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his denial on that head, though I cannot accept his explanation that he wrote it out of friendship and to give the plaintiff an opportunity of clearing himself. The most probable view is that he had a double motive—to force the hand of the plaintiff and compel him to vindicate his character by taking legal proceedings against the *Rajya Bhakta*; and in this way to punish the latter journal for its libellous propensities. The device has succeeded, but an unexpected defendant appears on the record.

"For, 'tis the sport, to have the engineer
Hoist with his own petard."

I acquit the defendant, therefore, of moral malice in the publication. The plaintiff has suffered no actual damage. This trial and judgment will remove all suspicions and imputations against his character in the eyes of his friends and of the Parsi community, which may have arisen from reading the article complained of. The plaintiff does not ask for large damages. Having regard to all the circumstances of the case, I think Rs. 200 a fair sum to award. The costs, which I direct the defendants to pay, will render the first defendant more cautious in the future in the language which he may employ with reference to the plaintiff. Decree for plaintiff for Rs. 200 and costs.

Attorneys for the plaintiff—Messrs. *Jefferson, Bhaishankar, Dinsha, and Kanga.*

Attorneys for the defendants:—Messrs. *Ardesir, Hormasji, and Dinsha.*

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Before Mr. Justice Farran.

GOSVAMI SHRI (*Plaintiff*) *v.* SHRI GOVARDHANLALJI (*Defendant*).*
[10th May and 12th June, 1890.]

Jurisdiction—Letters Patent, 1865, *cl.* 12—"*Dwell*"—"*Carry on business*"—"*Personally working for gain.*"

The plaintiff claimed to be the *acharya* or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar in the territories of the Maharana of Oodeypore. In 1876 he was deported from the territories of his Highness, and his son, the defendant, had ever since been in charge of the shrine. The plaintiff alleged that at the time of his deportation he had money and valuables at Nathdwar which he had entrusted to his son, the defendant, for safe custody. He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit.

It appeared that the defendant's permanent residence was at Nathdwar, from which he was absent only when on pilgrimage or on tour. He had in Bombay an establishment called a *pedi* in which a *bhandari* or treasurer, a *munim*, and *mehtas* and servants were regularly employed. Into this *pedi* offerings made to the shrine of Shri Nathji by devotees were paid, as also offerings to another shrine at Nathdwar of which the defendant claimed to be the owner, and to a very small extent offerings to the defendant personally as the owner of such shrines. The defendant had similar establishments in other places in the Bombay Presidency. The offerings collected in them were transmitted to the Bombay *pedi* and dealt with there. The moneys from the Bombay *pedi* were transmitted to Nathdwar sometimes by means of *hundis* drawn at Nathdwar on the Bombay *pedi* and

* Suit No. 234 of 1889.

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honoured by that *pedi*, and sometimes by articles being purchased for the defendant's use by the servants of the *pedi* in Bombay and sent to Nathdwar.

In May, 1888, the defendant agreed to purchase a house in Bombay for Rs. 1,18,500. Earnest-money (Rs. 10,000) was paid out of moneys in the Bombay *pedi*, and the employees of the *pedi* after the purchase lived in the house. Interest was paid on the unpaid purchase-money. In 1889, when the defendant visited Bombay, he lived in this house, but he sold it in the same year shortly before he returned to Nathdwar. The defendant had never been in Bombay until 1889. In that year, in accordance with the practice, he obtained from the British Resident at Meywar, a permit to travel with an armed following to the places mentioned in the permit, one of which was Bombay. The journey was supposed to last for six months. The defendant left Nathdwar in February, [542] 1889, and after various stoppages reached Bombay on the 2nd April, and took up his quarters at the house above-mentioned. The reason assigned for his coming to Bombay was that his devotees had asked him to come. When in Bombay his followers visited him, and he visited their houses on invitation. On these occasions he received offerings, which in the aggregate amounted to about Rs. 75,000. These offerings were personal, and were not paid into the *pedi*.

