# Guardian Assurance Co. Ltd. Vs Thakur Shiva Mangal Singh

**Court:** Allahabad High Court

**Date of Decision:** Sept. 8, 1936

**Final Decision:** Dismissed

## Judgement

1. This is an appeal from an order filing an agreement of reference to arbitration. The applicant Thakur Shiva Mangal Singh got certain ornaments

injured with the defendant company for Rs. 18,000 with a guarantee that if the articles be lost by burglary and house, breaking at any time within

the period fixed, then the company shall pay or make good all such loss or damages not exceeding the sum of Rs. 18,000. There were a Large

number of other conditions contained in numerous paragraphs printed overleaf among which there was a clause that if any question or difference

arose between the insured or any claimant upon this policy and the company as to the meaning and effect of this policy or as to any claim by or any

right or liability of either party by virtue thereof, the same shall be referred to arbitration and be decided by arbitrators mutually chosen or by an

umpire chosen by them previously to commencing arbitration, and the award shall be binding and conclusive on the parties to the reference and

may be made a rule of any competent Court, etc. and that the company shall not be liable in respect of any claim under this policy unless and until

the liability and the amount of the liability of the company in respect thereof shall have been referred to arbitration and determined by an award,

and the obtaining of an award thereon shall be a condition precedent to any right of action against the company upon this policy. The company also

had the option instead of paying the amount of the loss or damage to make it good by replacing the article stolen. There was no express provision

as to the place at which the amount would be paid. This was the policy granted by the company bearing the signature of their director and local

managers, Andrew Yule & Co., Ltd., Calcutta. The actual form which was previously signed by the applicant is not before us.

2. The present application for the filing of this agreement was made under Para. 17, Schedule 2, Civil P.C., The defendant company took the

objection that Schedule 2 was not applicable inasmuch as this was a submission to which the Arbitration Act (Act 9 1899) applied and therefore

the Muttra Court could not go on with this matter. The learned Subordinate Judge has overruled this objection and has held that the Muttra Court

has jurisdiction to entertain the application. His findings are that although the submission was accepted at Calcutta, a part of the cause of action

arises at Muttra and therefore there is jurisdiction to entertain the application. The learned advocate for the appellant urges before us that there is a

complete bar to the proceedings being taken at Muttra. The learned advocate for the respondent while supporting the judgment of the Court below

further takes up the position that the contract was not accepted at Calcutta and has also maintained that there is no admission on behalf of his client

that the company carries on any business at Calcutta or has got any office or sic there authorized to accept proposals for insurance. The first

question is whether any part of the cause of action arose at Muttra. For purposes of this argument we would assume that a part of the cause of

action arose at Calcutta also inasmuch as the contract was accepted at Calcutta. We shall also assume that a claim in respect of the subject matter

could have been brought in Calcutta be cause the defendant company is carrying on business at Calcutta. It has already been noted that these

points are disputed by the applicant.

3. The learned advocate for the company relies strongly on a recent case of the Rangoon High Court in Jupiter General Insurance Co., Ltd v.

Abdu Aziz AIR 1924 Rang 2, in which it has been laid down that in the case of a life insurance where the contract was made at one place and the

death occurred in another place, the death is the cause of the cause of action and not a part of the cause of action itself and accordingly the place

where the death took place would not confer jurisdiction on the Court. It is admitted that this view is contrary to a number of rulings of other High

Courts. We may mention the cases in The Light of Asia Insurance Company Ltd. Vs. Bai Chanchal, , The Bengal Provident and Insurance

Company Ltd. Vs. Kamini Kumar Choudhury, The weight of authority is undoubtedly against the contention put forward on behalf of the

company. But it is urged that the reasons given in the Rangoon case should be accepted in this Court. The words ""cause of action"" have never

been defined by the Indian Legislature but they certainly came to connote a definite meaning in England. Prior to 1882, the Courts in India

accepted the definition of the expression ""cause of action"" as given in England and applied it to cases arising before them. As early as 1797, in

Cailland v. Champion (1797) 101 E.R. 933 it was held that a part of the cause of action on a Policy of Insurance of the life of a person arose in

Scotland -where he had lately died. The question received an authoritative pronouncement in Read v. Brown (1889) 22 Q.B.D. 128. The Division

Bench consisting of Pollock, B. and Manisty, J. had come to the conclusion that the expressions cause of action"" and ""part of the cause of action

had long been judicially defined as meaning respectively the facts and any material fact in the case for the plaintiff. Lord Esher, M.E. in his judgment

quoted with approval the definition of that expression given in the earlier case in Cook v. Gill (1873) 8 C.P. 107 as:

every fact which it would he necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court, but it does

not comprise every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved.

