Baroda Oil Cakes Traders vs Parshottam Narayandas Bagulia And Anr. on 25 January, 1954

Equivalent citations: AIR1954BOM491, (1954)56BOMLR575, ILR1954BOM1137, AIR 1954 BOMBAY 491, 56 BOM LR 575

JUDGMENT

Gajendragadkar, J.

1. This is an appeal against the order passed by the Civil Judge, Senior Division, Baroda, directing that the plaint be returned to the plaintiff for presentation to the propert Court. By his plaint the plaintiff had claimed to recover Rs. 10,800 from the defendants on the ground that there was a valid contract between the parties and that the defendants had failed to perform their part of the contract. In other words, it is an action for damages for breach of contract. The defendants reside at Kanpur, outside the local limits of the jurisdiction of the Civil Judge at Baroda, and the plaintiff conceded that the Civil Judge in whose Court he filed the plaint would have no jurisdiction to entertain the suit under the provisions of Section 20, Sub-sections (a) and (b), of the Code of Civil Procedure.

He, however, alleged that the cause of action had accrued partly within the jurisdiction of the Civil Judge and so the suit as filed before him would be competent under Section 20(c), Civil P. C. The defendants denied this allegation and contended that the whole of the contract had been made outside the jurisdiction of the trial Judge and so the provisions of Section 20(c) were inapplicable to the present case.

The learned Judge has upheld this plea and in the result an order has been passed directing the return of the plaint to the plaintiff. Thus the only question which arises before us is whether the trial Court was right in holding that it had no jurisdiction to entertain the suit under Section 20(c). The decision of this point would depend upon the answer to the question as to whether part of the cause of action in respect of the plaintiff's claim has arisen within the local limits of the trial Court.

2. It is common ground between the parties that the contract in question was for sale of 200 tons of groundnut cakes and it had been entered into by telegrams. The plaintiff sent a telegram from Baroda offering to purchase the said groundnut-cakes from the defendants. The defendants conveyed their acceptance to the plaintiff by telegram despatched from Kanpur and the said acceptance reached the plaintiff at Baroda in due course. The plaintiff's case was that the proposal or offer had been sent from Baroda and so a part of the cause of action had arisen in Baroda.

The plaintiff also pleaded that the acceptance had been received by him in Baroda and that again means in law that a part of the cause of action had arisen in Baroda. It is these two pleas that require

consideration in the present appeal. The point thus raised prima facie appears to be short and simple; but it has led to conflict of judicial opinion amongst the Indian High Courts, and that is why Mr. Justice Shah, before whom this appeal was originally placed for final disposal, has referred it to a Division Bench.

3. Section 20(c) provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. The expression "cause of action" has received judicial interpretation on numerous occasions. Every student of the Code is familiar with the explanation of this expression which describes it as a bundle of essential facts necessary to be proved by the plaintiff in order to succeed in his suit. This explanation appears to be clear and facile; but it is not always easy to decide which facts can legitimately enter this bundle and which must be excluded from it. The observations of Lord Justice Fry in -- 'Read v. Brown', (1888) 22 Q B D 128 at p. 132 (A) which explain the meaning of the expression "Cause of action" have now become a classic on the subject and are cited by every commentator on the Code of Civil Procedure: "Everything," observed Lord Justice Fry "which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action."

Mr. Justice Brett put the same position in a somewhat different form in -- 'Cooke v. Gill', (1873) LR 8 CP 107 (B) by making this lucid observation (p. 116):

> " 'Cause of action' has been held from the earliest time to mean every fact which is material to be: proved to entitle the plaintiff to succeed,--every fact which the defendant would have a right to traverse".

It is, however, important to bear in mind that the bundle of facts which constitute the cause of action in a civil suit does not and is not intended to comprise every fact which may be proved in evidence. It is only material facts which must be proved by the plaintiff before he can obtain a decree that constitute the cause of action. Facts which the plaintiff may allege incidentally and facts which may be brought in evidence as 'res gestae' would not necessarily constitute a part of the cause of action. The distinction between facts which are relevant and material and those that are incidental and immaterial is sometimes not easy to be drawn; but the said distinction is nevertheless important for the purpose of deciding which facts constitute the cause of action and which are not included in it. The position under Section 20(c) is very clear, if it is shown by the plaintiff that the cause of action has arisen wholly or in part within the local limits of the jurisdiction of the trial Court, the trial Court would be entitled to deal with the suit.

4. In interpreting this clause it may perhaps be relevant to refer to the history of this clause in the Code of Civil Procedure. The Code of 1882 merely provided that the Court, within whose local jurisdiction the cause of action has accrued would be competent to try the suit. Under this provision it was not clear whether jurisdiction was conferred on the civil Court only in case the whole of the cause of action had accrued within the local limits of its jurisdiction or whether it would be enough if only a part of the cause of action had accrued within its jurisdiction. In order to remove the doubt on this point, Section 7 of Act 7 Of 1888 added an Explanation. This was Explanation 3 to Section 17 of the earlier Code.

This Explanation specifically provided that in suits arising out of contract, the cause of action arises within the meaning of Section 17 at any of the three places mentioned in cls. (1), (2) and (3) of the Explanation. Under these clauses the place where the contract was made, the place where the contract was to be performed or performance thereof was to be completed and the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable, were mentioned as places at which the suit could be filed.

It would be noticed that the effect of this Explanation was that jurisdiction was conferred upon civil Courts to entertain suits arising out of contract even if a part of the cause of action had accrued within the local limits of their jurisdiction. Legislature made it clear by enacting this amendment that it was not necessary, to confer jurisdiction on the civil Court, that the whole of the cause of action should have accrued within the local limits of its jurisdiction. It was, however, found that even after this Explanation was added by Section 7 of Act 7 of 1888, some judicial doubt was still expressed as to whether this Explanation applied only to suits on contracts or to all suits of any kind whatever, and it was thought that this doubt could be repelled by deleting the Explanation altogether and introducing in its place Sub-section (c) to Section 20, as it now stands.

It is perfectly true that in interpreting the provisions of Section 20(c) it is unnecessary to consider the previous history of these provisions, because our duty in such a case would clearly be to interpret the words as they occur in Section 20(c), wholly uninfluenced by any considerations arising from the previous legislative history of this section. As Lord Herschell in -- 'Bank of England v. Vagliano Brothers', 1891 AC 107 (C) observes (pp. 144-45):

> "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view,"

Even so I have referred to the previous history of this section because during the course of the arguments the question of the effect of the deletion of Explanation 3 to Section 17 while enacting the present Code of Civil Procedure was agitated before us. I am disposed to take the view that Explanation 3 has been omitted from the present Code, because in view of the words used in Section 20(c) it was clearly no longer necessary. What was provided for by the said Explanation is in substance contained in the provisions of Section 20(c). In my opinion, the position of law in respect of cases failing under Section 20(c) of the present Code is substantially the same as it was' under the provisions of Explanation 3 to Section 17 of the earlier Code.

5. It is conceded that in the present case the cause of action has not arisen wholly within the local limits of the trial Court's jurisdiction. It is, however, argued that in part the cause of action has arisen within the said jurisdiction, and it is necessary to examine the correctness of this contention in, the present appeal.

6. When we consider the question as to whether the cause of action for such a suit has arisen partly at any place or not, it would, I think, be inevitable that the material provisions of the contract Act would .have to be considered. The suit is based on the allegation that the defendants have committed a breach of the contract and jurisdiction is sought to be conferred on the Court at Baroda on the ground that a part of the contract has been made in Baroda. Now, it seems to me difficult to accede to the argument that we should decide this question without reference to the provisions of the Contract Act.

It is perfectly true that the Contract Act does not deal with questions of procedure as the Code of Civil Procedure does. Nevertheless in interpreting the provisions of Section 20(c) it would be necessary to find where a contract has taken place either wholly or in part, and in determining where a contract has taken place it would be impossible to ignore the provisions governing the making of contracts.

It is, however, urged by Mr. shah for the appellant that we should decide this question without importing the technical considerations of Section 4 of the Contract Act. Mr. Shah asks us to look at this matter from a commonsense point, of view and from this point of view he contends that the making of a contract consists of the proposal or offer by the proposer and the acceptance of the proposal or offer by the person to whom the said proposal or offer is made. The proposal has been sent from Baroda and the acceptance has been received at Baroda. So, two constituent elements in the making of the contract have taken place in Baroda and a part of the cause of action must, therefore, be held to have arisen in Baroda. That is the appellant's case.