This suit was filed on the 3rd May, 1889, while the defendant was in Bombay. Early in August he left Bombay and returned to Nathdwar. The plaintiff contended that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865.

Held, that at the date of the institution of the suit the defendant was neither dwelling nor carrying on business, nor personally working for gain, in Bombay, and that the Court had no jurisdiction.

[Affirmed, 18 B. 290; **Confirmed**, 18 B. 294; **Appr.**, 1 L. B. R. 222; **R.**, 1 Ind. Cas. 965=3 S.L.R. 45.]

THE plaintiff claimed to be the *acharya* or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar, in the territories of the Maharana of Oodeypore.

He filed this suit on 2nd May, 1889, in the High Court of Bombay against his son to recover certain property which he alleged to have been entrusted to the care of the defendant. He prayed for discovery and for delivery of his property, or, in default, for Rs. 31,45,171.

The plaint alleged that in 1876 the plaintiff had been forcibly deported from the territories of the Maharana of Oodeypore, and had ever since been prevented from returning there. At the time of his deportation he had at Oodeypore a large amount of treasure in his treasury which was his private property. This private property was entrusted to his son, the defendant, to protect it and to remit it to the plaintiff, but the defendant had never remitted it.

The defendant resided at Nathdwar from the time of the said deposit until shortly before suit. He came to Bombay on a visit on the 2nd April, 1889.

In his written statement the defendant (*inter alia*) stated that he resided at Nathdwar, and was only temporarily in Bombay, and he pleaded that the High Court of Bombay had no jurisdiction to try this suit.

The question of jurisdiction was the only point raised at the hearing.

[543] *Inverarity* and *Anderson*, for plaintiff.—This Court has jurisdiction. The defendant has property in Bombay. He arrived here on the 2nd April, 1889, and left in August, 1889. He also has a firm here. He receives gifts and offerings here. He may be said to "reside" here. He has come to Bombay to extend and confirm his powers as Maharaj, and to receive offerings. He possesses a house here, which was bought

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for him to stay in, when in Bombay. A short residence is enough—*Mahomed Shuffli* v. *Laldin Abdula* (1); *Massey* v. *Burton* (2); *Durby* v. *Palmer* (3); *Dowling* v. *Harman* (3); *Anonymous* (4); *Ciragno* v. *Hassan* (5). The meaning given to the word "residence" varies—*Ex parte Breull; In re Bowie* (6). A person dwells in a place who goes there for definite object, whether the time during which he remains be long or short—*The Queen* v *The Mayor of Exeter; Wescomb's Case*(7); *In re Williams* (8); *Ex parte Pascal; In re Myer* (9). The defendant carries on business here, and while he was here lately he worked for gain. He made money out of his religious office. A clergyman works for gain in the same way. The defendant carries on here the duties and business of a Maharaj. He charged fees for visiting houses. In so doing he worked for gain.

Macpherson (Acting Advocate-General) and *Lang*, for defendant:—This Court has no jurisdiction. Jurisdiction depends on (1) residence, (2) carrying on business, (3) working for gain. Admittedly the defendant does not reside here. We say he does not carry on business here. The mere collecting of interest on investments in Bombay is not carrying on business. Depositing money at interest is not carrying on business—*Nobin Chunder* v. *Buroda Kant Shaha* (10); *Anonymous* (11). The case of *Ex parte Breull; In re Bowie* (6) has been overruled—*Graham* v. *Lewis* (12). Any business done was done for the shrine, not for the defendant **[544]** *Mahomed Shuffli* v. *Laldin Abdula* (1). There is no working for gain. Presents given to him in Bombay were optional. Reference was made to *Ramchandra Sakharam* v. *Keshav Durgaji*(13); *Zalem Tewarree* v. *Gobindqeer Gossain* (14); *Cowasjee Framjee* v. *Wallace* (15); *Rai Narain Dass* v. *T. Newton* (16).

JUDGMENT.