4. Fry, L.J. agreeing with that opinion remarked that everything which, if not proved, gives the defendant an immediate right to judgment, must be

part of the cause of action, and Lopes, L.J. agreeing with the definition given by the Master of Rolls of a cause of action pointed out that it includes

every fact which it would be necessary to prove, if traversed, in order to enable a plaintiff to sustain his action. In a case not arising under the

Contract Act a Full Bench of this Court in Murti v. Bhola Ram (1894) 16 All. 165, adopted the definition given in Read v. Brown (1889) 22

Q.B.D. 128. The learned Chief Justice quoted these definitions at p. 170 of his judgment with which the other learned Judges agreed. It is not

suggested that this definition of ""cause of. action"" has in any way been altered so far as the English Courts are concerned and the view of the Full

Bench of this. Court, so far at least as cases not arising under the Contract Act are concerned, must prevail and is binding upon us. Their

Lordships of the Privy Council also had occasion to lay down as to what was meant by the expression ""cause of action."" In Chand Koer v. Parta

Singh (1889) 16 Cal. 98, it was remarked:

Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of

the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the ""cause of action,"" or, in other words, to the media

upon which the plaintiff asked the Court to arrive at a conclusion in his favour.

5. There can be no doubt that prior to 1888 Courts had to consider the meaning of the words ""cause of action"" in cases arising under contracts.

The Code of 1882 merely referred1 to the place where the cause of action arose; but it was however not clear whether it meant a place where the

whole of the cause of action or only a part of it had arisen. Accordingly the section was amended by Act 7 of 1888 and an explanation was added

which laid down that with regard to suits arising out of contracts the cause of action arose within the meaning of that section at any of the following

places: (1) The place where the contract was made, (2) the place where the contract was to be performed or performance thereof completed, (3)

the place where in performance of the contract any money to which the suit related was expressly or impliedly payable. The Courts accordingly in

cases of contract considered that the three categories specified in the explanation were comprehensive and exhaustive and it was not appropriate

to go beyond them. In other cases the Courts still interpreted the meaning of the words ""cause of action"" in the light of the observations of their

Lordships of the Privy Council and the cases in England. From Section 20 of the Code of 1908 the old categories have been deleted, and now the

words ""the cause of action, wholly or in part, arises"" have been substituted. It seems to us that it is our duty to interpret the words as they now

stand in the statute and not the words as they had appeared in the amending Act of 1888, which have been intentionally removed by the

Legislature.

6. In this connexion, it may be pointed out that a remark made in the course of the judgment in Salig Ram v. Chaha Mal (1912) 34 All. 49 that the

law has not been altered as to what is the cause of action in suits arising out of contracts, was in the nature of an obiter dictum because that was a

suit for compensation for loss caused by the negligence of the agent, and negligence of the agent being the basis of the suit, the cause of action

obviously accrued at the place where the negligence took place and not at the place where the plaintiff suffered loss. Later in Mohammand Zakaria

v. Mohammad Hafiz AIR 1917 All. 17, it was remarked that the meaning of the expression cause of action"" has long been judicially settled and

finally pronounced in Courts in England in Read v. Brown (1889) 22 Q.B.D. 128 and adopted by a Full Bench of this Court in Murti v. Bhola

Ram (1894) 16 All. 165 a decision which is binding on Division Benches. The position then is that under the present Code it is the duty of the

Court to consider whether the cause of action, wholly or in part, arose in Muttra. For this we must attribute to the expression used by the

Legislature the ordinary meaning applied to it, and should therefore not confine it within the narrow categories which were specified in the

amending Act of 1888. It seems to us that the result of the deletion of the explanation is to restore the position which stood prior to 1888 and the

Courts: are now free to interpret Section 20 in the light of the words used therein irrespective of the categories specified previously. In Joseph

Trimble v. George Hill (1880) 5 A.c. 342 it was remarked:

Their Lordships think the Court in the colony might well have taken this decision as an authoritative construction of the statute. It is the judgment of

the Court of Appeal, by which all the Courts in England are bound, until a contrary determination has been arrived at by the House of Lords. Their

Lordships think that in colonies where a like enactment has been passed by the Legislature the Colonial Courts should also govern themselves by

it.

