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which the District Judge has already heard, though it may be said in this case in part. The question of the right of transfer by a District Judge of a case partly heard by him was considered by the Madras High Court in the case of *Kumarasami Reddiar v. Subbaraya Reddiar* (1) under the Madras Civil Courts Act, which contains provisions somewhat similar to those in the Bengal and N.-W. P. Civil Courts Act; and it was held the District Judge had no power to transfer to a subordinate Judge an appeal, which had been partly heard by him. In this connection we might also refer to the case of *Sita Ram v. Nauni Dulayya* (2). There, a District Judge had transferred a case from the Court of the subordinate Judge to his own Court, and against his decree an appeal having been preferred to the High Court, that Court remanded the suit under section 562 of the Code of Civil Procedure to the District Judge; but the latter transferred the case so remanded to the subordinate Judge. And [883] it was held that the District Judge had no power to transfer the suit, but was bound to try it out himself. In the present case, it will be borne in mind that after the District Judge had made an order upon the application of the defendant, the appellant before him, for local investigation by a second amin, and when the defendant failed to deposit the amin's fees, he recorded an order to the effect that the appeal would be dismissed, if the fees were not deposited within a given time—indicating clearly that, upon the materials that then stood before him, he was not prepared to disagree with the conclusion, which had been arrived at by the subordinate Judge, and that he should have to dismiss the appeal if further materials were not forthcoming. In this state of things, we fail to see how the Judge, when the report was received from the second amin appointed by him, could transfer the appeal to the Additional Judge. He was, we are of opinion, bound to consider the fresh materials that were afforded by the second amin's investigation, and determine the appeal one way or the other.

In this view of the matter, the order of transfer, and necessarily, the judgment of the Additional Judge, which followed upon such order of transfer, were without jurisdiction, and should, therefore be set aside.

The result is that the judgment of the Additional Judge is set aside, and the case remanded to the District Judge for being heard and decided according to law. Costs will abide the result.

Case remanded.

32 C. 884 (=2 C. L. J. 56.)

[884] APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Mookerjee,

SITARAM MARWARI v. THOMPSON.*

[30th May, 1905.]

Contract—Jurisdiction—Civil Procedure Code (Act XIV of 1872), s. 17, expl. iii, clause (2)—Suits arising out of contract—Cause of action—Place where the offer is accepted—Contract Act (IX of 1882), ss. 8, 10 and 25.

* Appeal from Appellate Decree No. 1623 of 1903, against the decrees of R. R. Pope, Judicial Commissioner of Chota Nagpore, dated the 11th of July 1903 modifying the decree of Mohendra Nath Roy, Subordinate Judge of Furulia, dated the 21st of March 1903.

(1) (1899) I. L. R. 23 Mad. 314.

(2) (1899) I. L. R. 21 All. 230.

A owed B a sum of money, for which A gave B at Midnapore a cheque drawn on a firm in Calcutta, in favour of C.

B took the cheque to C at Purulia and received the amount.

C presented the cheque at Calcutta, where it was dishonoured.

On a suit brought by the representative of C at Purulia against A for the recovery of the amount paid, the defence was that the Purulia Court had no jurisdiction to entertain the suit.

Held that the contract, on which the suit was brought, was completed as soon as the consideration was paid, and as this was done at Purulia, the contract was made at that place within the meaning of section 17, explanation iii, clause (2) of the Civil Procedure Code, and therefore the Purulia Court had jurisdiction.

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[Ref. 96 P. L. R. 1909.]

SECOND APPEAL by the plaintiffs Sitaram Marwari and others, minors, through their guardian Parji Shetani.

This appeal arose out of an action brought by the plaintiffs to recover a certain sum of money from the defendants Mr. Thompson and others.

It was alleged that the said Mr. Thompson was the agent of the Brahmputra Tea Company and Assam Company, and as such agent he owed a certain sum of money to the defendant No. 2, Khudiram Mookerjee, who was a coolie contractor under him. Nathuram Marwari, the predecessor of the plaintiffs had banking business at Purulia and Midnapore. As agent of [885] the said companies Mr. Thompson drew two cheques in favour of Nathuram Marwari on the 3rd December 1899 on Messrs. Finlay Muir & Co., and Messrs. Kiltum & Co., of Calcutta, for payment. The said cheques were drawn from Midnapore, but they were presented by the defendant No. 2 at Nathuram Marwari's place of business at Purulia and payments were made to him. The cheques were subsequently presented to their respective drawers, but were dishonoured. The notice of dishonour was given to Mr. Thompson, who made a part payment to the plaintiff's father. The present suit was brought in the Court of the Subordinate Judge at Purulia for recovery of the balance of the amount from the defendants. The defence *inter alia* was that the Purulia Court had no jurisdiction to entertain the suit in as much as the cheques were issued at Midnapore, where the defendant No. 1 resided, and were payable at Calcutta.

