1863. Oct. 28, Nov. 7.

is nothing in the bequest itself to suggest any unequal division ; and as the governors of the two Institutions concur in the application that each should receive a moiety, I do not suppose that there is anything in the circumstances of the two Institutions to render any other than an equal division desirable or proper. The costs of all parties as between solicitor and client will be taxed and paid out of the fund.

NOTE.—As to the jurisdiction over charities possessed by the late Supreme Court (and therefore by the present High Court) see *Attorney General* v. *Brodie*, 4, Moo. I. A. Ca., 190.

ORIGINAL JURISDICTION (*a*)

Original Suit No. 120 *of* 1863.

RÁJENDRA RAU *against* SÁMA RAU and another.

The High Court has no jurisdiction to entertain a suit on an instrument stipulating for the payment of money generally, when the defendant resides beyond the local limits and such instrument was signed by him beyond those limits.

Jurisdiction to entertain a suit on a promissory note is *prima facie* shewn upon a plaint alleging that the note was delivered by the defendant at Madras, and that he thereby promised to pay at Madras.

Remarks on the maxim *debitum et contractus sunt nullius loci*

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THE plaintiff sued for rupees 3,806-2-10, being the balance of principal and interest due on a Telugu instrument, dated the 23rd July 1859, and signed by the defendants, who resided in the district of Coimbatore, in favour of the plaintiff and his late brother Gundu Rau deceased, on account of arrears of rent due for a bungalow at St. Thomas' Mount in the zila' of Chingleput. It appeared that the defendants laid claim to the bungalow and caused it to be sold by auction : the plaintiff and Gundu Rau accordingly sued the defendants and the purchaser in the Court of the Principal Sadr Amin of Chingleput. The Amin decreed for the plaintiffs, declaring them entitled to the bungalow, and on appeal such decree was affirmed. The defendants thereupon signed the instrument in question at Manjákkuppam in the district of Coimbatore, and paid in pursuance thereof three sums of rupees 450, rupees 35 and rupees 45, for which the plaintiff gave credit.

The following is a translation of the instrument :—

"On the 23rd day of the month of July of the year 1859, Chintapanti Sáma Rau and Ráma Rau residing at Man-

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jákkuppam Gudalurn, at present carrying on livelihood by employment and being inhabitants of Chennapattanam (Madras), write and give the bond to these persons,(namely) Chintapanti Rájendra Rau and Gundu Rau, residing at Triplicane of Chennapattanam (Madras). That is to say—

"The garden bungalow and others situated at Parangikundà (St. Thomas' Mount) of the ta'aluk of Sydapet in the zilá of Chingleput. In Original Suit No. 14 of the year 1851 of the Chingleput Principal Sadr Amin's Court and in Appeal Suit No. 94 of the year 1853, it was decided in your favour to the effect that the rent of the aforesaid garden bungalow and others should be paid by the defendants being the parties to the aforesaid suit., Up to the date of filing the aforesaid suit, the rent for ten months is 500 rupees at the rate of (50)fifty rupees per month,and the interest accruing for the same from the day on which the original decree was given by the aforesaid Principal Sadr Amin's Court, up to this day is rupees 370-13-4. The further rent subsequent to the aforesaid sum of rupees 500 decreed in the aforesaid suit from the month of January of the year 1851, when the aforesaid suit was filed, up to the 22nd day of the month of May of the year 1856, when the aforesaid garden bungalow and others were delivered to you by the aforesaid Court is rupees 3,235-5-6. Total amount of rupees 4,106-2-10, is due to you by the three defendants included in the aforesaid suit. Therefore out of the aforesaid amount we Sáma Rau and Ráma Rau have this day paid to you the sum of rupees 450. Deducting the same, the remainder is rupees 3,656 2-10. We bind ourselves to continue to pay the same month by month, either to you or to your order, according to what is particularized hereunder at the rate of (35) thirty-five rupees from the first day of the month of July of the year 1860. In case of our paying (2,000) two thousand rupees for this bond, at the rate of 35 rupees month by month according to what is mentioned above, and the interest at the rate of two annas per hundred rupees per month, then you should give up the remaining rupees 1,656-2-10. If we do not conduct ourselves according to the aforesaid condition, and in case of our making default in respect of any one instalment, then immediately you are at liberty to recover from us without any objection the aforesaid sum of 3,656-2-10, together with

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the interest. While we are making payments in respect of this bond according to what is mentioned above or before the same, if the aforesaid sum of 3, 656-2-10 be recovered by you from George Gilbert Keble Richardson, being the third defendant and a member of the firm of Ashton, Richardson and Co. at Madras, then the rupees received by you from us should be paid back to us together with the interest.

"K. SÁMA RAU.

"K. RÁMA RAU.

"Witnesses to this

"Ráchuru Subba Rau, I know.

"Jagannáthapuram Vaiddulá Sanjvia Rau, I know.

"Triplicane Yajurveda Govindáchárya, I know.