7. We therefore think that the, words; ""cause of action"" should be understood to mean as defined in the English Courts and accepted in India. This

view finds support from the observation made by their Lordships of the Privy Council in Chand Koer v. Parta Singh (1889) 16 Cal. 98. Now it is

true that thet immediate cause of action for the suit may be the non payment by the defendant company of the amount due from it. But it cannot

also be denied that the plaintiff! cannot possibly succeed without proving that the articles were stolen. The suit is bound to fail, if in the case of

denial, evidence is not given of the burglary having taken place. The burglary therefore is one of the facts which it is necessary for the plaintiff to

establish before obtaining! relief. It is certainly not the cause at action Ã¯Â¿Â½^r the suit, but is a part of the cause of action entitling the plaintiff to sue.

Under the guarantee the plaintiff"s right to recover the amount accrued immediately the articles were stolen. It Was not contingent upon the

happening of any future events and was certainly not dependent upon the making of a demand and the refusal by the defendant to pay the amount.

The cause of action accrued in favour of the plaintiff at a time when his right to sue accrued and time also began to run against him and would not

be kept in abeyance until a demand was made and there was a refusal on the part of the defendant. Even if the company exercised the option of

replacing the articles, they would have to do so at Muttra. We are accordingly unable to accept the contention that no part of the cause of action

arose at Muttra. This view is in accordance with the preponderance of authority on this point, and we think that that view should be accepted,

particularly as it seems to be in harmony with the view expressed in Cailland v. Champion (1797) 101 E.R. 933, which appears to be still good

law in England.

8. The main point to consider is whether Schedule 2, Civil P.C., applies to this case because the present application has professedly been made

under para. 17 of that Schedule and is not a plaint in a regular suit. On behalf of the defendant company it is urged that, in view of the arbitration

clause in the guarantee, this was a case where the subject matter in dispute could be the subject of a suit, brought in the Presidency Town of

Calcutta and that accordingly u/s 2, Arbitration Act, that Act applied to this case. It is then urged that u/s 3 of that Act, paragraphs 523 to 526 of

the old Code (corresponding to paras. 17, 19, 20 and 2l) cannot apply to this submission or arbitration inasmuch as the provisions of the Act for

the time being applied to it. The reply on behalf of the respondent is that the Arbitration Act has been amended by the Local Legislature so far as

these Provinces are concerned and the definition of the word ''submission"" given in Section 4(b), Arbitration Act, is now restricted and means only

a written agreement to submit present or future differences to arbitration under the Arbitration Act, 1899, whether an arbitrator is named therein or

not. It is contended that unless the agreement refers specifically to the arbitration taking place under the Arbitration Act, it would not be a

submission within the meaning of the Arbitration Act as amended by the U.P. Local Act. It is also contended that inasmuch as there is no provision

made in the guarantee for the appointment of two arbitrators or for the appointment of a third arbitrator or an umpire there may be difficulty in

future in completing the arbitration proceedings if the defendant Company refused to agree to the appointment of such arbitrators.

9. It seems to us that the latter argument has no force. We are not concerned at this stage with the question whether any deadlock is likely to be

created on account of a particular attitude adopted by the defendant in the arbitration proceedings. Nor are we concerned with the question

whether there are particular sections of the Act which may not have any application to this case. Section 3 merely lays down that certain

paragraphs of Schedule 2, shall not apply to any submission or arbitration to which ""the provisions of the act for the time being"" applied. This

cannot mean that all the provisions of the Act must apply in toto to the submission. This cannot be the case because there are other classes of

agreement referred to therein. There are also references to other proceedings like the filing of an award and so on, and therefore it cannot be

seriously contended that the intention of the legislature was that all the provisions of the Act must in their entirety apply to the submission. It seems

to us that the provisions of the Act must be said to apply to the submission, for the submission, is governed by it and is subject to some of the

provisions which are relevant, irrespective of the question whether ultimately the proceedings would be fructuous or not.