In my opinion, it is difficult to accept this contention. When a civil Court deals with the question as to where the contract is made, it must decide that question in the light of the provisions relating to the making of contracts, and so the decision of the question as to whether a suit on contract is within the jurisdiction of the trial Court must necessarily imply the decision of the question as to where the contract was made in the light of the provisions of Section 4, Contract Act.

The position under Section 4 is clear beyond doubt. A proposal which is made becomes complete only when its communication comes to the knowledge of the person to whom it is made, in other words unless the proposal is communicated to the person to whom it is made, it is not complete, and in that sense is inchoate and inconclusive. If that be the position, the proposal can be said to have been made by the plaintiff to the defendants only when it comes to the knowledge of the defendants; and this incident takes place at Kanpur, that is to say, the proposal becomes complete at Kanpur and not at Baroda.

It would, therefore, be difficult to hold that a part of the contract has taken place at Baroda merely because the proposal was sent from Baroda. The communication of the proposal from Baroda may be a fact which is relevant by way of 'res gestae', but unless the communication is complete it would not become a constituent of the bundle of facts which is otherwise known as the cause of action. It is in this connection that we have to bear in mind the distinction between facts which may be proved by way of evidence or as 'res gestae' and facts which must be proved because they constitute a part of the cause of action.

7. The position with regard to the argument that the acceptance has been communicated to the proposer at Baroda is, in my opinion, no better. Under Section 4 the communication of an acceptance is complete as against the proposer when it is put in the course of transmission to him, so as to be out of the power of the acceptor. This necessarily means that as soon as the acceptance is posted or sent by telegram as in the present case, the acceptance is complete against the proposer, and so far as he is concerned the contract is concluded. It is true that in a sense the act of acceptance is a continuous act and it becomes complete so as to bind the acceptor when the acceptance comes to the knowledge of the proposer.

But so far as the making of the contract is concerned, the proposer is bound as soon as the acceptance is posted and, subject to the right of the acceptor to revoke his acceptance, the contract is completed as soon as the acceptance is posted. In other words, the communication of the acceptance to the proposer cannot be said to be such an integral part of the completion of the contract as to constitute a part of the cause of action in a suit on the said contract. Even if the acceptance does not reach the proposer for the reason that it is lost or misplaced in transit, the contract would be complete and for its breach the proposer would be entitled to sue in damages.

If this be the true position, the continuity of the act of acceptance does not assist the plaintiff because that part of the continuing act of acceptance which takes place at Baroda is outside the making of the contract technically considered and would not, therefore, be a part of the cause of action in a suit on contract. In my opinion, therefore, the decision of the question as to where a part of the cause of action has occurred in the present suit cannot be wholly divorced from the consideration of the provisions of Section 4, Contract Act; & in the light of these provisions it would be difficult to accede to the argument that because the proposal was sent from Baroda and the acceptance was received at Baroda by the proposer a part of the contract has been made in Baroda itself. As I have already indicated, this point has been considered by Courts on several occasions. I would now proceed to consider some of the decisions which deal with this point.

8. so far as this Court is concerned, this point has been considered by single Judges on three different occasions. In 1896 Mr. Justice Fulton was dealing with a plaintiffs' claim against the defendant company that carried on business at Calcutta -- 'Dobson v. Bengal Spinning and Weaving Co.', 21 Bom 126 (D). It is clear from the terms of the contract that payment under the contract had to be made in Bombay where both the plaintiffs' agent and their solicitors resided, and so it was perfectly clear that a part of the contract had to be performed in Bombay and the Bombay Court would, therefore, have jurisdiction to deal with the suit based on the contract.

Fulton J. who came to this conclusion, however, discussed the alternative argument urged before him that a part of the cause of action had arisen in Bombay by reason of the fact that the agreement dated December 28, 1892, had been signed by the plaintiffs in Bombay and this fact necessarily led to the conclusion that where one of the parties assents to the contract in Bombay, part of the cause of action arises in Bombay. Mr. Fulton J. observed that if the plaintiffs' assent to the contract can be disproved, the whole contract falls to the ground, and with it the right of suit.

Fulton J. described the act of plaintiffs signing the contract in Bombay as the act of concurrence of the plaintiffs and he pointed out that if the making of the contract be part of the cause of action, it appears to follow that the act of concurrence of either party which is essential to the contract is itself a part of the cause of action, for without such act of concurrence the contract cannot come into existence. It is noticeable that the fact that the plaintiffs put their signature to the document in Bombay was treated by Fulton J. as an act of concurrence on the part of the plaintiffs & this was literally & substantially true because when the plaintiffs put their signature to the agreement in question, the defendants' agent was present in Bombay.

So that the plaintiffs' signature to the document ceased to be merely a unilateral act, and it partook of the character of concurrence by the plaintiffs in the presence of the defendants' agent. If this is what the learned Judge meant by describing the making of the plaintiffs' signature as an act of concurrence & treating it as constituting a part of the cause of action, with respect, his conclusion was right. If, on the other hand, the learned Judge intended to imply that the making of the offer by the proposer would itself be a part of the cause of action for the purpose of Clause 12 of the Letters Patent or S. 20(c) of the Code, I would be reluctant to accept the said view as a correct statement of the law. Besides, the observations made by Mr. Justice Fulton can be regarded as 'obiter' in view of the other finding made by him which was wholly decisive of the matter in favour of the plaintiffs.

9. This question does not appear to have been considered in any reported decision of this Court until it was raised before Bhagwati J. in -- 'Premchand Roychand & Sons v. Moti Lall', . The facts giving rise to this question were identical with the facts before us and the view which Mr. Justice Bhagwati took about the effect of the provisions of Clause 12 is the same as I have expressed in my judgment. Bhagwati J. considered the judgment of Fulton J. and the other decisions which were cited before him and he held that the true principle deducible from these decisions was that even though an offer may have emanated from a place within jurisdiction, it cannot be said to have been made until that offer has been received by the party to whom it has been made. If the party to whom the offer is thus communicated resides or carries on business outside the jurisdiction, the offer cannot be said to have been made within jurisdiction. With respect, I agree with this statement of the law.

10. In -- 'Bombay Steam Navigation Co. v. Union of India', the same point was raised before Coyajee J. Again the facts on which the point was raised were substantially similar; but Coyajee J. came to a contrary conclusion. The plaintiffs had made an offer from Bombay by letter to the defendant at Belgaum, and the defendant had communicated his acceptance from Belgaum to the plaintiffs at Bombay. The defendant resided in Belgaum and the contract had to be performed outside Bombay. Coyajee J. held that as part of the cause of action had arisen in Bombay from where the offer was made and where the acceptance was communicated which was a continuing acceptance until it reached the offeror at Bombay, leave was properly granted under Clause 12 of the Letters Patent and the Court had jurisdiction to deal with the suit.

When the judgment of Bhagwati J. was cited before Mr. Justice Coyajee, he took the view that one important aspect of the question had not been argued before Bhagwati J. and he preferred to follow the earlier judgment of Mr. Justice Fulton in -- '21 Bom 126 (D)' Coyajee J. was disposed to accept the argument that acceptance of the proposal is a continuing act and since the acceptance becomes

complete as against the acceptor when it comes to the knowledge of the proposer, a part of the contract had taken place at Bombay where the acceptance had been communicated, and so a part of the cause of action must be held to have arisen in Bombay.

It would appear from the judgment of Coyajee J. that he was also disposed to agree with the plaintiffs' contention that the making of the offer can be said to have taken place at Bombay inasmuch as the offer was sent from Bombay to Belgaum. In support of this conclusion Mr. Justice Coyajee referred principally to the judgment of Chief Justice Rankin in -- 'Engineering Supplies Ltd. v. Dhandhania and Co. . He also relied on the observations of Mr. Justice Patanjali Sastri, as he then was, in -- 'Sepulchre Bros v. Khushal Das', AIR 1942 Mad 13 (H). With great respect, I am unable to accept the view that the offer can be said to have been made at Bombay when in law the making of the offer must be deemed to have taken place at the place where and at the time when the offer is communicated to the party to whom it is made.

The questions which fall to be considered are really simple. When is the offer made, and where? The offer can be said to have been made when it is communicated to the person to whom it is addressed, and this naturally takes place at the place where the said person resides. I am, therefore, inclined to take the view that the offer can be said to have been made not at the place of the proposer, but at the place of the acceptor. Coyajee J. was impressed by the argument that Bhagwati J. had not considered the continuing character of the act of acceptance and its bearing on the question of jurisdiction.

