

Present : Pereira J. and De Sampayo A.J.

1914.

SAIBO v. SENANAYAKE.

253—D. C. Colombo, 35,766.

*Jurisdiction—Promissory note—No place of payment mentioned—Where action may be maintained.*

A promissory note was made at a place beyond the territorial limits of the jurisdiction of the District Court of Colombo; no place of payment was mentioned in the note, but at the date of the action the payee was resident in Colombo.

*Held*, over-ruling the contention that the note was payable where the payee was residing for the time being, that the District Court of Colombo had no jurisdiction in respect of plaintiff's claim.

**T**HE facts appear from the judgment.

*Bawa, K.C. (with him R. L. Pereira)*, for the plaintiff, appellant.— Though the note was made outside the territorial limits of the jurisdiction of the District Court of Colombo, no place of payment is mentioned in it. The payee was resident within the jurisdiction of the District Court of Colombo at the date of the institution of the action. The law relating to promissory notes is the English law. The question as to what is the place of payment in the case of a promissory note has to be decided according to the English law, and not the Roman-Dutch law. If English law applied to this case, the place of payment is the place where the creditor resides; the debtor must seek the creditor. There are several contracts bundled up in a note: contract as to amount of money to be paid, place of payment, &c. The English law applies to all those contracts.

Plaintiff is therefore entitled to sue on the note in the Court within whose jurisdiction he resides.

Counsel cited *Latchime v. Jameson*,<sup>1</sup> *Palaniappa Chetty v. De Mel*,<sup>2</sup> *Kadija Umma v. Hadjar*,<sup>3</sup> *I. L. R. 12 Cal. 163*.

*Bartholomeusz*, for the respondent, not called upon.

*Cur. adv. vult.*

September 1, 1914. PEREIRA J.—

The main question raised in this case is whether the District Court of Colombo had jurisdiction in respect of the plaintiff's claim. In view of my decision on this question, it is not necessary that I

<sup>1</sup> (1913) 16 N. L. R. 286.

<sup>2</sup> (1901) 1 Br. 417.

<sup>3</sup> (1913) 16 N. L. R. 242.

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should enter into the other questions involved in the issues framed. The action is one on a promissory note made at Kandalam (a place apparently beyond the territorial limits of the jurisdiction of the District Court of Colombo). It is payable on demand, but the place of payment is not mentioned in the note. A collateral or subsequent agreement that the amount of the note should be paid by the defendant in Colombo has been averred by the plaintiff, and it has been contended that such an agreement could not be proved in law. I need not go into the question involved here, because the evidence of that agreement has been (rightly I think) disbelieved by the District Judge. The plaintiff, of course, might have brought the action in the Court within the jurisdiction of which the note was made, but in my opinion the District Judge of Colombo had no jurisdiction, because the note was not payable anywhere within his jurisdiction. It has been said that at the date of this action the plaintiff was resident in Colombo, and that therefore the note was payable in Colombo, the argument being that the note was payable wherever the plaintiff happened to be for the time being. I do not think that the question as to the Court that has jurisdiction can be made to depend upon such a fluctuating test. No authority has been cited in support of the contention. The note is not payable at any particular place.

I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I agree.

*Appeal dismissed.*