ORIGINAL CIVIL.

Before Panckridge J:

1935

Aug. 20.

DAULATRAM RAWATMULL

v.

MAHARAJLAL.*

Jurisdiction—Assignment of promissory note—Leave under cl. 12 of the Letters Patent—Revocation of leave—Letters Patent, 1865, cl. 12.

Usually, it is not right to grant leave under clause 12 of the Charter in a case where the part of the cause of action on which jurisdiction depends is a matter with which the defendants have had nothing to do.

APPLICATION, on behalf of the defendants, for revocation of leave under clause 12 of the Charter.

The plaintiffs, in this case, were the assignees of a promissory note. The defendants, by their written statement, denied the execution of the promissory note, as also its assignment in Calcutta. The other necessary facts appear from the judgment.

Khaitan for the defendants, applicants. The assignment is not *bona fide* and the case comes within the principle of *Kalooram Agarwala* v. *Jonisthalal Chakrabarti* (1). Also, in this case, the balance of convenience is clearly in favour of a trial at Bhagalpur. The defendant Maharajlal, who is alleged to have signed the promissory note as *kartâ* is a man of over 90 years and will find it difficult to come to Calcutta. Also all the witnesses are at Monghyr and Bhagalpur.

It is proper to apply for revocation at this stage. *Engineering Supplies, Ltd.* v. *Dhandhania & Co.* (2).

S. C. Bose, *S. R. Das* and *D. N. Sinha* for the plaintiffs respondents. The court clearly has jurisdiction to try a suit of this nature. *Roghoonath Misser*

*Application in Original Suit No. 869 of 1935.

(1) (1935) I. L. R. 63 Cal. 435. (2) (1930) I. L. R. 58 Cal. 539.

v. *Gobindnarain* (1); *Read* v. *Brown* (2). Otherwise, the rights of the holder of a negotiable instrument to sue in his own *forum* will be unduly curtailed.

The balance of convenience is also in favour of a trial in Calcutta, for the court-fees are considerably less.

Except in the clearest case, where no part of the cause of action arose within jurisdiction, leave granted under clause 12 should not be revoked. *Secretary of State for India in Council* v. *Golabrai Paliram* (3). In the case of *Radha Bibee* v. *Mucksoodun Doss* (4) leave was reserved to the defendant to have the order granting leave set aside.

PANCKRIDGE J. This is an application on behalf of some of the defendants to revoke the leave given under clause 12 of the Charter to institute this suit, and to take the plaint off the file.

The suit is on a promissory note and the sum claimed amounts to Rs. 11,684. The plaintiffs are described as a firm carrying on business in Calcutta. The defendants, who are seventeen in number, are described as landholders, residing at a village in the district of Monghyr. I take these descriptions from the cause title.

In the body of the plaint the defendants are further described as members of a joint Hindu *Mitâkshará* family.

The plaintiffs' case is that certain of the defendants, as *kartâs* and managers of the joint family, borrowed monies and purchased piecegoods and other commodities from one Ramkumar Marwari. The accounts between the *kartâs* and Ramkumar were adjusted from time to time and promissory notes were given and renewed. The last of such promissory notes is said to have been executed by the *kartâs* on the 22nd March, 1933, and is the promissory note on which the suit is brought.

(1) (1895) I. L. R. 22 Cal. 451.
(2) (1888) 22 Q. B. D. 128.
(3) (1931) I. L. R. 59 Cal. 150, 153.
(4) (1874) 21 W. R. (C. R.) 204.

1935

Daulatram Rawatmull v. *Maharajlal.*

Panckridge J.

The payee of the promissory note died on the 15th January, 1934. His heir and legal representative was a minor and the District Court appointed guardians of his property. With the leave of the court, the guardians appointed assigned the promissory note in suit to one of their number, Ray Bahadur Lokenathprasad Dandania of Bhagalpur. On the 8th April, 1935, the assignee in his turn, according to the plaint, assigned the promissory note in suit to the present plaintiffs, some of whom, I am informed, are related to him, for valuable consideration. That assignment is said to have been made in Calcutta; and it is common ground that it is the only part of the cause of action which has arisen within the jurisdiction. It is the plaintiffs' case that the loans and deliveries of goods which were the consideration for the successive promissory notes were made at Bhagalpur and that the promissory note in suit was executed there.

My attention has been drawn to a recent judgment of mine whereby I revoked leave under clause 12 of the Charter in a case, where the only part of the cause of action, which had arisen within the jurisdiction, was the endorsement by the payee of the promissory note in suit.

I think the plaintiffs are fully justified in saying that the circumstances in that case were considerably stronger than in the case with which I am now concerned. I should not feel justified on the materials before me in holding, as I did in the former case, that the assignment is *prima facie* collusive, in the sense that the circumstances indicate that it was effected in Calcutta largely for the purpose of giving jurisdiction to this Court and thereby embarrassing the defence. At the same time, I am of opinion that usually it is not right to grant leave in a case where the part of the cause of action on which the jurisdiction depends is a matter with which the defendants have had nothing to do. I do not lay this down by any means

as a hard and fast rule, but, generally speaking, it appears to me 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.

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 some one 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 and it appears from the plaint that the consideration for the note took the form of advances of cash and the supply of goods for personal consumption.

In these circumstances, the argument as to negotiability does not apply with the same force as it would in the case of parties engaged in mercantile transactions. Mr. Bose has also pointed out that by suing in this Court the plaintiffs avoid the necessity of paying a heavy initial court-fee on the institution of the suit. I do not think that that is a circumstance which should affect me one way or the other. It would be wrong for me to take into consideration whether my decision is likely to impoverish or to enrich the revenue. From the nature of things, in whichever court the suit is instituted, one party or the other will be put to a certain amount of inconvenience, and, on the whole, I think that the balance of convenience demands that the litigation should be

1935

Daulatram Rawatmull v. *Maharajlal.*

Panckridge J.

conducted either in the court within whose jurisdiction the defendants reside or in the court within whose jurisdiction the document sued upon was executed. I, therefore, revoke the leave given, but in the circumstances of this case I direct that each party bear his own costs.

Attorneys for applicants: *Khaitan & Co.*

Attorneys for respondents: *P. D. Himatsingka & Co.*, *Ajit K. Dey* and *S. Sen.*

S. M.