With respect, though it may be conceded that the act of acceptance is a continuing act, it cannot be overlooked that as soon as the acceptance is posted the contract is concluded so far as the proposer is concerned, and in that sense the whole of the cause of action has already arisen at the place where the acceptance is posted. The result is that what follows the posting of the acceptance is really immaterial for the purpose of deciding where the cause of action accrues or arises. With 'respect, therefore, I am unable to agree with the view taken by Coyajee J.

11. In the Madras High Court the consensus of judicial opinion is in favour of the view which I am taking. In -- 'Kamisetti Subbiah v. K. Venkatasawmy', 27 Mad 355 (I) the learned Judges of the Madras High Court considered this point by reference to the provisions of Section 17 of the earlier Code read with Explanation 3 to the said section. The plaintiff was a resident of Kurnool and the defendant of Madras. The contract of agency on which the suit was based had been concluded by postal communications between the plaintiff and the defendant.

When the plaintiff sued the defendant at Kurnool, his claim was resisted by the defendant on the ground that the Kurnool Court had no jurisdiction to entertain the suit, and this plea was upheld by the Madras High Court. In their judgment the learned Judges observed that under the Indian Contract Act, where the proposal and acceptance are made by letters, the contract is made at the time when & at the place where the letter of acceptance is posted, though the contract is voidable at the instance of the acceptor by communication of his revocation before the acceptance has come to the knowledge of the proposer.

12. This view apparently prevailed in the Madras High Court until Mr. Justice Ramesam struck a note of dissent in -- 'Venkata Reddy v. Nataraja', AIR 1924 Mad 789 (J). It must, however, be pointed out that even Ramesam J. rejected the plaintiff's plea that the offer sent by the plaintiff from his place helped him to establish that a part of the cause of action had accrued at his place. He, however, accepted the plaintiff's plea that acceptance was continuous, and since it was communicated to the plaintiff at his place, a part, of the cause of action had accrued at that place. It is remarkable that as in the case in -- 'Dobson and Barlow v. Bengal Spinning and Weaving Co. (D)', so in this case under the contract money had to be paid at the plaintiff's place and so undoubtedly a part of the cause of action had arisen at the plaintiff's place. Therefore, the observations made by Mr. justice Ramesam. were clearly 'obiter'.

13. Despite this note of dissent struck by Ramesam J. the Madras High Court apparently continued to adhere to the view expressed in '27 Mad 355 (I)'. In -- 'Ahmed Bux v. Fazal Karim', AIR 1940 Mad 49 (K), Chief Justice Leach and Mr. Justice Kunhi Raman held that the making of an offer has to be proved in order to entitle a plaintiff to succeed in a suit for damages for broach of contract; but an offer is made at the place where it is received, and, if it is made by post or telegram, the place of despatch is not a material factor. Leach C. J. who delivered the judgment of the Bench examined the judicial decisions cited before him and expressed his dissent from the contrary observations made by Rankin C. J. in 'AIR 1931 Cal 659 (G).

14. Almost two years after this judgment was delivered, Patanjali Sastri, J. as he then was, reverted to the view expressed by Ramesam J. and held that the communication of acceptance is a part of the cause of action of a suit on contract and so the plaintiff would be entitled to sue on the contract at the place where the acceptance is communicated to him 'AIR 1942 Mad 13 (H)'.

Mr. Justice Patanjali Sastri was impressed by the argument based on the provisions of s. 4 of the Indian Contract Act and indeed he observed that he should have hesitated to follow the decision of Ramesam J. but the English decision which was cited before him ultimately persuaded him to take the same line as Ramesam J. had adopted. Patanjali Sastri J. has emphasised the continuing character of acceptance and has pointed out that this aspect of the matter had not been considered by decisions which took a contrary view. I have already stated that the continuing character of acceptance is not of material consequence, because as soon as the acceptance is posted the contract is completed, and so far as the proposer is concerned nothing remains to be done.

15. The view thus expressed by Patanjali Sastri J. was effectively challenged before a Division Bench of the Madras 'High Court in -- 'Manilal v. Venkatachalapathy, AIR 1943 Mad 471 (L). The learned Judges who decided this case expressed their emphatic dissent from the line adopted by Patanjali Sastri J. contrary to the consistent view expressed by the Madras High Court on the point and reaffirmed the view that in a suit on contract it must be held that a contract is made where the offer is accepted and an offer when accepted by post is accepted at the place where the letter of acceptance is posted and therefore the cause of action arises there. The same view has been taken by the Allahabad High Court in -- 'Ratan Lal v. Harcharan Lal', AIR 1947 All 337 (M) and by the Lahore High Court in -- 'Pokhar Mal v. Khanewal Oil Mills', AIR 1945 Lah 260 (N).

16. it now remains to consider the Calcutta view which has been emphatically expressed by Rankin C. J. in -- 'Engineering Supplies, Ltd. v. Dhandhania Co. (G)'. it is necessary to state that the contract with which Rankin C. J. and Ghose J. were dealing was a C. I. P. contract and under its terms goods had to be delivered at Calcutta, so that there is no doubt at all that a part of the cause of action had accrued at Calcutta. Even so Rankin C. J. examined the alternative argument that a part of the cause of action had accrued at Calcutta inasmuch as the offer had been sent from and the acceptance had been received at Calcutta. Rankin C. J. took the view that it was "a confusion to say that, if you want to know where a contract was made, the answer will be found in the law of contract. That is the last thing you will find in the law of contract." According to him, the answer to the question would have to be found in the Code of Civil Procedure, because the Court will have to decide which facts the plaintiff is obliged to prove in order that his case may -ultimately succeed. Observations falling from Chief Justice Rankin are no doubt entitled to great respect. But it is now clear that since these observations were made in 1930, they have been disapproved by the Madras, Allahabad and Lahore High Courts, and, speaking for myself, I respectfully agree with the criticism made against this view by Leach C. J. in -- 'Ahmad Bux's case (K)'.

It is perfectly true that the making of the offer has to be proved by the plaintiff; but the question as to where the offer is made must inevitably be decided in the light of the provisions of the Indian Contract Act, and that is exactly what Rankin C. J. was not disposed to do. When it is said that the offer is made at the place of the person making the offer, that is at best a layman's common-sense view. It is not the correct statement of the legal position at all. The correct legal position can be determined only by reference to s. 4 of the Contract Act, and the provisions of this section leave no doubt on the point that the offer is made when it is communicated and can, therefore, in law be held to be made at the place where it is communicated.

17. In dealing with this question reference is always made to some English decisions. It is hardly necessary to add that in construing the specific words of s. 20(c), the safer course to adopt would be to interpret the words in a reasonable way by giving them their plain grammatical meaning and not to lean very much on the assistance which can be derived from English decisions which construe similar expressions in the rules of English procedure. Even so, it seems to me that the view expressed by the majority of the Indian decisions is in consonance with the observations made in -- 'Clarke Brothers v. Knowles', 1918-1KB 128 (O).

Dealing with the question of the jurisdiction of the County Court under Section 74 of the County Courts Act, 1888, the learned Judges had to decide where the contract was made. The contract in fact had been made by correspondence and Lawrence J. observed that (p. 132) :

> ".. .. .. the posting of the offer was no part of the cause of action. The making of an offer is part of the cause of action, but an offer is made where it is received, and that in this case was at Croydon" (which was outside the local limits of the West Hartepool County Court in which, the suit had been filed)."

Lush J. agreed with this view though he put it thus in a different form (p. 133):

> "The material question is not where the offer was sent from but where it was made, and the making of the offer is proved by showing that it was received."

18. In regard to the continuing character of acceptance Halsbury observes (Vol. VII, para. 130, p. 94) that "the acceptance of an offer made through the post is complete as soon as a properly addressed letter containing the acceptance is posted."

It is also stated that the person making the offer Is bound by the acceptance from the time when it was posted, notwithstanding that the letter of acceptance is lost in the post, or that its delivery is delayed, or even that it is returned to the acceptor owing to a mistake in the address caused by the person who made the offer. The principle is that for the purpose of receiving the acceptance the post office is the agent of the person who makes the offer, not of the acceptor. (Halsbury's Laws of England, 2nd Edn., Vol. VII, p. 94, para. 130).

This would show that so far as the proposer is concerned, the contract is completed as soon as the acceptance is posted, and the fact that the acceptance does not bind the acceptor until it reaches the proposer does not make the receipt of the acceptance a part of the contract itself. The contract is concluded as soon as the acceptance is posted and it is only for the purpose of avoiding revocation of the contract by the acceptor that the communication of the acceptance to the proposer is material.