10. The learned advocate for the respondent has to concede that if the U.P. Local Act had not been passed and if the offer had been accepted at

Calcutta, then the Arbitration Act would apply to the case, because a suit could have been filed in Calcutta in respect of the subject matter in

dispute and that accordingly Schedule 2, Civil P.C., would not be applicaable on account of the provisions of Section 3, Arbitration Act. His main

contention is that in view of the amendment made by the Local Legislature it is the duty of the Muttra Court to understand by the word

submission"" the meaning given to it in the local amending Act. He therefore contends that inasmuch as under the local Act it seems to be necessary

that the agreement must specifically refer to the Arbitration Act, the present Arbitration clause would not be a submission"" within the meaning of the

definition given by the local Act and that accordingly it would not be a submission under the Arbitration Act at all. The argument is that the local

Act has been extended to the whole of the United Provinces and that therefore it is the duty of the Courts in the United Provinces to understand by

the word ""submission"" used in the Arbitration Act the meaning given to it by the local Act. It seems to us that this argument has not much force. No

doubt the local Act has been extended to the whole of the United Provinces, in the sense that if the Arbitration Act is subsequently made

applicable to any district, the local meaning of the Act would become applicable automatically. But so long as the principal Arbitration Act has not

been made applicable to Muttra, it cannot be seriously argued that the amending Act, which merely alters the definition of one word in the principal

Act has been made applicable to Muttra. The position then is that so far as the Muttra Court is concerned the proceedings before it are neither

governed by the Arbitration Act nor by the amending Act, and no party can take the benefit of the provisions of that Act in arbitration proceedings.

But that does not mean that the Muttra Court should not look at the Arbitration Act at all and that even if it is satisfied that this is a case which is

governed by the Act and the suit could have been brought in Calcutta, it should ignore the Act and go on with the present application or suit, as the

case may be. It seems to us that in order to see whether the paragraphs of Schedule 2 have been superseded, the Muttra Court is bound to

consider whether the submission in question was one to which the provisions of the Arbitration Act for the time being applied, and was a case in

which, if the subject matter in dispute were the subject of a suit, the suit could be otherwise instituted in a presidency town like Calcutta. If the

submission is such that it could be Bled in the presidency town of Calcutta, but could not be filed in a place like Cawnpore to which the Arbitration

Act with its amendment has been extended, the result would be that the provisions of the Act still applied to the submission, though they applied

only in Calcutta and not in Cawnpore. In such an event it is impossible to say that the provisions of the Act do not apply to the submission at I all.

It follows therefore that if the Muttra Court finds that the submission is one which could be filed in the Calcutta Courts, then it must stay its hands

and cannot entertain proceedings under Schedule 2, Civil P.C.,

11. The learned advocate for the respondent has argued before us that the words ""subject matter"" used in Section 2 must be understood to mean

the subject matter from the point of view of territorial jurisdiction of the Courts and would not include a case where a suit could be filed in the

presidency town on account of the residence of the defendant. It is true that in Section 20, Civil P.C., a distinction has been drawn for the

purposes of the filing of a suit between (i) the case where the defendant or defendants carry on business or work for gain or voluntarily reside

outside, or (ii) where the cause of action, wholly or in part, arises. Under that section there is undoubtedly a distinction, and the cause of action

cannot be said to arise merely because the defendant is residing or carrying on business at a particular place; but specific provision has been made

to meet such a case. There is no doubt that the legislature instead of saying where the suit could have been filed has taken care to say where,

if the subject matter submitted to arbitration were the subject of a suit, the suit could be filed.

12. The emphasis accordingly is on the subject matter in dispute being the subject of a suit. This seems to be quite independent of the case where

the suit is maintainable on account of the residence of the defendant. If the subject matter of the suit be such that a suit could be brought in respect

of it in Calcutta, the case would fall u/s 2, for it does not speak of a suit being brought as between the parties, but merely speaks of the subject

matter being the subject of a suit in the Presidency town. This view is contrary to certain observations made in Mathuradas Maganlal Vs. Maganlal

Parbhudas, and Khillooram Lokuram v. Louis Dreyfus & Co. AIR 1919 Sind 57. The Bombay case was an entirely different case where there

was an oral agreement of reference to arbitration followed by an, award. The High Court held that such sic was not invalid and a suit could be

brought on the basis of such an award. The observation made therein was therefore not necessary for the purpose of deciding that case. The point

did arise in the later case in Khillooram Lokuram v. Louis Dreyfus & Co. AIR 1919 Sind 57 where it was considered that inasmuch as the

defendant resided in Karachi the suit could be brought there and therefore the case came within the purview of Section 2. The words used in

Section 2 are far more specific and significant than the mere word ""matter"" used in para. 17 of the Schedule, and we think that the Legislature

intended to confine the applicability of the Arbitration Act to cases where the subject matter in dispute was of such a nature as to be the subject of

dispute in a Presidency town and not to cases where the subject matter was not of such a nature and the suit could be filed because the defendant

happened to be there. This is in accordance with the observation made in In re Babaldas Khemchand AIR 1921 Bom. 185. The position then is

that neither the Arbitration Act nor the amending Act is applicable to arbitration proceedings before the Muttra Courts.

