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share of the mortgagors in the mortgaged property. The plaintiff, representing one of the mortgagors, brought the present suit to redeem his share, by paying a proportionate amount of the mortgage-debt; and the lower Courts gave him a decree. In second appeal the mortgagees, defendants, contended that the plaintiff was not entitled, under the circumstances of the case, to redeem a share of the mortgaged property.

Mr. *Conlan*, and Pandits *Ajudhia Nath*, *Bishambhar Nath* and *Nand Lal*, for the appellants.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Babu *Ratan Chand*, for the respondent.

The judgment of the Court (OLDFIELD and BRODHURST, JJ.), after stating the facts, and the contention of the appellants, continued as follows:—

OLDFIELD, J.—This contention is, in our opinion, correct. When the mortgagee has, or if there are more than one, all the mortgagees have, acquired the equity of redemption of a part of the mortgaged property, a mortgagor may redeem a share of the mortgaged property by payment of a proportionate part of the mortgage-debt —*Sobha Shah* v. *Indarjit* (1). But this is not such a case, for only one of several mortgagees has acquired a share of the mortgaged property. The case to which our attention was drawn—*Kuray Mal* v. *Puran Mal* (2)—was one of the former description, and following the ruling of the Privy Council in *Nawab Azimut Ali Khan* v. *Jawahir Singh* (3), it was held that, when the mortgagees bought the share of a mortgagor, one of the mortgagors was entitled to redeem his own share, but not that of another mortgagor against the will of the mortgagees. We reverse the decrees of the lower Courts, and dismiss the suit with costs.

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January 23.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

BISHUNATH (DEFENDANT) *v.* ILAHI BAKHSH (PLAINTIFF.)*

Civil Procedure Code, s. 17—*Contract—Breach—"Cause of action"—Jurisdiction.*

The expression "cause of action," as used in s. 17 of the Civil Procedure Code, does not mean *whole* cause of action, but includes *material part* of the cause of action.

* First Appeal No. 151 of 1882, from an order of A. Sells, Esq., Judge of Cawnpore, dated the 16th August, 1882.

(1) I. L. R., 5 All. 149. (2) I. L. R., 2 All. 565.
(3) 13 Moo. I. A. 404.

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In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action.

Held, therefore, where a contract was made at *C* and broken at *A*, that the Court at *C* had jurisdiction to try the suit for compensation for the breach of such contract.

Llewhellin v. *Chunni Lal* (1) and *Gopikrishnaggassami* v. *Nilkomul Banerjee* (2) followed. *DeSouza* v. *Coles* (3) and *Jumoonah Pershad* v. *Zaibunnissa* (4) dissented from.

THE plaintiff in this case, to whom the defendants had leased the right of cutting timber on a certain estate, sued for damages for the breach of a covenant in the lease, whereby the defendants promised to preserve the timber from injury. It appeared that the estate in question was situated within the local jurisdiction of the Munsif of Akbarpur, Zila Cawnpore; that some of the defendants resided at Akbarpur and some at Cawnpore; and that the lease had been entered into at Cawnpore. The suit was instituted in the Court of the Munsif of Cawnpore, and was subsequently transferred to the Court of the Subordinate Judge of that place. The Subordinate Judge held that the suit should not have been instituted in the Court of the Cawnpore Munsif, but in that of the Akbarpur, as the cause of action had arisen within the local jurisdiction of the latter Court, the breach of the contract upon which the suit was based having taken place within that jurisdiction; and directed that the plaint should be returned to the plaintiff to be presented to the proper Court. The plaintiff appealed to the District Judge of Cawnpore, who held as follows on the question, whether the suit had been properly instituted in the Court of the Cawnpore Munsif:—

"The contract was undoubtedly entered into at Cawnpore, and the breach now complained of must clearly have occurred in the Akbarpur jurisdiction. Of the defendants, some live in Cawnpore and some in Akbarpur. The lower Court has held that the cause of action arose in the jurisdiction of the Court of Akbarpur, and that therefore the suit would not lie in the Court of the City Munsif, where it was actually filed. Undoubtedly the breach of contract occurred in Akbarpur, but the breach of contract was actually only

(1) I. L. R., 4. All. 423.
(2) 13 B. L. R. 461.
(3) 3 Mad. H. C. Rep., 384.
(4) 5 Calc. L. R., 268.

