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Abdul Rahim a party, and I order him to be made a party as defendant. He must of course be summoned, and have an opportunity of being heard. The summons will issue forthwith, returnable on the first day of August next, on which day the cause may be set down for hearing. A written statement must be filed by Abdul Rahim within four weeks from the service of the summons upon him. I order the costs of all parties who have appeared on this application to be paid out of the estate.

Attorney for the plaintiff: *Shámráv Pándurang.*

Attorney for the Advocate General: *R. V. Hearn*, Government Solicitor.

Attorney for Abdul Rahim: *H. E. Hope.*

Suit No. 347 of 1870.

June 27.

KHIMJI CHATURBHUI *et al.* *Plaintiffs.*

SIR CHARLES FORBES, Baronet, *et al.* ... *Defendants.*

Jurisdiction—Cause of Action—Whole Cause of Action—Carrying on of Business—Letters Patent of High Court, Cl. 12.

The defendants resided and carried on business in London, and employed Sir C. F. and Co. as their commission agents in Bombay. The plaintiffs at Bombay executed a power of attorney in favour of the defendants to enable them to sue in England for certain money due to the plaintiffs, and handed the power of attorney to Sir C. F. and Co., who undertook to forward it to the defendants in London, and that the defendants should endeavour to recover the money so due to the plaintiffs. The defendants recovered the money in England for the plaintiffs, but did not transmit it to the plaintiffs in Bombay.

In a suit brought by the plaintiffs to recover the money so received by the defendants, *it was held* that the cause of action had not arisen wholly in Bombay, and that the High Court, under Cl. 12 of its Letters Patent had no jurisdiction to entertain the claim, the leave of the court to file the suit not having been obtained.

Where an English firm, upon the usual terms, employs a Bombay firm to act as the English firm's commission agents in Bombay, such English firm does not thereby render itself liable to be sued in the High Court of Bombay, as it does not carry on business within the local jurisdiction of such High Court within the meaning of the above clause of the Letters Patent.

THE facts of this case are fully set out in the judgment of the court. It was tried by BAYLEY, J., in a Division Court, on the 8th of June 1871 and subsequent days.

Anstey and Mayhew for the plaintiffs.

Marriott and Jones Q. Pigot for the defendants.

Cur. adv. vult.

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27th June 1871. BAYLEY, J.:—This suit was originally brought against Sir Charles Forbes, Baronet, and George Stewart Forbes, residing in Europe; Henry Forman, residing at Malabar Hill, in Bombay; Andrew John McDonald and Henry Randall Cormack, residing in Rampart Row, within the Fort of Bombay; and who were described in the plaint as carrying on trade and business in Bombay in partnership under the name, style, and firm of Sir Charles Forbes and Co.

The plaint was filed on the 30th of April 1870.

The suit being in effect brought to recover moneys received in England by the firm of Messrs. Forbes, Forbes, and Co., which carried on business in London, and the defendants, Sir Charles Forbes and Co., having filed their written statement on the 1st of July 1870, the plaintiffs became aware that the members of the firm of Forbes, Forbes, and Co., in England, with the exception of Sir Charles Forbes, were distinct from the members of the firm of Sir Charles Forbes and Co., in Bombay; and an order was obtained from myself, then the sitting Judge in chambers, dated the 28th of February 1871 (exhibit No. 5), by which, after hearing Mr. Anstey for the plaintiffs and Mr. Langley for the defendants, leave was given to the plaintiffs to amend the plaint by substituting all the partners in the firm of Messrs. Forbes, Forbes, and Co., of London, as defendants, carrying on business at Bombay by means of the firm of Sir Charles Forbes and Co., as their attorneys or agents, in place of Sir Charles Forbes and Co., the original defendants; and it was ordered that the summons be amended accordingly, that the hearing be postponed until the 28th of April then next, and that the original defendants' costs of, or occasioned by, the amendment be paid by the plaintiffs.

