

Present : De Sampayo J.

1916.

SITHAMPARAM v. PONAN.

105—C. R. Colombo, 48,650.

Jurisdiction—Court of Requests—Civil Procedure code, s. 9—Courts Ordinance, s.77—Contract sought to be enforced entered into within the local limits of the jurisdiction of Court of Requests.

A Court of Requests has jurisdiction in respect of an action for enforcing a contract if the "contract sought to be enforced was made" within the local limits of its jurisdiction.

THE plaintiff sued the defendant in the Court of Requests, Colombo, for wages due him from defendant, alleging that the contract of service was entered into at Colombo. The defendant took objection to the jurisdiction of the Court on the ground that the cause of action arose at Kalutara. The defendant further contended that even if the contract was entered into at Colombo the Court had no jurisdiction.

The following preliminary issue was agreed to:—"Has this Court jurisdiction?" The learned Commissioner (T. W. Roberts, Esq.), although he was of opinion that the Court had jurisdiction, thought that he was bound by the decision reported in *Davith Appuhamy v. Perera*,¹ and dismissed the plaintiff's action with costs.

The plaintiff appealed.

Arulanandam, for plaintiff, appellant.—The decision relied on by the Commissioner was with regard to a hypothecary action, and has no application to the present case. Section 77 of the Courts Ordinance, No. 1 of 1889, no doubt creates the jurisdiction of the Courts of Requests. This section has to be interpreted in the light of the provisions of section 9 of the Civil Procedure Code. The omission of paragraph (d) occurs in both sections 77 and 65. In *Lallyett v. Negriz & Co.*² it was assumed that the Court of Requests had jurisdiction in an exactly similar case.

Wardsworth, for respondent.—*Lallyett v. Negriz & Co.*² is no authority, as the point was not expressly raised. *Davith Appuhamy v. Perera*¹ is a binding authority. The omission of paragraph (d) in section 77 of the Courts Ordinance, as amended by Ordinance No. 11 of 1895, was intentional. The cause of action is the non-payment of the wages, and that took place at Kalutara.

Cur. adv. vult.

¹ (1908) 11 N. L. R. 150.

² (1911) 44 N. L. R. 247.

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April 3, 1916. DE SAMPAYO J.—

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This case raises an important point touching the jurisdiction of the Court of Requests. The plaintiff, who is a licensed toddy drawer, made a contract with the defendant, who is a distiller of arrack, to draw toddy for him on certain terms. The contract is alleged to have been made in Colombo, but it appears the work was to be done and paid for at Kalutara, where also the defendant resides. The Commissioner has upheld an objection taken to the jurisdiction of the Court of Requests of Colombo, and has dismissed the action.

Section 9 of the Civil Procedure Code provides for actions being instituted in the Court within the local limits of whose jurisdiction, *inter alia*, (c) "the cause of action arises," or (d) "the contract sought to be enforced was made." The contention on behalf of the defendant is that, by reason of the provisions of section 77 of the Courts Ordinance, No. 1 of 1889, as amended by section 4 of the Ordinance No. 12 of 1895, which created the jurisdiction of the Court of Requests, paragraph (d) of section 9 of the Civil Procedure Code does not apply to Courts of Requests, and that the making of the contract within the local limits of such Courts does not therefore give them jurisdiction. Now, the material portion of section 77 of the Courts ordinance is as follows: "Every Court of Requests shall have cognizance of and full power to hear and determine all actions in which the party or parties defendant shall be resident within the jurisdiction of such Court, or in which the cause of action shall have arisen within such jurisdiction, and all hypothecary actions in which the land hypothecated or any part thereof is situated within the jurisdiction of such Court," &c.

I may say at once that *Davith Appuhamy v. Perera*,¹ upon which the Commissioner relies, has no bearing on the present question. That case had to do with a hypothecary action, and it was there held that the Court of Requests had no jurisdiction to entertain an action on a mortgage bond, unless the property mortgaged was situate within its jurisdiction. This case turns upon the true meaning of the earlier words, "in which the cause of action shall have arisen within such jurisdiction." If the contention on behalf of the defendant—that because a place in which a contract is made is not mentioned in section 77 of the Courts Ordinance as a test of jurisdiction, paragraph (d) of section 9 of the Civil Procedure Code is not applicable to Courts of Requests—be sound, then we would be confronted by a still greater difficulty. For section 65 of the Courts Ordinance creates the jurisdiction of District Courts in similar terms, and omits any reference to the place in which a contract is made. If, therefore, the present contention is to prevail,

¹ (1908) 11 N. L. R. 150.

even a District Court will have no jurisdiction in cases in which the contract sought to be enforced was made within its local limits, and the provision of paragraph (d) of section 9 of the Civil Procedure Code will be wholly meaningless and futile, as it will be inapplicable equally to the District Courts and the Courts of Requests, which are the only civil courts of original jurisdiction constituted by the Courts Ordinance. The difficulty raised by the defendant is more apparent than real, and its solution lies in the proper apprehension of terms. The fact appears to be that the argument is founded upon a fallacious interpretation of the expression "cause of action," occurring in both the above sections of the Courts Ordinance. The defendant in this case relies on the definition of "cause of action" in section 5 of the Civil Procedure Code, but it must be noted that the definitions of words and expressions in that section are prefaced by the qualification "unless there is something in the subject or context repugnant thereto." There is clearly a great deal in sections 65 and 77 of the Courts Ordinance repugnant to the meaning of "cause of action" as defined in section 5 of the Civil Procedure Code. Moreover, that section is confined to words and expressions as used in the Civil Procedure Code itself, and does not purport to define them as used in the Courts Ordinance. It is obvious that "cause of action" in sections 65 and 77 of the Courts Ordinance has a much wider signification than in the interpretation section of the Civil Procedure Code. Even in the Civil Procedure Code the expression has often a wider meaning than the mere definition. It includes, for instance, "the grounds of the plaint" and "the *media* on which the plaintiff asks for judgment." *Dingiri Menika v. Punchi Mahatmaya*,¹ *Samichi v. Pieris*.² In this case one of the grounds set out in the plaint, and of the *media* on which the plaintiff asks the Court to arrive at a conclusion in his favour, is that the defendant made a contract with him in Colombo. This, I think, is the plaintiff's cause of action, so far as section 77 of the Courts Ordinance is concerned, and on the assumption that the contract was made in Colombo the Court of Requests of Colombo would have jurisdiction to hear and determine the action.

The judgment appealed from is set aside, and the case is remitted to the Court of Requests for further proceedings. The plaintiff will have the costs of the trial already had, and of this appeal.

Set aside.

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DE SAMPAYO
J.

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¹ (1910) 13 N. L. R. 59.

² (1913) 16 N. L. R. 257.