

thought, for they made it the ground of their 8th plea in the memorandum of appeal. I therefore do not think that the order passed on the execution side in appeal by the Judge had any effect to bar the learned Chief Justice and myself from hearing the special appeal, nor am I of opinion that our judgment thereon is open to the objections urged in the petition for review. I would dismiss the application with costs; and in this order the Chief Justice concurs.

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ALI  
v.  
DEBI DIN  
RAI

*Application retested*

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## APPELLATE CIVIL.

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May 16.

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*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

LEEWHELLIN (DEFENDANT) v. CHUNNI LAL AND ANOTHER (PLAINTIFFS)\*

*Contract for sale and delivery of goods at fixed price—Suit for price—Cause of action—Place of suing—Act X of 1877 (Civil Procedure Code), s. 17 (a)—Jurisdiction.*

C and L entered into an agreement at a place in the Saran district, in which the latter resided and carried on business, whereby C promised to sell and deliver to L at a place in the Saran district certain goods, and L promised to pay for such goods on delivery "by approved draft on Calcutta or Cawnpore (where C carried on business) payable thirty days after the receipt of the goods or by Government currency notes." C delivered the goods according to his promise, but L did not pay for the same, and C therefore sued L for the price of the goods, suing him at Cawnpore.

Held that the "cause of action," within the meaning of s. 17 of the Civil Procedure Code, was L's breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore and the cause of action therefore arose there; and that therefore the suit had been properly instituted there.

THE plaintiffs in this suit, who carried on business at Cawnpore under the style of Bihari Lal, stated in their plaint that on the 22nd November, 1877, at Sonepur fair, they sold to the defendant 500 maunds of indigo-seed at the rate of Rs. 9 a maund, agreeing to deliver the same on the 15th February, 1878, and to pay commission at the rate of Rs. 5 per cent; that they delivered the indigo-seed to the defendant on the stipulated date; that the defendant promised to give them a bill of exchange for Rs. 4,275, the price of the seed, after deducting Rs. 225, his commission, on his Cawnpore or Calcutta firm, payable to the plaintiffs' firm at Cawnpore,

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\* First Appeal, No. 85 of 1881, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 11th May, 1881.

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thirty days after the delivery of the seed; that the defendant did not send the bill of exchange for the price of the seed; and that the price of the seed became payable on the 17th March, 1878, at Cawnpore, and the cause of action arose on that date at Cawnpore. They accordingly claimed to recover the price of the seed and interest. The suit was instituted in the Court of the Subordinate Judge of Cawnpore. The defendant set up as a defence to the suit, *inter alia*, that as the sale of the indigo-seed took place at Sonepur, in the district of Saran, and he was dwelling and carrying on business at Ramgola, in the same district, and had not made any promise to pay the price of the seed at Cawnpore, the suit was not cognizable in the Court of the Subordinate Judge of Cawnpore. The Subordinate Judge held, as to the question of jurisdiction, that the plaintiffs were at liberty to institute the suit either at Cawnpore or Calcutta, and he therefore had jurisdiction to entertain the suit; and he gave the plaintiffs a decree.

The defendant appealed to the High Court, contending, *inter alia*, that the Subordinate Judge of Cawnpore had no jurisdiction to entertain the suit, as the cause of action had not arisen at Cawnpore, and the defendant did not dwell or carry on business within his jurisdiction.

Mr. *Amir-ud-din*, for the appellant.

☞ Pandit *Nand Lal*, for the respondents.

The judgments of the Court (STRAIGHT, J., and BRODHURST, J.), so far as they related to this contention, were as follows:

STRAIGHT, J.—This is an appeal from a decision of the Subordinate Judge of Cawnpore passed on the 11th May, 1881. The plaintiffs-respondents are merchants and bankers carrying on their business in that city, under the style or firm of Bihari Lal, and the defendant-appellant is the proprietor of an indigo concern at Ramgola in the district of Saran in the Presidency of Bengal. On the 22nd November, 1877, some of the plaintiffs and the defendant appear to have met at Sonepur fair also in the Saran district, and there a contract was entered into, by which the plaintiffs agreed to deliver to the defendant at Satta Ghat on or before the 15th February, 1878, 500 maunds of indigo-seed at Rs. 9 per maund. The

plaintiffs were to allow the defendant a commission of five per cent., and payment was to be made by him by approved draft on Cawnpore or Calcutta, at thirty days date from receipt of goods, or by Government currency notes. The 500 maunds were duly delivered, and this the defendant does not deny, but he neither remitted a draft on Cawnpore or Calcutta, nor currency notes, nor did he pay for the same, though he on more than one occasion promised to do so. The plaintiffs accordingly on the 18th February, 1881, instituted the present suit for the recovery of Rs. 4,275 principal and Rs. 1,492 interest, total Rs. 5,767. The Subordinate Judge decreed the claim in full with costs and future interest, and the defendant now appeals, his first and most substantial plea going to the jurisdiction of the Subordinate Judge of Cawnpore to entertain the suit of the plaintiffs in his Court.