FARRAN, J.—The only question which arises for decision is whether the High Court of Judicature at Bombay has jurisdiction in this case. The defendant is a subject of His Highness the Maharana of Oodeypore. The plaintiff is the father of the defendant, and alleges that he is the *achrya* of the Vaishnav community and Mabaraj Tikait of Shri Nathji, at Nathdwar, in Oodeypore. In 1876 the plaintiff was deported from the territories of His Highness, and the defendant, his son, has since been in charge of the shrine. The present suit is brought by the plaintiff to recover from the defendant the amount and value of money and articles of value which were in a treasury at Nathdwar at the time when the plaintiff was so deported, and which, the plaintiff alleges, were his own private property.

The alleged cause of action, therefore, arose in Oodeypore, but is of a transitory nature. The sum claimed in the plaint is very large, being more than thirty-one *lakhs* of rupees. It is not denied that the permanent place of residence of the defendant is at Nathdwar. The witness Lukhmidas Khimji says that he always resides there, except when absent on pilgrimage or tour. The defendant has in Bombay an establishment called by the witnesses a *pedi*, in which a *bhandari* or treasurer, a *munim*, and *mehtas*

(1) 3 B. 227. (2) 27 L. J. Ex. 101. (3) 6 M. & W. 131.
(4) 8 Taunt 737. (5) 6 Taunt 20. (6) L. R. 16 Ch. D. 484.
(7) L.R. 4 Q.B. 110. (8) L.R. 8 Ch. Ap. 690. (9) L. R. 1 Ch. D. 509.
(10) 19 W. R. C. R. 341. (11) 23 W. R. C. R. 223.
(12) L. R. 20 Q. B. D. 780=L. R. 22 Q. B. D. 1. (13) 6 B. 100.
(14) 1 Ind. Jur. 85. (15) 1 B. H. C. R. 113. (16) 6 N. W.P.R. 43.

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and servants are regularly employed. Into this *pedi*, offerings made to the shrine of Shri Nathji by devotees are paid, as also offerings to another shrine at Nathdwar, of which the defendant claims to be the owner, and to a very small extent offerings to the defendant personally as the owner of such shrines. The defendant has similar establishments in other places in the Bombay Presidency. The offerings collected in those are transmitted to the Bombay *pedi* and dealt with there. The moneys [545] from the Bombay *pedi* are transmitted to Nathdwar, sometimes by means of *hundis* drawn at Nathdwar on the Bombay *pedi*, and honoured by that *pedi*, and sometimes by articles being purchased for the defendant's use by the servants of the *pedi* in Bombay and sent to Nathdwar. The balances not immediately required are deposited with native *savkars*, who allow interest on the sums from time to time in their hands. The sums which come into the Bombay *pedi* from every source for transmission to Nathdwar are considerable. They may be estimated roughly at two *lakhs* of rupees per annum.

On the 7th May, 1888, the defendant, through one Chutturbhuj Morarji, agreed to purchase from Chunda Ramji a house in Bombay near the Cowasji Patel Tank for Rs. 1,18, 500. The earnest-money, Rs. 10,000 was paid out of moneys in the Bombay *pedi*, and the employees of the *pedi* after this purchase lived in the house. Interest was paid on the unpaid purchase-money. The defendant, when he came to Bombay in 1889, also lived in this house, and continued to do so until he left in the same year to return to Nathdwar. Just before he left, Chutturbhuj Morarji agreed to take the house off his hands for Rs. 1,40,000. The balance of the purchase-money was paid out of this sum to Chunda Ramji, and the house was conveyed by him to Chutturbhuj Morarji. Chutturbhuj says that he took over the house for another Maharaj. There is no reason for disbelieving him.

