

APPELLATE JURISDICTION (a)

Regular Appeal No. 29 of 1869.

MR. C. E. MIRUS.....Appellant.  
ATMAKURU LUTCHMANA ROW and 2 others...Respondents.

A Civil Court has jurisdiction to determine a suit where the defendants dwell, or the cause of action arises within the jurisdiction of the Court.

HIS was a Regular Appeal against the decree of O. B. Irvine, the Acting Civil Judge of Bellary, in Original Suit No. 62 of 1867.

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The plaintiff stated that the second defendant and one Plavali Venkatasam, the third defendant's gumastah, were concerned as drawer and acceptor to a local bill for the amount of Rupees 5,000, and the amount fell due on the 19th December 1866, when in satisfaction of this bill the second defendant drew another on the third defendant which was endorsed by the first and accepted by the third defendant. The defendants, who had become responsible for the payment of this amount, had failed to pay it though demanded. Hence this suit.

The first and second defendants put in statements denying their liability.

The Civil Judge dismissed the suit on the following grounds :—

The question now arises, whether this Court has jurisdiction to entertain the suit. The plaintiff's wakil urges that it has, because the defendants all ordinarily reside in Bellary, although at the time the bill was drawn the third defendant was residing at Madras.

(In disposing of this suit, I referred to the cases of Rajendra Row v. Sama Row and another, and DeSouza v. Coles, reported respectively in I, M. H. C. Rep., 436 and III, M. H. C. Rep., 384, which in a manner are applicable to this case.)

I am clearly of opinion that this Court has no jurisdiction. By the terms of Section 3, Act XXIII of 1861, it is provided not only that the defendant must be residing or personally working for gain within the limits of the Court's

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jurisdiction, but also that the *cause of action* must have arisen within such limits.

Now in this suit, the cause of action was the failure of the acceptor (third defendant) to meet the amount of the bill *in Madras*. A reference to the bill shows that the bill was accepted in Madras and was payable at the Bank of Madras in Madras, and further that it was noted for non-payment at Madras.

For this reason, I am of opinion that this Court has no jurisdiction, and accordingly, under Section 3, Act XXIII of 1861, the plaint must be returned.

The plaintiff appealed to the High Court.

*The Advocate General*, for the appellant (the plaintiff.)  
*Parthasardhy Aiyengar*, for *P. Balaji Row*, for the first respondent (the first defendant).

The Court delivered the following

JUDGMENT :—This is an appeal from a dismissal of a suit upon a *Hundi* on the ground of absence of jurisdiction.

The Civil Judge's construction is that the dwelling of the defendants and the arising of the cause of action within the local jurisdiction must cohere to create it. This is erroneous. Section 5 of the Civil Procedure Code shows that either one or the other will give jurisdiction, and accordingly Section 3, Act XXIII of 1861, requires the absence of both to justify the dismissal of the plaint.

As it is alleged, and apparently not disputed, that all the defendants dwell within the jurisdiction, this observation is sufficient to dispose of the case.

We will not, therefore, unnecessarily enter upon the question of localizing the cause of action. What that cause is has exhibited new divergence of opinion in the Courts at Westminster since the impossibility of reconciling their decisions was adverted to in *DeSouza v. Coles* (see and compare *Allhusen v. Malgarejo*, *Law Rep.*, III Q. B., 340 with *Jackson v. Spittal*, *L. R. V. C. P.*, 542).

The decision of the Civil Judge upon this preliminary point must be reversed and the case remanded for decision upon the merits. The costs of this appeal will be provided for in the revised decree.