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a correct reading of exhibit A 5 does not lead to any other conclusion.

I, therefore, agree that the appeal must be allowed with costs throughout, and a decree passed in favour of the plaintiffs in accordance with the terms mentioned by the learned Chief Justice.

Attorneys for appellants : Messrs. *Kanga & Co.*

Attorneys for respondents : Messrs. *Benjamin Chhatrapati & Co.* : Messrs. *Dharamsi Dinkarrai & Nandlal.*

Appeal allowed.

N. K. A.

ORIGINAL CIVIL.

Before Mr. Justice Kania.

DAMJI HIRJI, PLAINTIFF *v.* MESSRS. MAHOMEDALLI ESSABHOY, DEFENDANT.*

1939
February 16

Letters Patent, cl. 12—Carries on business, what constitutes—Bill of exchange signed outside jurisdiction—Delivered by agent in Bombay—Cause of action—Jurisdiction of Court.

Defendants who owned factories outside Bombay rented a room in Bombay in their own name and employed a clerk in Bombay to keep regular books of account in respect of moneys borrowed by them in Bombay for the purposes of their business. The clerk under the defendant's instructions purchased in Bombay goods and machinery for their factories.

The defendants signed at Dharangaon eight hundis in the form of promissory notes dated at Bombay and sent them to their clerk in Bombay who delivered them to the payees in Bombay The hundis were endorsed by the payees in favour of the plaintiff in Bombay. On a suit on the hundis :

Held, (1) that the defendants were carrying on business within the jurisdiction and the Court had jurisdiction to try the suit ;

(2) that even if a different view was taken the contract was made in Bombay and the whole cause of action arose within the jurisdiction of the Court, and leave under cl. 12 of the Letters Patent was not necessary.

* O. C. J. Suit No. 1816 of 1938.

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SUIT on hundis.

The material facts and contentions are sufficiently stated in the judgment.

N. H. Bhagvati and *H. B. Sonpal*, for the plaintiff.

Murzban J. Mistree and *P. P. Khambata*, for the defendants.

KANIA J. Plaintiff, who as an endorsee of eight hundis drawn by the defendants on different parties is their holder, has filed this suit to recover the amount of the hundis from the defendants. In the written statement several defences were suggested. At the hearing Mr. Mistree for the defendants has given up all except that of jurisdiction.

In paragraph 5 of the plaint it is alleged that the hundis were passed in Bombay, the moneys due thereunder are payable in Bombay, and the whole cause of action has arisen in Bombay. No leave under cl. 12 of the Letters Patent has been obtained from the Court.

The facts, admitted by the parties and proved, show that the defendants own ginning factories and presses at different places in the Bombay Presidency. None of them is in Bombay itself. The defendants have rented a room at Nagdevi Street in Bombay in the name of the firm. When the partners of the defendant firm come to Bombay they stay in that room off and on. For the purpose of carrying on their business defendants borrow money on hundis. Some of the hundis are negotiated through Messrs. Bhawanidas & Co., who are well-known hundi brokers. Interest on the loans taken by the defendant firm is paid in Bombay and at the room rented in the Nagdevi Street a clerk maintains books of account in which the loans, interest and repayments are duly entered. Four envelopes with the printed address of the defendant firm were produced and admitted to be used by the defendant firm in the usual course of business. One of them has the name of the

defendant firm and the address of Nagdevi Street only on it. The plaintiff contends that these facts establish that the defendants are carrying on business in Bombay.

The defendant firm had raised money on eight hundis which were drawn on June 23, 1936. On the top of each is written, "Bombay, 23-6-36". When the hundis fell due, six parties agreed to renew the same. Two not having so agreed were paid off by money raised on two hundis given to two other parties. On each of the eight hundis thus issued the words, "Bombay, 21-7-37" are written at the top. The hundis were signed outside Bombay, at Dharangaon. After the signatures were made the hundis were sent to the defendants' mehta at Nagdevi Street, and that mehta delivered the hundis to the payees in Bombay. Thereafter the hundis were endorsed by the payees in favour of the plaintiff at his residence in Bombay. On these facts the plaintiff contends that the whole cause of action has arisen in Bombay within the jurisdiction of this Court and the issue must be found against the defendants.

In support of their contention that the defendants do not carry on business in Bombay they rely on the decision in *Framji Kavasji Marker* v. *Hormasji Kavasji Marker*.[1] In that case the defendant, who was residing at Peshawar, carried on business as a general merchant at Sialkot, Nowshera, Gwalior, Delhi, and other places. He had a retail shop at each of those places where he sold European goods. He had kept a man in Bombay who made some local purchases and received goods imported from Europe and forwarded them to the defendant at his different shops. The evidence in that case established that no sales whatsoever took place in Bombay. The Court under the circumstances came to the conclusion that a sale was an essential part of the defendant's business, because it was on a sale that he earned a profit. It was, therefore, held that the existence of an agent in Bombay with the limited power

[1] (1865) 1 Bom. H. C. R. 220 at p. 224.

