

## REVISIONAL CRIMINAL.

*Before Sir Louis Stuart, Knight, Chief Judge.*

RAM DEI (APPLICANT) *v.* JHUNNI LAL  
(OPPOSITE-PARTY).<sup>\*</sup>

1926  
January,  
26.

*Criminal Procedure Code (V of 1898), section 488—Maintenance, suit for—Jurisdiction of courts to maintain the suit.*

Where a husband who had been living from a number of years at Lahore took his wife to her people to Lucknow and left her there declaring that he would support her no longer and the question arose on a suit for maintenance brought by the wife at Lucknow, whether the Lucknow courts had jurisdiction to award her maintenance under section 488 of the Code of Criminal Procedure on a finding that the husband last resided with her in Lucknow, *held*, that mere casual residence in a place for a temporary purpose with no intention of remaining is not "dwelling" and where a party has fixed residence out of the jurisdiction, occasional visits within the jurisdiction will not suffice to confer jurisdiction by reason of residence. The case would be different if the husband had no fixed residence. [I.L.R., 32 All., 203, referred to. I.L.R., 36 Calc., 964 and I.L.R., 45 Bom., 54, distinguished.]

Mr. *G. H. Thomas* and Mr. *Moti Lal*, for the reference.

Mr. *Kashi Prasad*, against the reference.

STUART, C. J. :—Jhunni Lal is employed as a carpenter in the railway workshops in Lahore and has resided in Lahore continuously for 11 years. His brothers reside in Lucknow city. He married a woman called Ram Dei. Her family resides in Lucknow city. About 18 months ago Jhunni Lal brought Ram Dei from Lahore to Lucknow. His stay in Lucknow did not exceed a week. He took Ram Dei to the house of her brothers and left her there. According to her story he left her declaring that he

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would support her no longer, and then returned to Lahore where he has continued to reside. The question raised in this reference is whether the Lucknow courts have jurisdiction to award Ram Dei maintenance under the provisions of section 488 of the Code of Criminal Procedure on a finding that Jhunni Lal last resided with Ram Dei in Lucknow. The Bench of Magistrates considered that there had been no residence within the meaning of the law. I agree with them. The point has not, as far as I know, ever been considered directly, but a similar point was decided in *Flowers v. Flowers* (1). There the decision turned on the meaning of the words "last resided together" used in section 3(3) of Act IV of 1869. A Full Bench of the Allahabad High Court decided: "Mere casual residence in a place for a temporary purpose, with no intention of remaining, is not dwelling, and where a party has a fixed residence out of the jurisdiction, occasional visits within the jurisdiction will not suffice to confer jurisdiction by reason of residence." The case would undoubtedly be different if Jhunni Lal had no fixed residence. The principles then laid down in *Bright v. Bright* (2) and *Murphy v. Murphy* (3) would have application but in the circumstances of the present case I do not consider that it can be said that Jhunni Lal last resided with his wife in Lucknow. He resided with her last in Lahore which is the place where the application for maintenance should be made. I, therefore, uphold the order of the Bench and return the record.

*Order upheld.*

(1) (1910) I.L.R., 32 All., 308.

(2) (1909) I.L.R., 36 Cal., 964.

(3) (1921) I.L.R., 45 Bom., 547.