

1872.
July 25.

[ORIGINAL CIVIL JURISDICTION.]

Suit No. 585 of 1871.

SUGANCHAND SHIVDA'S and others *Plaintiffs.*

MULCHAND JOHA'RIMAL *Defendant.*

*Cause of action—Whole cause of action—Hundi—Action against indorser
—Jurisdiction—Letters Patent, High Court, Cl. 12.*

The contract that the indorser of a *hundi* enters into is to pay the amount of the *hundi* to the holder (in case the drawee makes default) in the place where the *hundi* has been indorsed by him and not in the place where it is made payable.

Where, therefore, a *hundi* indorsed and delivered in Ajmere was payable in Bombay where it was dishonoured, *it was held* that the cause of action of the holder against the indorser did not arise wholly in Bombay.

Whether it arose in part in Bombay—*Quære.*

THIS was a suit by the holders against the indorser of a Marwadi *hundi*.

The *hundi* was addressed by Kássidás Vanarsidá (the drawer) at Mandusar to Bháichand Junnkrám (the drawee) at Bombay and stated "Here (at Mandusar) there have been deposited by Vithaldás Manchhárám Rs. 2,500 which have been received. As to the time (for the payment) thereof do you pay the amount to 'Shah' after 45 days from the 6th of Vaisak Sud (26th April 1871). As to the mark appertaining to the same do you debit the amount to my (the drawer's) account."

The *hundi* was sold and indorsed over to Johárimál Gambhirmál, by him it was sent from Kota to the defendant at Ajmere in order that the amount might be recovered. It was there sold and endorsed by the defendant to Popsing Hardevdás, by whom it was sent to the plaintiffs in Bombay for collection. In Bombay it was presented for acceptance and payment, and was dishonoured and due notice was given to the defendant.

The defendant, in his written statement, alleged that he lived and carried on business at Ajmere, and had no place of business and no place of abode within the jurisdiction of the

High Court, and submitted that the cause of action did not arise within the jurisdiction, and that the suit ought to be dismissed with costs. He admitted the endorsement of the *hundi*, but alleged that it was made at Ajmere. He also set up a defence upon the merits.

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The case was set down for argument on the point of jurisdiction before GREEN, J., on the 25th of July 1872, when it was admitted by counsel for the plaintiff, that the indorsement of the *hundi* by the defendant had been made at Ajmere.

Farran (with him *Latham*) in support of the jurisdiction:— I shall contend that in this case the whole cause of action (*i.e.*) the obligation and its breach arose in Bombay, and that therefore the Court has jurisdiction to try the cause and will rely upon the judgment of Holloway J. in the case of *DeSouza v. Coles (a)* and the later English decisions on the meaning of the expression "cause of action."* (GREEN, J.:—How do you say the obligation of the drawer or indorser is to pay in Bombay? Is not the obligation he undertakes an obligation to pay in the place where he draws or indorses?) I submit he is in the position of a surety; he undertakes to place the holder in the same position as he would be in if no default were made. The holder is entitled to be paid in the place upon which the *hundi* is drawn; but if the Court is against me on this point, it is useless for me to argue the other and more important question.

Marriott (with him *Pigot*) *contra*.—The contract that the drawer or indorser of a bill enters into is not to pay money in the place on which the bill is drawn, but only to guarantee its acceptance and payment in that place by the drawee, and in default of such payment, they agree, upon due notice, to reimburse the holder in principal and damages at the place

*NOTE.—The English decisions on this point are conflicting, see *Sichell v. Borch* 2 H. & C. 954; *Allhusen v. Margarep*, L. Rep. 3 2 B. 340; *Jackson v. Spittell* L. Rep. 5 C. P. 542; *Durham v. Spence* L. Rep. 6 Ex 47; and *Cherry v. Thompson* L. Rep. 72 B. 573.

1872. where they respectively entered into the contract: *Potter v. SUGANCHAND BROWN (b); ALLEN v. KEMBLE (c);* Story's Conflict of Laws SHIVADA'S para. 315. v. MULCHAND JOHA'RIMAL. *Farran* in reply.

GREEN, J.—I must hold that the Court in this case has no jurisdiction. The contract that the indorser of a bill enters into is, in case the drawee does not pay, to pay the amount of the bill with interest in the place where he has indorsed the bill. In the present case, the bill, it is admitted, was indorsed by the defendant at Ajmere, and the obligation that the defendant is under is to pay at that place. As the leave of the Court has not been obtained under Clause 12 of the Letters Patent, I have no option but to follow the course adopted in *Framji v. Wallace (d)*, and direct the plaint to be returned to the plaintiff, and the plaintiff must pay the defendant his costs.

Order accordingly.

Attorneys for the plaintiffs—*Dallas and Lynch.*

Attorneys for the defendant—*Rimington, Hore and Langley.*

[APPELLATE CIVIL JURISDICTION.]

July 31.

Miscellaneous Special Appeal No. 11 of 1872.

GANGA'RA'M VELJI *Appellant.*

PARBHU DAYA'RA'M *Respondent.*

Civ. Pro. Code Secs. 205 and 273—Wearing Apparel—Attachment.

Necessary wearing apparel is not liable to attachment under Sec. 205 of the Code of Civil Procedure.

THIS was a miscellaneous special appeal from the decision of W. H. Newham, Judge of the District of Súrat, confirming an order of the Subordinate Judge of Olpár.

A judgment creditor in execution of a decree of the Civil Court attached the necessary wearing apparel of his judgment

(b) 5 East 124. (c) 6 Moore P. C. C. 314. (d) 1 Bom. H. C. Rep. 113.