19. In support of the contrary view reliance is sometimes placed on the observations made in Halsbury's laws of England (Vol. VIII, Para. 209, p. 191) on the topic of contracts by letter. This is what Halsbury says:

> "As a general rule, where an offer is made and accepted through the post, the contract is completed the moment the letter accepting the offer is posted, even though the letter never reaches its destination, and such an offer cannot be withdrawn by a subsequent letter arriving after the posting of the acceptance. It appears from this general principle, that in such a case a part of the cause of action arises where the letter is posted & a part where it is delivered although the mere sending or delivery of a bare offer by post will not give jurisdiction to the district where such; sending or delivery takes place without some other fact, such as delivery of goods, to indicate the locality in which the cause of action arose."

It is also added that "an acceptance by telegram of an order sent by telegram gives jurisdiction to the district from which the acceptance was sent". (Halsbury's Laws of England, 2nd Edn., Vol. VIII, p. 191, para. 299)."

It is quite true that these observations appear to lend support to the. contention that the posting of the letter of offer or the receipt of the letter of acceptance may be treated as a part of the cause of action. But, with respect, I would hesitate to accept this proposition broadly in all cases based on contract, because it appears from the decisions on which this proposition is based that most of these decisions dealt with actions on accounts stated. Indeed, foot-note (h) where the material decisions in support of this statement of the law are referred to, also refers to -- 'Clarice Brothers v. Knowles

(O)', and as I have already pointed out, the decision in this case is clearly inconsistent with the statement of the law in question.

20. In -- 'Evans v. Nicholson', (1875) 32 LT 778 (P) a rule for prohibition which had been issued against the Mayor's Court was discharged on the ground that the Mayor's Court had jurisdiction to entertain the claim. The claim was based on accounts stated and one of the questions which arose for decision was whether the rule in -- 'Dun-lop V. Higgins', (1848) 1 HLC 381 (Q) applied to such claims. Lord Coleridge C. J. and Lindley and Archibald JJ. held that the said rule applied, whereas Denman J. took a contrary view. All the learned Judges, however, agreed in holding that a part of the cause of action had accrued within the local limits of the Mayor's Court. The statement of the account was treated by the majority view as analogous to the acceptance of a contract and on that view the rule laid down in -- 'Dunlop v. Higgins (Q)', was applied and it was held that the statement of the account having been communicated at a place within the jurisdiction of the Mayor's Court, the Mayor's Court was competent to try the case.

It must be conceded that the observations made by Lord Coleridge C. J. are clearly in favour of the view that a part of the cause of action accrues at the place where the acceptance is communicated. The learned Chief Justice considered the earlier decisions which seemed by implication to have taken a contrary view and he strongly criticised those decisions. He observed that the acceptance continues to be an act done by the person accepting in a, uniform and unbroken course of dealing until it reaches the other person to whom it is notified. And he added that although complete when the acceptor sends his acceptance by post and made then as against him, it is none the less made also when it reaches the mind of the offerer by reason of its having also been made before. As I have already stated, this was a claim on accounts stated between the parties.

21. In (1873) LR 8 CP 107 (B)' the defendants had drawn bills in Philadelphia upon the Union Bank of London and endorsed them in Philadelphia and there delivered them to the agents of the plaintiffs, who remitted them to the plaintiffs in London. The drawees refused to accept the bills and so the plaintiffs issued an attachment out of the Lord Mayor's Court to attach moneys of the drawers in the hands of the garnishees, bankers in London. It was held on these facts that the cause of action arose in America and not in London, and consequently the garnishees were entitled to a prohibition. It is in this case that Brett J. made his classical observations in regard to the denotation of the expression "cause of action" which I have already cited.

22. The third case to which reference may be made in support of the statement contained in Hulsbury is reported in '(1888) 22 QBD 128 (A)' In this case the plaintiff had brought an action in the Mayor's Court as assignee of a debt alleged to be due in respect of the price of goods sold and delivered to the defendant by the assignor. The sale and delivery had taken place without the city of London, but the debt had been assigned in writing to the plaintiff pursuant to s. 25 (6) of the Judicature Act, 1873, within the city of London. It was held that the assignment of the debt was part of the cause of action, and since this part of the cause of action had arisen within the city of London, there was no ground for issuing the writ of prohibition.

Lord Esher M. B. observed that he could not bring himself to entertain a doubt that the assignment is a fact which the defendant might traverse; and if that be so, the plaintiff would be bound to prove it. That is the reason why the learned Judge held that the assignment was a part of the cause of action. Even while taking this view the learned Judge added that the cause of action does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.

The view that the assignment constitutes a part of the cause of action may support the statement of the law in Halsbury. But it must also be point-ed out that even Lord Esher M. R. put his decision on the other ground which he characterised as "stronger ground", and that was the effect of the provisions of s. 25 (6) of the Judicature Act, 1873. He construed the said provisions and came to the conclusion that an assignee in order to show that the debt is his and that he may sue upon it must prove the assignment. He must, if suing, prove the assignment to himself in order to recover judgment, and the fact of the assignment is therefore part of his cause of action.

With respect, in considering the effect of this decision this distinguishing fact cannot be overlooked. It is remarkable that though these decisions seem to support the view that the receipt of acceptance and the transmission of offer may be regarded as parts of the cause of action, in -- 'Clarke Brothers v. Knowles (O)', a contrary view has been emphatically expressed. If in deciding this case the learned Judges did not refer to the continuing character of the act of acceptance, that was presumably because the said character of acceptance did not make any difference inasmuch as acceptance is complete as against the proposer as soon as it is posted or transmitted to him. In view of this apparent conflict in English decisions I would respectfully prefer to derive assistance from the judgment in -- 'Clarke Borthers v. Knowles (O)',

23. I would, therefore, hold that no part of the cause of action arose in Baroda in the present case, though the plaintiff had sent his offer from Baroda by telegram and though he received the acceptance from the defendants by telegram at Baroda. In the eyes of law the offer was made at Kanpur and the acceptance was likewise made at Kanpur, with the result that the whole of the contract was made at Kanpur. The learned Judge was, therefore, right in taking the view that he had no jurisdiction to try the present suit.

24. The result is the appeal fails and is dismissed. In view of the fact that on the point of law raised in the appeal there was a conflict of judicial opinion in this Court, I would direct that parties should bear their own costs throughout.

vyas, J.

25. I agree with my learned brother.

26. The relevant facts of this case are very few. The plaintiff is a firm doing business in Baroda. The defendants are firm in Kanpur. By a wire dated November 29, 1950, despatched from Baroda, the plaintiff-firm offered to purchase 200 tons of groundnut cakes from the defendant-firm. The plaintiff's wire was received by the defendants at Kanpur. The acceptance of the offer was

telegraphed by the defendant-firm from Kanpur. The delivery of the goods was to be given to the plaintiff at Khanna railway station and the plaintiff bad to pay the money at Kanpur to the Guru Nanak Oil Mills, from whom the defendant-firm had purchased the goods for the plaintiff, or to the agent of the said mills at Kanpur. The plaintiff contends that the defendants failed to give delivery of the goods. He, therefore, gave them a notice dated January 10, 1951, and filed this suit in the Baroda Court against them on January 16, 1951, claiming to recover Rs. 10,800 with costs and future interest.

27. The principal defence to the suit was that the Baroda Court had no jurisdiction to try the suit as the contract was made at Kanpur, as its performance was to be at Kanpur and as the payment was also to be made at Kanpur and as the breach of the contract, if any, had also occurred at Kanpur.

28. The learned Civil Judge, S. D., at Baroda has held that his Court has no jurisdiction to try the suit and has ordered the plaint to be returned to the plaintiff for presentation to the proper Court.

This is an appeal from that order.

29. NOW, interesting questions of law which have arisen for our decision are: (1) Does the posting or telegraphing of a proposal or offer from a particular place give rise to part of a cause of action at that place for the purpose of jurisdiction? In other words, is the place of despatch of a letter or telegram of offer a material factor in the making of an offer? (2) Is the acceptance of an offer as against an offerer a continuing thing, i. e., does it continue till it is received by the offerer or is it complete as soon as it is posted or telegraphed?

30. On both these points, there is not quite an uniformity of judicial opinion, but the direction to which the weight of the judicial decisions points is clear. Section 20, Clause (c), of the Civil Procedure Code, says:

> "Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises."

The expression 'cause of action' is not defined in the Civil Procedure Code, but there is no doubt as to its generally accepted signification. In '(1873) LR 8 CP 107 (B)' 'cause of action' was defined in, this way: Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. This definition of the expression 'cause of action' was adopted by the Master of the Bolls, Lord Esher, in '(1888) 22 QBD 128 (A)'. Fry L. J. agreed with the Master of the Bolls and observed:

> "Every thing which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action."

