

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Tyabji.

1900.
December 7.

FERNANDEZ (ORIGINAL PLAINTIFF), APPELLANT, v. WRAY (ORIGINAL DEFENDANT), RESPONDENT.

Jurisdiction—Letters Patent, 1865, Cl. 12—Dwell—Temporary residence when sufficient to give jurisdiction.

The defendant, who was Political Agent at Kolhápur, left Kolhápur on the 6th March, 1900, *en route* for England on a year's furlough. He arrived in Bombay on the 7th March and sailed for England on the 10th. While the defendant was in Bombay (*viz.* on the 8th March) the plaintiff presented a plaint against him, in the heading of which he (defendant) was stated to be then residing at Malabár Hill in Bombay. The plaint in the first instance was rejected for want of jurisdiction. On appeal,

Held, that the temporary residence of the defendant in Bombay under the circumstances gave the Court jurisdiction, and that the plaint should be admitted.

For the purposes of jurisdiction a man may be said *prima facie* to dwell where he is staying at any particular time, but it is open to him to show that he is not dwelling there, but at some other place. The defendant had no residence at Kolhápur at the time the plaint was presented, and must be taken to have then been dwelling in Bombay.

APPEAL from an order made by Russell, J., rejecting the plaint on the ground that the Court had no jurisdiction.

Suit for damages for false imprisonment and malicious prosecution.

The defendant was the Political Agent at Kolhápur, and the plaintiff resided there. On the 6th March, 1900, the defendant left Kolhápur *en route* for England on a year's furlough, having handed over charge to the officer appointed to act for him. He arrived in Bombay on the morning of the 7th March and sailed for England on the 10th. On the 8th March, while he (the defendant) was still in Bombay, the plaintiff presented the plaint to Russell, J., who rejected it for want of jurisdiction. An appeal was filed the same day and notice of the appeal was served on the defendant on the following day (the 9th March).

In the heading of the plaint the defendant was stated to be then residing at Malabár Hill in Bombay.

The question on appeal was whether the temporary residence of the defendant in Bombay was sufficient to give the Court jurisdiction.

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WEAT.

Scott for plaintiff.

Lang (Advocate General) for defendant.

They cited *Morris v. Baumgarten*⁽¹⁾; *Everet v. Frere*⁽²⁾; *Alexander v. Jones*⁽³⁾; *Ex parte Pascal: In re Myre*⁽⁴⁾; *Ramchandra v. Keshav*⁽⁵⁾; *Gosvami v. Shri Govardhanlalji*⁽⁶⁾; *Kavasji v. Wallace*⁽⁷⁾.

JENKINS, C. J.:—The plaintiff in this case sues to recover Rs. 10,000 as damages for the wrongful acts of the defendant. The plaint was presented to Russell, J., on the 8th March, 1900, but he rejected it on the ground that he was not satisfied that the defendant was residing at Malabár Hill within the jurisdiction of this Court. What caused the doubt in the mind of the learned Judge I do not know, for although there is no allegation in the body of the plaint that Colonel Wray was then residing at Malabár Hill, yet this statement was made in the description of the defendant contained in the heading of the plaint; and although I think it is desirable that in cases of this kind there should be a general statement of the fact in the plaint, yet it has always been the practice to accept, in the first instance, the statement made in the heading.

The question for our decision is whether, at the time of the commencement of the suit, the defendant was dwelling within the jurisdiction. The facts are very simple. The defendant was Political Agent at Kolhápúr, and he resided there up to the evening of the 6th March. Having obtained a year's furlough, he left Kolhápúr on that evening and arrived in Bombay on the next day, *viz.*, the 7th March. This plaint was lodged on the 8th March. The defendant was then in Bombay and he remained here until the 10th, on which day he sailed for England.

Was the defendant's remaining in Bombay for this period of four days sufficient to satisfy clause 12 and to give this Court jurisdiction? Ordinarily, no doubt, it would not be said that

(1) (1865) Coryton, 152.

(4) (1876) 1 Ch. D., 509.

(2) (1885) 8 Mad., 205.

(5) (1881) 6 Bom., 100.

(3) (1866) L. R., 1 Ex., 133.

(6) (1890) 14 Bom., 541 at p. 550.

(7) (1863) 1 Bom. H. C. R., 113 (o. c.)

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a man remaining here for so short a time was "dwelling" here, but that is because he would ordinarily have a permanent dwelling or residence elsewhere. The cases show that *prima facie* a man may be said to dwell, where he is staying at any particular time, but it is open to him to show that he is not dwelling there, but at some other place. [His Lordship then dealt with the evidence and continued:]

I am of opinion, on the evidence, that the defendant had no residence at Kolhápúr at the time this plaint was lodged, and that he must be taken to have been then dwelling in Bombay within the meaning of the provisions of clause 12 of the Letters Patent, and that, therefore, this plaint must be accepted.

TYABJI, J. :—I am of the same opinion. I think that the words "reside" and "dwell" have a narrow or more extended meaning according to the intention of the Legislature in the various Acts in which they occur. For the purpose of jurisdiction I think the authorities establish that, if a person has no permanent residence, he may be said to dwell wherever he may be found. Now had Colonel Wray any permanent residence when this plaint was presented? The only residence that has been suggested is Kolhápúr. But he gave over charge of his appointment there and left the place on the 6th March. The house in which he had lived there was not his own. It was a house belonging to Government and is occupied by the Political Agent for the time being, and the officer appointed to act for Colonel Wray took up his residence there. Colonel Wray had sold off his furniture and other effects at Kolhápúr, so that it would appear that he did not intend to return. At all events there is nothing to show that he did intend to return. I think, therefore, that he ceased to dwell at Kolhápúr on the 6th March, and that when this plaint was presented he had not acquired any other residence, and must, therefore, be taken to have been then dwelling in Bombay, and that this Court has jurisdiction under clause 12 of the Letters Patent.

Appeal allowed.

Attorneys for plaintiff:—Messrs. *Thakurdas, Dharamsi, Cama, & Co.*

Attorney for defendant:—*The Government Solicitor.*