

**(1950) 03 CAL CK 0008**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 1832 of 1947**

Dominion of India

APPELLANT

Vs

Gopal Chandra Tapadar and Others

RESPONDENT

**Date of Decision :** 14-03-1950

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 20  
Presidency Small Cause Courts Act, 1882 — Section 18  
Railways Act, 1989 — Section 77

**Citation :** AIR 1951 Cal 37 : 55 CWN 113

**Hon'ble Judges :** Lahiri, J;Guha, J

**Bench :** Division Bench

**Advocate :** Bhabesh Narayan Bose, for the Appellant; Binayak Nath Banerjee and Sushil K. Biswas, for the Respondent

## Judgement

1. This is a Rule obtained by the Dominion of India, now Union of India against a judgment of the F. B. of the Presidency Small Causes Ct. Calcutta, by which the pltf's. suit for recovery of the price of 440 bags of cement was decreed against the second deft. The facts giving rise to this Rule are as follows:

2. The pltf. was the consignee of 440 bags of cement despatched from Japla on the East Indian Railway System for carriage to Gaibandha on the Bengal & Assam Railway system. This consignment never reached its destination & accordingly the pltf. instituted the suit against the Governor-General of India in Council as representing (1) The East Indian Railway, (2) The Oudh & Trihut Railway, & (3) the Bengal .. & Assam Railway. Of these three railways the East Indian Railway & the Bengal & Assam Railway have their offices in Calcutta. The pltf. instituted the suit in the Presidency Small Cause Court, Calcutta, on the allegation that the cause of action arose in Calcutta as the East Indian Railway & the Bengal & Assam Railway have both their business & office at Calcutta & as notices u/s 77, Railways Act had been served on the East Indian Railway & the Bengal & Assam Railway at Calcutta within the jurisdiction of the Presidency Small Cause Ct.

3. The suit was contested by the deft, inter alia on the ground that the Presidency Small Cause Ct. had no jurisdiction because the deft, cannot be said to reside in or carry on business or personally work for gain within the local limits of the jurisdiction of the Presidency Small Cause Ct., & secondly that no part of the cause of action arose within the local limits of that jurisdiction. The Presidency Small Cause Ct. Judge who tried the suit dismissed it against the East Indian Railway & the Bengal & Assam Railway but decreed it for a sum of Rs. 750/- against the Oudh & Trihut Railway without assigning any reasons. An appeal to the F. B. u/s 38, Presidency Small Cause Courts Act, was also dismissed without assigning any reasons. Against the decision of the F. B. the Dominion of India obtained the present Rule.

4. Mr. Bose appearing in support of the Rule has argued in the first place that the present case was not triable by the Presidency Small Cause Ct. because all the three Railways which have been impleaded as defts. in the suit were owned by the Central Govt. & were represented by the Governor-General in Council who could not be said to voluntarily reside or carry on business or personally work for gain in carrying on the administration of the Railways. In support of this contention reliance is placed upon the decision reported in the case of *Rodricks v. Secy. of State* 40 Cal. 308 : (21 I. C. 1), where Sir Lawrence Jenkins made the following observation:

"The Ct. has no jurisdiction to entertain a suit brought against the Secretary of State where the cause of action has arisen wholly outside the ordinary original jurisdiction of that Ct. on the sole ground that the Secretary of State dwelt or carried on business or personally worked for gain within the local limits of that Ct."

& in this decision Sir Lawrence Jenkins followed an earlier decision of this Court reported in *Doya Narain v. Secy, of State* 14 Cal. 256. These two decisions of this Ct. were followed by the Madras H. C. in the case of *Govindarajulu Naidu v. Secy. of State* A. I. R. 1927 Mad. 689, where it was pointed out that the word "resides" must be taken to refer to natural persons & not to legal entities; & further, the word "business" is a Commercial business & not a business of the State or Govt. & as such the Secretary of State could not be said to carry on business in running the administration of the Railways. The decision in *Bodricks v. Secy. of State* 40 Cal. 308 : (21 I. C. 1) was also followed by another Division Bench of this Ct. in *Dominion of India Vs. R.C.K.C. Nath and Co.*, , decided by the C. J. and Banerjee J. on 5-12-1949. In view of these authorities, it is impossible for us to hold that the present case can come under Clause (c) of Section 18, Presidency Small Cause Courts Act, which requires that at the time of the institution of the suit any of the defts. should actually & voluntarily reside or carry on business or personally work for gain within such local limits & either the leave of the Ct. has been given before the institution of the suit or the defts. who do not reside or carry on business or personally work for gain acquiesce in such institution. It may be mentioned here that in the present case the pltf. obtained

the leave of the Ct. u/s 18, Presidency Small Cause Courts Act. There is one decision by Lord Williams J. in the case of Golab Rai v. Secy. of State I. L. R. (1941) Cal. 160, where his Lordship took the view that carriage by railway is a business within the meaning of Clause 12, Letters Patent, & is carried on by the Govt. of India. In view of the three Division Bench judgments to which we have already referred it is impossible for us to follow the decision of Lord Williams J. in this case. We accordingly hold that the first point raised by the petnr. must succeed & it should be held that the Presidency Small Cause Ct. Judge had no jurisdiction to entertain the suit under Clause (c) of Section 18, Presidency Small Cause Courts Act.