Clearly thus, 'cause of action' is every fact which-is material to be proved to entitle the plaintiff to succeed, every fact which the defendant could have a right to traverse, in -- 'Dhunjishah Nusserwanji

v. A. B. Fforde', 11 Bom 649 (R) and --- 'Roghoonath Misser v. Gobind Narain', 22 Cat 451 (S) 'cause of action' was defined as bundle of essential facts, which it is necessary for the plaintiff to prove before he could succeed in the suit. Now, therefore, the question is this: Is the posting or telegraphing of an offer something which the plaintiff is obliged to prove, if traversed, in order to support his right to the judgment of the Court or is it something which, if not proved, gives the defendant an immediate right to judgment? If the answer is 'yes', the posting or telegraphing of an offer would be part of a cause of action. On the other hand, if the answer is 'no', the place of post-

ing a letter or sending a wire containing an offer or proposal would not be a material factor for considering cause of action or a part of it.

31. An offer is undoubtedly a part of the cause of action as was held in -- 'Borthwick v. Walton', (1855) 15 CB 501 (T) and --'Green v. Beach', (1873; 8 Ex 208 (XT) but under s. 4 of the Indian Contract. Act, the communication of an offer is not complete until it comes to the knowledge of the person to whom it is made. An offer which is not communicated is no offer and there is no communication of it unless the other party knows about it. There cannot be a partial or incomplete communication of an offer. The intention of the Legislature in this context, is clear. Section 4, which says that the communication of an acceptance is complete as against the proposer when it is put in course of transmission to him, does not say that the communication of a proposal is complete as soon as it is put in the course of transmission to the other party. Thus, putting an offer in transmission from a particular place is no part of the cause of action, as the offer is made only when it is received.

> "There is nothing irrevocable about an offer as it can be revoked right up and till the time it is received and before it is accepted." 'AIR 1945 Lah 260 at p. 263 (N).
>
> Where an offer is made by correspondence, it is true that unless the offer is posted or telegraphed, it cannot and does not reach the other end at all. But, simply because of that initial circumstance, it cannot be said in the law of contract that the place from where the letter or wire is despatched is a material factor in the making of an offer. The making of an offer is not done in parts or is not completed by bits. It is either made or not made. It is made only when it is received at the other end and it is not made at all if it is not so received, although it may have been posted by the proposer or offeror. If the letter containing the offer is miscarried or lost after posting, it cannot be said that the offer was made at all. A post office or a telegraph office is an agent of the offerer, and unless the said agent delivers the proposal to the other party, the proposal is not made at all.

32. The question whether the posting of an offer is or is not a part of the cause of action has come up for consideration of the Courts both in this country and in England. The leading English case on the subject is the case of '1918-1 KB 128 (O)'. In that case, the plaintiffs who were a firm carrying on business at West Hartlepool in the county of Durham, in December 1915, made a contract by correspondence through the post with the defendant, who carried on business at Croydon, for the purchase from the defendant of a quantity of glass and scrap wire. The defendant having failed to

deliver the goods in accordance with the contract the plaintiffs in May 1917 applied to the Registrar of the West Hartlepool County Court under s. 74 of the County Courts Act, 1888, for leave to commence an action against the defendant for breach of the said contract in the West Hartlepool County Court. The affidavit upon which the application was based stated:

> "that the facts relied on as constituting the alleged cause of action or a part thereof are, that the written offer made by the proposed plaintiffs and accepted by the proposed defendant in respect of the sale of the goods for the breach of which contract an action is proposed to be brought was made and posted by the proposed plaintiffs at West Hartlepool, within the district of the Court."

It was contended for the defendant that the Registrar was wrong in giving the plaintiffs leave to commence an action in the West Hartlepool County Court, for that Court had no jurisdiction. It was argued for the defendant that the only ground on which it was suggested that the West Hartlepool County Court had jurisdiction was that part of the cause of action arose within the district, and the only fact relied on in the plaintiffs' affidavit in support of that suggestion was that the letter containing the offer to purchase the goods in question was posted in West Hartlepool. It was contended that in an action on a contract, the posting of the offer was no part of the cause of action and that an offer made through the post was made where the letter was received, not where it was posted and that in that particular case it was received-in Croydon.

33. Dealing with the plaintiffs' contention in that case that what was meant by the 'cause of action' was all those facts which the plaintiffs must prove to establish their claim, that one of those facts was the sending of the offer to buy the goods and that as the letter containing that offer was despatched from West Hartlepool, part of the cause of action arose within that district, Lush L. J. observed that the material question was not where the offer was sent from, but where it was made and the making of the offer was proved by showing that it was received. His Lordship said (P. 133):

> "Therefore the offer here was made in Croydon. The posting of it was no part of the cause of action."

Lord Justice Lawrence who also delivered a concurring judgment on this point said (p. 132):

> "The making of an offer is part of the cause of action. But an offer is made where it is received, and that in this case was at Croydon."

34. It may be noted that precisely the same contention as was raised for the plaintiffs in --Clarke Brothers v. Knowles (O)', is raised by Mr. Shah for the plaintiff in this case. He says that since the wire containing the plaintiff's offer to buy the goods was despatched from Baroda, part of the cause of action had arisen in Baroda. This contention must be negatived as was the plaintiffs' contention negatived, by Lord Justices Lawrence and Lush in the case of -- 'Clarke Brothers v. Knolwes (O)'. The relevant portion of Section 74 of the County Courts Act, 1888, under which the plaintiffs in 'Clarke Brothers' case (O)' had applied to the Registrar of the West Hartlepool County Court for leave to commence an action against the defendant for the breach of the contract, was as follows:

> "Every action or matter .. .. .. may be commenced by leave of the judge or registrar .. in the court in the district of which the cause of action or claim wholly or in part arose."

This language is very similar to the language of Section 20, Clause (c), of the Civil Procedure Code, and so the decision in -- 'Clarke Brothers' case (O)' is an apposite authority to show that the posting or telegraphing of the offer is not a part of the cause or action within the meaning of s. 20(c) of the Civil Procedure Code.

35. The decision in -- 'Clarke Brothers' case (O)', is followed by several High Courts in India. In '' the plaintiffs who were carrying on business as share-brokers in Bombay offered to sell to the defendant, who was a share-broker residing and carrying on business in Delhi, certain shares. The offer was communicated to the defendant by telegram which was received by him in Delhi and he accepted the offer by telegram. The performance of the contract by sending the share certificates together with the relevant transfer forms and also the draft to the defendant was to be in Delhi. The plaintiffs drew a draft on the defendant for the price of the shares, but the defendant failed to retire the draft in Delhi. The plaintiffs filed a suit against the defendant in Bombay, after obtaining leave under Clause 12 of the Letters Patent, for breach of contract, on the ground that he had refused to retire the draft in Delhi.

36. The contention of the defendant was that he was residing and carrying on business in Delhi, that the contract was made by the acceptance by him of the otter of the plaintiffs in Delhi, that the performance of the contract was to be made and was in fact offered by the plaintiffs to him in Delhi, that the breach of the contract, if any, took place in Delhi and that, therefore, the whole cause of action having arisen in Delhi, the Bombay Court had no jurisdiction to try the suit in spite of the leave under Clause 12 of the Letters Patent having been granted. Bhagwati J. in the course of his judgment observed (p. 252):

> "In my opinion, ...it cannot be stated that even though the offer in this case had been communicated by telegram by the plaintiffs from Bombay to the defendant in Delhi it can be said to have been made in Bombay, and it cannot be stated that therefore any part of the cause of action had arisen within jurisdiction." Bhagwati J. went on to say (p. 252): ".. .. there is no doubt in my mind that the true principle is that even though an offer may have emanated from a" place within jurisdiction, it cannot be said to have been made until that offer has been received by the party to whom it has been made. If the party to whom the offer is thus communicated resides or carries on business outside jurisdiction, the offer cannot be said to have been made within jurisdiction."

It was implicit in this decision that the acceptance of an offer, as against the offerer or proposer, is not a continuing thing. The contract between the plaintiffs and the defendant was taken as completed in Delhi. The offer was taken as having been made in Delhi where it was received by the defendant and the acceptance by the defendant of that offer, as against the proposer, was also complete in Delhi as soon as the wire of acceptance was despatched from Delhi.

