APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

RAMAN CHETTIYAR (DEFENDANT), APPELLANT,

v.

GOPALACHARI (PLAINTIFF), RESPONDENT.*

1907. December 10, 11. 1908. January 21.

Jurisdiction – Civil Procedure Code, s. 17, expl. III—Cause of action arises only where money is expressly or impliedly payable under the contract and not under any general rule of law.

The rule of general law that where a contract is silent as to the place of payment, it is the duty of the debtor to seek out his creditor and pay him does not control the express provisions of section 17, explanation III of the Code of Civil Procedure, and cannot be applied in determining where, for the purposes of the section, the cause of action has arisen. The place where the cause of action arises under section 17, explanation III, is the place where money is payable, expressly or impliedly, under *the contract itself*, and not under any *general rule of law*.

When a promissory-note payable on demand is made at T and no place is fixed expressly, or impliedly, for payment, the mere fact that the creditor is described as residing at K which is within the jurisdiction of a Court different from that exercising jurisdiction at T does not, by virtue of the general rule of law stated above, make K the place of payment for the purposes of section 17, explanation III of the Civil Procedure Code, and the Court at K has, in the absence of evidence that the money was payable at K in the ordinary course of business, no jurisdiction to entertain a suit against the debtor who is not resident within the local limits of its jurisdiction.

SUIT to recover balance due on a promissory-note executed by the defendant in favour of the plaintiff.

The defendant was a resident of Tanjore where the promissory-note was executed, while the plaintiff was a resident of Kumbakonam, where the suit was brought. It was objected by the defendant that the Court at Kumbakonam had no jurisdiction. The Subordinate Judge held that he had jurisdiction and passed a decree in favour of the plaintiff. His judgment was confirmed on appeal.

Defendant appealed to the High Court.

* Second Appeal No. 1564 of 1904, presented against the decree of F.D.P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 501 of 1904, presented against the decree of M. R. Ry. T. T. Rangachariar, Subordinate Judge of Kumbakonam, in Original Suit No. 32 of 1903.

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C. Narasimhachariar for *R. Sadagopachariar* and *T. Narasimha Ayyangar* for appellant.

The Hon. Sir *V. C. Desikachariar* for *P. R. Sundram Ayyar*, and *N. R. K. Thathachariar* for respondent.

JUDGMENT (SIR ARNOLD WHITE, C.J.).—The note sued on in the present case was executed within the local limits of the jurisdiction of the Tanjore Court. The note is payable on demand and is not payable at any specified place. The defendant resides at Tanjore. The plaintiff resides at Kumbakonam and brought his suit in the Kumbakonam Court. The question is, has that Court jurisdiction? The matter is governed by section 17 of the Code of Civil Procedure which provides that a suit must be instituted in the Court within the local limits of whose jurisdiction the cause of action arises. Under explanation III to this section one of the places at which the cause of action arises within the meaning of the section is the place where in performance of the contract any money to which the suit relates is expressly or impliedly payable. The note itself states that the maker of the note resides at Tanjore and that the payee resides at Kumbakonam. As regards the document itself I do not think that the statement in the document that the plaintiff resides at Kumbakonam can be said in itself to imply that the money payable under the note was payable a Kumbakonam. I do not think it necessary to decide whether the question of the implication of payment in a particular place is to be considered only with reference to the terms of the contract, or whether the circumstances in which the contract was made may also be taken into account. I assume that, for the purpose of applying explanation III, the explanation may be construed in the same way as the words "according to the terms thereof ought to be performed within the jurisdiction" occurring in Order XI, R. 1(*e*) of the English Rules of the Supreme Court, *i.e.*, you must look at the contract and at the facts which existed at the time the contract was made, and then determine whether, having regard to the terms, the contract was one which ought to be performed within the jurisdiction. See the judgment of Cotton, L.J., in *Reynolds* v. *Coleman*(1) and the judgment of Lindley, L.J., in *Rein* v. *Stein*(2).

Now, in the present case, what are the proved facts which can be relied on to give rise to the implication that payment was to be

(1) 36 Ch. D., 453. (2) (1892) 1 Q.B., 753.

made at Kumbakonam ? So far as I can see the only fact is the fact that the plaintiff resides there, and that, in my judgment, is not sufficient. The District Judge observes "If the defendant proposed to act in the ordinary course of business, he would pay plaintiff, where plaintiff was, at Kumbakonam, admittedly his residence." But there is no evidence that it was the practice between the parties for the defendant to make payments to the plaintiff at Kumbakonam and in referring to the "ordinary course of business" I think the Judge only had in mind the ordinary rule that a debtor should follow his creditor. I do not think this general rule can be relied on as controlling the express words of a statute prescribing the conditions which give a Court local jurisdiction. This view would seem to be in accordance with the principle of the decision of the House of Lords in *Comber* v. *Leyland*(1). The other view would involve the proposition that unless the contract or the circumstances in which the contract was made give rise to a contrary implication a creditor may sue in any Court within the local jurisdiction of which he happens to be when his right to sue arises. This seems to me to be quite inconsistent with the express provisions of section 17.

Illustration (*b*) to the section throws some light on the intention of the legislature. If the plaintiff's place of residence gave rise to an implication as to the place where the money to which the suit relates was payable, *A* would have been entitled to sue *B* and *C* at Simla.

As in the present case the only fact, either with reference to the terms of the contract, or with reference to the circumstances in which the contract was made, which can be said to raise an implication that the money was to be payable at Kumbakonam is the fact that the plaintiff resides there, and as this fact is not sufficient in my view to raise this implication, I am of opinion that the Kumbakonam Court had no jurisdiction to entertain the suit. It is not necessary to consider the other question which was argued in this appeal. I would allow the appeal with costs throughout, and return the plaint for presentation to the proper Court.