In November, 1886, the defendant was minded to go on a pilgrimage to several places in British India and to visit Bombay *en route*. He obtained the usual documents for that purpose from the Resident at Meywar, and went on the tour, but did not then come to Bombay. He was never in Bombay until he came here in 1889. It is usual and necessary for the defendant, if he wishes to travel with his retinue in British India, to obtain from the British Resident at Meywar a permit to travel, with an armed following, to the places and by the routes mentioned in the permit. An introductory letter to the Government officials in British India is given him by the Resident. On the 4th February, 1889, the defendant obtained such a permit and letter, which allowed him, to travel with his retinue from Nathdwar to Ajmere, [546] Ahmedabad, Kira, Baroda, Broach, Surat, Bombay, Hyderabad (Deccan) Chinapatam, Kathiawar, Junaged, Dwarkanath, Cutch Mandvi and Muttra by road and rail, and back. The journey in the permit was supposed to occupy about six months. The defendant left Nathdwar on the 22nd of February 1889, stopped at Ajmere five days to see his followers and visit Pushgar, at Ahmedabad fifteen days, and a short time at Broach, Bulsar and Mathana, and reached Bombay on the 2nd April. He put up, as before stated, at the house near the Cowasji Patel tank. There is no shrine in Bombay which the defendant would care to visit. The reason assigned for his coming was because his devotees asked him to come, and said that Bombay was worth visiting, and no doubt he had it in mind to stir up and confirm his followers here by showing himself amongst them. When in Bombay he daily

received his followers, and also on invitation visited their houses. Such visits ars called *padhramni*, and are esteemed a great honour. The Maharaj invariably receives an offering in money or payment on the occasions of such visits, but does not appear to bargain for the amount before he goes. On arrival at the house, he pronounces his benediction. He is placed on a *gadi*: the *tilak* mark is made on his forehead; a garland is put on him; lamps are waved about him; and he is worshipped. He then distributes *pan-sopari*, and the ceremonies come to an end. During his stay in Bombay, the defendant paid a very large number of such visits, and received, in offerings made on those occasions, sums aggregating about Rs. 75,000. His expenses in Bombay amounted to about Rs. 45,000. These offerings were strictly personal, and were not paid into the *pedi*.

The defendant left Bombay about the 10th or 11th August, and returned to Nathdwar. The witness Saligram Vias says that the intention of the defendant had been originally to stay a month in Bombay, but that his stay was lengthened, because his wife was unexpectedly confined when here. This is not quite accurate, as the lady was not confined until July, and then it was a surprise to her attendants. It may be taken, I think, that the defendant proposed a minimum stay of a month in Bombay, and that, finding it to his liking, he prolonged it, but that its prolongation to the utmost limits allowed by the permit was caused by the [547] confinement of his wife and the death of the infant. This suit was instituted while the defendant was in Bombay, namely, on the 3rd May. The defendant was arrested on a writ of attachment before judgment on the next day. He was released on the 6th May without giving security.

It is under these circumstances contended for the plaintiff that this Court has jurisdiction to entertain this suit against the defendant, under cl. 12 of the Letters Patent, because at the time of the commencement of the suit defendant (*a*) was dwelling in Bombay; (*b*) was carrying on business in Bombay; (*c*) was personally working for gain in Bombay. The defendant's usual and permanent residence being at Nathdwar and his natural *forum*, to use the expression of James, L. J., being there, the *onus* lies on the plaintiff to show that the defendant is liable to be sued in Bombay. This *onus* the plaintiff will discharge if he establishes that in May, 1889, the defendant was dwelling in Bombay, within the meaning of cl. 12 of the Letters Patent. To "dwell" is to "reside". Except that "dwell" is of Saxon origin, and "reside," is imported into our language from the Latin, there is, as pointed out by the learned Chief Justice in *Mahomed Shuffli* v. *Laidin Abdula* (1) and by Brandth, J., in *Everet* v. *Frere* (2), no distinction between "residing" and "dwelling" used in its ordinary signification. The decisions which have been arrived at in affixing a meaning to the one word would be a safe guide in determining the meaning to be attached to the other. The above quoted cases also show that the Legislature often employs the word residence in different senses, and that whether it is used in a particular section in a narrow or more extended meaning is to be determined according to what the Court believes to have been the intention of the Legislature in framing the provision in which the word occurs. Accordingly in *Ramchandra Sakharam* v. *Keshav Durgaji* (3) we find that an absence of a Marwari for four and a half months in

(1) 3 B. 227. (2) 8 M. 205. (3) 6 B. 100.