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mentioned above did not make the defendant one who carried on business in Bombay. In my opinion the facts of the present case go much beyond that. For the defendants' business in this case they want finance, they want articles and parts of machinery. It is admitted that some goods (e.g. hessian, cloth, iron hoops, etc.) and parts of machinery were purchased by the clerk in Bombay under the defendants' instructions. The loans taken were for the business of the defendants and without that it would not be possible to carry on that business at all. Borrowing was thus an essential element in the defendants' business. The existence of an office room rented in their own name, employment of a clerk to keep regular books of account in respect of the borrowings of the firm in addition to the purchases made by the defendants through their man here, establish facts which make the defendant firm one which carries on business within the jurisdiction of this Court. The contention of the defendants on this point must therefore fail.

Even if a different view were taken, the second contention of the plaintiff, in my opinion, is also good. The hundis in the present case are in the form of promissory notes payable after a certain number of days. By putting signature on a note the same does not become a contract. As clearly provided in s. 46 of the Negotiable Instruments Act, a promissory note is complete when the signed document, according to the form prescribed by s. 4 of the Act, is delivered to the payee. In the present case the signatures on the promissory notes were made at Dharangaon but the same were sent to the defendants' clerk in Bombay. Till then there existed no contract between the defendants and the payees mentioned in the notes. The defendants' clerk in Bombay went to the payees' shops and handed over the promissory notes to the payees. When the payees received and accepted the promissory notes, there arose contracts between the parties. The words "Bombay, 21-7-37" on

the top of each note are also important. In the absence of sufficient ground to disregard it, that statement may be relied upon to show that the parties intended and made the contract contained in the note in Bombay. It was not necessary for the parties to name the place where the contract was made or any place in the note at all. They, however, deliberately chose to name the place, and, therefore, it is permissible and proper to hold that the parties agreed that the contract was made in Bombay.

In support of their contention the defendants relied on *Rampurtab Samruthroy* v. *Premsukh Chandamal.*(1) It was there held that in suits upon hundis drawn outside the jurisdiction upon drawees within jurisdiction part of the cause of action arose within jurisdiction and leave under cl. 12 of the Letters Patent was necessary in such suits. This is found in the headnote. On looking at the facts it is clear that the hundis were drawn *from* Sihore upon the plaintiff in Bombay in favour of several individuals and firms in Bombay, and the plaintiff, at the request of the defendant made to them in Bombay and on the defendant's account, paid the several hundis in Bombay. Telang J., in deciding the case, first of all took the view that according to the oral evidence the contract between parties in respect of the Sihore business took place at Indore, and the transaction in respect of which the suit was brought was entered into in pursuance of that contract. Therefore, if the contract and the breach of it together constituted a cause of action, the whole cause of action did not arise within the jurisdiction of the Court. Apart from that evidence and dealing with the case as if it was a suit by drawees against the drawers, it was pointed out that the hundis were sent from Sihore to Bombay and leave under cl. 12 of the Letters Patent was obtained. The learned Judge considered the facts similar to those in *Sichel* v. *Borch.*(2) I shall presently consider that case in detail. As the hundis were from Sihore, the whole cause of action

(1) (1890) 15 Bom. 93. (2) (1864) 33 L. J. Exch. (N. S.) 179.

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was not considered as having arisen in Bombay. The facts are materially different in the present case as I have already pointed out.

In *Sichel* v. *Borch*[1] the facts were these: Defendant, a merchant resident in Norway and not a British subject, drew in Norway his bill of exchange at four months' sight to the order of himself. It was headed "Dremmond," the place where he lived. It was addressed to Messrs. C. Kirkup & Co. payable in London. The defendant endorsed the note in Norway in the following terms: "Order Messrs. Henry Dresser & Co. value in account Jacob Borch (Defendant)" and sent it in post with a letter written to Dresser & Co., London. Dresser & Co. endorsed it to the plaintiffs in London for value. The plaintiffs filed the suit in London against the defendant. It was successfully urged on behalf of the defendant that the whole cause of action had not arisen within the jurisdiction of the London Court. Pollock C. B. in delivering the judgment observed as follows (p. 180):

"The cause of action here is the contract and the breach of the contract; and it is not because the breach of the contract was in this country that the cause of action is within the jurisdiction. We must consider the contract which gives rise to the breach. The contract, strictly speaking, is neither in Norway nor in this country. The contract, so far as one of the parties is concerned, is no doubt in England: but the contract, so far as the other party is concerned, is in Norway; and therefore the contract is not in the one place or the other."

Martin B. was of the opinion that the contract was in Norway although the breach of it was in London. The decision brings out clearly the distinction between the signing of a promissory note and delivering it to the payee. The observations of Pollock C. B. appear to be based on the view that when the defendant signed the note (made out in his own favour), endorsed it and posted it, the contract so far as he was concerned arose in Norway, while so far as Messrs. Henry Dresser & Co. were concerned it was in London. Martin B. appeared to have taken the view that as the note was made out in favour of the defendant himself,

[1] (1864) 33 L. J. Exch. (N. S.) 179.

when he made the endorsement he is deemed to have received it as a payee, and the transaction thus resulted in a contract which was made wholly in Norway. The decision emphasizes the fact that the contract arose on the delivery of a properly signed negotiable instrument and not before. A person may sign a promissory note or a negotiable instrument in his own house and keep it there without incurring any obligation to any one at all. When such a document is tendered to the payee and accepted by him, there arises a contract between the parties. The signature on a negotiable instrument becomes necessary because of the provisions of s. 4 of the Negotiable Instrument Act. It is only a preparation. It does not amount to an offer, and, therefore, does not become any part of the contract.