37. In 'AIR 1940 Mad 49 (K)' the appellants were a firm of hide merchants carrying on business in Hyderabad (Sind). On April 21, 1937, the appellants telegraphed to the respondent, who was a merchant carrying on business at Madras and at Madhavaram, offering to sell to him 5000 sheep hides of a certain quality at the price of Rs. 128 per 100 skins, delivery to be given at the railway station in Hyderabad. The respondent by a telegram of the same date made a counter-offer. He informed the appellants that he was prepared to accept the hides at the price of Bs. 125 per 100 skins. This counter-offer was accepted by the appellants by telegram the next day. On May 4, 1937, the appellants made an offer to the respondent in respect of another parcel of hides, but of a different quality, at the price of Rs. 80 per 100 skins.

Here, again, the respondent made a counteroffer. On May 5, he telegraphed saying that he was prepared to buy at the price of Bs. 75 per 100 skins. This counter-offer was accepted by the appellants by a telegram despatched from Hyderabad on May 7. In the plaint, the respondent averred that part of the cause of action arose in Madras from where he had telegraphed his counter-offers. Leach C. J., delivering the judgment of the Bench, held that the cause of action did not arise even in part in Madras and that, therefore, the Madras Court had no jurisdiction to try the suit.

The learned Chief Justice followed the English case of -- 'Clarke Brothers v. Knowles (O)', and dissented from the decision in in which the learned Chief Justice Bankin of the Calcutta High Court had regarded the making of the offer by cable from Calcutta as part of the cause of action, and observed (p. 202):

> "With the greatest respect for what was said in --Engineering Supplies, Ltd. v. Dhandhania & Co.', (G) I am unable to agree that the posting of an offer from a particular place can be regarded as part of the cause of action. The making of the offer has to be proved in order to entitle a plaintiff to succeed in such a case as this, but the offer is made at the place where it is received and if it is made by post or telegram the place of despatch is not a material factor."

38. In -- 'The National Insurance Co., Ltd., Calcutta v. Seethammal', AIR 1933 Mad 764 (V) a policy of insurance was put through by means of the local agent in Madras of the insurance company and this proposal was accepted by the insurance company by its directors in Calcutta. It was contended on behalf of the appellants that the contract between the assured and the company was made in Calcutta, that being the place where the proposal as it was described in the insurance policy was in fact received by the company and the place where it was decided to accept the proposal and the place from which the acceptance was sent by means of the post to Madras. It was contended by the appellant insurance company that the proposal being received in Calcutta and being there accepted, the contract was made in Calcutta. In accepting the appellants' contention, the learned Chief Justice observed (p. 765):

> "For the purpose of the proposal and the acceptance, in my opinion, the agent was merely a post office. It was his duty upon receiving the proposal signed by the assured merely to send it on to Calcutta, there to be dealt with by .the Company, and

> again when the proposal was accepted. it was his duty merely to communicate the acceptance of the proposal to the assured. In my opinion this is a very clear case; and the policy of insurance, in my view, was clearly effected in Calcutta and not in Madras."

In the present case, the telegraph office was merely the agent of the plaintiff proposer. It was the duty of the said agent, upon receiving at Baroda the proposal signed by the plaintiff proposer, to transmit it on to Kanpur, there to be dealt with by the defendants, and again when the proposal, was accepted, it was the duty of the said agent to communicate the acceptance to the plaintiff. The contract was thus clearly effected in Kanpur where the proposal was received by the defendants and accepted by the defendants.

In -- 'AIR 1947 All 337 (M)' a Division Bench of the Allahabad High Court consisting of Malik and Waliullah JJ. held that the posting of an offer could not be regarded to give rise to a part of the cause of action at a place where the offer was posted, when the person to whom the offer was to be communicated lived at a different place. It was observed that Section 4 of the Indian Contract Act put it beyond any controversy that an offer must be deemed to have been made at the place where it was received, not at the place from where it was sent.

Mr. Justice Malik dealing with the decision of the learned Chief Justice Rankin of the Calcutta High Court in -- 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)', said that any observation on a point of law by Rankin C. J. was entitled to great weight, but pointed out that the observations of the learned Chief Justice in the above-mentioned Calcutta case, namely (p. 660):

> "There remain two matters on which the plaintiff can rely in contending that a part of the cause of action took place in Calcutta. One is that this offer was sent from Calcutta by cable to London, and the other is that he rejected the goods--which he did by sending the defendants a communication from Calcutta or by informing their representative in Calcutta,"

were not necessary for the decision of that case as the contract in that case was a c. i. f. contract, and inasmuch as the goods had to be delivered in Calcutta, there could be no doubt that a part of the cause of action did arise in Calcutta. In other words, the Allahabad High Court took the view that the observations cited above of Rankin C. J. in 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)' were obiter.

39. In 'AIR 1945 Lah 260 (N)' the offer for purchase of certain goods was made by the plaintiff residing at Jullunder to the defendant residing at Khanewal. The offer was sent through post and was in due course received by the defendant at Khanewal. The offer was accepted by the defendant by letter sent to the plaintiff from Khanewal. The delivery was to take place at Khanewal. As the goods were not supplied by the defendant, the plaintiff brought a suit for damages at Jullunder. The question was whether the Court at Jullunder had territorial jurisdiction to entertain the suit.

It was contended for the plaintiff that even though the contract might be said to have been made & completed at Khanewal by reason of the acceptance of the plaintiff's offer having taken place there, the offer itself was a part of the cause of action & that under Section 20 of the Civil Procedure Code a Court having territorial jurisdiction in the place from where the offer proceeded had jurisdiction to try the suit arising out of the contract even though the contract might have been completed and broken elsewhere.

The learned Chief Justice Harries, who delivered the judgment of the Division Bench, observed that, although it was true that the letter containing the offer was posted at Jullunder, there was no effective offer until it had been received by the addressee of the letter. The learned Chief Justice said that the mere writing of a letter meant nothing and added (p. 263):

> "Assume for example the offerer wrote the letter at Jullundur and instead of posting it thought better of it and took the letter himself to Khanewal and handed it over to the addressee. In such a case, the offer would clearly have been made at Khanewal. Can it make any difference that the letter is not taken by hand to Khanewal but is sent through post? There is nothing irrevocable about an offer as it can be revoked right up and till the time it is received and before it is accepted. It appears to me that an offer is not an effective offer until it has been received. For example, if the letter was mislaid in the post, could it possibly be said that an offer had been made to the defendants in Khanewal? Obviously it could not be said that such an offer had been made."
>
> "The matter is made perfectly clear by Section 4, Contract Act, which provides that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. That being so, it appears to me clear that the offer in this case was not made at Jullundur but was made at Khanewal."

His Lordship agreed with the dissent, by the Madras High Court in 'Ahmed Bux v. Fazal Karim" (K)', from the view taken by the Calcutta High Court in 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)'.

40. We must now refer in details to the case of 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)', on which Mr. C. K. Shah, the learned advocate for the plaintiff-appellant, relies. There the plaintiff's case was that a number of ball valves was ordered by him to be made by the defendant. The plaintiff's order was sent by cablegram from Calcutta to London. It was accepted by the defendant company by cable from London. It was a c.i.f. contract. The goods came to(Calcutta and they were tendered to the East Indian Railway Company who rejected them. Before the goods were tendered to the East Indian Railway Company, the plaintiff in Calcutta paid a sum of Rs. 5,765 as customs duty in Calcutta. After the railway company had rejected the goods, the plaintiff gave notice of rejection to the defendant company.

On these facts, the plaintiff contended that the defendant company was liable to it in damages including special damage for the sum paid as customs duty and certain other sums. Rankin C. J.,

who delivered the judgment of the Bench, said that there remained two matters on which the plaintiff could rely in contending that a part of the cause of action took place in Calcutta, one was that his offer was sent from Calcutta by cable to London and the other was that he rejected the goods by sending the defendants a communication from Calcutta or by informing their representative in Calcutta.

In the course of his judgment, the learned Chief Justice observed (p. 662):

> "We have to ask ourselves whether something, which the plaintiff is obliged to prove as a fact) in order that his case may succeed, is a thing which took place within Calcutta. If it is, it seems to me to be no answer to say that what took place in Calcutta was not by itself a contract and it seems to me to be wrong to introduce notions, which depend upon the view that a contract, which was in fact made by people at different places, was made in the place where the last assent was given. Strictly a contract is not a fact but an obligation which may result from a series of facts."

In memorable words, the learned Chief Justice said (p. 663):

> "I would like here to observe that I think it a confusion to say that, if you want to know where a contract was made, the answer will be found in the law of contract. That is the last thing you will find in the law of contract. The law of contract will inform you what the necessary conditions are which have to be fulfilled before two parties come under a legal obligation to each other in respect of their negotiations. Thus I believe, the Indian Contract Act nowhere says anything about the place where the contract is made and it is no part of the ordinary law of contract, though it may be part of a doctrine of private international law or of some rule of procedure, to say that where persons in two different places do something out of which the contract arises, the contract is to be deemed to have been made in one place rather than in the other."

