

1918.

Present: Bertram A.C.J. and De Sampayo J.

DIAS v. CONSTANTINE

123—D. C. Galle, 14, 954.

Jurisdiction—Goods supplied by person residing at Galle to a person residing at Kalutara—Action for value of goods sold—Has Galle Court jurisdiction?—Place of payment—Sale of Goods Ordinance.

Plaintiff, a resident of Galle, entered into an agreement with the defendant, who was residing and carrying on business at Kalutara, to supply goods at Kalutara.

There was no express agreement as to the place of payment. Plaintiff brought this action in the District Court of Galle for the value of goods supplied.

Held, that the Court had jurisdiction.

Primâ facie, in commercial transactions, when cash is to be paid by one person to another, that means that he is to be paid at the place where the person who is to receive the money resides or carries on business.

THE facts are set out in the judgment of the District Judge:—

This is an action to enforce a payment on a sale of rubber stumps supplied. The Court has jurisdiction. The plaintiff offered stumps for sale by advertisement. The defendant, a seedsman at Kalutara, wrote about them, received a sample by train, sent an agent to inspect, and finally accepted plaintiff's proposal, presumably by post, without leaving his station. So that the acceptance was outside the jurisdiction of the Court, and therefore the contract was definitely made at Kalutara. But the cause of action is the failure of tender of payment to the plaintiff; in the absence of agreement to the contrary, the presumption is that payment shall be made to the party to whom it is due at his residing place or place of business, and the parties have heretofore acted on that footing. Payments were tendered by cheque sent to plaintiff. The cause of action begins here

F. W. Jayawardene (with him *Prins*), for appellant.

Hayley, for respondent.

June 8, 1918. BERTRAM A.C.J.—

The question that we have to determine in this case is a question of jurisdiction. The question is, Where did the cause of action arise? The action is brought in respect of a non-payment of a sum due on a contract. The contract was a contract entered into for the supply of goods at Kalutara by a merchant residing and carrying

on business in Galle. The question, therefore, is, At what place under the contract was the payment to be made? The place of payment under the contract is the place where the parties to the contract intended the payment to be made. In this case the contract does not expressly mention any place of payment. Consequently, what we have to discover is the implied intention of the parties.

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There have been several cases in England on this point, and it is a rule of English law that it is the duty of a debtor to seek out and pay his creditor, if the creditor is within the jurisdiction, at the creditor's residence or place of business. The relevancy of that rule in regard to this matter is this, that under the English law, in determining what was the intention of the parties, this is a circumstance which the Court naturally looks at. The debtor being under an obligation to seek out and pay his creditor, the Court assumes that the parties, if they did not mention the place of payment, contracted on that basis. The cases in English law where that doctrine has been laid down are, amongst others, *Duval & Company, Limited v. Gans*,¹ and *Rein v. Stein*.² It is said that this is a point in which the law of England differs from that of Ceylon. I do not think that is correct. The English law with regard to the sale of goods is in force in Ceylon, and part of that English law is the obligation of the debtor to seek out and pay his creditor.

That is not the only fact in the case. Another fact is that the plaintiff is a merchant, as I have said, resident and carrying on business at Galle, supplying goods to order. Any ordinary business man, carrying on business in this Colony at a particular centre and sending out his goods to distant places in the Colony, expects to be paid at his place of business. The principle is so laid down by Kay L.J. in *Rein v. Stein*,² one of the cases above referred to. " *Prima facie*, in commercial transactions, when cash is to be paid by one person to another, that means that he is to be paid at the place where the person who is to receive the money resides or carries on business. " That is the only common sense view. In my opinion the intention of the parties was that the money due upon the contract should be paid at Galle, at the place where the merchant supplying the goods is resident and carrying on business. It is not necessary for us to go into the question as to where in fact, the contract was actually concluded, because that is, after all, only one circumstance. It has very little bearing on the intention of the parties as to where the money should be paid.

I am of opinion, therefore, that the appeal should be dismissed with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.

¹ (1904) 2 K. B. 685

² (1892) 1 Q. B. 753