

action, that is, the whole cause of action, arose within the jurisdiction of the County Court " and held that it did not, on the ground that though there might have been a breach within the jurisdiction, (as the acceptance of the bill of exchange, on which the action was brought, was general and bound the defendant to pay everywhere) yet the contract was made elsewhere, and therefore the whole cause of action did not accrue within the jurisdiction. See also *Re Walsh and Ionides (a)*.

1863.
Nov. 2 & 9.
O. S. No. 120
of 1863.

I do not see any ground for supposing that the words of our Charter giving jurisdiction in cases in which " the cause of action " has arisen within the local limits of the ordinary original jurisdiction, are used in any different sense, and I come to the conclusion, therefore, that in this case, as the contract was not made in Madras, the Court has not jurisdiction to entertain the suit.

(a) 22, L. J., Q. B., 137. 1, E. & B., 383, S. C.

APPELLATE JURISDICTION (a)

Referred Case No. 12 of 1863.

SAHIB RAUTAN *against* IBRAHIM RAUTAN and another.

The discretionary power of a Judge to detain a defendant in custody otherwise than by committing him to prison in execution of a decree, is confined to the case provided for in Act XXIII of 1861, sec. 8.

CASE referred for the opinion of the High Court by R. B. Swinton, the Judge of the Court of Small Causes at Tanjore. Suit No. 67 of 1862 was brought for the recovery of rupees 32 due under a bond executed by the defendants. The Judge decided in favour of the plaintiff who moved for execution of the decree by issuing a warrant against the persons of the defendants. This was done in the form No. 12 of the forms accompanying the Rules of Practice of the Small Causes Courts. The defendants were accordingly produced before the Court and professed their inability then to pay the amount, but stated that they would do

1863.
November 16.
R. C. No. 12
of 1863.

(a) Present : Scotland, C. J. and Holloway, J.

1863.
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 R. O. No. 12
 of 1863.

so in eight days. They did not apply for their discharge under section 273 of the Civil Procedure Code (*a*). The plaintiff was willing to wait, but requested the Court to keep them in charge of a batta peon until the expiration of the eight days. The Judge made an order in accordance with such request; and now submitted the following questions for the decision of the High Court, first, whether a defendant, being arrested and brought before the Court in execution of a decree, the Court has any power to restrict his liberty otherwise than by ordering him to be imprisoned, and secondly, whether the Court is not bound to release him at once upon the plaintiff failing to take steps to imprison him.

No counsel were instructed.

The Court delivered the following

JUDGMENT :—We are of opinion that the defendants in this case having been arrested and brought before the Court under a warrant in execution of the final decree in the suit, were at liberty to apply for their discharge under section 273 of Act VIII of 1859, and that not having done so, the Judge of the Small Cause Court ought properly to have committed the defendants to prison in execution of the decree, and thereupon, if necessary, fixed the sufficient subsistence money to be paid by the plaintiff. The discretionary power of the Judge to detain a defendant in custody otherwise than by committing him to prison in execution of the decree, is confined to the case provided for by Section 8 of Act XXIII of 1861 (*b*).

(*a*) This section enacts that “any person arrested under a warrant in execution of a decree for money may, on being brought before the Court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found or shall state that, with the exceptions above-mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

(*b*) This section enacts that “when a person arrested under a warrant in execution of a decree for money shall, on being brought before the Court, apply for his discharge on either of the grounds mentioned in Section 273 of Act VIII of 1859, the Court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances