ORIGINAL CIVIL.

1936

Jan. 16.

Before Cunliffe J.

RADHIKA MOHAN RAY

v.

BHABANI PRASANNA LAHIRI*.

Promissory Note—Suit upon promissory note—Indorsement, the only part of cause of action within the jurisdiction—Leave to sue—Considerations upon which leave to be granted—Letters Patent, 1865, cl. 12.

The defendants executed two promissory notes for Rs. 35,000 and Rs. 2,716 respectively at 66, Chakraberhe Road, North, Calcutta, not far outside the original jurisdiction of the High Court. Subsequently, the payee of these notes indorsed and delivered them, within such jurisdiction, to the plaintiff for value. The plaintiff then obtained leave under cl. 12 of the Letters Patent to sue the defendants upon the promissory notes in the High Court.

Held that the leave granted under cl. 12 of the Letters Patent would not be revoked as the assignment of the notes was not made simply to embarrass the defendants and bring the suit in this Court, and the notes having been executed quite close to the jurisdiction of this Court, no hardship would be caused to the defendants in bringing up witnesses to this Court.

Held, further, that, in granting leave under cl. 12 of the Letters Patent, where the assignment is the only part of cause of action upon a promissory note to arise within the jurisdiction, no discrimination should be made between cases where the payee was a private individual and where he was a a commercial man.

Kalooram Agarwala v. *Jonisthalal Chakrabarti* (1) and *Daulatram Nawatmull* v. *Maharajlal* (2) dissented from.

ORIGINAL SUIT.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

S. C. Bose, J. C. Moitra and *R. Chaudhuri* for the plaintiff.

N. C. Chatterjee and *S. B. Sinha* for the defendants.

*Original Suit No. 1913 of 1934.

(1) (1935) I. L. R. 63 Cal. 435.

(2) (1935) I. L. R. 63 Cal. 526.

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CUNLIFFE J. This is a suit upon two promissory notes for Rs. 35,000 and Rs. 2,716 respectively, to which there appears to be very little defence either upon facts or upon law.

No evidence was called before me. The onus, as far as producing evidence was concerned, was on the defendants, as the execution of the notes was admitted There was, however, evidence before the Court in the form of certain testimony taken on commission.

Numerous defences were outlined in the written statement. But when it came to the argument, I was informed that the defence rested upon a single contention, in relation to the jurisdiction of the Court, having regard to the fact that the plaintiff here was not the original holder of the notes, but was an assignee for value. It was contended, on the authority of three recent decisions of my brother Panckridge of this Court that the formal leave to sue under cl. 12 of the Letters Patent should not have been given and ought to be revoked by me, because the assignment, which took place within the jurisdiction and on which the jurisdiction of this Court is founded, was brought about, not in a *bona fide* manner but with the object of embarrassing the defendants.

Reliance was placed upon the evidence-in-chief and the cross examination of a witness on commission. This witness was a lady. She was questioned about the assignment and described how it took place at the office of a firm of solicitors, not very far from this Court, and how the consideration for the assignment and the endorsement was the handing over of another promissory note of a considerable value and the payment in cash of Rs. 5,000. If this had not been done the jurisdiction of this Court could not have been invoked because the actual execution of the note, as I am informed, took place outside the jurisdiction, although it may be noted that it did not take place very far outside.

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Reliance has been placed, as I said, upon three cases: *Kalooram Agarwala* v. *Jonisthalal Chakrabarti* (1), *Daulatram Rawatmull* v. *Maharajlal* (2) and *Harnathrai Binjraj* v. *Sew Prasad Sing* (3).

The head note to the first case runs as follows in 40 C. W. N. 161:—

> Where on an application by the defendant for revocation of leave obtained by the plaintiff, on the assignment of a promissory note, to sue on the Original Side of the High Court at Calcutta under cl. 12 of the Letters Patent, it was found that the assignment took place within jurisdiction on the day before the expiry of the period of limitation, that the promissory note had been originally executed by the defendant outside jurisdiction in Manbhum, the sum at stake was not a large one and there was no likelihood of any issue being raised which the local tribunal would not be competent to try and that the circumstances of assignment suggested collusion for the purpose of creating jurisdiction, leave under cl. 12 was revoked.

And in the course of his judgment in that case Panckridge J. made use of these expressions:—

> In my opinion, on the facts as set out,......leave ought not to have been granted,

and then—

> Various arguments have been advanced by the learned Standing Counsel on behalf of the plaintiff. He points out that under the Civil Procedure Code a suit can be instituted in any Court within whose jurisdiction any part of the cause of action arose, and that there is no question of the granting or refusal of leave. This is true, but I do not think that the fact that in a *mofussil* Court there is no way of preventing unnecessary hardship in a case like this, is a reason for allowing the discretionary jurisdiction of this Court to be used to inflict a similar hardship.

