

Appellate Jurisdiction. (a)*Referred Case No. 56 of 1870.*

D. KISSUN SING

against

LIEUT. R. L. N. STURT.

The defendant, an Officer in a Regiment stationed at Vellore, was sued for money due for the rent of a house occupied by him in Madras. While absent on leave on medical certificate, he rented the plaintiff's house at Madras, where he was residing at the time of the institution of the suit, but he returned to Vellore previous to the hearing of the suit. The Small Cause Court Judge of Vellore held that the defendant was dwelling at Vellore at the time of the institution of the suit within the meaning of Section 8, Act XI of 1865.

Held, that there was nothing in point of law to prevent the Judge from affirming his jurisdiction.

THIS was a case referred for the opinion of the High Court by H. P. Gordon, the Acting Judge of the Court of Small Causes at Chittoor, in Suit No. 815 of 1870. 1870.
November 25.
It. O. No. 56.
of 1870.

The case stated was as follows:—

This is a suit to recover Rupees 280, house-rent due by defendant for plaintiff's house situated at Madras.

The defendant pleads no jurisdiction, on the ground that at the time of the institution of the suit he was residing at Madras, and had no house at Vellore.

The case came on for hearing before me on the 2nd November 1870, and was adjourned for further hearing pending the decision of the High Court upon the following case:—

The defendant is an officer attached to the 28th Regiment M. N. I., stationed at Vellore. While absent on leave on medical certificate at Madras, he rented the plaintiff's house at that place. At the date of institution of the suit (*viz.*, 22nd August 1870) defendant was living in Madras. Defendant denies and plaintiff cannot assert that while absent on leave at Madras, he (defendant) retained any house, or apartments at Vellore for occupation on his return. This Court has no jurisdiction unless at the time of the commencement of the suit the defendant was *dwelling* at Vellore. (Section 8, Act XI of 1865). Previous to the hearing of the suit, defendant returned to his duty at Vellore. Upon these

(a) Present: Holloway and Innes, JJ.

1870. facts, I am of opinion that the defendant was dwelling at
November 25. Vellore at the time of the institution of the suit, within the
R. O. No. 56 meaning of Section 8, Act XI of 1865. It appears to me
of 1870. that the retention of a house or apartments during absence
is valuable to prove the dwelling place of a party so far only
as it gives rise to a presumption that he intends to return
thither. In this case, the circumstances under which the
defendant was absent of themselves have, in my opinion, that
effect.

The question for the decision of the High Court is

Whether under the foregoing circumstances defendant
can be held to have been dwelling in Vellore at the time of
the commencement of this suit?

No counsel were instructed.

The Court delivered the following

JUDGMENT:—The fact that the absence from Vellore,
the head quarters of the Regiment, of the defendant was
only temporary, and the “animus revertendi” shown by the
actual return thither were very cogent evidence from which
the Judge might conclude that Vellore was the place at
which the defendant dwelt; that he went abroad when he
went from there and returned home when he came back
thither. The question was one entirely of fact, and there
was nothing in point of law to prevent the Judge from
affirming his jurisdiction.