"This was written in the handwriting of Jagannáthapuram Vaiddulá Narasinga Rau."

On the case coming in Chambers before Bittleston, J. for settlement of issues, his Lordship objected that the cause of action had not arisen within the local limits of the original civil jurisdiction of the High Court.

Mr. Branson, attorney for the plaintiff, said that the Chief Justice had recently directed a plaint upon a promissory note made at Jaulnah to be received upon the ground that under that note (as in the present case) the money was payable everywhere.

Bittleston, J. thereupon said, that he would consider the questoin; and on the 9th November his lordship delivered the following

JUDGMENT:—Both defendants are resident in the district of Coimbatore, and the question therefore is, whether the cause of action arose within the local limits of the original civil jurisdiction of this Court? The suit is brought upon a written instrument, alleged in the plaint to have been executed by the defendants in Madras; but the evidence is that the contract was signed at Manjákkuppam in the district of Coimbatore.

Further, it appears that the document was given on account of arrears of rent due for a house at St. Thomas' Mount in the zila' of Chingleput, and in consequence of a decision of the Civil Court of Chingleput in the plaintiff's favour.

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Unless, therefore, it can be said that the cause of action arose in Madras, because the stipulation in the document is for the payment of money generally, no particular place of payment being fixed, and consequently for its payment everywhere, this Court has not jurisdiction to entertain the suit.

I took time to consider this question, because I was informed that the Chief Justice had directed a plaint upon a promissory note made at Jaulnah to be received upon the ground that the money was payable everywhere, but upon reference to the plaint (O. S. No. 261 of 1863) I find it alleged that the promissory note sued upon was delivered by the defendant at Madras, and that the defendant thereby promised to pay at Madras ; and the Chief Justice intended to decide no more than that jurisdiction was *prima facie* shown upon a plaint so framed. That ruling is in accordance with the opinion which I expressed in *Winter* v. *Round*(*a*), and does not affect the present question.

But the same question was raised in certain proceedings on the Appellate Side of this Court under date 25th November 1862, and though the matter was disposed of upon a reference without any argument, it is proper that I should notice the decision then pronounced. That was an application by the Civil Judge of Bellary calling upon the High Court to enforce execution of a judgment of the Bellary Court within the territory of Mysore—which judgment the Mysore Court had refused to execute on the ground that it had been passed without jurisdiction—and upon that point the answer of the High Court to the Civil Judge was conveyed in these terms. "The objection taken to the jurisdiction of the Bellary Court now appears to be well founded ; for the bond was executed and the defendant resides in the Mysore territory, and the money is by the terms of the bond made payable generally, without any stipulation as to place of payment."

To have ruled otherwise would have been to affirm the proposition that upon all instruments for the payment of money, in which there is no stipulation for payment at any particular place, the suit may be brought anywhere ; but the

(*a*) Supra, p. 202.

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Court thought that, though money payable under such an instrument is payable everywhere, the jurisdiction to entertain a suit thereon does not arise everywhere.

Consistently with this ruling I cannot hold that this Court has jurisdiction in the present case; and the ruling itself seems to me to be quite in accordance with the English authorities on the same subject. The maxim of the common law *debitum et contractus sunt nullius loci* was at a very early period restrained by Statute (6 R., 2., c. 2) with the view of requiring that debt, account and other such actions should be brought in the country where the contract was made, and though that Statute failed in accomplishing the object, it led to the adoption by the Courts of the practice of changing the venue upon an affidavit that the cause of action arose in another county than that in which the venue was laid and not elsewhere. See the notes to *Peacock* v *Bell*(*a*). So as regards actions in inferior Courts it has always been held that the cause of action, that is, the whole cause of action, must appear to have arisen within the local limits of the Court's jurisdiction, and in *Comyn's Digest*, Title Courts (P. 9) many cases will be found illustrating the sense in which the Courts have employed the expression that the cause of action must appear to have arisen within the jurisdiction. In *Rex* v. *Danser*(*b*) the question was whether the cause of action on a promissory note arose within the jurisdiction of an inferior Court, the note having been signed and the consideration having been given out of the jurisdiction, and the Court held that it did not; but the money was payable generally upon that instrument, and if that circumstance would have justified the Court in saying that the cause of action arose wherever the money was payable, the decision should have been the other way.

In the 60th section of the English County Court, Act (9 & 10 Vict., c. 95) the very same words are used as in the 12th sec. of the High Court Charter and in Sec. 5 of the Civil Procedure Code; and the decisions upon that section confirm the view which I have expressed.

In *Wilde* v. *Sheridan*(*c*) Coleridge, J. said, "the question upon 9 & 10 Vict., c. 95, sec.60, is whether the cause of

(*a*) 1 Wms. Saund., 74. (*b*) 6 T. R., 242.

(*c*) 21 L. J., Q. B., 260. 1 Bail, C. C., 56, S. C.

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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*).

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.

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

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

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