

from the 30th January 1900. On the assumption that the relation then subsisting between the parties was to be determined by those proceedings, the plaintiff was awarded, as a matter in the discretion of the Judge, that rate from the date of the plaint to the date of realization which means in my opinion realization in the course of those proceedings. It was not intended as a restriction of the plaintiff's right if there was no realization. I concur accordingly.

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CHETTIAR  
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SABAPATHY  
MUDALIAR.

## APPELLATE CIVIL.

*Before Sir S. Subrahmaniam Ayyar, Officiating Chief Justice,  
and Mr. Justice Sankaran Nair.*

TADEPALLI SUBBA RAO (PLAINTIFF), APPELLANT,

v.

NAWAB SAYED MIR GULAM ALLIKHAN OF BANGANA-  
PALLI (DEFENDANT,) RESPONDENT.\*

1905  
August 30,  
30.  
September 8.

*Jurisdiction—Non-resident foreigner—Subjects of protected Native States may be sued if cause of action arises within the jurisdiction.*

A non-resident foreigner who is a subject of a protected Native State, may be sued in the Courts of British India, if the cause of action arose within the jurisdiction of any such Court. Even apart from the provisions of section 17 of the Code of Civil Procedure, the cause of action in the case of contracts arises at the place of performance.

*Annamalai Chetty v. Murugesu Chetty* (I.L.R., 26 Mad., 544), followed.

THE facts necessary for this report are set out in the judgment.

*Dr. Swaminadhan, V. Krishnaswami Ayyar and T. Ramachandra Rao* for appellant.

No one appeared for respondent.

JUDGMENT—Sir S. SUBRAHMANIAM AYYAR, Offg. C.J.—The plaintiff, the endorsee of a promissory note executed by the defendant, sues for the money due thereon. The defendant is a foreigner whose place of domicile is Banganapalle, one of the protected native territories in this Presidency, and at the time of the suit the defendant resided there. The execution of the note was also in the same place. But the note in terms provides

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that the amount thereof was to be paid at Masulipatam. The Subordinate Judge of Masulipatam dismissed the suit on the ground that he had no jurisdiction to entertain it.

The decree, it seems to me, cannot be sustained. In *Annamalai Chetty v. Murugesu Chetty*(1) it is laid down that the case of *Girdhar Damodhar v. Kassigar Hiragar*(2) was correctly decided. The ground for that case being upheld by the Judicial Committee, was that the *cause of action* had arisen in Bombay, as will be seen from the following passage in the judgment of Lord Lindley:—

"Their Lordships see no reason for doubting the correctness of the decision of the case of *Girdhar Damodhar v. Kassigar Hiragar*(2) where the defendant was a native of Cutch and the cause of action arose within the local limits of the jurisdiction of the British Indian Court in which the action was brought." See *Annamalai Chetty v. Murugesu Chetty*(1). Now the very same ground of jurisdiction existed in the present case with reference to the Court at Masulipatam, the place expressly agreed upon for the performance of the contract of the defendant. There never was any doubt as to the place of fulfilment being the place where the cause of action arises, apart from any legislative enactment; and the provisions of section 17, Explanation III (ii) and (iii) of the Civil Procedure Code are but statutory affirmations of recognised principles of jurisprudence about which much will be found stated in the judgment of Holloway, J., in *DeSouza v. Coles*(3), *Alathappa Chetti v. Chellappa Chetti*(4) shows no doubt that Holloway, J., was not, in 1876, disposed to follow Savigny to the extent to which the learned Judge had done in *DeSouza v. Coles*(3), but the modification of opinion on the part of the learned Judge was not with reference to what constituted a cause of action but, as to the proper forum in personal actions according to the true principles of Private International Law, a point on which there has long existed considerable divergence of opinion among the writers on the subject. His conclusions on the point were similar to those since adopted in the Farridkote case which the Subordinate Judge has followed. The statement of the law by the Earl of Selbourne in that case that the accrual of the cause of action in a particular place does not confer

(1) I.L.R., 26 Mad., 544 at p. 552.

(3) 3 M.H.C.R., 384.

(2) I.L.R., 17 Bom 662.

(4) I.L.R., 1 Mad., 196.

on the Courts of that place jurisdiction over a non-resident foreigner is not referred to by Lord Lindley, but that does not relieve us from the necessity of being ruled by the latest pronouncement of the Judicial Committee on the point. Whether what weighed with their Lordships in the last-mentioned case in upholding the decision of the Bombay Court in *Girdhar Damodhar v. Kassigar Hiragar*(1) was the dependent character of the foreign territory or the argument of convenience with reference to commercial relations between the residents of the paramount and the protected states urged by Bittleston, J., in *Bavah Meah Saib v. Khajee Meah Saib*(2), by Sargent, C. J., in *Girdhar Damodhar v. Kossigar Hiragar*(1) by Farran, C.J., in *Ram Raji Jambhekar v. Pralhaddas Subkarn*(3), and by Candy, J., in *Rambhat v. Shankar Baswant*(4) is a matter which it is not for us to enter. Assuming that the rule laid down in *Annamalai Chetty v. Murugesu Chetty*(5) was not intended to extend to subjects of a foreign independent state, but was confined to subjects of protected Indian territories, the present is such a case, and there is no alternative but to reverse the decree of the Subordinate Judge and remand the suit for disposal according to law. I would make the order accordingly leaving the costs to abide and follow the result.

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SANKARAN NAIR, J.—I agree. We are bound by the decision of the Privy Council, in the case cited, to hold that a British Indian Court has jurisdiction to entertain a suit, if the cause of action has arisen within the local limits though the defendant does not reside within such limits, but is a foreigner, domiciled and residing in a protected Indian State.

(1) I.L.R., 17 Bom., 662.

(2) 4 M.H.C.R., 216.

(3) I.L.R., 20 Bom., 133.

(4) I.L.R., 25 Bom., 528.

(5) I.L.R., 26 Mad., 544 at p. 552.