

1864.
REG.
v.
BA'MA GHO'PA'L.

IV., Ch. 85), I find it expressly enacted in Sec. 59 " that no Governor in Council shall have the power of creating any new office without the previous sanction of the Governor General of India in Council." Reading the Indian Act by the light thrown upon it by the Imperial Statute, I can come to no other conclusion than that the framers of the former Act adapted its provisions in this respect to those of the Act of Parliament, and that, therefore, the consent of the Governor General required by the Act was the *previous* consent ; and that until this consent had been obtained no office of Joint Session Judge could be created. The proceedings of the present trial must, therefore, be annulled, as holden *coram non iudice*. I wish it to be understood that, although it appears to have been sometimes the practice of the late Şadr Court, and also of this court, to entertain and determine questions of jurisdiction which had not been raised by the pleading, I am not prepared to assent to the view that this was a proper course, or that it will be incumbent on this court to follow it on future occasions.*

Conviction and sentence annulled.

Original Civil Jurisdiction.

1863.
Nov. 7.

KA'VASJI FRA'MJI Plaintiff.
WALLACE Defendant.

Jurisdiction—Dwell—Letters Patent of High Court, cl. 12.

The defendant, an officer in the Bombay Staff Corps, holding an appointment in Sind, came to Bombay on leave, and remained about ten days. During his stay in Bombay he was served with a writ of summons on a cause of action arising in Sind.

Held—That the defendant did not " dwell " within the local limits, so as to give the Court jurisdiction under cl. 12 of the Letters Patent.

THIS was an action to recover Rs. 1,643 for the use and occupation of a bungalow at Sakkar, in Upper Sind, from 1855 to 1863. The cause came on this day for settlement of issues, before ARNOULD, J.

Dunbar, for the defendant, objected that the court had no jurisdiction. The cause of action arose in Sind, and the defendant did not " dwell or carry on business or work for gain " within the local limits of the ordinary original jurisdic-

* Act XIV. of 1864 was subsequently passed to give validity to the judicial acts and proceedings of Mr. Gonne between February 25, 1863, and July 11, 1863.

tion. The defendant was a Captain in the Bombay Staff Corps, and for some years had held, and still held, an appointment in the Revenue Survey in Upper Sind. In the month of September last he had to come to Bombay for a few days, and during his stay had been served with the writ.

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Marriott, for the plaintiff, contended the objection was too late, the defendant's solicitor having filed a warrant to defend, signed by him. After that it was too late for the defendant to object to the jurisdiction: if he meant to do so, he should have appeared under protest. The defendant was described in the plaint as residing at Malabar Hill, Bombay, and he was so residing when the plaint was filed.

Dunbar, in reply:—The warrant to defend was necessary to authorise counsel and attorney to appear for the defendant; unless the warrant had been filed they could not appear to take the objection.

A witness was then called, who proved that defendant held an appointment in Sind, and resided at Sakkar, and had been in Bombay for about ten days only, during which time he resided in a friend's house.

PER CURIAM:—The Court has no jurisdiction; a temporary residence of a few days is not a "dwelling" within the meaning of cl. 12 of the Letters Patent. The Court having no jurisdiction, I consider that, having regard to Act VIII. of 1859, the proper course is to return the plaint to the plaintiff. The plaint would not have been received if the facts had been fully stated to the Judge, to whom it was presented: the plaintiff must, therefore, pay the costs incurred by the defendant.

Cause struck out, and plaint returned.

~~and~~

In the goods of BA'LKRISHNA GANPATJI, late of Máhim, in the Island of Bombay, Hindú inhabitant.

1864.
 Jan. 15.

Will of Hindú—Inspection.

The Court will, on the application of one who is next of kin of a deceased Hindú, order a person in possession of an alleged Will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant.

Austey, on the 13th of November 1863, on behalf of one Shrídhár Lád kobá, moved for and obtained an order for a citation, calling on one Rámchandra Kerobá to appear before