The substituted defendants, Messrs. Forbes, Forbes, and Co., of London, having, on the 24th of April 1871, filed their written statement, the suit came on for hearing before me on

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the 8th of June instant, when, Mr. Anstey and Mr. Mayhew appearing for the plaintiffs, and Mr. Marriott and Mr. Jones Q. Pigot for the defendants, issues were framed—

(1). Whether, having regard to Cl. 12 of the Amended Letters Patent dated the 28th of December 1865, this court has jurisdiction to entertain this suit.

[The other issues (which were raised for the purpose of showing that the defendants were justified in retaining the amount claimed in this suit, by reason of the plaintiffs being indebted in a similar amount to the defendants on certain other transactions), are not material for the purpose of this report.]

It was contended on behalf of Messrs. Forbes, Forbes, and Co., of London, the sole defendants now on the record, and whom I shall hereafter designate as the defendants, that the cause of action arose in London; that the defendants did not dwell, or carry on business, or personally work for gain within the local limits of the ordinary original jurisdiction of the High Court of Bombay; and, consequently, that this court had no jurisdiction to try and determine the suit.

• It being considered difficult, if not impossible, to confine the evidence exclusively to the question of jurisdiction, witnesses were examined on both sides, and the case was fully heard on the merits.

I will consider first the question of jurisdiction.

Cl. 12 of the existing Letters Patent of the 28th of December 1865, by which the original jurisdiction as to suits was given, and upon which this question exclusively turns, is as follows:—“And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High

Court, or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, in which the debt, or damage, or value of property sued for, does not exceed one hundred rupees.”

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This section, it will be noticed, differs from the corresponding section (s. 12) in the original Letters Patent constituting the High Court of Bombay, bearing date the 26th of June 1862, in one important particular, namely, that whereas in the Letters Patent of 1862 jurisdiction was given “if the cause of action shall have arisen” within the local limits of the ordinary original jurisdiction of the said High Court, in the amended Letters Patent of 1865, by which the Letters Patent of 1862 were revoked, jurisdiction is given “if the cause of action shall have arisen, *either wholly, or, in case the leave of the court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court.*”

Consequently, where the leave of the court has not been first obtained, this court has no jurisdiction to try and determine a suit when (the other portions of Cl. 12 being inapplicable) only a part of the cause of action has arisen within the local limits, *i. e.*, within what until recently was called the “Town and Island of Bombay” and the Harbour of Bombay.

The previous leave of the court not having been obtained before the present suit was filed, the first question is whether the cause of action arose wholly within its local limits.

I am of opinion that it did not.

The suit is brought, as appears from the particulars of demand, to recover Rs. 8,667-7-9, made up as follows, namely, Rs. 10,647-9-1, alleged to be a balance of the amount recovered by the defendants, Messrs. Forbes, Forbes, and Co., of London, from Messrs. Shand and Co., after deducting therefrom commission due to the defendants, solicitors’ charges, and postages, &c., less Rs. 1,980-1-4, alleged to be

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the amount due by the plaintiffs to the defendants on their promissory note.

It appeared from the evidence that in April 1867 the plaintiffs consigned through Messrs. W. Sim and Co., of Bombay, to Messrs. Shand and Co., of London and Liverpool, 183 bales of cotton by the "Abel Tasman," and insured such cotton to its full value. The "Abel Tasman" sailed from Bombay on the 5th of April 1867. About four days afterwards she struck on a reef down the coast, and filled and sank on the 12th of that month.

The value of such consignment was recovered by Messrs. Shand and Co. from the underwriters, and Messrs. Shand and Co., being creditors of Messrs. W. Sim and Co. to a large amount, claimed to retain the moneys they had so received, and to set the same off against Messrs. W. Sim and Co.'s debts to themselves.

The plaintiffs, in Bombay, being unable to get the moneys so obtained for them by Shand and Co., and had and received by Shand and Co. in England to the use of the plaintiffs, Khimji Chaturbhuj, one of the plaintiffs, and acting for himself and his copartners, after applying unsuccessfully to other firms in Bombay to take up the matter, came, in the middle of May 1868, to the firm of Sir Charles Forbes and Co. in Bombay, saw Mr. Macdonald, a member of that firm, and begged his firm to undertake to recover the moneys so received by Shand and Co. from the underwriters in respect to the consignment of 183 bales of cotton which had been sunk in the "Abel Tasman" in April 1867.

