paddock, and that those who deposed to his presence there had concocted their story. It is safer, I think, upon so material a misdirection as was given in this case, that a new trial should be ordered, and, according to the statute, before a Judge of the Supreme Court.

Appeal allowed. Judgment appealed from set aside and new trial ordered before a Judge of the Supreme Court. Appellant to have costs of this appeal and of appeal to the Supreme Court. Costs of the County Court trial to abide the event of the new trial.

Solicitor for the appellant, *G. H. Wise*, Sale, by *Madden, Butler, Elder & Graham.*

Solicitor for the respondent, *A. F. Rice*, Maffra, by *Croft & Rhoden.*

B. L.

[HIGH COURT OF AUSTRALIA.]

DOWNIE (DEPUTY FEDERAL COMMISSIONER OF TAXATION FOR TASMANIA) . . . . . APPELLANT;
PLAINTIFF,

AND

THOMAS . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

SYDNEY, *Dec.* 5.

Knox C.J., Isaacs and Starke JJ.

Income Tax—Action to recover tax—Action in Local Court of Tasmania—What constitutes cause of action—Making of assessment—Notice of assessment—Failure to pay—Nonsuit—Local Courts Act 1896 (*Tas.*) (60 *Vict. No.* 48), *secs.* 33, 34—*Income Tax Assessment Act* 1915-1918 (*No.* 34 *of* 1915—*No.* 18 *of* 1918), *secs.* 31, 36, 41, 44—*Income Tax Regulations* 1917 (*Statutory Rules* 1917, *No.* 280—1918, *No.* 95), *regs.* 30, 41A.

H. C. OF A. 1924.

DEPUTY FEDERAL COMMISSIONER OF TAXATION (TAS.) v. THOMAS.

In an action brought in the Local Court of Tasmania at Hobart by the Deputy Federal Commissioner of Taxation for Tasmania, to recover from the defendant, who resided and carried on business at Latrobe in Tasmania, Federal income tax alleged to be due by him, the assessment having been made in, and the notice of assessment having been sent from, Hobart,

Held, that the cause of action arose partly in Hobart, and, therefore, the Local Court had jurisdiction, under sec. 33 of the *Local Courts Act* 1896 (Tas.), to entertain the action, and the defendant was not entitled to a nonsuit under sec. 34.

Decision of the Supreme Court of Tasmania (Full Court) reversed.

APPEAL from the Supreme Court of Tasmania.

An action was brought in the Local Court at Hobart by Henry Edmonds Downie, the Deputy Federal Commissioner of Taxation for Tasmania, against Joscelyn Langdon Thomas, a farmer who resided and carried on business at Latrobe, to recover Federal income tax alleged to be due by him for the years 1915-1918 and certain sums alleged to be recoverable as additional tax. *Crisp* J., before whom the action was heard, found a verdict for the plaintiff subject to a reference to the Full Court of the Supreme Court of the question whether the plaintiff should not be nonsuited by reason of secs. 33 and 34 of the *Local Courts Act* 1896 (Tas.).

The Full Court held that the plaintiff must be nonsuited because, as the defendant might under the *Income Tax Regulations* have paid the sums in respect of which the action was brought at any branch of the Commonwealth Bank, his failure to pay, which was the cause of action, did not arise in Hobart.

From that decision the plaintiff now, by special leave, appealed to the High Court.

Brissenden K.C. (with him *Keith Ferguson*), for the appellant. The Supreme Court was wrong in determining that the respondent's failure to pay was the cause of action. A cause of action consists of every material fact which the plaintiff must prove if his right to recover is denied (*Read* v. *Brown* (1); *Payne* v. *Hogg* (2)). The making of the assessment and the notices of assessment were essential parts of the cause of action (*Income Tax Assessment Act* 1915-1918, secs. 31, 36, 41, 44; *Income Tax Regulations*, reg. 41A).

(1) (1888) 22 Q.B.D. 128.

(2) (1900) 2 Q.B. 43, at p. 51.

Those essential parts of the cause of action arose in Hobart; or at all events the respondent did not show that the cause of action wholly arose at a place nearer by not less than five miles to Latrobe than to Hobart, as it was necessary for him to do to bring himself within sec. 34 of the *Local Courts Act* 1896. The option given to the respondent by reg. 30 of the *Income Tax Regulations* to pay at the branch of the Commonwealth Bank at Latrobe does not entitle him to say that his failure to pay was at Latrobe.

Davidson (with him *W. B. Simpson*), for the respondent. Under sec. 44 of the *Income Tax Assessment Act* income tax when it becomes due and payable is a debt due to the King, and the failure to pay the debt is the whole cause of action. The appellant did not show that the cause of action arose in Tasmania. As he chose to invoke the Local Court, which has a strictly limited jurisdiction, he was bound to show that the cause of action was one upon which he might properly sue in that Court. [Counsel also referred to the *Legal Procedure Act* 1903 (Tas.), sec. 5.]

The judgment of the COURT (which was delivered by KNOX C.J.) was as follows :—

In this case the appellant sued the respondent in the Local Court at Hobart to recover the amount of income tax alleged to be due by him, and an objection was taken that the plaintiff should be nonsuited under sec. 34 of the *Local Courts Act* 1896. That objection was referred to the Full Court of the Supreme Court of Tasmania, and a nonsuit was entered for the reasons stated by the learned Chief Justice and *Crisp* J. We think the decision of the Supreme Court was wrong. Sec. 33 of the Act provides that every Court held under the Act shall have jurisdiction throughout Tasmania but that the plaintiff shall file his plaint in the Court having jurisdiction to the amount claimed nearest to the place where the defendant dwelt or carried on business or "in the Court having jurisdiction to the amount claimed nearest to the place where the cause of action, either wholly or in part, arose." There is no doubt that this cause of action arose in part in Hobart. A "cause of action" consists of every material fact which the plaintiff must prove if his claim be disputed; and in this case the cause of action includes the

H. C. OF A. 1924.

DEPUTY FEDERAL COMMISSIONER OF TAXATION (TAS.) v. THOMAS.

assessment, which apparently was made in Hobart, and the notice of the assessment sent from there (*Income Tax Assessment Act* 1922-1923, secs. 35, 40, 57). It follows that the appellant was entitled under the provisions of sec. 33 of the *Local Courts Act* to bring his action in the Local Court at Hobart. But the respondent relies on sec. 34 of that Act, which provides that if on the trial of the action it shall appear to the Court that at the time of the commencement of the action another Court of competent jurisdiction appointed under the Act was nearer by not less than five miles to the place where the defendant dwelt or carried on business, "*and also to the place where the cause of action wholly arose*," the plaintiff shall be nonsuited. But the cause of action in this case did not *wholly* arise at a place nearer by not less than five miles to Latrobe than to Hobart, and it follows that sec. 34, so far as it provides for the granting of a nonsuit, has no application.

For these reasons we are of opinion that the appeal should be allowed.

Appeal allowed. Judgment appealed from set aside. Verdict for plaintiff to stand. Appellant, pursuant to his undertaking, to pay costs.

Solicitor for the appellant, *A. Banks Smith*, Crown Solicitor for Tasmania.

Solicitors for the respondent, *Simmons, Wolfhagen, Simmons & Walch*, Hobart.

B. L.