
(1871) 05 CAL CK 0009
In the Calcutta High Court

Harjiban Das and Others

APPELLANT

Vs

Bhagwan Das

RESPONDENT

Date of Decision : 10-05-1871

Acts Referred:

Citation : (1871) 05 CAL CK 0009

Judgement

Phear, J.—It is somewhat strange that, although the plaint affects the exact formality of English pleading, no mention is made in it of presentment for payment having occurred according to the terms of the hundi sued upon. However, no objection was made to the plaint on this ground, and the matter thus omitted was supplied by the plaintiff's written statement. I may remark that the plaint is very bald in other respects. The defendant admits that he drew the hundi as alleged.

2. The document runs in these terms (reads.)

3. The defendant, however, denies that he ever accepted the hundi as alleged, and he says that the endorsement which now appears upon it in these words:—"Chitti accepted by Bhagwan Das, in favor of Sheikh Syad Ali Saheb,"--is not in his handwriting, and was not made with his authority. I think I must take his testimony on this point to be true. According to the plaintiff's account, the hundi was brought to him in Calcutta, and he discounted it on the evening following the day when it was drawn by the defendant at Patna; and the plaintiff states positively that at that time the hundi bore the endorsement which purports to be the acceptance of the defendant. Now it is beyond dispute that the defendant had no gomasta or agent of any sort in Calcutta, and it is not suggested that he accepted the hundi at Patna, simultaneously with drawing it. The only possible alternative in favor of the acceptance being genuine, therefore, seems to be that the defendant came to Calcutta by the train which brought the hundi, and so was in Calcutta in time to receive presentment of the hundi, and to accept it, before it was taken to the plaintiffs to be discounted. But I think it is clear on all the evidence that this was not the case. The defendant did not come

up to Calcutta for some days at least after making the hundi. And indeed, it is evident from the document itself, coupled with the nature of the defendant's business, that acceptance, in the technical sense, was not necessary to the force of the document, and probably was not contemplated at first by any one. The defendant had no kothi or establishment of any sort in Calcutta, excepting when he himself came there with his goods, and remained to sell them. And even then he took up his quarters, sometimes at one person's, and sometimes at another's. The hundi was in effect a simple promise on the part of the drawee that he himself would pay the money at Calcutta, forty-one days after the date of drawing. It was not an undertaking by him that some one else would accept on presentment, and pay at the expiration of some subsequent period.

4. In this view of the principal facts, inasmuch as the plaint was filed without special leave previously obtained in pursuance of the provisions of clause 12 of the Letters Patent of our Court, the question at once arises, did the plaintiff's cause of action arise wholly within the jurisdiction of this Court?

5. In the case of *De Souza v. Coles* 3 Mad. H.C. Rep., 384, two very learned and able Judges of the Madras High Court discussed at great length the meaning of the words "cause of action" as used in that clause of the Madras High Court Letters Patent which corresponds with our 12th clause; and although they were not able to arrive at unanimity of opinion with regard to the meaning, they have in their respective judgments dealt exhaustively with the materials upon which the question depends.

6. The remarkable power of research and the great erudition of Mr. Justice Holloway necessarily have the effect of investing his opinion with peculiar importance, and I feel the difficulty of justifying my dissent from it. He was led to the conclusion that a truly scientific conception of the term "cause of action" embraces nothing more than the right resident in the plaintiff, and the infraction of it by the defendant. And no doubt a definition in some such words as these may be resorted to with much advantage, if one's only purpose is to obtain a precise technical term for use in processes of scientific enquiry. Probably the jurists and commentators, to whom Mr. Justice Holloway refers for authority, pretty well agree in the adoption of a definition of this narrow and exact character. But it seems to me that, even if this be the fact, it helps us extremely little, for our immediate object is to discover not the sense which the words "cause of action" ought to be understood to convey when employed with close attention to the accuracy of a scientific phraseology, but the sense which they ordinarily bear in the language of English lawyers, due regard being had to their connection with the rest of the clause wherein they appear. What do the words mean in this particular situation? is the question for our consideration; and I am afraid that principles derivable even from so great a jurist as Doneau are scarcely calculated to afford us much in the shape of guidance.

7. The first thing that occurs to me, upon looking into clause 12, is that the authors of the Letters Patent understood by "cause of action" something which

might consist of parts respectively attributable to different local origins; a part of the cause of action might arise within the local limits of the Court's jurisdiction, while another part might arise beyond those limits. But unless I greatly misunderstand Mr. Justice Holloway's meaning, "cause of action" under the definition which he accepts is necessarily indivisible; the obligation of the defendant towards the plaintiffs, which is, I may say, the correlative of the plaintiff's right in the matter of any given suit, must, I conceive, if attributable to place at all, be almost universally single, or capable of being treated as single, in regard to locality. And the breach of the obligation does not introduce any new element of locality. It appears to me, therefore, for this reason alone, that the right and the infraction of it do not together make up the full measure of "cause of action" in clause 12.