Mr. Macdonald, on looking over the documents brought by Khimji, considered that his firm, the plaintiffs in this suit, had a good claim on Shand and Co., provided Shand and Co. had no claim against the plaintiffs for previous deficiencies, and he told Khimji Chaturbhuj that if the plaintiffs got a power of attorney prepared, his (Mr. Macdonald's) firm would forward the documents to the defendants in London, and that the defendants would try and recover the money from Shand and Co.

A power of attorney was accordingly executed by the plaintiffs, bearing date the 23rd of May 1868, by which the plaintiffs constituted the defendants, the partners of Forbes, Forbes, and Co., of London, their attorneys and agents for the plaintiffs, and in the plaintiffs' names, or in the name of their firm, or otherwise, but for the plaintiffs' use, to ask, demand, sue for, recover, and receive of and from the firm of Messrs. Shand and Co., of London, merchants, and from the several partners therein, all moneys due to the plaintiffs or to their firm in respect of the surplus proceeds of 183 bales of cotton consigned by the plaintiffs, in or about the month of April 1867, by the ship "Abel Tasman," from Bombay to Liverpool, with power to adjust all accounts between the plaintiffs and Shand and Co. in respect of the said claim, and to compromise and conclude all differences then existing, or which might thereafter arise in the settlement of the said claim, between the plaintiffs and the said firm of Shand and Co. The power contains the usual clauses.

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Mr. Macdonald, in his cross-examination by Mr. Mayhew, said that the defendants (*i. e.*, Forbes, Forbes, and Co.) filed a suit in England against Shand and Co.; that the law proceedings in England took nearly two years; and that the amount recovered by the defendants was the result of a compromise, about £70 being given up.

The amount so recovered, which was not disputed by the plaintiffs at the hearing, is alleged to have been received on the 9th of March 1870, and was thus entered in Schedule No. 1 to the present defendants' written statement, which was filed on the 24th of April 1871.

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March 9—Amount recovered under process at

law from Messrs. Shand & Co.	£1,100	0	0
Less Commission at 2½ per cent..	„	27	10
			0
	£ 1,072	10	0"

which, with some deductions, is the money claimed in the present suit.

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The claim in this suit, therefore, is not a partnership claim, as was the case of *Lutchmee Chund v. Zorawur Mull (a)*, decided by the Lords of the Judicial Committee of the Privy Council upon the extent of the jurisdiction of the Zillá Court at A'grá under the Bengal Reg. XI. of 1803, but for moneys recovered and received by the defendants in England from Shand and Co. in England through the instrumentality of a court of law in England; and if, as alleged by the plaintiffs, the defendants have improperly refused to remit those moneys to Bombay, it is to my mind clear that the "cause of action," assuming the plaintiffs to have one, and which I take to mean the contract and the breach (see *DeSouza v. Coles [b]*), cannot be said, in the language of Cl. 12 of the existing Letters Patent of the High Court, to have arisen wholly within the local limits of the ordinary original jurisdiction of the High Court of Bombay.

Moreover it must always be borne in mind that the High Courts of Judicature in India have no inherent jurisdiction of their own, as have the superior courts of England, but only such jurisdiction as Her Majesty, under the powers conferred upon her by the Imperial Stat. 24 & 25 Vict., c. 104, "an Act for establishing High Courts of Judicature in India," which received the Royal assent on the 6th of August 1861, has been graciously pleased to grant unto them. The words of the Letters Patent are not to be forced or strained for the mere purpose of conferring jurisdiction.

Next, did the defendants in this suit, Messrs. Forbes, Forbes, and Co., of London, "at the time of the commencement of the suit, dwell, or carry on business, or personally work for gain within such limits?"

There was no evidence to show that any of the partners in the defendants' firm, who are all described in the amended plaint as "of London, merchants," ever were in Bombay at all, except Sir Charles Forbes, Baronet, and the only evidence as to his residing in Bombay was given by Mr.

(a) 8 Moo. Ind. App. 291.