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Marwar for the purpose of getting his sisters married was held to be non-residence at Pen, within the meaning of s. 37 of the Code of Civil Procedure (Act X of 1877). The expression there was construed broadly so as not to prevent [548] a creditor from enforcing his claim. In *Mahomed Shuffli* v. *Laldin Abdula* (1), a native of Cabul who had lived in Bombay for four months over his shop, but as to whose future intended movements the Court was not satisfied, was held not to reside in Bombay so as to avoid giving security for costs under s. 380 of the Code; while in *Everet* v. *Frere* (2), the defendant, who stayed a few days in Madras *en route* from Burma to England, and who was not shown to have any permanent residence, was held to reside in Madras, within the meaning of s. 648 of the Code, and his arrest before judgment was ordered there under a warrant from the Small Cause Court at Ootacamund. The word is, in fact, elastic. (See James, L. J., in *Ex parte Breull*; *In re Bowie* (3).)

Clause 12 of the Letters Patent was framed to confer ordinary original jurisdiction on the High Court, and to define the cases in which such jurisdiction is to be exercised. In such an enactment it appears to me that the words should be read in their usual and ordinary acceptation, neither strained to amplify the jurisdiction of the Court, nor narrowed to minimise it. The natural and ordinary meaning should be placed on the words—*Graham* v. *Lewis* (4). That was a decision on the Mayor's Court Act, 1857, s. 12, an Act which is more analogous to the High Court Charter than is the Bankruptcy Act, 1869, and the rules framed under it, which were the basis of the decision in *Ex parte Breull*; *In re Bowie* (3). The High Court, in its ordinary original civil jurisdiction, is, like the Mayor's Court, a court of limited jurisdiction, and there is no presumption in favour of jurisdiction (see *per* Green, J., in *Mulchand* v. *Suganchand* (5)). The Bankruptcy Court in England is a court of unlimited jurisdiction. In the Encyclopœdia Dictionary (Cassell, 1887) "reside" is defined "to dwell permanently or for a length of time; to have one's home or settled abode; to abide continuously or for a lengthened period." Dwell is defined "to reside; to abide in a place; to have a habitation; to be a resident or inhabitant." Webster contains a similar definition of each word. In Latham's work [549] "dwell" is defined as "to inhabit, live in a place; reside, to have a habitation." It is true, as said by Sargent, C. J., in *Mahomed Shuffli* v. *Laldin Abdula* (1), that neither expression necessarily implies a permanent state of things; but yet when we wish to speak of residence for a limited time, we apply a limiting adjective. When, in ordinary language, you speak of a man's residence without a qualifying adjective, his permanent residence is understood. In s. 17 of the Civil Procedure Code (Act XIV of 1882), by explanation I, the term residence is applied to the temporary lodging of a defendant in respect of a cause of action arising at the place where he has such temporary lodging. That is an enlarging explanation for a limited purpose, and not an interpretation or definition of the word as usually understood.

Turning to the decisions under the clause in question we find that in *Cowasjee Framjee* v. *Wallace* (6) Sir J. Arnould declined to hold that an officer from Upper Sind who came to Bombay on leave, and had, when

(1) 3 B. 227. (2) 8 M. 205. (3) L. R. 16 Ch. D. 484 (487).
(4) L.R. 20 Q. B. D. 780 = L. R. 22 Q. B. D. 1. (5) 1 B. 23 (31).
(6) 1 B.H.C.R. 113.

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the action was brought, lived for about ten days in a friend's house on Malabar Hill, was "dwelling" in Bombay within the meaning of cl. 12 of the Letters Patent.

In *Emrittoll* v. *Kidd* (1) it was held that a party having a permanent residence at Dinapore who came to Calcutta and resided there temporarily for the purpose of carrying on a suit, did not dwell in Calcutta within the meaning of s. XII of the Charter. The learned Judge there says that the Charter of the High Court was only meant to give jurisdiction, where it attaches on the score of residence, when that residence is substantially the ordinary residence or dwelling of the defendant.