It is doubtless that the pronouncements of a celebrated jurist as the learned Chief Justice Rankin on points of law are entitled to the greatest weight. But, with very great respect, I feel we must turn to the law of contract--Section 4 of the Indian Contract Act--in order to see when the communication of an offer is complete, bearing in mind that an offer can be revoked or withdrawn till it is received and before it is accepted. There is no such thing as an incomplete or partial communication of an offer known to the law of contract. Either there is communication or there is no communication. We must therefore know when there is communication, and for that we must inevitably turn to Section 4.

Again, with very great respect, it is not correct to say that if we want to know where a contract was made, the answer would not be found in the law of contract. The law of contract does tell us that at the place where the offer is made to the offeree and is accepted by the offeree, there takes place a concluded contract as against the offerer. Besides, the view taken by the learned Chief Justice Rankin is directly contrary to the decision on the point expressed so clearly by Lord Justice Lawrence and Lord Justice Lush in 'Clarke Brothers' case (O)', where the section that was

considered was Section 74 of the County Courts Act, 1888, which in terms was very similar to Clause (c) of Section 20 of the Civil Procedure Code. It may also be noted that in 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)' the question whether the cabling of an offer from Calcutta constituted part of the cause of action and gave jurisdiction to the Calcutta Court did not really arise for decision, as the contract was to be performed and was actually performed in 'Calcutta, giving undoubted jurisdiction to the Calcutta Court, in the circumstances, the observations of the learned Chief Justice Rankin, to which I have referred above, were with great respect obiter.

41. Mr. Shah for the appellant has referred us to a decision of this Court in '21 Bom 126 (D)'. This case was referred to by Rankin C. J. in 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)' and by Bhagwati J. in 'Premchand Roychand & Sons v. Moti Lall (E)'. Rankin C. J. relied upon it in support of his view, whereas Bhagwati J. said that it did not lay down a principle which would prevent him from holding that even though an offer might have emanated from a place within jurisdiction, it could not be said to have been made until that offer had been received by the party to whom it had been made. The material observations of Mr. Justice Fulton in 'Dobson and Barlow v. Bengal Spinning and Weaving Co. (D)' were (p. 134): "……if the making of the contract be part of the cause of action, it appears to follow that the act of concurrence of either party which is essential to the contract is itself a part of the cause of action, for without such act of concurrence the contract cannot come into existence." Now, the law of contract does not contemplate concurrence, by the offerer, to the acceptor's acceptance, after the acceptance. In the Indian Contract Act, there is no such thing as a concurrence to acceptance. For a concluded contract what is necessary is the making of an offer & the acceptance of the said offer. The proposer's concurrence to acceptance by the acceptor is not necessary. Therefore, when Mr. Justice Fulton appeared to speak of concurrence by the offerer to the contract, we must assume that he had in mind the making of an offer by the offeror and we have already seen that there is no effective making of an offer until the offer is received at the other end by the other party. That being so, I am of the view that the proposer's concurrence to the contract, which Mr. Justice Fulton seemed to have in view, to be effective occurred only when the proposal was received at the other end and not, when the proposal was posted from Baroda.

42. In '27 Mad 355 (I)' the plaintiff who was a resident of Kurnool filed a suit in the District Court of Kurnool against the defendants, who resided in Madras, for damages. The plaintiff had been consigning goods for sale to the defendants as commission agents and he complained that the defendants had sold his goods at rates unnecessarily low. The contract of agency had been concluded by postal communications between the plaintiff and the defendants. The first issue which was framed in the case was whether the District Court of Kurnool had jurisdiction to entertain the suit.

The District Judge' held that he had jurisdiction inasmuch as the dealings of the parties were begun and carried on by letters written from Kurnool to Madras and from Madras to Kurnool and, therefore, the suit could be instituted at either place. The High Court held that the contract was made in Madras where the plaintiffs' proposal sent by post came to the knowledge of the defendants and where the defendants' acceptance was posted and was thus put in the course of transmission to the plaintiff so as to be out of the power of the defendants.

43. Mr. Shah relies on the case of '' in which Mr. Justice Coyajee held that a part of the cause of action had arisen in Bombay from where the offer was" made. With great respect, I am unable to agree with the view taken by Mr. justice Coyajee. A contention whether the posting of an offer from a particular place was a material factor for considering part of the cause of action was specifically taken by I the plaintiffs in 'Clarke Brothers' case (O)' and was negatived by both the Lord Justices who heard and decided the case.

Lord Justice Lawrence and Lord Justice Lush both came to the conclusion that the material question was not where the offer was sent from, but where it was made and they clearly stated that the -making of the offer was proved by showing that it was received. They observed in terms that the posting of a letter was no part of the cause of action. The decision in the 'Clarke Brothers' case (O)' has been followed by the majority of the High Courts in India. Mr. Justice Coyajee has relied on the decisions in 'Dobson and Barlow v. Bengal spinning and Weaving Co. (p)', and 'Engineering Supplies, Ltd. v. Dhandhania & Co. (G)'. In regard to both these cases, I have made my observations which I do not wish to repeat.

44. Thus, the weight of the judicial decisions points overwhelmingly to the conclusion that the posting or telegraphing of an offer from a particular place does not give rise to a part of a cause of action for the purpose of jurisdiction.

45. The next point for consideration in this appeal is this: Is the acceptance of an offer a continuous thing or is it complete as against the proposer as soon as it is posted or telegraphed by the acceptor? Here again, Mr. Shah relies on the abovementioned decision of Coyajee J. in 'Bombay steam Navigation Co. v. Union of India (F)'. Coyajee J. has held that the acceptance is a continuous acceptance until it reaches the offeror at the other end. For coming to this conclusion, Mr. Justice Coyajee has relied on a decision of Mr. Justice Patanjali Sastri, as he then was, in 'AIR 1942 Mad 13 (H)'. Mr. Justice Patanjali Sastri held that although an acceptance of an offer was complete as against the proposer as soon as the letter containing it was posted, it was a continuing act until it reached the person to whom it was communicated and thus could be taken to be made also at the place where it was received. In Mr. Justice Patanjali Sastri's view, where an offer was made and accepted through post, a part of the cause of action arose where the letter accepting the offer was posted and a part where it was delivered.

It may be noted with great respect, however, that in the abovementioned case Mr. Justice Patanjali Sastri was sitting as a single Judge and his decision was contrary to an earlier judgment of a Division Bench of the same High Court which is reported in -- 'Mylappa Chettiar v. Aga Mirza', AIR 1920 Mad 177 (W). In a subsequent case of the Madras High Court also, 'AIR 1943 Mad 471 (L)', a division bench of the Madras High Court definitely dissented from the view taken by Mr. Justice Patanjali Sastri in 'Sepulchre Bros. v. Khushal Das (H)', and while overruling the said view, the Division Bench characterised it as unsound and incorrect. With respect, I am in agreement with the view of the Division Bench of the Madras High Court in 'Manilal v. Venkatachalapathi (L)'.

46. It is true that the view of law taken by Mr. Justice Patanjali Sastri in 'Sepulchre Bros. v. Khushal Das (H)' finds support in an English decision, '(1875) 32 UT NS 778 (P)'. In that case, Lord Coleridge

C. J. observed (p. 780):

> ".....in my opinion, although complete when he sends it (acceptance) off by post and made then as against him, it is nonetheless made also when it reaches the mind of the offerer by reason of its having also been made before... .and so, to apply the proposition to the facts in this case, I should say that, although an account was un-doubtedly stated at Copthorne, wherever that may be, it was none the less stated again when the letter containing the admission was received in the City."

Lord Justice Denning agreed with the view of Lord Coleridge C. J. and said:

> ".....I do agree that, if the letter speaks at the moment it is posted, it is in the nature of a continuous statement and speaks also at the moment when it is received."

With very great respect, the view of law taken in 'Sepulchre Bros. v. Khushal Das (H)' is clearly opposed to the plain language of Section 4 of the Indian Contract Act and also seems on the whole to be against the weight of the judicial decisions, When we are considering the question of a cause of action to the proposer's suit, we must consider when the acceptance as against the proposer is complete. Section 4 says that the communication of an acceptance is complete as against the proposer when it is put in a course of transmission to him so as to be out of the power of the acceptor.