(b) 3 Mad. H. C. Rep. 384.

Macdonald, who stated that he believed Sir Charles Forbes had not been in Bombay since 1803. ?

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None of the defendants, therefore, when the plaint in this suit was filed, on the 30th of April 1870, dwelt, or personally worked for gain, within the local limits of this court.

Did they "carry on business" here within the meaning of those words in the existing Letters Patent ?

Mr. Mayhew, on behalf of the plaintiffs, contended that they did; whilst Mr. Marriott, for the defendants, argued strenuously that they did not.

The amended plaint, in obedience to the provisions of Sec. 26 of the Code of Civil Procedure (Act VIII. of 1859), which states what particulars are to be given in the plaint, and which enacts that the plaint shall (*inter alia*) contain the following particulars, namely, "The name, description, and place of abode of the defendant, so far as they can be ascertained," describes the four defendants as "of London, merchants, but carrying on their trade as merchants at Bombay by means of their attorneys or agents, Sir Charles Forbes and Co., an European firm of merchants carrying on trade in Rampart Row, within the Fort of Bombay."

The plaintiffs gave no direct evidence in support of this very material allegation. Mr. Macdonald, who said that he came to Bombay for the first time in November 1865, the month and year in which the present firm of Sir Charles Forbes and Co. was established in Bombay, himself a partner in such firm of Sir Charles Forbes and Co., and who would doubtless know far more about the nature and character of the transactions which the defendants (*i. e.*, Forbes, Forbes, and Co., of London) had in Bombay, stated at the commencement of his examination-in-chief as follows:—

"The firm of Forbes, Forbes, and Co., of London, has no branch in Bombay, and does not carry on business in Bombay. It is quite distinct from the firm of Sir Charles Forbes and Co. All the partners in each firm are different except Sir Charles Forbes, who is a partner in both. None of the members of Forbes, Forbes, and Co. reside in Bombay.

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Sir Charles Forbes resides in the neighbourhood of London, and in the summer he goes to his castle in Aberdeenshire."

In cross-examination he said: "Forbes, Forbes, and Co. do not do any business whatever in Bombay. If they have business to do we act for them. Forbes, Forbes, and Co. are our London correspondents, and we are their Bombay ones." Then, in allusion to certain re-drafts drawn by the defendants upon the plaintiffs in relation to some cotton consignments previously made by the plaintiffs, and which the defendants had in 1866 and 1867 sent out to Bombay to Sir Charles Forbes and Co. for collection, he says: "The business of the original re-drafts was the business of Forbes, Forbes, and Co., done in Bombay through our firm. We only acted as Forbes, Forbes, and Co.'s agents in the matter of the re-drafts." And in re-examination he said: "We charge Forbes, Forbes, and Co. commission for the business we do for them in Bombay—agency commission, just as for other constituents. They charge us commission for the business they transact for us in England. The share of loss sustained in consignments to England is borne by Sir Charles Forbes and Co. as well as Forbes, Forbes, and Co. That is purely a commission business." And in answer to a question put by the court Mr. Macdonald said: "In the matter of the original consignments, as well as in that of recovering the moneys from Shand and Co., our firm acted merely as the agents of Forbes, Forbes, and Co."

This evidence, which was not met, or even attempted to be denied, by any called on behalf of the plaintiffs, shows that the defendants cannot be considered as carrying on business in Bombay in the plain common-sense acceptation of the words. They have no house or establishment, or any clerks or servants, in Bombay. What business they do get done here they transact through their agents, namely, the Bombay firm of Sir Charles Forbes and Co., paying them a commission for that purpose.

Mr. Marriot relied on two cases decided by the High Court of Madras in 1863 and in 1866—*Subbaraya Mudali and*

others v. The Government and Cunliffe (c) and Chinnammál v. Talukannatammál and others (d)—where the court held that the words “carry on business” in Cl. 12 of the Letters Patent of the High Court of Madras, and which are similar to the Letters Patent of the High Court of Bombay, implied a personal and regular attendance to business within the local limits.