The point is made clear and emphasized in *Chapman* v. *Cottrell*.[1] There the defendant, a British subject resident in Florence, signed two promissory notes in Florence as the joint and several maker with his brother in London, whom he sent them by post. His brother then also signed them and delivered them in London to the payees. It was held that the cause of action arose when the notes were delivered to the payee in London and the defendants could, therefore, be sued in London. In the judgment, Martin B. cited with approval the following observations of Bayley J. in *Cox* v. *Troy*[2] (p. 478):

> " . . . I have no difficulty in saying, from principles of common sense, that it is not the mere act of writing on the bill, but the making a communication of what is so written, that binds the acceptor."

In India also there are authorities to support this view. In *Winter* v. *Round*[3] a note was dated at Madras, but in fact was signed at Secunderabad. It was delivered to the plaintiff at Madras. The Court held that the cause of action arose in Madras, because the defendant signed it as a note made at Madras, and, secondly, the delivery of the note

(1) (1865) 34 L. J. Exch. (N. S.) 186 at p. 187. (2) (1822) 5 B. & Ald. 474.
(3) (1863) 1 Mad. H. C. R. 202.

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to the plaintiff took place at Madras, which delivery was necessary to complete his title.

In *Meenakshi Ginning and Pressing Company* v. *Myle Sreeramulu Naidu*,[1] the importance of a statement as to the place where the note was made was noticed. There a promissory note drawn on behalf of the company was headed Bellari. It was signed by the Secretaries and Treasurers and dated at Bellari. The note was then sent to another place where the agents countersigned it and affixed their seal to it. It was then posted and addressed to the payee at Madras who received it there. A suit was filed on the note at Bellari. In giving judgment it was observed as follows (p. 21):

> " . . . a statement of the place of execution is, of course, not essential to the validity of a negotiable promissory note, nor are the parties precluded from dating the note at a place different from that at which it is actually made, if, for any purposes of theirs, they consider it necessary to do so. Where, therefore, a negotiable note . . . is dated with reference to a specified place and the justice of the case does not necessiate a different conclusion, the parties should be presumed to have agreed to that place being taken to be the place of the contract."

As I have pointed out in the present case, the parties have put "Bombay" on the top of each note and dated it.

The defendants also relied on *Roghoonath Misser* v. *Gobindnarain.*[2] In that case a hundi drawn in Benares on the drawers' firm in Bombay in favour of firm which carried on business at Mirzapur and Calcutta was endorsed at Calcutta by the payee to a firm at Calcutta and dishonoured by the drawers' firm at Bombay. After obtaining leave under cl. 12 of the Letters Patent, a suit was brought in the Calcutta High Court by the endorsee to recover the amount of the hundi. It was held that the Court had jurisdiction because the endorsement in favour of the plaintiff took place in Calcutta, and that was part of the cause of action. The only contention urged was that no part of the cause of action arose within the jurisdiction of the Court, and the learned Judge rejected that contention. It does not appear to be

(1) (1904) 28 Mad. 19. (2) (1895) 22 Cal. 451.

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urged that the whole cause of action had arisen within jurisdiction, and there was no occasion for the Court to consider that aspect of the case. The facts further do not show whether the hundi was delivered to the payee at Mirzapur or Calcutta. The facts only show that the payee, who was carrying on business at both places, made the endorsement in favour of the plaintiff at Calcutta. I am unable to consider that decision as going against the principles summarised above.

Under the circumstances in the present case, as the note was delivered by the defendant firm to the payees in Bombay, and the endorsements in favour of the plaintiff having taken place in Bombay, the whole cause of action arose in Bombay. The issue must, therefore, be answered in the affirmative.

There will, therefore, be a decree for the plaintiff against the defendants for Rs. 27,000 with interest thereon at six per cent. from March 18, 1938, till judgment. Costs and interest on judgment at six per cent.

Attorneys for plaintiff: Messrs. *Dharamsey, Dinkarrao & Nandlal.*

Attorneys for defendants: Messrs. *Aibara & Co.*

Suit decreed.

N. K. A.

ORIGINAL CIVIL.

Before Mr. Justice Kania.

GIRNARA JAISUKHLAL, PLAINTIFF *v.* MAHOMEDHUSEIN KARWA AND ANOTHER, DEFENDANTS.*

1939 *February* 15 *and March* 10

Limitation Act (IX of 1908), Art. 117—Suit on a foreign judgment—Starting point for limitation—Decree time barred under the foreign law—Whether a suit would lie in British India.

In 1928 the plaintiff obtained a money decree against the defendants at Junagadh. Successive appeals of the defendants against the decree were dismissed first by the

* O. C. J. Suit No. 1733 of 1938.