

1872
 POORNO
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 v.
 HURRYCHURN
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considerable, doubt whether the preliminary conditions were performed, and whether there was any thing more than an attempt by the plaintiff to induce the purchasers to give up their bargain to him; and it would be more satisfactory if the judgment showed that the Deputy Commissioner had carefully considered the evidence. He may have done so, and we must suppose that he has: but his judgment on either issue raises a suspicion that he has not given the question the full consideration it required. As we are of opinion on the other ground that the suit should be dismissed, we think it is not necessary to decide whether the preliminaries were duly performed.

Appeal allowed.

ORIGINAL CIVIL.

Before Mr Justice Macpherson.

MOTHOORMOHUN ROY v. JADOMONEY DOSSEE AND ANOTHER.

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 Dec. 11.

Jurisdiction of High Court—Cause of Action—Promissory Note—Letters Patent, 1865, cl. 12.

See also
 14 B.L.R. 368.
 13 B.L.R. 464.

The High Court has no jurisdiction to entertain a suit brought upon a promissory note made without, but payable within, the local limits of its jurisdiction leave to institute the suit not having been first obtained.

THIS was a suit to recover the principal and interest due on a promissory note executed by the defendants at Shamnugger, and made payable to the plaintiff in Calcutta. Leave to sue had not been obtained before the institution of the suit.

Mr. Branson and Mr, Sutherland for the plaintiff.

Mr. Woodroffe and Mr, Fergusson for the defendants.

Mr. Woodroffe took the preliminary objection that the Court had no jurisdiction.

Mr. Branson.—The defendant's written statement does not raise the question of want of jurisdiction, and it is too late to raise it now. [Mr. Woodroffe.—The plea of want of jurisdic-

tion can be raised at any stage of the proceeding; and if the defendant omits to plead it, the Court will, of its own motion, take cognizance of it. MACPHERSON, J.—If the cause of action arise partly within the jurisdiction, may I not now give the plaintiff leave to sue under cl. 12 of the Letters Patent, 1865? Mr. Woodroffe.—I submit not: leave to sue must be obtained before the institution of the suit—*Shaikh Abdool Hamed v. Promothonauth Bose* (1).] In the case of *DeSouza v. Coles* (2) in which the question of jurisdiction was fully discussed, and the authorities reviewed, Holloway, J., laid down that, there is a competent *forum* wherever a place can be indicated to which the right and its infraction can both be referred, because there is a cause of action and the whole cause of action. The immediate cause of action, and not the cause of that cause of action is what gives jurisdiction. Here the note was payable in Calcutta, and the immediate cause of action, therefore, arose within the jurisdiction. In *Luckmee Chund v. Zorawur Mull* (3), where advances were made in pursuance of a partnership contract, the Privy Council held that the cause of action for the balance of such advances arose at the place where the payment of such balance would have to be made. Where decisions of the Privy Council are in conflict with decisions of the Courts at Westminster, this Court must attach greater weight to the decisions of the former tribunal; and the more so since the common law decisions depend upon the narrow construction of the Country Courts' Acts. The High Court has a more extensive jurisdiction than an English County Court. If the defendants' contention be correct, there would be a class of cases which could not be brought as of right in any Court, a result which could never have been intended by the Legislature. The Full Bench ruling of the Agra High Court in *Prem Shook v. Bheekoo* (4) supports the plaintiff's view.

Mr. Woodroffe.—The case of *DeSouza v. Coles* (2) has been dissented from by Phear, J., in *Harjiban Das v. Bhagwan Das* (5). *Luckmee Chund v. Zorawur Mull* (3) is distinguishable; it was

(1) 1 I. Jur., 218.

(4) 3 Agra H. C. Rep., 242.

(2) 3 Mad. H. C. Rep., 384, at p. 414. (5) 7 B. L. R., 102.

(3) 8 Moo. A., 291.

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a decision upon the Bengal Regulation II of 1803, the language of which differs widely from that of cl. 12 of the Letters Patent. So the case of *Prem Shook v. Bheekoo* (1) was upon the construction of Act VIII of 1859, s. 5. In cl. 12 of the Letters Patent, the words "if the cause of action shall have arisen wholly, or in part," clearly show that the Legislature regarded the cause of action as something divisible; see *Cherry v. Thompson* (2), *Sichel v. Borch* (3), *Issurchunder Sein v. D' Cruz* (4) and *Greeschunder Bonnerjee v. Collins* (5). To the argument founded upon the probable intention of the Legislature, it may be answered that the domicile of the defendant would always give a complete *forum*—*Cherry v. Thompson* (2). The High Court on its original side is only a District Court, having Calcutta for its district: it has no such extensive jurisdiction as is contended for—*The Indian Carrying Company v. McCarthy* (6) and *Sreemutty Lalmoney Dossee v. Juddoonauth Shaw* (7).

MACPHERSON, J., held that the Court had no jurisdiction to entertain the case. The suit was accordingly dismissed, but without costs.

Suit dismissed.

Attorneys for the plaintiff: Messrs *Swinhoe, Law and Co.*

Attorney for the defendants: Mr. *Carruthers.*

(1) *Agra H. C. Rep.*, 242.

(2) *L. R.*, 7 *Q. B.*, 573.

(3) 2 *H. & C.*, 954.

(4) 1 *I. Jur.*, 233.

(5) 2 *Hyde*, 79.

(6) 1 *I. Jur.*, 61.

(7) *Id.*, 319.