No judgment is given in the case of *Morris* v. *Baumgarten* (2). The defendant there, a racing man, had come to Calcutta for a month, and had, at the time when the suit was filed, no another residence. It was held there that the Court had jurisdiction over him. The decision would probably have been the other way had the defendant had a permanent dwelling elsewhere. When a man has no permanent residence, he must be taken to dwell where he is actually staying. In *Nishadeney Dossee* v. [550] *Kally Kristo Ghose* (3) for part of the year the defendant's usual residence was in Calcutta, and it was held that though, at date of suit, he had only been there for a few days he was liable to be sued in its High Court.

Zalem Tewarree v. *Gobindgeer Gossain* (4) shows that to give jurisdiction on the ground of residence something more than a temporary stay within the district of the Court is required when the defendant has a fixed and permanent residence elsewhere. That was a decision under the old Civil Procedure Code.

There is, so far as I am aware, no decision of the Courts in India which supports the contention of Mr. Inverarity, that staying in a place, with a definite object or fixed purpose (in the case of a man who has a *bona fide* and permanent abode elsewhere) for a short and limited period constitutes a dwelling in such place within the meaning of the Letters Patent. The decisions, so far as they go, rather lead to the opposite conclusion. He relies, however, upon English authorities more or less analogous.

The decision in *Ex parte Breull*; *In re Bowee* (5) turned on the meaning of the words "carry on business" to which was given a broad and extended meaning to effect the object of the Bankruptcy Act, which was to distribute the bankruptcy business, so that a debtor should be sued in the most convenient form, and not taken away to another of which neither he nor his creditors knew anything. To effect this object the Court held that the words used were *elastic* and construed them accordingly; see *Graham* v. *Lewis* (6). The meaning of the word "residence" was not there decided, though Lord Justice James was prepared with the above object to give it a very wide interpretation.

In *Blackwell* v. *England* (7) the word residence as applied to that of an attesting witness was, in order to effect the presumed object of the Legislature, construed to mean the place where he was usually to be found, *viz.*, in his master's office. In the case of *Massey* v. *Burton* (8)

(1) 2 Hyde, 117. (2) Coryton, 152. (3) Coryton, 24.
(4) 1 Ind. Jur. 85. (5) L.R. 16 Ch. D. 487.
(6) L. R. 20 Q. B. D. 780=L. R. 22 Q. B. D. 1.
(7) 8 Ell. & Bl. 541. (8) 27 L.J. Ex. 101.

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a short residence of the plaintiff was held [551] to confer jurisdiction on the County Court within the district of which she resided, but the plaintiff there had no other residence, and her affidavit was express and uncontradicted, that she was residing within the district in which she sued. Where a man has no permanent residence he may be said to reside where you can catch him—*Alexander* v. *Jones* (1). *In re Williams* (2) does not appear to support the plaintiff's contention.

Dowling v. *Harman* (3), *Anonymous Case* (4), and *Ciragno* v. *Hassan* (5) only lay down the English rule as to security for costs. They have no bearing on this case and were not followed in this Court by Sargent, C. J., in *Mahomed Shuffi* v. *Laldin Abdula* (6).

The Queen v. *The Mayor of Exeter* ; *Wescomb's Case* (7), an instance of a double residence, is not an authority which can assist me in coming to a decision. Nor can, I think, *Ex parte Pascal*; *In re Myer* (8), though at first sight it appears in point. The Courts of law in England had always jurisdiction over foreigners temporarily in England, though the debt sued on was contracted abroad. *In Ex parte Pascal*; *In re Myer* (8) it was held that the Bankruptcy Court had jurisdiction to issue a debtor's summons against a foreigner in the cases in which the Common Law Courts had previously possessed jurisdiction over him, *i e.*, when he was in England. As to residence, it was held that the rules under the Act were framed for the purpose of determining in what Court a man should be sued, and that a man who is liable cannot escape liability by saying that he is not resident in the place where he is sued, so long as he is staying at a place it is his residence within the 59th section of the Act, unless he can show that he has some other residence, in that case of course in England. I have referred to all the cases cited before me, and also to the cases of *Marsh* v. *Conquest* (9), *Macdougall* v. *Paterson* (10), and *Kerr* v. *Haynes* (11), and am unable to see that the meaning of the world "reside" or "dwell" has been, in the case of an Act [552] conferring limited jurisdiction, construed in such a manner as to support the argument of Mr. Inverarity.