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In the first of those cases Sir Colley Scotland, Chief Justice, in delivering the judgment of the court after time taken to consider, said (p. 293): “Now the alternatives on which the jurisdiction of the court is alike made to depend are that the defendant should ‘dwell, or carry on business, or personally work for gain, within the local limits,’ and we think that carrying on business by the defendant personally is what is meant by the clause. Dwelling is a personal act, and the working for gain is expressly required to be personal, and we think a personal attendance to business was intended. It could not have been intended that the carrying on of business was to be taken in its most general sense. If that were so, a man living at Calcutta or Bombay, or any other distant place, and there carrying on in person his business, might, because of his carrying on business here by a *gumástá*, clerk, or agent, or by occasional visits only, be sued in this court at the discretion of the plaintiff, without any regard to the place where the cause of action arose. This evident inconvenience and hardship could not have been intended by the Letters Patent; the intention must have been that the words “carry on business” should be taken with some limits; and we think that when read with the other words of the clause the proper construction is that, to give jurisdiction, there must be the regular carrying on of business by the defendant personally within the local limits. We may refer on this point to the case of *Mitchell v. Bender*, 23 Law Journ. Q. B. 279.”

In the second of those Madras cases, and which was heard before the Chief Justice, Sir Colley Scotland (3 Mad. H. C. Rep. 146), it appeared from the evidence that a trader in the

1871. 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." After his death the first 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 as broker, the purchasers paying his brokerage commission, and the consignors of the grain paying nothing. The Chief Justice held that the first 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.

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In the course of his judgment he said (p. 147): "It could not have been intended (as observed in the judgment of the Court in 1 Madras High Court Reports 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 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. Bender* (23 Law Journ., Q. B. 273), or at an 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 Narayana in his independent trade or business of a general broker, for a commission received from the purchasers. In *Corbett v. The General Steam Navigation Company* (4 Hurl. & Norman 482), and in *Minor v. The London & 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 County Courts Act, at a place where they employed general agents to act on their behalf; and in the present case I think Narayana 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"; and he, accordingly, dismissed it with costs.

The High Court of Bombay in the interval between those two cases, namely, in February 1865, had considered the effect of the words "carry on business" in the jurisdiction clause of the original Letters Patent (dated 26th June 1862) of the Bombay High Court. The question was brought before the Full Court by Mr. Justice Couch, who declined in Chambers to make an order for a commission to examine witnesses until the opinion of a court of two Judges had been obtained on the point of jurisdiction. After lengthened argument, and time taken to consider, Sir Matthew Sausse, C.J., delivered the judgment of the court, and, expressly guarding themselves from expressing any opinion as to whether the first above-cited case in the Madras High Court was good law or not, held that a defendant does not "carry on business" so as to come within Cl. 12 of such Letters Patent, and render himself subject to the ordinary original civil jurisdiction of the High Court of Bombay, though he may have an agent at Bombay for certain purposes connected with his business, where that which is the essential ingredient in his business does not take place within the local limits of the jurisdiction of the court, and, therefore, that the defendant, who was a retail dealer in European goods, and carrying on business at upcountry stations in the Panjáb and Central India, was not within the jurisdiction of the High Court of Bombay on the ground that he had an agent in Bombay for the purpose of purchasing and forwarding goods to be used in his trade: *Fránji Kávasji Marker v. Hormasji Kávasji Marker (e)*.

That case certainly appears to me to be an authority against the present plaintiffs.

The plaintiffs' contention as to the proper construction to be placed upon Cl. 12 of the Letters Patent certainly derives no countenance from the opinion expressed by Her Majesty's Secretary of State for India in the letter dated 14th May 1862 to the Governor General of India in Council accom-

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panying the original Letters Patent of the High Court to be established in Bengal, a letter which was printed in 1862 with the Act of Parliament, and the Letters Patent of the High Court of Bombay in the little book containing the Rules of the Bombay High Court.