13. The learned advocate for the appellant however strongly relies on the case in Gulab Chand Chotey Lal Vs. Kishen Narain and Others,

decided by this Court, and contends that even if there were no express reference to the Arbitration Act in the guarantee, the Act applied and

therefore the reference was one which could be filed in Calcutta. The provisions of the Amending Act of this Province are almost identical with the

provisions of a similar amending Act in the Punjab which came into force a year earlier. The Punjab Court in K.L. Khanna & Co. v. Model Town

Society, Ltd. AIR 1933 Lah. 173 put a restricted construction on this new definition and laid down that unless and until there is a specific reference

to the Arbitration Act in the submission, the Arbitration Act could not be applicable. ""We now think that the policy of the Legislature is that the

Arbitration Act being in many particulars defective it would not be fair to give it a universal application, but it would be advisable to make it

applicable only in such cases in which the parties themselves agreed that the arbitration proceedings should take place under the Arbitration Act

and therefore it is necessary that them should be a specific reference to the Arbitration Act and that a mere reference to arbitration in general

would not bring in the operation of the Arbitration Act. No authorities appear to have been cited before us when the earlier case was decided; at

least none is referred to in the judgment. The judgment proceeded on first impressions. The point has been argued with great ability on both sides

in this case and we have had the occasion to re-examine the matter. On re-consideration we have come to the conclusion that the policy of the

Legislature seems to have been contrary to what was assumed in that case and that the whole object of the Amending Act is to put a restriction on

the scope of submissions and not to make them more general. According to the contention of the learned advocate for the appellant himself, in

Calcutta, whether there is a specific reference to the Arbitration Act or not, the Act would apply. If that be the position, then there would be no

object in passing an Amending Act, if the purpose merely was to make the Act applicable whether there was a specific reference to it or not. On

the other hand, there would be a necessity for the amending Act if the intention be to restrict the Act to cases where there is a specific reference to

the Act. We, therefore, think that the observation made in Gulab Chand Chotey Lal Vs. Kishen Narain and Others, was not sound though that

point was really not necessary for the decision of that case.

14. We feel no difficulty as regards the apprehension in the mind of the respondent that a deadlock may be created if the defendant chooses to be

recalcitrant in the arbitration proceedings. As was observed in In re Babaldas Khemchand AIR 1921 Bom. 185 there is a method by which the

Court can put pressure on the defendant to expedite the arbitration proceedings. u/s 19, Arbitration Act, power is given to a Court to stay

proceedings in case of submission where the Court is satisfied that there is no sufficient reason why the matter should not be referred in accordance

with the submission and that the applicant was at the time when the proceedings were commenced, and still remains, ready and willing to do all

things necessary to the. proper conduct of the arbitration, in which event it has the discretion of making an order staying the proceedings. It follows

that if the assured were to institute a regular suit for recovery of this amount, the defendant company would have to apply to the Court for stay of

the proceedings and would have to satisfy the Court that there was no sufficient reason why the matter should not be referred in accordance with

the submission and that the company was at the commencement of the proceedings and still remained ready and willing to do all things necessary

for the proper conduct of the arbitration proceedings. It is only on those conditions that the proceedings can be stayed. If the company fails to

satisfy the Court as regards either of these matters, the Court may not stay the proceedings and go on with the suit. There is, therefore, no real

apprehension that there would be any complete deadlock in a matter like this.

15. Two main questions remain for consideration. The first is whether the Guardian Assurance Co., Ltd. is carrying on lousiness in Calcutta within

the meaning of Clause 12 of the Letters Patent of that High Court. The point was raised expressly in the Court below and we accordingly allowed

the parties to file affidavits before us in order to see whether there is anything which would necessitate the framing of a fresh issue and sending it

down to the Court below for determination after proper Arial. But the affidavit filed on behalf of the appellant in the light of the affidavits filed by

the company does not make out any case for substantiating the suggestion that the Assurance Company is not carrying on business at Calcutta. It

cannot be ^seriously disputed that the rent of a room in the premises occupied by Messrs. Andrew, Yule Co., Ltd. is being paid by the Guardian