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At the hearing I was strongly disposed to favour this contention, having present to my mind numerous English decisions in which it had been ruled that the expression "cause of action," in connection with the question of jurisdiction, means whole cause of action, that is to say refers not only to the "*locus in quo*" the breach has taken place, but includes the place where the contract itself was entered into. Upon looking into the authorities however and carefully considering the question, I have come to the conclusion my first impression was erroneous, and that the term "cause of action" as used in s. 17 of the Procedure Code comprehends material portion of the cause of action. A contract as we know necessarily involves mutual obligations, the failure to perform each and all of which by the parties interested respectively may create a right to sue. In the present instance for example, the plaintiffs were to deliver the 500 maunds of fresh and clean up-country indigo-seed at Satta Ghat, on or before the 15th February, 1878. If they had failed to make such delivery, the defendant might have sued them in the Court of the District in which Satta Ghat is situate, or in Cawnpore where the plaintiffs carry on their business, for damages for the breach of their contract, or to enforce its specific performance. So if the defendant had refused to accept delivery on the ground of the indigo-seed not being of the quality agreed, the plaintiffs might in their turn have sued him in the same Court for

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damages for such non-acceptance, or to compel him to perform his contract to accept. But as a matter of fact, neither of these causes of action has in itself arisen, because the plaintiffs did deliver the seed as promised, and so wholly discharged their share of the obligation under the contract, and the defendant partially performed his portion by accepting the delivery. In respect of these two matters, therefore, there was no ground for complaint upon either side, and all that remained was for the defendant to make payment in the manner agreed upon, and this he failed to do. Such failure I think must be taken to constitute the immediate and material cause of action, as being the only substantial incident to the contract remaining unperformed. The sole question that remains is, where was payment to be made? Looking to the ordinary course of commercial relations, I think the intention of the parties was that such payment should be made at the plaintiffs' place of business at Cawnpore, and that neither draft nor currency notes having been delivered there, the breach upon which the suit is brought occurred within the jurisdiction of the Subordinate Judge, and he was competent to entertain the claim. In coming to this conclusion I am fortified by two rulings of this Court, one that of a Full Bench—*Prem Shook v. Bheekhoo* (1); and F.A. No. 137 of 1869, *Morgan C. J.*, and *Ross, J.* (2)—also by *Gopikrishna Gossami v. Nilkomul Banerjee* (3), and *Hills v. Clark* (4).

BRODHURST, J.—The appellant's pleas are not, I think, sustainable. Under the provisions of s. 17, Act X of 1877, it was optional with the plaintiffs to institute the suit either in the Court of the Subordinate Judge at Chapra in the district of Saran, or in the Court of the Subordinate Judge of Cawnpore. They might have sued in the Chapra Court because the defendant was at the time residing in that district, and they might have instituted their suit in the Cawnpore Court because the cause of action arose within the jurisdiction of that Court, owing to the defendant's not having paid, on the stipulated date, the amount that he undoubtedly was bound to pay to the plaintiffs at Cawnpore, either by an approved draft on that place or on Calcutta or by means of Government currency notes.

(1) N.W. P. H. C. R., 1868, p. 242

(3) 13 B. L. R. 461

(2) Unreported

(4) 14 B. L. R. 367

Admittedly the principal sum claimed has been due since the 17th March, 1878, or for more than four years, and if, as contended by the defendant-appellant, the plaintiffs were compelled under the law to institute the suit in the Court at Chapra, at a distance of more than three hundred miles from their place of business, a great hardship would under the circumstances have been inflicted upon them.

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*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

NAWAL SINGH (PLAINTIFF) v. BHAGWAN SINGH AND ANOTHER  
(DEFENDANTS.)\*

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May 16.

*Hindu law—Mitakshara—Partition—Right of son born after partition to father's property.*

The property acquired by a Hindu governed by the law of the Mitakshara after a partition has taken place between him and his sons devolves on his death, when he leaves a son born after partition, on such son, to the exclusion of the other sons.

THE plaintiff in this suit, one of the sons of one Chatar Singh, deceased, by his first wife, sued the defendant, the son of Chatar Singh by his second wife, for possession of certain land, claiming by right of inheritance under Hindu law. The defendant set up as a defence to the suit that the land in question had been acquired by his father Chatar Singh after he and his sons by his first wife had partitioned the ancestral property of the family, and before he had married his second wife; and that Chatar Singh had made a verbal gift of the land to him and had placed him in possession. The Court of first instance decided that the family property had not been partitioned, and gave the plaintiff a decree. The lower appellate Court found that a partition of the family property had taken place, and held that the plaintiff had no right to property which his father had acquired after the partition, but that the defendant was entitled to succeed to such property. It accordingly dismissed the plaintiff's suit.

The plaintiff having appealed to the High Court, the Court (STRAIGHT and TYRRELL, J.J.), by an order dated the 28th January, 1882, remanded the case to the lower appellate Court for the trial

\* Second Appeal, No. 701 of 1881, from a decree of Sayyid Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 13th April, 1881, reversing a decree of Maulvi Mubarak-ul-lah Khan, Munsif of Jaisar, dated the 18th December, 1880.