8. But however this may be, it seems to me clear upon all the decisions reviewed in *De Souza v. Coles* 3 Mad. H.C. Rep., 384, that the English Courts have always included in the cause of action "some portion at least of the ground of origin of the right." The inconsistencies of decision of which Mr. Justice Holloway complains do not appear to me to exhibit an oscillation between an including of the ground of origin of the right" on the one side, and an excluding of it on the other; but rather manifest themselves in the differing quantities of that ground, which it was thought necessary in the various cases to take in. For instance, in causes of action arising out of contract, sometimes the factum of the contract is, for the purpose of determining the forum, held to be an essential part of the cause of action, and sometimes not. Thus, no doubt, the decision of the Privy Council in *Luckmee Chund and Others vs. Zorawur Mull and Others* excluded the contract of partnership, which was the first of the series of facts leading up to the plaintiff's right; but the decision did not, as I read it, therefore exclude everything excepting the locality of the plaintiff's right. On the contrary, the Privy Council not only did not, as it seems to me, set itself to enquire whether there was any place to which the plaintiff's right was specially attributable, but it distinctly founded its judgment upon a consideration of the place of those facts which immediately gave rise to that right, and it appears to me that we here meet with the one principle which underlies and explains all the decisions of the English Courts, and accounts for their inconsistencies. Indeed, it would have been reason for great surprise if Lord Chelmsford, the spokesman of the Privy Council on this occasion, had been found giving utterance to doctrines more scientific than those which commonly prevail in Westminster Hall. I venture to think that in all cases the English Courts have held that the cause of action is only complete when the facts out of which the plaintiff's right immediately arose is comprehended in it, as well as the facts which constitute its infraction. The diversities of decision are, I think, all referable to the practical difficulty which so often presents itself of determining what is the immediate proximate cause of the plaintiff's right as distinguished from that which is prior and more remote. And it should be remembered that many decisions, such as the late decision in the case of *Jackson v. Spittall* L.R., 5 C.P., 542, although they at first sight seem

to be in point, yet in reality depend upon particular considerations of practice and enactment which have no bearing whatever upon the general question before us.

9. To return to the present case, the plaintiff's right, of the infraction of which he complains, is the right to be paid money in Calcutta; and in the view of the facts which I take, that right arises immediately out of the promise which the defendant made at Patna when he wrote the hundi, and there delivered it to Syad Ali's gomasta. It appears to me that the plaintiff's cause of action, within the meaning of the words in clause 12 of the Letters Patent, is not merely the right of the plaintiff and the infraction of it, both localized at Calcutta, but also includes the factum of the promise made at Patna. Consequently, in my opinion, it did not wholly arise within the jurisdiction of this Court.

10. Assuming that the plaintiff's right to sue in this Court fails so far as it depends upon the locality of the cause of action, the Advocate-General yet contends that it can be maintained upon the ground that the defendant carries on business in Calcutta.

11. The facts relevant to this point are that the defendant dwells and has a kothi at Patna. At that place, as his head-quarters, he makes purchases of country produce; from time to time he sends what he so purchases either by boat or rail to some arhat at Calcutta; and then follows them himself. At Calcutta he takes lodgings at the arhat, where his goods are, and himself sells them. He never employs the arhatdar or any other agent for this purpose. As soon as he has sold all his goods, he pays for his accommodation at the arhat a percentage on the account they have realized, and then returns to his home at Patna. An excursion of this kind lasts one or two months, and sometimes more; and the interval between two excursions is of about the same length.

12. It is not clear whether or not the defendant was in Calcutta when the plaint was filed, but he was so when the summons was served on him.

13. On these facts I do not think that the defendant was at the commencement of this suit carrying on business in Calcutta within the meaning of clause 12 of the Letters Patent. It appears to me that the carrying on business for the purpose of that clause must involve pretty much the same element of permanency as is necessary to convert a mere staying" into dwelling." Here the defendant was in Calcutta solely for the purpose of selling his goods : the moment he succeeded in getting them off his hands, he immediately returned to Patna. The time consumed in this process might be a few days, or two or three months. I think that Patna was his permanent place of business; and that his coming to Calcutta was only a visit made in the course and for the purposes of that business. On the whole, then, I am of opinion that this suit has been wrongly brought in this Court, and that I ought not to entertain it. Accordingly I reject the plaint with costs on scale No. 2, and I abstain from all discussion of the merits of the case.