Upon the wording of the clause, and the Indian authorities, and on those I have lastly referred to decided in the English Courts, I have come to the conclusion that the residence contemplated by the Letters Patent must be of a more or less permanent character, of such a nature as to show that the High Court, in which a defendant is sued, is his natural *forum* ; and that the defendant coming to Bombay for the purpose for which he came, and staying for the period for which he stayed, was not, on that account, liable to be sued in the High Court in respect of a cause of action which did not arise within the local limits of its jurisdiction. I also consider that the fact that the defendant, while here, stopped in a house, which he had contracted to purchase, does not materially alter the case, though it has to be taken into consideration in determining the character of the defendant's residence. If it had been shown that the defendant had purchased the house for a Bombay residence, intending to come to Bombay from time to time and live in it, I should probably have come to an opposite conclusion; for a man may, no doubt, have two or several residences in the legal as well as in the ordinary meaning of that word.

(1) L. R. 1 Exch. 133. (2) L. R. 8 Ch. 690.
(3) 6 M. & W. 131. (4) 8 Taunt 737. (5) 6 Taunt 20.
(6) 3 B. 227. (7) L. R. 4 Q.B. 110. (8) L. R. 1 Ch. D. 509.
(9) 17 C. B. (N.S.), 418 (432). (10) 11 C. B. 755.
(11) 29 L. J. Q. B. 70.

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(*Per* James, L. J., in *Ex parte Breull*; *In re Bowie* (1); *Barley* v. *Bryant* (2); *Butler* v. *Ablewhite* (3).) But the object with which the defendant purchased has been left in doubt; and I hold, as I have said, that, under the circumstances of this case, the *onus* lay on the plaintiff to establish the jurisdiction affirmatively. If I were to conjecture, I should think that the devotees of the defendant had the house purchased, hoping that the defendant would come to Bombay periodically and live in it; but that he himself had formed no such resolution. The defendant has been fourteen years on the *gadi*, and this is the only occasion on which he came to Bombay. When the house was purchased, Bombay was to him a *terra incognita*.

I must also hold that the defendant did not carry on business in Bombay within the meaning of the clause. A man who receives [553] presents or offerings and reckons and keeps an account of them is not, in ordinary language, considered to carry on business, even though he may be a man held in reverence by his devotees as of superhuman holiness or as containing in himself an incarnation of the deity. The fact of the offerings being on so large a scale and coming from such an extended area that the defendant is obliged to employ servants to collect and keep an account of them, does not alter the character of the defendant's source of livelihood, which remains notwithstanding its magnitude eleemosinary. The case of *Graham* v. *Lewis* (4) shows that the words "carry on buisness" are not to be strained from their natural sense for the purpose of usurping jurisdiction, and the cases at *Nobin Chunder* v. *Buroda Kant Shaha* (5) and *Anonymous case* (6) establish the same proposition in reference to the Courts in India, though the reasons upon which the judgments are founded are not as full as could be wished. It, of course, does not alter the position that the defendant's servants banked with several native *savkars*. The defendant's occupation is certainly not that of a money-lender. I do not support my judgment on this head by reference to the fact that the bulk of the offerings paid into the *pedi* were offerings to the shrine of Shri Nathji, as for this purpose I cannot dissociate the defendant from the shrine of which he is the manager and as the residue of the offerings are made to the defendant personally, and to him as the owner of the shrine of Navaninit Payaji.