In para. 16 of that letter, Sir Charles Wood said: "As it is very desirable that every suit should be instituted in the court of the district in which the property forming the subject of dispute is situated, or in which the cause of action has its origin, or in which the defendant resides or carries on business, the jurisdiction hitherto exercised by the Supreme Court (on the ground of constructive inhabitancy or otherwise) over persons and property beyond the local limits of the Presidency Town, but within the limits of the Presidency or Division subject to the authority of the High Court, has not been vested in the High Court." And at para. 20 he said: "As already observed, the effect of Clause 12 will be to confine the ordinary original civil jurisdiction of the High Court within narrower limits than the civil jurisdiction exercised by the Supreme Court."

This letter, of course, affords no assistance in the interpretation to be put upon Cl. 12 of the Letters Patent, and I merely notice it to show that the framer of the Letters Patent of 1862 stated he had no intention of extending, or of even continuing, the old Supreme Court jurisdiction by way of constructive inhabitancy or residence.

I am of course aware of a decision by the late and the present Chief Justices of Bombay—*Bombay Coast and River Steam Navigation Company v. René Heleux (f)*—where it was held that a person who had sued in a High Court for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjected himself to a cross-suit for damages caused by the same collision, although himself residing out of the jurisdiction of the court; and an order made by Sir Joseph Arnould rejecting under such circumstances a plaint for want of jurisdiction was set aside on appeal.

It had been previously held at Calcutta by Sir Barnes Peacock, C.J., and Morgan, J., in *Feda Hossim v. Syedonissa* (g) that a suit to enforce the specific performance of an agreement for the compromise of a former suit instituted in the late Supreme Court in Calcutta would not lie in the High Court in Calcutta where it appeared that the defendant dwelt out of the jurisdiction.

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It was contended, however, on behalf of the plaintiffs, that the defendants, by accepting this alleged mandate or trust from Bombay, rendered themselves liable to account in Bombay, and thereby gave this court jurisdiction to entertain the present suit.

No doubt the defendants are liable to account to the plaintiffs for the moneys received by them in England. They admit having received the net sum of £1,072 10s. on the 9th of March 1870 from Shand and Co., and, in part payment thereof, they, by their bill of exchange dated 11th March 1870 (exhibit No. 3) drawn by them on their Bombay agents, Sir Charles Forbes and Co., requested the latter to pay on demand to themselves, Sir Charles Forbes and Co., on account of the plaintiffs, Rs. 3,978-4-1, which sum Sir Charles Forbes and Co., the original defendants in this suit, brought into court on the 1st of July 1870, the day they filed their written statement.

That sum was tendered to the plaintiffs before this action was commenced, and, as was stated by their counsel at the hearing, was taken out of court by them on the 5th of June 1871.

The present defendants, Forbes, Forbes, and Co., having claims against the plaintiffs in respect of re-drafts drawn by them against the plaintiffs in respect of consignments of cotton in former years, claim to hold the balance of the said sum of £1,072 10s. in reduction of such claim.

Such re-drafts, however, and the compromise which, after a suit had been filed in the High Court of Bombay in respect thereof, was, on the 29th of April 1867, made between Mr.

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Macdonald, whose firm was acting as agents of the defendants, on the one part, and Khimji Chaturbhuj, who was acting for himself and his copartners, the plaintiffs in this suit, on the other part, had reference to matters which were in no way connected with the moneys received from Shand and Co. sought to be recovered in the present suit. The alleged liability of the defendants in the present suit arises from the implied contract between the parties that the moneys were received by the defendants in England for the use and at the request of the plaintiffs. See *Dhanraj v. Gobindaram (h)*, *coram* Peacock, C.J., Norman and Markby, JJ.—a decision in 1868 upon the words “cause of action” in Cl. 12 of the Amended Letters Patent of the High Court at Calcutta dated 28th December 1865. * *

For these reasons I am of opinion that, having regard to Cl. 12 of the Amended Letters Patent, dated the 28th of December 1865, this court has no jurisdiction to entertain this suit; and I, accordingly, record a finding upon the first issue to that effect and for the defendants.

His Lordship, however, went into the merits of the case, and found all the issues in favour of the defendants.

Decree for the defendants with costs.

Attorney for the plaintiffs: *Shámráv Pándurang.*

Attorneys for the defendants: *Rimington, Hore, & Langley.*

(h) 1 Beng. L. Rep., O. J. 76.