In the result, the learned Judge revoked the leave to sue on the Original Side of this Court, which another Judge had already granted.

So too in the next case *Daulatram Rawatmull* v. *Maharajlal* (2) the learned Judge took the same course. He again revoked an order of a Judge of this Court giving leave to sue under cl. 12. The head note to that case reads as follows in 40 C. W. N. 164:—

> Where defendants who were landholders in the district of Monghyr had borrowed money and purchased commodities for personal use from a trading

(1) (1935) I. L. R. 63 Cal. 435, 437. (2) (1935) I. L. R. 63 Cal. 526, 529.
(3) (1935) 40 C. W. N. 165.

firm of the locality and on an adjustment of the account gave a promissory note for such debts and the same was assigned to a person in Bhagalpur who assigned it to a relation of his in Calcutta for valuable consideration and the latter obtained leave to sue in the Calcutta High Court under cl. 12 of the Letters Patent, leave was revoked on defendants' application on the ground that when people take an assignment of a promissory note they should be prepared to enforce their claim either in the Court within whose jurisdiction the makers reside or in a jurisdiction where a part of the cause of action with which the makers are directly concerned has arisen.

If the defendants were a mercantile firm, the result might have been different by reason of the incidents of negotiability attached to a promissory note.

In that case the learned Judge particularly considered the arguments advanced by Mr. S. C. Bose, who appeared there to argue *contra* to the proposed revocation (he now appears before me in this case for the plaintiff). In dealing with the learned counsel's submissions Panckridge J. said this :—

The branch of the argument advanced by Mr. Bose which has attracted me most is his submission that if people choose to execute a negotiable instrument they must be held to contemplate the possibility of its passing from hand to hand by endorsement and delivery and of its eventually getting in the ordinary course of affairs into the hands of someone who may elect to institute proceedings in a Court which does not suit the convenience of the makers of the note. Were the defendants in this case a mercantile firm, I am not sure that this argument would not have turned the scale in favour of the plaintiffs, but they are described as land-owners........

So, it must be observed there, that the learned Judge presumably would not have directed this revocation of the leave given by his predecessor if, by accident, the parties before him had been business or commercial men.

In the third case *Harnathrai Binjraj* v. *Sew Prasad Sing* (1), however, the learned Judge did not take the step of revoking the leave which had been given at the launching of the suit.

It is for me now to make up my mind as to whether the facts in this case are in the same category as those with which my learned brother was dealing, and to decide also whether I can agree with his view of the law with regard to the principle involved.

(1) (1935) 40 C. W. N.165.

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I am not at all convinced on the facts before me, scanty as they are, that this assignment, admittedly for value, was brought about simply for the purpose of embarrassing the defendants and for the purpose of bringing the case within the jurisdiction of the Original Side of this High Court, although, no doubt, the question of convenience must have been considered by the persons who eventually decided upon buying and parting with the note. Nor am I satisfied that there was hardship upon the defendants, more especially because the note was executed quite close to the original jurisdiction of this Court, as I have already pointed out, and therefore there would not be this question of the difficulty of bringing witnesses up to give evidence here, if they wished so to do, as there appears to have been in the case before my learned brother.

Holding this view, therefore, on the facts, it seems necessary for me to say very little about the view of the law expressed by my learned brother. I shall only say this, that I have the misfortune to differ from what appears to have been the general trend of his observations with regard to his treatment of the holders or assignees of negotiable instruments who are suing in this Court under the jurisdiction dealt with in cl. 12. It seems to me that if one discriminates between plaintiffs and defendants in relation to negotiable instruments on the grounds of hardship or humanity, or even on the ground of legitimate agreement to assign, one strikes at the root of the law of negotiability as laid down not only in the Negotiable Instruments Act but in the time-honoured principles of the law merchant.

I am not satisfied in my own mind that because a person happens to be a private individual and the holder of, let us say, a simple bill of exchange, he should be treated on a different footing in law to a commercial man through whose hands instruments of negotiability are daily passing.

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For these reasons, I shall give judgment in this case for the plaintiff as prayed with costs, including costs of the commission, with interest at the contract rate of 7½ per cent. up to the date of judgment, and after judgment until realisation at the rate of 6 per cent. The undertaking already given by the defendants not to part with their landed properties is to continue for six weeks after the signing of the judgment.

Suit decreed.

Attorneys for plaintiff: *Mukherjee & Lahiri.*

Attorneys for defendants: *Chaudhuri & Chaudhuri.*

P. K. D.