Miller, *J.*—This appeal arises out of a suit on a promissory-note for Rs. 7,000 (Rupees seven thousand). The first

(1) (1898) A.C., 525.

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question arising for decision is whether the Subordinate Judge of Kumbakonam had jurisdiction to try the suit?

The promissory-note was executed in Tanjore and was payable on demand, no place of payment being fixed in it. Tanjore is not within the local jurisdiction of the Subordinate Judge of Kumbakonam, but the plaintiff resides in Kumbakonam, and claims the right to sue there on the ground that the debt is impliedly payable there (section 17, explanation III (iii), Civil Procedure Code).

The jurisdiction of the Court is to be ascertained from the provisions of the Code, *i.e.*, in the present case from explanation III to section 17.

The District Judge says that in the ordinary course of business payment would be made at Kumbakonam where the plaintiff resides, but assuming that we are entitled to hold that the money is impliedly payable in the ordinary course of business, there is nothing to show that the plaintiff had a place of business at Kumbakonam, or that he ordinarily collected his debts at Kumbakonam. The District Judge does not point to any evidence as to the ordinary course of business, and we have not been shown any. The District Judge probably refers to the rule of law that the debtor must seek his creditor to pay him, and the argument before us was directed on behalf of the plaintiff to establish the position that we ought to read into the contract a reference to this rule of law.

But it seems to me clear that by the phrase 'expressly or impliedly payable' we are to understand payable according to the terms of the contract, which are expressed or can be inferred on a construction of the language, or from the circumstances. The rule as stated by Bowen, L.J., in "The Eider" (1) is that, when no place of payment is specified, *either expressly or by implication*, the debtor must seek his creditor. Is there in the present contract an 'implied' undertaking to pay at Kumbakonam? The money is payable on demand and the natural inference is that it is payable where the demand is communicated to the debtor. Beyond the fact that the creditor is described as residing in Kumbakonam from which it seems to me nothing can be implied, there is no word in the promissory-note suggesting

(1) (1893) L. R., P. D., 136.

Kumbakonam as the place of payment. Nor are there any circumstances conveying this suggestion. The money was not sent from Kumbakonam to Tanjore, it is not alleged that the debts which were transferred to the plaintiff were payable in Kumbakonam, and no part of the negotiation is shown to have taken place in Kumbakonam.

The case is therefore one in which the place of payment is not specified either expressly or by implication, and it seems to me necessarily to follow that sub-division (iii) of explanation III does not apply.

Are we then entitled to apply the general rule of law? I think not. We are bound to seek the jurisdiction of the Court within the provisions of the Code, and if sub-division (ii) of explanation III is not applicable we have to see if any other sub-division is applicable. It was not suggested here or apparently in either of the lower Courts that sub-division (ii) can be applied if sub-division (iii) is inapplicable, and the Court having jurisdiction is therefore the Court of the place where the contract was made (sub-division (i)), or where the defendant resides (section 17 (*b*)).

Reliance was placed on a dictum of Tyabji, J., in *Motilal* v. *Surajmal*(1), but the learned Judge, there, was interpreting section 12 of the Letters Patent of the High Court which does not define what is meant by the place where the cause of action arises. The English cases to which we were referred depended on the provisions of Order XI R1 which have reference to contracts which "ought to be performed within the jurisdiction", provisions which give room for the introduction of the general rule of law, but which are not found in section 17 of the Code of Civil Procedure.

If the framers of the Code had intended that a plaintiff should, in the absence of a contract to the contrary, be allowed to sue at his place of residence to recover debts due to him in pursuance of contracts made elsewhere, there is no apparent reason why they should not have said so; they had an excellent opportunity of making this clear in drafting illustration (*b*) to section 17, and the fact that they did not avail themselves of that opportunity supports, I venture to think, the view which I take of the present case.

(1) I.L.R., 30 Bom., 167.

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Section 49 of the Contract Act cannot govern this case, for here the money is payable on demand and not "without application by the promisee."

I am therefore of opinion that the Kumbakonam Court had no jurisdiction to try the present suit, and for that reason would, without deciding any other question, reverse the decrees of both the Courts below and return the plaint to be presented to the proper Court (section 57C, Civil Procedure Code).

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Wallis.

1907. November 11 December 2.

PATTATHERUVATH PATHUMMA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

MANNAMKUNNIYIL ABDULLA HAJI AND TWO OTHERS (DEFENDANTS NOS. 1, 2 AND 4 AND THE LEGAL REPRESENTATIVES OF THE FIRST DEFENDANT), RESPONDENTS.*

** Marumakkattayam Law – Gift to woman governed by such law, effect of.*

A gift of property to a woman governed by Marumakkattayam law and to her children, by their father does not of itself constitute the mother and her children, a separate tarwad, but the donees take such property with the incidents of tarwad property.

Where the gift is made by a Muhammadan husband governed by Makkattayam law to his wife, who is also governed by Marumakkattayam law, and to her children the property becomes the exclusive property of the donees with the incidents of tarwad property subject to Marumakkattayam law, and on the death of the mother it does not pass to her heirs under the Muhammadan law.

THE first plaintiff was the daughter, and the first defendant the son of one Ayissa, a Muhammadan woman governed by the Marumakkattayam law. Properties were given to Ayissa and her children by her husband. Uttotti, a Muhammadan governed by Makkattayam law. On the death of Ayissa, the first

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* Second Appeal No. 1401 of 1901, presented against the decree of M. R. Ry. A. Venkitaramana Poi, District Judge of North Malabar, in Appeal Suit No. 431 of 1903, presented against the decree of M. R. Ry. M. G. Krishna Row, District Munsif of Quilandy, in Original Suit No. 456 of 1901.