Lastly, I have to consider whether the defendant personally worked for gain in Bombay on the occasion of his visiting it. The Letters Patent evidently contemplate the case of a man living without the local limits of the jurisdiction and pursuing his avocation within them. If this be so, in order that the jurisdiction should attach on the ground of working for gain, such working should be habitual. Such is the case put by the Court in *Rai Narain Dass* v. *Newton* (7); but I do not put my judgment on this ground. It would be, I think, a straining, if not a misuse, of words to hold that the defendant, in paying the domiciliary visits [554] which have been described, personally worked for gain. In ordinary language, the defendant would rather be described as living on the work of others than as himself working. To constitute work, there must be some mental or physical effort. To take advantage of an innate holiness as a reason for accepting presents or offerings as your natural due, is not work in the usual acceptation of that term; nor is the blessing which the defendant invokes

(1) L.R. 16. Ch. D. 487. (2) 1 Ell. & Bl. 340. (3) 6 C.B. (N. S.) 740.
(4) L.R. 20 Q.B.D. 780 on appeal, L. R. 22 Q. B. D. 1.
(5) 19 W. R. C. R. 341. (6) 23 W.R. C.R. 223. (7) 6 N.W.P.R. 43.

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upon the dwellings which he visits. A beggar usually, in some countries at least, invokes a blessing on the head of one who bestows alms upon him. The defendant's benediction is, no doubt, held in far higher esteem amongst his devoted adherents; and his visiting their houses is esteemed, like the visit of an earthly sovereign, a high honour and distinction; but this does not change the nature of the act of benediction or of visiting. The offerings which the defendant receives, though expected, are not bargained for. That at least is the evidence of the plaintiff's witness.

I, therefore, for these reasons decide the issue before me in the negative. To do otherwise would be to snatch a jurisdiction which was not intended to be conferred, and which the words of the Letters Patent, taken in their usual meaning, do not confer; and though *boni judicis est ampliari jurisdictionem*, that maxim has been diversely interpreted, and should not lead the Court to appropriate that which does not rightfully appertain to it. Issue found in negative and for defendant. Suit dismissed with costs.

Attorneys for the plaintiff: Messrs. *Conroy and Brown.*

Attorneys for the defendant: Messrs. *Craigie, Lynch, and Owen.*

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[555] ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

IN THE MATTER OF NARRONDAS DHANJI, A MINOR. JAVERVAHU, WIDOW, *Petitioner.* [27th June, 1890.]

Criminal Procedure Code (Act X of 1882, s. 491—Custody of minor—Habeas corpus—*Rule to show cause why minor should not be delivered to claimant—Rule discharged—Right to appeal against order of discharge—Judgment—Letters Patent, 1865, cl. 15—Practice.*

The petitioner as step-mother claimed to be entitled to the custody of her deceased husband's minor son, who was living with D., his maternal uncle. She obtained a rule calling upon D. to show cause why the child should not be delivered to her. After argument the rule was discharged.

Held, that the order discharging the rule was a judgment within the meaning of cl. 15 of the Letters Patent, 1865, and that, therefore, under that clause the petitioner had a right to appeal against the order.

[R., 29 C. 286.]

IN this case the petitioner, who was the step-mother of Narrondas Dhanji, an infant under ten years of age, presented a petition, under s. 491 of the Criminal Procedure Code (Act X of 1882) on the 2nd April, 1890, stating that her husband Dhanji Dharamsi died in 1883, leaving herself, his widow, and the infant Narrondas, his son by a predeceased wife, his only heirs and representatives; that by his will he appointed Dossa Jewan and Gopalji Jugjivan to be his executors; that she (the petitioner) had gone on a pilgrimage about a year after her husband's death, and during her absence had allowed the infant Narrondas to remain with the said Dossa Jewan, who was his maternal uncle; that since her return from pilgrimage she had frequently endeavoured to get possession of the child from his maternal uncle, but had failed. She submitted that she was "entitled to the custody of the said minor, as she was advised that she