Assurance Co., Ltd., that the said room "has been set apart for carrying on business on behalf of the Assurance Co., that separate account books

are maintained as regards the business of this Company in Calcutta, that the company is paying the license tax to the Calcutta Corporation Hinder

the Calcutta Municipal Act, that it has undoubtedly got Messrs. Andrew Yule & Co. and its agents who have been authorized under a duly

executed power-of-attorney to accept insurance proposals, issue cover notes and policies and pay all claims. The Assurance Company Ltd. has

got a sign board also indicating that it has its office on the same premises. It can also not be denied that proposal forms of this type are accepted

by its authorized agents on behalf of the company and that policies under the signatures of the Directors of Messrs. Andrew Yule & Co. are issued

to people who get their properties insured. The policy in the present case was also signed by one of the Directors of Messrs. Andrew Yule & Co.

16. But even on these facts the learned advocate for the appellant has strenuously argued before us that the law as regards the residence and the

carrying on of business by corporations is different from the law applicable to ordinary business people. The contention is that it is well settled in

England that a corporation can carry on business only where it dwells and that the corporation can dwell only at the place at which its directors

meet and hold their meetings and carry on the principal business of the corporation. Great reliance has been placed on a number of old English

cases where the question was, where can a corporation or company be considered to dwell or reside? Most of these cases are summarised in the

judgment of the Madras High Court in Tutika Basavaraju v. Parry & Co. (1904) 27 Mad. 315. It is there, fore not necessary to refer to all of

them. But the judgment of Kelly, C.B. in Calcutta Juta Mills Co. v. Nicholson (1877) 1 EX. D 428 has been quoted almost in extenso by the

learned Judges of the Madras High Court and has been greatly relied upon. It is therefore necessary to refer to it briefly.

17. In that case the Calcutta Jute Mills Co. had been formed for the purpose of taking over business, plant etc., of certain mills in India. The

company was incorporated in England and its affairs in the United Kingdom were managed by a board consisting of five or more directors. The

company commenced business as spinners and manufacturers in India and not anywhere else. It has no real office or other place of business in the

United Kingdom although for the purpose of registration its address was given in the city of London. Only one of the directors of the company had

his own office at that place and the meetings of the English members of the company were held at that place, but all the company"s books of

account, papers as well as other documents and moneys, etc., were kept, received and dealt with by the management in India. The company also

had no property whatsoever in England and no money came into the hands of the English directors except what was remitted from Calcutta from

time to time to defray their necessary expenses. But after receiving the profits there was, after the meetings of the shareholders, a distribution at a

later stage. The question arose whether the company could be said to carry on business in England so as to be liable to pay Income Tax.

18. The learned Judges of the Exchequer Division came to the conclusion that the company was in fact carrying on business in England, and was

therefore not exempt from the payment of Income Tax. This case seems to have been made the basis of the view in the Madras Court that a Joint

Stock Company resides where its place of incorporation is, i.e., where the meetings of the whole company or those who represent it are held, and

where its governing body meets in bodily presence for the purposes of the company and exercises the powers conferred upon it by statute and by

the articles of association. It was accordingly held that the East India Distilleries Company, which was a company incorporated in England, was not

carrying on business in Calcutta because its Board of Directors met in England, and that accordingly the agents, Parry & Co., who entered into a

contract in India, were personally liable to pay damages for breach of that contract. With great respect, the authority cited did not support the

conclusion. The English case was one where the company was actually incorporated in England and had its principal office in Calcutta and it was

nevertheless held to carry on business in England. The Madras case was a converse case where the business was being carried on in Calcutta

while the company had been incorporated in England. The analogy of that case, therefore, did not apply. In Calcutta Juta Mills Co. v. Nicholson

(1877) 1 EX. D 428, Kelly, C.B., was careful to make the reservation:

What is the meaning of the word ""residing,"" as applied to a joint stock company, and to this case? The answer is whether there may or may not be

more than one place at which the same joint stock company can reside, I express no opinion at present; a joint stock company resides where its

place of incorporation is.

19. The learned Judge accordingly sic not hold that a company can reside a1T only one place, much less that it can carry on business in only one

country. Indeed, in the case of a foreign company, it may be registered in a foreign country and may carry on business in India. So far as the CPC

is concerned, there cannot be the least doubt that a foreign company which is carrying on business in India must be deemed to have its principal

office in India. Expl. 2 added to Section 20, Civil P.C., lays down that a corporation shall be deemed to carry on business at its sole or principal

office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. It is also clear

from the provisions of the Indian Companies Act that the latter Act recognises the obvious fact that foreign companies may carry on business in

British India. Section 277 refers to companies-incorporated outside British India which have a place of business in British India.

