

ORIGINAL JURISDICTION (a)

*Original Suit No. 229 of 1865.*CHINNAMMÁL *against* TULUKANNATAMMÁL and others.

A trader in the Mofussil habitually sent grain to Madras for sale by a General Agent for the sale of goods sent to him by different persons. On some occasions the trader himself accompanied the loaded bandies. Since his death the 1st defendant his widow, carried on his business. The grain so sent for sale was never stored, but remained in the bandies until sold by the Agent, who acted himself as broker, the purchasers paying his brokerage commission and the consignors of the grain paying nothing.

Held, that the 1st defendant did not "carry on business" within the jurisdiction of the High Court of Madras within the meaning of Sec. 12 of the letters patent.

1866.
January 23.
O. S. No. 229
of 1865.

THIS was a suit brought for an account of undivided family property and payment of a share in the same to the plaintiff.

Mills, for the plaintiff.

O'Sullivan, for the defendant.

The following judgment was delivered by

SCOTLAND, C. J.—This is a suit for an account of property, alleged to belong to the undivided family of which the plaintiff is a member, and the payment to the plaintiff of her share. But the hearing before me was confined to the preliminary question of jurisdiction raised by the 4th issue. None of the immovable property claimed in the suit is within the local limits of the Court's ordinary original jurisdiction, and, at the institution of the suit, all the defendants resided at Kumarapundi, a village 27 miles from Madras. The question is, whether the 1st defendant, at the time of the commencement of the suit, carried on business in Madras within the meaning of Sec. 12 of the letters patent.

(a) Present Scotland, C. J.

The facts I deduce from the evidence are :—That Chinnaiya Kaniappa deceased, the husband of the first defendant, resided and kept a cloth and provision shop at Kumarpundi, and that from his death in October 1864, the 1st defendant has continued the business of the shop. That Chinnaiya Kaniappa for several years before his death used frequently in each year to send bandy-loads of paddy for sale to the witness Náráyana Chetti, a mundy shop-keeper and general agent for the sale of paddy and other grain sent to him by different persons, Chinnaiya Kaniappa sometimes accompanying the bandies himself. That since his death the 1st defendant has on two or three occasions sent 8 or 10 bandy-loads of paddy to Náráyana Chetti, the last occasion being 2 or 3 months before the commencement of the suit. That the paddy sent for sale was never stored by Náráyana; but remained in the bandies until sold. That Náráyana effected all sales himself as broker, the purchasers paying his brokerage commission, and that the plaintiff and the other owners of grain paid nothing in respect of the sales except a small contribution in the way of charity in accordance with the usage of the bazaars.

These facts, in my opinion, do not show that the 1st defendant was carrying on business within the ordinary original jurisdiction of the Court at the commencement of the suit. In the first place, it is quite consistent with every fact that the 1st defendant had at the date of the suit given up all intention of again sending paddy to Náráyana for sale, and it might be enough for this reason alone to hold that jurisdiction had not been shown. But taking it to be proved that the 1st defendant had such intention, and was continuing at the time of the institution of the suit to sell paddy in the Madras market through Náráyana, I am of opinion that the Court has no jurisdiction. It could not have been intended (as observed in the judgment of the Court in *Subbaraya Mudali and others v. The Government*, 1 M. H. C. Repts. 286) that the words "carry on business" were to be understood in their most general sense. Giving proper effect to the other words of the provision, the section, I think, requires that the defendant

1866.
January 23.
O. S. No. 229
of 1865.

1866.
January 23.
O. S. No. 229
of 1865.

should, at the time of the commencement of the suit, carry on within the local limits of the Court's jurisdiction some independent regular business in person, as in the case of *Mitchell v. Hender*, (23 L. J. Q. B. 273); or at any office or other fixed place of business (see *Rolfe v. Learmouth*, 14 Q. B. 196) either personally, or by clerks, or servants employed by the defendant and conducting the business under his control and in his individual or partnership name.

Here the defendant had no place of business in Madras and the sales were effected by Náráyana, in his independent trade or business of a general broker, for a commission received from the purchasers. In *Corbett v. The General Steam Navigation Co.* (4 Hurl. and Nor. 482, 28 L. J. Ex. 215) and in *Minor v. The London and N. W. R. Co.* (1 C. B. N. S. 325), it was held that the defendants in those cases did not carry on business within the meaning of the Country Courts Act at a place where they employed general agents to act on their behalf; and in the present case I think Náráyana is the only person who can be said to have carried on business within the meaning of the section in question in respect of the paddy sent to him for sale. For these reasons I am of opinion that the Court has no jurisdiction to entertain the suit. It should be understood that I do not mean by any expression in this judgment to question in the slightest degree the decisions in *Shiel v. The Great Southern Railway Co.*, (referred to as an authority by this Court in *Subbaraya Mudali and others v. The Government*) and in the late case *re Brown v. The London and N. W. Railway Co.*, 32 L. J. Q. B. 318), as to the meaning of the words 'carry on business' in their application to Railway Companies and other corporate bodies having numerous stations and offices throughout the country.

The result of my judgment is that the suit must be dismissed with costs.