

1919.*Present:* Ennis A.C.J. and De Sampayo J.FERNANDO *v.* ARUNASALAM PILLAI.

416—D. C. Galle, 14,948.

Jurisdiction—Agent in India—Action by principal for balance due.

The defendant, a resident of Negapatam, when temporarily resident at Galle, entered into an agreement with plaintiff, a resident of Galle, that when he returned to India he would be plaintiff's agent for sending him goods.

In pursuance of this agreement, the plaintiff remitted various sums to India, and in this action he claimed the balance (Rs. 805) due to him.

Held, that the District Court of Galle had jurisdiction. Under the English law a debtor must seek out his creditor and pay him, unless there is anything in the contract to the contrary.

The English law applies because this is a contract of agency, and the action arises on the obligation of the contract.

THE facts are set out in the judgment.

Hayley, for the appellant.

No appearance for the respondent.

May 9, 1919. ENNIS A.C.J.—

This was an action for the recovery of Rs. 805, the balance of sums given to the defendant for the purchase of rice. The plaintiff is a resident of Galle, and the defendant resides in Negapatam in India. The learned Judge has found that the defendant, when temporarily in Galle about March, 1916, entered into an agreement with the plaintiff that when he returned to India and resumed business he would be the plaintiff's agent for sending him goods at a salary of Rs. 100 a month. In pursuance of this agreement, the plaintiff remitted sums to India, and he claims that the balance of Rs. 805 has not been spent in the purchase of goods, and is due to him. The defendant filed answer challenging the jurisdiction of the Court, and further saying that he had paid a sum in full in settlement. When the case came on for hearing, counsel for the defendant submitted that he was prepared to press only one issue, namely, the jurisdiction of the Court. I find it difficult to follow whether this was meant as an abandonment of the other issues in the case, or whether it merely means that he was in a position to argue the preliminary issue of law. It appears that at the time the defendant himself was in India. In the circumstances I would take it as being

the argument on the preliminary issue of law only, and on this point the learned Judge finds in favour of the defendant. The plaintiff appeals.

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For the purpose of jurisdiction, section 9 of the Civil Procedure Code provides that an action may be instituted in the Court in which the cause of action arises, and it is the principle of English law that a debtor must seek out his creditor and pay him, unless there is anything in the contract to the contrary. This principle was followed in the case of *Dias v. Constantine*.¹ There is not that I can see any reason for disregarding that principle in the present case, and, in the circumstances, I consider that the appeal should be allowed, as it was the duty of the defendant to pay to the plaintiff any sum which might be due. The English law applies because this is a contract of agency, and the action arises on the obligation of the contract.

I would set aside the decree and send the case back. If, in fact, the position was that the defendant abandoned the other issues, the District Judge can enter judgment for the plaintiff. If, on the other hand, there was no intention to abandon the other issues, the case will proceed on those issues. The appellant is entitled to the costs of appeal.

DE SAMPAYO J.—I agree.

Sent back.