20. In the present case the Guardian Assurance Co., Ltd. has got itself. registered under the Indian Companies Act u/s 277 (Act 7 of 1913) as a

company carrying on business in British India. No authority has been cited on behalf of the respondent in support of the proposition that a foreign

company cannot carry on business in another country. On the other hand, there are clear authorities in support of the contrary proposition. In La

Compagnie Generale Transatalantique v. Thomas Law & Co. (1899) A.C. 431 it was laid down by the House of Lords that a foreign corporation

which does business in England in such a way as-to be resident there, may be sued there. The view expressed in an earlier case by Bacon, V.C.,

was upheld where he had laid down that in the case where a company hired an office, wrote up their name, and beyond all question stamped upon

themselves and upon their place of business the assumption that they carried on business there, they would be deemed to be residing there. In

Dunlop Pneumatic Tyre Co. Ltd. v. Actien Gesellachft Fur Motor (1902) 1 K.B. 342 the defendants were a foreign corporation who were

manufacturers of motor cars abroad and had hired a ""stand"" at the Crystal Palace for the exhibition of articles of their manufacture at the National

Cycle Show held there which lasted for nine days only. The defendants among, other articles exhibited a motor car fitted with tyres, which were

alleged by the plaintiffs to be an infringement of their patent. The employee whose duty it was to explain the working of the articles exhibited and to

take orders for and press-the sale of the defendants'' goods, was in. charge of the ""stand."" It was held by the Court of appeal that during the

continuance of the Show the defendants were. carrying on business so as to be resident at Crystal Palace, a place within the jurisdiction of the

Court. The case in Saccharin Corporation Ltd. v. Chemische Fabrik Von Heyden Aktiengesellschaft (1911) 2 K.B. 516 was a case where the

defendants were a foreign corporation, carrying on business as manufacturers in Germany and had merely employed a sole agent for the United

Kingdom, who rented an office in London and was paid a commission on orders obtained by him for the defendants goods. The agent also had

authority to enter into contracts for the sale of the defendants'' goods without submitting the orders to the defendants. The fulfilment of orders

obtained or contracts made by him were made in some cases out of goods of the defendants laying at wharves in London and in other cases out of

a stock of the defendants goods kept at the agent''s office. Goods so delivered were paid for by cheques sent by the purchasers to the agent and

the agent also acted for another firm. It was held by the Court of appeal that the defendants were carrying on their business at the agent''s office so

as to be resident at a place within the jurisdiction of the Court. That case in our opinion is directly in point. We there, fore hold that it is not open to

the respondent to raise the objection that the Guardian Assurance Co., Ltd. is not carrying on any business at its office in Calcutta.

21. The last point is as to the place where the contract between the parties was finally accepted. Originally the agent of the Assurance Company

obtained a proposal form (now placed before us in appeal) from the respondent signed by him. In this Mr. Shiva Mangal Singh had noted ""Yes

against the query ""is the policy to cover larceny including servants?"" and he also agreed that the above declaration and the answers given above

should be the basis of the contract between him and the Guardian Assurance Co., Ltd. and he further agreed to accept the policy subject to

conditions in and endorsed on that policy. On the back of this printed form certain old rates were specified and it was patent that there were two

distinct categories for the fixing of rate, namely, (1) burglary and house-breaking, and (2) burglary, house-breaking, larceny or theft. The rates

were different for the two categories. It is however conceded on behalf of the appellants that these old rates have been modified since and different

rates now prevail. The heading of this document was ""Proposal Form."" The conditions were in the form of answers against printed questions put.

Beading it as a whole, there can be no doubt that it was in the form of an offer made by Mr. Singh to the company which the company might later

on accept. Certain documents have, been" filed by both parties and have been admitted by the other so that their genuineness is not in question. A

letter dated 14th December 1931 was sent by the resident representative at Cawnpore of the Assurance Company, to Mr. Singh, in which it was

mentioned that the company was prepared to accept the risk at the rate of 1 per cent, against burglary and house-breaking only. It contained the

request to be favoured with instructions to cover the risk together with a list of jewellery showing the individual value of the articles, and to send a

cheque for Rs. 180 on the amount of Rs. 18,000 for which the articles were to be insured. The letter concluded as follows:

On receipt of your instructions, we shall make immediate arrangements to cover the risk as stated above.