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a portion of the cause of action. There could be no action without the contract, which therefore forms part of the cause of action; and it has been held that the term 'cause of action' comprehends 'material portion of the cause of action'—*Llewhellin* v. *Chunni Lal* (1)—and the ruling is consonant with the view of the law taken by Macpherson in his edition of the Civil Procedure Code, where he says that 'the more convenient and liberal doctrine is that which permits an action to be brought either in the *forum* of the place where the contract was made, or in that where the performance was to have taken place. Either the contract may be considered as affording a cause of action, to enforce performance, or the non-performance as giving cause of action for damages therein incurred.' Under this view I hold that the present suit could have been brought either in the Cawnpore Court or the Akbarpur Court, looking at the cause of action alone." The District Judge accordingly remanded the suit for re-trial.

Bishunath, one of the defendants, appealed to the High Court, contending that no part of the cause of action arose within the jurisdiction of the Munsif of Cawnpore, and he could not therefore entertain the suit.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the appellant.

Shaikh *Maula Bakhsh*, for the respondent.

The Court (STRAIGHT and BRODHURST, JJ.,) delivered the following judgment:—

STRAIGHT J.—It is admitted for the purpose of argument that the contract was made at Cawnpore, and that the breach of it occurred at Akbarpur. The obligation, therefore, under which the appellant was bound to the respondent, was created within the jurisdiction of the Cawnpore Court, while the failure to fulfil it happened outside in another jurisdiction. We have already ruled in *Llewhellin* v. *Chunni Lal* (1) that the expression "cause of action," as used in s. 17 of the Civil Procedure Code, does not mean *whole* cause of action, but includes *material part* of the cause of action. In the present case the right of the respondent to come into Court arises under a contract, whereby his legal *status* in

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

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reference to the appellant, out of which sprung his title to sue, was created. It is impossible therefore to say that the contract itself was not a material portion or part of his cause of action, for without it his right to relief against the appellant would not exist. It must be admitted that the decisions of the several High Courts upon this point have not been uniform, and that *De Souza* v. *Coles* (1) and *Jumoonah Pershad* v. *Zaibunnissa* (2) are authorities against our view. In the former case, however, Holloway, J., seems to have proceeded under a misapprehension of a ruling of the Privy Council in *Luckmee Chund* v. *Zorawur Mull* (3), and his proposition, that "the making of the contract is a matter perfectly indifferent, and is no part of the cause of action," is one we should hesitate to adopt. We think, in accordance with the judgments of Birch and Markby, JJ., in *Gopikrishnagossami* v. *Nilkomul Banerjee* (4), that a suit like the present may be brought either at the place where the contract was made, and the defendant's obligation established, or where performance was to be had and breach took place. The respondent was therefore in his right in going to the Cawnpore Court, and the Judge's decision is correct.

Appeal dismissed.

1883
January 13.

Before Mr. Justice Tyrrell and Mr. Justice Brodhurst.

BATESHAR NATH (DEFENDANT) *v.* FAIZ-UL-HASAN (PLAINTIFF) *

Partition—Objection raising question of title—Determination of question—Appeal—Res judicata—Act XIX of 1873 *(N.-W. P. Land-Revenue Act), ss.* 113, 114.

Where in proceedings for partition under Act XIX of 1873, a question of title to land is raised between the parties to the partition, and there is an adjudication of such question, such adjudication will operate as a bar to a suit between the same parties in the Civil Courts to contest the title to such land, notwithstanding that in some respects such adjudication may have been irregular or defective. *Har Sahai Mal* v. *Maharaj Singh* (5) and S. A. No. 129 of 1881, decided the 27th July 1881 (6), followed.

Held in this case, on consideration of the partition proceedings, that the question of title raised therein had been adjudicated on and therefore the rule mentioned above applied.

* First Appeal No. 90 of 1882, from an order of F. E. Elliot, Esq., Judge of Mainpuri, dated the 6th June, 1882, reversing an order of Babu Anant Ram, Munsif of Mainpuri, dated the 15th February, 1882.

(1) 3 Mad. H. C. Rep., 384.
(2) 5 Calc. L. R., 268.
(3) 8 Moo. I. A., 291.
(4) 13 B. L. R. 461.
(5) I. L. R., 2 All. 294.
(6) Not reported.