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large landed properties pre-emption on the ground of vicinage was never allowed. On these findings the appeal must fail. We may note that we should find it very difficult indeed to agree with the court below on the evidence which it accepted of the performance of the two demands according to the Muhammadan law. If it were necessary for us to come to a finding on that point that finding would be in favour of the opposite party.

The appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

ABDUR RASHID (PLAINTIFF) v. THE SIZING MATERIALS COMPANY,
LIMITED (DEFENDANT).*

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April, 9.

Civil Procedure Code (1908), section 20 (a)—Cause of action—Place of suing—Contract for supply of goods—Contract made in Bombay—Delivery and payment to be made at Cawnpore—Suit for refund of price on account of short delivery.

Plaintiff, who carried on business in Cawnpore, went to Bombay and purchased certain goods from the defendant, and it was agreed between the parties that the goods were to be sent to Cawnpore at the plaintiff's expense consigned to a Bank there, and that the plaintiff was to pay their price to the Bank and take delivery of the goods. The plaintiff alleged that he paid and took delivery according to his agreement; but, when he came to open the parcel in which the goods had been sent, some of the goods shown in the invoice were not to be found. He accordingly sued the defendant for a refund of the price of the goods which he had not received.

Held that the suit was properly instituted at Cawnpore, where the goods were to be delivered and payment was to be paid.

THE facts of this case were briefly as follows :—

The plaintiff who was a merchant at Cawnpore went to the defendants who carried on business at Bombay, paid them Rs. 300 in advance and ordered some chemical goods. It was agreed between the parties that the defendants would send the invoices and the Railway receipts and the above goods to the plaintiff through the Punjab National Bank, Limited, Cawnpore, from where the plaintiff would, after depositing the price of the goods, take the invoices and the Railway receipts. The

*Civil Revision No. 57 of 1919.

defendants sent the invoices to the plaintiff and informed him to deposit the money in the Bank at Cawnpore. The plaintiff deposited the money and got the original invoices and the Railway receipts therefrom. On comparison the plaintiff found a shortage in the goods and claimed a refund of the excess price. The defence was that no cause of action arose to the plaintiff at Cawnpore. The court below held that it had no jurisdiction to try the suit and returned the plaint for presentation to the proper court.

Munshi *Jang Bahadur Lal*, (with him *Munshi Shiva Prasad Sinha*), for the applicant, submitted that the cause of action arose at Cawnpore for two reasons, first, the goods were to be delivered at Cawnpore and it was there that the shortage was discovered and the contract was found to have been broken. Under the law a suit for the performance of a contract should be brought where the contract was to be performed. Secondly, the money was to be paid at Cawnpore. He relied upon *Llewellyn v. Chunni Lal* (1), *Hari Mohun Mullick v. Goburdhun Dass* (2), *James Hills v. S. G. Clark* (3). He further submitted that the money was to be paid to the Punjab National Bank who were the defendant's agents and not the plaintiff's. He also relied on *Sheo Charan Lal v. Taj Bhai Ali Bhai and Sons* (4).

Dr. *Kailas Nath Katju*, for the opposite party, submitted that the cause of action arose at Bombay and the Cawnpore court had no jurisdiction. The defendants were to get the money at Bombay free of any charge. The defendants having made over goods at Bombay to the Railway Company their responsibility ceased. He relied upon *Salig Ram v. Chaha Mal* (5). The offer and acceptance both having taken place at Bombay the contract was complete there and so the Bombay Court alone had jurisdiction; *Sitaram Marwari v. Thompson* (5).

BANERJI, J.:—The plaintiff in this case is a dealer in chemicals and scientific instruments at Cawnpore. He went to Bombay and ordered goods to be sent to him by the defendant. He alleges that he made an advance of Rs. 300. The invoice of the goods

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(1) (1892) I.L.R., 4 All., 423.

(4) (1917) I.L.R., 39 All., 368.

(2) (1878) 8 O.L.R., 459.

(5) (1911) I.L.R., 84 All., 49.

(3) (1874) 14 B.L.R., 367.

(6) (1905) I.L.R., 32 Cal., 884.

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and the Railway receipt were to be sent by the defendant to the Punjab National Bank at Cawnpore and the plaintiff was to pay the Bank and take delivery. These facts are not disputed. The defendant sent three invoices to the Bank and duplicates to the plaintiff. The plaintiff took delivery, but he says that all the goods mentioned in the invoices were not in the parcel which contained the goods. The plaintiff thereupon asked the defendant for a refund of the price of such of the articles as he states had not been supplied. There was some correspondence between the parties. The defendant offered to make some payment, but as nothing was done the present suit was instituted for the price of the articles which, according to the plaintiff, had not been supplied. The court below has returned the plaint, holding that it had no jurisdiction to entertain it, and that the plaintiff's cause of action accrued in Bombay and he should have brought the suit in the court in Bombay. The reason which the learned Judge of the Small Cause Court has assigned for holding that opinion does not commend itself to me. It is true that the charges were to be paid by the plaintiff for the despatch of the goods to Cawnpore, but the goods were agreed to be delivered to him at Cawnpore, upon payment of the price to the Punjab National Bank at Cawnpore. The plaintiff could not get delivery unless he made that payment. As payment had to be made at Cawnpore, delivery of the goods was to be obtained at Cawnpore, and as all the goods, according to the plaintiff, were not delivered at Cawnpore, his cause of action for the present suit accrued within the jurisdiction of the Cawnpore Court. The court below should, in my opinion, have entertained the suit and tried it on the merits. I accordingly allow the application, set aside the order of the court below and remand the case to that court with directions to re-admit it on its list of pending cases and dispose of it according to law. Costs of this application will be costs in the cause.

Application allowed and cause remanded.