22. On the 25th December 1931 Mr. Singh wrote to the agent explaining why he could not send a reply earlier having been out of station and

stating that he was sending the list attached therewith, that he did not know the exact weight of the ornaments and thought that the prices were

approximate, i.e. the price of gold and the cost of making them. The letter ended as follows: ""I hope you will issue the risk note soon."" This letter in

the ordinary course would be received on the 28th December at Calcutta, and we find that on that very date, namely the 28th December 1931, a

cover-note was issued by the agents Messrs. Andrew Yule & Co. insuring the articles contained in the sic by Mr. Singh ""against burglary and

house-breaking only"" on payment, of the premium of Rs. 180, the amount assured being Rs. 18,000. This cover-note was duly sent to Mr. Singh

and was-received without any protest. Later the policy itself was issued on the 18th January 1932 which was sent to Mr. Singh and received by

him. Nothing has been placed before us to show that Mr. Singh communicated any formal acceptance"" of this policy thereafter. The learned

advocate for the respondent has argued before us that, inasmuch as the original proposal form signed by his client had contained the condition that

there would be insurance against larceny as well whereas in the policy which was ultimately issued larceny was excluded, the policy must be

regarded as a counter-offer and therefore the silence of his client at Muttra must be considered as an acceptance in the eye of the law.

23. We are wholly unable to accept this contention. From the very nature of the transaction it was patent that the contract was to be finally

completed when the policy was issued by the Company. The original proposal form was merely in the nature of an offer made by the appellant,

and the correspondence which followed was in the nature of settling the terms, as a preliminary measure before the premium was paid and. the

insurance guaranteed and the policy issued. Indeed, even the issue of the cover-note was apparently a provisional undertaking given by the

Company. The whole conduct of Mr. Singh, both prior to and after the issue of the policy, shows that he had from the very beginning agreed to the

conditions which would ultimately be mentioned in the policy, and he agreed, by his acquiescence to the deletion of the insurance against larceny

also and accepted the rate of 1 per cent quoted for burglary and house-breaking only. The correspondence was in the nature of negotiations in

order to settle as a preliminary step the terms on which the policy should be issued. The proposal form, as well as the ""Cover-note and the policy,

show that Mr. Singh was to make the offer, and the acceptance was to be made by the Company when they issued the policy. We are therefore

unable to hold that this was a case of a counter-offer made by the Company and contained in the policy which was subsequently accepted by Mr.

Singh at Muttra by his silence

24. It is not necessary for us to decide this point; but we may just refer to a case cited by the learned advocate for the respondent which would

rather go to suggest that an implied acceptance not communicated to the promisor would not be an acceptance in the eye of the law: see Harvey v.

Facey (1893) A.C. 552. We must accordingly hold that the acceptance took place at Calcutta and that accordingly a suit could have been filed in

Calcutta for damages, or at any rate a part of the cause of action arose at Calcutta. It follows therefore that the Arbitration Act would be

applicable to this case arid the provisions of Schedule 2, Civil P.C., would not be applicable.

25. Mr. Banerji, on behalf of his client, has expressed a fear that the technical objection taken by the defendant company is with a view to

depriving his client of all remedies and he has expressed the apprehension that when an application under the Arbitration Act is made in the

Calcutta High Court, the Company would take the plea that the agreement is not enforceable in Calcutta and that no arbitration proceedings can

take place, and in that way evade the payment and their liability without having the question of fact tried on its merits. He has therefore applied for

permission to amend the application which had been filed in the Court below so as to add in it a relief for a decree for Rs. 18,000 with interest and

costs by way of damages against the Company on the allegations already mentioned in the application. His contention is that an application under

Schedule 2 is afterwards registered as a suit and treated as a suit, and when an award is delivered a decree follows, and that accordingly it is open

to this Court to permit the amendment of the application so as to include the relief in express terms for the recovery of the amount claimed. This

would, to some extent, be tantamount to allowing the conversion of the application into a plaint with the proper relief. We would not ordinarily

even entertain such an application, but there is only one point in favour of the respondent and it is that the period of limitation for the institution of a

suit has apparently expired and the only other remedy, if this application is dismissed, would be to proceed to file the agreement in the Calcutta

High Court under the Arbitration Act. We therefore think that before we finally decide this point and also before we make up our minds as to the

question of costs we should allow the case to stand out for five months to enable the respondent to move the Calcutta High Court. In the meantime

we order that the proceedings in the Court below be stayed.