct consequences of the defendants' neglect and misconduct as alleged. The latter was the appellants' agent, and it was his duty to purchase the grain at Karachi, to place it on the railway at Karachi, and despatch it to the plaintiff's address, and he was then directed to post the railway receipt and send it V. P. P. to the plaintiffs. When the trouble arose it will be seen from the correspondence detailed in the first court's judgement that he ordered the railway authorities at Karachi not to deliver the goods as he had not received payment. Finally, after the money had been paid on the 25th of January, he was asked by letter to order the said railway authority at Karachi to wire instructions to Hathras to make delivery. In this also he is said to have made delay.

It is thus quite clear that the defendant's neglect or misconduct or both, took place, if at all, at Karachi. In the course of the transaction he had nothing to do outside Karachi. He had not contracted to deliver at Hathras, but merely to place the goods on the rails at Karachi and to post the railway receipt there also. We fail to see that the cause of action, i.e. the defendant's alleged neglect or misconduct which resulted in loss, occurred anywhere else but at Karachi. It is urged that the resultant loss or damage occurred at Hathras, and that the negligence and misconduct plus the resultant loss constitute the whole cause of action, and that, therefore, the cause of action partly arose in Hathras.

It is quite clear that under section 17 (*a*), read with explanation III, of Act XIV of 1882, the present suit would not have been within the jurisdiction of the Hathras court. The contract was made at Karachi, where the plaintiff's offer was accepted. The performance of the contract had to be completed at Karachi and the money due was payable at Karachi. The defendant contracted to act as the plaintiff's agent at Karachi for the purpose

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of purchasing and despatching the goods and to do certain acts there also. His negligence or misconduct, if any, occurred there.

The language of the section has been altered in the present Act in that in place of the words "The cause of action arises" and Explanation III of section 17 the words "The cause of action in whole or in part arises" have been substituted. This has not in our opinion altered the law as to what is the cause of action in suits arising out of contract. Explanation III of section 17, Act XIV of 1882, though it does not appear in the present Act, is a correct statement of what the law still is and shows clearly the true meaning of the words "cause of action" in the case of suits arising out of contracts.

In our opinion, therefore, the cause of action in the present suit arose wholly at Karachi and the lower appellate court's order was sound. We therefore dismiss the appeal with costs.

Appeal dismissed.

Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.

MUHAMMAD NAZIR KHAN (PLAINTIFF) v. MAKHDUM BAKHSH AND ANOTHER (DEFENDANTS.)*

1911 *July* 31.

Pre-emption—Muhammadan law—Talab-i-mawasibat.

Where a person immediately on hearing of the sale of a house exclaimed "*mera hak shafa hai*" and without any delay took the price and brought it to the vendee and claimed the house, *held* that the expressions used by him coupled with the circumstances constituted a sufficient first demand. *Muhammad Abdul Rahman Khan* v. *Muhammad Khan* (1) distinguished.

THIS was an appeal under section 10 of the Letters Patent from a judgement of KARAMAT HUSAIN, J. The facts of the case are fully stated in the judgement under appeal, which was as follows:—

"This was a suit for pre-emption on the basis of the Hanafi Law and the question to be decided is whether the expressions used by the pre-emptor in making the *talab-i-mawasibat* do or do not amount to a claim for pre-emption. The first court came to the conclusion that they did not. The lower appellate court came to the conlusion that they did and decreed the suit. The defendant comes here in second appeal and his learned counsel contends that the expressions used by the pre-emptor are not sufficient to constitute the first demand. The lower appellate court in its judgement remarks as follows: 'In the present case the words used were *mera shafa* repeated twice. The plaintiff

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Appeal No. 47 of 1911 under section 10 of the Letters Patent.

(1) (1903) 8 A. L. J. 270.