It is no doubt true that, as against the acceptor, the communication of an acceptance is complete when it comes to the knowledge of the proposer. But, when we are considering the question of a cause of action or a part of a cause of action for the suit of the proposer, what must be taken in account is the completeness of the communication of an acceptance as against the proposer and not as against the acceptor. It is to be remembered that all that was required to establish a completed contract in this case had been completed at the moment the telegram of acceptance was despatched by the defendants from Kanpur.

It is difficult to understand how the acceptance of the offer, which took place at Kanpur by the despatch of a telegram of acceptance by the acceptor from Kanpur, could also become an acceptance at Baroda, especially when we have got to remember that the acceptance at Kanpur had to become an acceptance as against the offerer at the moment of the despatch of a telegram from Kanpur. If the acceptance as against the proposer is a continuous thing and therefore takes place not only at the place from where it is communicated, i.e., posted or telegraphed, but also at the place where it is received by the offerer, there will be two acceptances binding on the offerer. Such a position is untenable under the Indian Contract Act.

It was for this reason that Mr. Justice Patanjali Sastri's view on this point in 'Sepulchre Bros. v. Khushal Das (H)' was considered unsound and incorrect by a subsequent decision of a Division Bench of the Madras High Court. The view of law on this point taken by Mr. Justice Patanjali Sastri in 'Sepulchre Bros. v. Khushal Das (H) and adopted by Mr. Justice Coyajee in 'Bombay Steam Navigation Co. v. Union of India (P)' is against the explicit language of the provisions of Section 4 of

the Indian Contract Act. Section 4 says:

> "The communication of an acceptor is complete, as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor."

Therefore, according to Section 4, the acceptance is complete as against the proposer the moment it is put in the course of transmission so as to be out of the power of the acceptor. Now, if the acceptance as against the proposer is complete as soon as it is put in the course of transmission, what happens later when it reaches the hand of the offerer can be no part of the acceptance as against the proposer. If the receipt of the acceptance by the proposer is a part of the acceptance as against the proposer, then the putting of the acceptance in the course of transmission by the acceptor cannot be a complete acceptance as against the proposer, and this position is obviously unsustainable in view of the clear provisions of Section 4. In the matter of acceptance, Section 4 puts the offerer in a different position from the acceptor. Whereas, as against the proposer, the communication of an acceptance is complete as soon as it is put in the course of transmission to the proposer, it is not so as against the acceptor himself, so far as the acceptor himself is concerned, an acceptance is a continuous thing and becomes complete, as against him, when it comes to the knowledge of the proposer at the other end.

47. In this connection, I may quote with advantage the observations of the learned Chief Justice Harries in 'Pokhar Mal v. Khanewal Oil Mills (N), which arc pertinent (p. 264):

> "There can be no doubt whatsoever that the moment that letter of acceptance was placed in the post-box in Khanewal, the offer had been accepted and the contract had been concluded. The posting of the letter was an acceptance of the offer and bound the offerer immediately it was posted although by Section 4, Contract Act, the position of the acceptor is somewhat different." It must be remembered that the offerer was here suing and suing upon a contract which was complete when the letter was posted to him at Khanewal. All that was required therefore to establish a complete contract had been completed the moment the letter was posted. Mr. Grover has urged that the acceptance must be regarded as a continuing one and it is acceptance at Jullundur also when the letter reached the offerer. I cannot see how it can be an acceptance at Jullundur when it had to become an acceptance as against the offerer at the moment of posting. The offerer could not be heard to say that no contract existed the moment the letter was posted. If a contract had come into existence by the posting of the letter, there could be no question of the acceptance subsisting until it reached Jullunder."

As the learned Chief Justice Harries pointed out, Section 4 of the Indian Contract Act creates, in the case of an acceptor, a position which is somewhat different from the position of an offerer. As soon as the communication accepting the offer is despatched, the said communication is complete as against the offerer and binds the offerer. But, so far as the acceptor is concerned, he has liberty to revoke it or cancel it, and the said liberty subsists up to the point of time that the communication of acceptance reaches the offerer.

The ultimate decision of the Division Bench in that case was that the moment the letter of acceptance by the defendant was posted in the post box at Khanewal, the offer had been accepted and the contract had been concluded and that, as a complete contract had come into existence by the posting of the letter of acceptance by the defendant at Khanewal, there could be no question of the acceptance subsisting until the letter reached Jullunder. It was therefore held that the mere receipt by the plaintiff of the letter of acceptance at Jullunder could not be said to form part of the cause of action for the suit for damages for breach of the contract so as to entitle the plaintiff to bring the suit at Jullunder. The cause of action, as far as the plaintiff was concerned, was complete the moment the letter of acceptance was post-ed, & that being so, the fact that it ultimately reached its destination at Jullunder was not material.

48. The Bombay decision in " also proceeded on the basis that the acceptance of an offer was not a continuous thing as against the proposer, but was complete as soon as it was put in the course of transmission by the acceptor at the other end. If the Court had taken the view that the acceptance was a continuous thing and also gave rise to a cause of action for the plaintiff's suit at the place where it was received by the plaintiff, it would have been held that the Bombay Court had jurisdiction to try that particular suit, but the decision of the Court was that the Bombay Court had no jurisdiction to try the suit, as no part of the cause of action had arisen in Bombay.

49. In -- 'Sitaram Marwari v. Thompson', 32 Cal 884 (X) Mr. Justice Mookerjee in the course of his judgment observed (p. 889):

> "But it is a much more frequent and more difficult case where the contract is not entered into at a personal meeting of the parties, but by a messenger, by a document signed by the parties at different places, or what is most usual, by a simple correspondence. In such cases, the true place of the contract has been most keenly disputed. Three different questions naturally arise, although most jurists do not discriminate them. Where is the contract made? What place is to fix the forum? What the local law? To the first, I answer without hesitation, that the contract is concluded where the first letter is received 'and the assenting answer is despatched by the receiver'; for at this place a concurrent declaration of intention has been arrived at. The sender of the first letter is, therefore, to be regarded as if he had gone to meet the other, and had received his consent."

In the case before us also, it was at Kanpur that a concurrent declaration of intention was. arrived at. Following the observations of Mr. Justice Mookerjee quoted above, the sender of the first telegram, i.e., the plaintiff, must be regarded as if he had gone to meet the defendants at Kanpur, and when the defendants despatched a telegram of acceptance from Kanpur, it must be taken that the plaintiff had received the consent of the defendants.

50. In '27 Mad 355 (I)', to which I have already referred, it was observed by a Division Bench of the Madras High court (p. 359): "Under the Indian Contract Act, it is true that the contract is not complete in the sense that neither party can recede therefrom, until the acceptance comes to the knowledge of the proposer. But at the time when the acceptance is posted, the contract becomes

complete as against the proposer and any communication (from the proposer) which reaches the acceptor after this moment, revoking the proposal, is altogether inoperative. As against the acceptor, however, the contract is not complete at that moment and can be avoided by him by communicating to the proposer, a revocation of the acceptance, before the acceptance reaches him." Clearly thus, the acceptance is a continuing thing so far as the completeness of the contract 'as against the acceptor' is concerned.

51. In Halsbury's Laws of England, 2nd Edn., Vol. VII, p. 94, para. 130, it is observed;

> "The acceptance of an offer made through, the post is complete as soon as a property addressed letter containing the acceptance is posted. The acceptor is not responsible for any delay or failure on the part of the post office, provided that it is not caused by any default on his part, and the person making the offer is bound by the acceptance from the time when it was posted, notwithstanding that, the letter of acceptance is lost in the post, or that its delivery is delayed, or that it is returned to the acceptor owing to a mistake in the address caused by the person who made the offer. The principle is that for the purpose of receiving the acceptance the post office is the agent of the person who makes the offer, not of the acceptor."

In support of these observations, reliance is put on numerous English decisions. It would thus be clear that the view of the law expounded by Mr. Justice Patanjali Sastri and adopted by Mr. justice Coyajee is against the overwhelming weight of the judicial authorities both in this country and England.

52. In 'AIR 1943 Mad 471 (L)' to which I have already referred, it was held by Leach C. 3. and shahabuddin J. that a contract was made where the offer was accepted, and an offer, when accepted by post, was accepted at the place where the letter of acceptance was posted, and therefore the cause of action arose there.

53. The result of the examination of the above authorities is that, in the case before us, the offer was made at Kanpur and the acceptance of the offer also took place at Kanpur and, therefore, no part of the cause of action arose within the jurisdiction of the Baroda Court.

54. The appeal must, therefore, fail and be dismissed.

55. Appeal dismissed.