5. The second point raised by Mr. Bose is that no part of the cause of action arose within the local limits of the Presidency Small Cause Ct. & therefore Clause (a) of that section also did not apply. Clause (a) of Section 18 confers jurisdiction on the Presidency Small Cause Ct. when the cause of action has arisen either wholly or in part within the local limits of the Small Cause Ct. & leave of the Ct. has been given before the institution of the suit. We have already said that the pltf. in the present case obtained leave of the Ct. u/s 18. The question, therefore, that requires consideration is as to whether in the circumstances of this case it can be said that the cause of action has arisen either wholly or in part within the local limits of the jurisdiction of the Small Cause Ct. In para. 7 of the plaint the pltf. alleges that the cause of action arose in Calcutta as notices u/s 77, Railways Act, had been served on the East Indian Railway & the Bengal & Assam Railway at Calcutta, within the jurisdiction of the Small Cause Ct. The controversy had centered round the meaning of the expression "cause of action". Various authorities were placed before us for the purpose of showing the different meaning attributed to the expression "cause of action". It is to be noticed that with regard to the jurisdiction of a Ct. the expression "cause of action" has been used in Section 20, Civil P. C., Section 18, Presidency Small Cause Courts Act as also Clause 12, Letters Patent of the Calcutta H. C. In the case of Engineering Supplies Ltd. Vs. Dhandhanian and Co., , Rankin C. J. had to consider the meaning of the expression "cause of action" as used in Clause 12, Letters Patent, & at p. 544 of the report his Lordship made the following observation:

"The only definition that will work, if it has to be applied to cases of all kinds, is the entire set of facts that gives rise to an enforceable claim or, in the words of Pry L. J., everything which if not proved gives the deft, an immediate right to judgment," "every fact which is material to be proved to entitle the pltf. to succeed, every fact which the deft. could have a right to traverse."

6. Mr. Bose has referred to the decision of the Judicial Committee in the case of AIR 1949 78 (Privy Council) their Lordships considered the different meanings attributed to this expression by different Judges. Their Lordships also quote the definition given by Lord Esher M. R., in *Bead v. Brown* 1889 Q. B. D. 128 : (58 L. J. Q. B. 120), which runs as follows :

"Every fact which it would be necessary for the pltf. to prove, if traversed, in

order to support his right to the judgment of the Ct."

These definitions of the expression "cause of action" are certainly wide enough to include the service of notice u/s 77, Indian Railways Act, because service of the notice is one of the facts which it was necessary for the pltf. to prove in order to support his right to the judgment of the Ct. The view indicated above is supported by the decision of a Division Bench of this Ct. in the case of *Dominion of India v. Jagdish Prosad Pannalal A. I. R. 1949 Cal. 622 : (84 C. L. J. 175)*.

7. Even if it is held that service of notice u/s 77, is part of the cause of action it is to be noticed that the Oudh & Trihut Railway against which the suit has been decreed, has no office in Calcutta & therefore notice upon this Railway was not served in Calcutta within the jurisdiction of the Presidency Small Cause Ct. In the case of *Dominion of India v. Jagdish Prosad Pannalal A. I. R. 1949 Cal. 622 : (84 C. L. J. 175)*, it was pointed out that the Governor General & the Dominion of India & now the Union of India is the sole deft, in the case as owning three different railways & a notice u/s 77 upon the Governor General in Council as representing the East Indian Railway should be held to be a good notice upon the Governor General as representing the Oudh & Trihut Railway. At p. 624 of that report their Lordships made the following observations :

"The Governor General in Council, & now the Dominion of India, does own these two railways. But as owner of the railways, the Governor General in Council or the Dominion of India is the same entity. It does not own the East Indian Railway in one capacity & the Bengal Nagpur Railway in another capacity. It owns both & therefore it may well be that upon the true view of the facts in this case, this was a suit against one deft, only namely, the Governor General in Council & now the Dominion of India."

In this view of the matter the case before us comes under Clause (a) of Section 18, Presidency Small Cause Courts Act. We, therefore, hold that the Small Cause Ct. in the present case has jurisdiction to try the suit u/s 18(a), Presidency Small Cause Courts Act.

8. In the result the Rule is discharged with costs, hearing fee two gold mohurs.