The Court of First Instance overruled the objection of jurisdiction, and having held that the plaintiffs had no cause of action against defendant No. 2 decreed the suit against defendant No. 1.

On appeal to the Judicial Commissioner of Chota Nagpore, the decision of the first Court was reversed on the ground that the suit was not maintainable in the Court at Purulia.

Against this decision, the plaintiffs, who were the legal representatives of Nathuram Marwari, appealed to the High Court.

Babu Digambur Chatterjee for the appellant. The whole question is where the contract was made. The contract was completed at Purulia, where payment was made and thus the offer was accepted. The case is clearly covered by section 17, explanation iii, cl. (2) of the Civil Procedure Code.

Babu Jyoti Persad Sarvadhicary for the respondent. In order to determine the forum we have to see what the contract was. Here the contract was by Thompson to pay to the plaintiff in the event of the firms in Calcutta not paying. That contract was made at Midnapore, where the cheque was drawn. Payment by the plaintiff was the consideration for the contract by Thompson, which was made at Midnapore, where the cheque

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was drawn, and as the cheque made the money payable in Calcutta, the cause of [886] action for the contract arose either at Midnapore under cl. (1) or at Calcutta under cl. (iii) of explanation iii of section 17 of the Civil Procedure Code, but not at Purulia: see *W. Sheriff v. H. Manners* (1). The place where the consideration money is paid does not affect the forum.

Cur. adv. vult.

STEPHEN, J. The only point we have to decide in this case is whether the suit was properly brought in Purulia.

The facts of the case are as follows:—

Defendant No. 1, as agent for a tea Company, owed certain sums of money to Khudiram, the second defendant, in respect of which he gave him two cheques drawn one on Messrs. Kilburn, the other on Messrs. Finlay, Muir & Co., in favour of the plaintiff's father, now represented by the plaintiff. Khudiram took these cheques to the plaintiff at Purulia and received the amount, for which they were drawn, from him. The plaintiff presented the cheques at Calcutta, where they were dishonoured.

The learned Judicial Commissioner has held that nothing that took place at Purulia gives the plaintiff any right of action there. In taking this view he has, in our opinion, attached too much importance to the effect of the cheques alone: and too little to the circumstances in which they were dealt with. On the facts disclosed in the record, it is plain that there was a request by the defendant to the plaintiff to pay the amount of the cheques to Khudiram. The arrangement seems a natural one, and without some such request, express or implied, it is not easy to see why the plaintiff should have paid the money. The defendant's debt to Khudiram, was in fact discharged at Purulia; and as this was done through the instrumentality of a cheque drawn in favour not of Khudiram, but of the plaintiff, it is difficult to see how it can have been done without some kind of request from the defendant. If this is so, the contract between the plaintiff and the defendant was that, if the plaintiff would pay the money to Khudiram at Purulia, the defendant's bankers would pay the money to the plaintiff in Calcutta. The offer was made when [887] Khudiram presented the cheques and accepted when the plaintiff paid their amount to him. Consequently the contract on which the suit is brought, was made where the offer and acceptance took place, that is, at Purulia; and the action is properly brought there under section 17 (a), explanation III of the Code. From this point of view the dropping of the case against Khudiram is immaterial.

The judgment of the lower Appellate Court is therefore set aside and the case remanded.

MOOKERJEE J. The facts which have given rise to the litigation out of which the present appeal arises lie in a narrow compass and so far as they are necessary for the purposes of the disposal of the question of jurisdiction raised before us, are practically undisputed. The first defendant Thompson was a contractor at Midnapore, the second defendant Khudiram was a cooly contractor and had done work for Thompson, for which he was entitled to get a sum of money. The father of the plaintiffs, Nathuram, was a banker at Purulia and had monetary transactions with Thompson. On the 3rd December 1899, Thompson drew two cheques in favour of Nathuram, one for Rs. 1,145 upon Finlay, Muir & Co., Calcutta, and the other for Rs. 775 upon Messrs. Kilburn & Co., Calcutta. These cheques were made over by Thompson to his creditor Khudiram, who took them to

(1) (1908) 7 C. W. N. 912.

Purulia and presented them to Nathuram on the 6th December 1899. Nathuram took the cheques and paid Khudiram Rs. 1,500. The cheques were subsequently presented by him to the respective drawees and were dishonoured. It is alleged by the plaintiffs that Nathuram thereupon applied to Thompson for repayment of the money and from time to time received part payments. The present action was commenced on the 27th November 1902 in the Court of the Subordinate Judge at Purulia for recovery of the balance with interest and costs. Thompson resisted the claim on the ground amongst others that the Purulia Court had no jurisdiction to entertain the suit. This objection was overruled by the Court of First Instance on the ground that the case was covered by section 17, Explanation III, clause (2) of the Code of Civil Procedure, and a decree was made in favour of the plaintiffs. Thompson [888] appealed to the Judicial Commissioner, who has dismissed the suit on the ground that it could be instituted either at Midnapore or at Calcutta, but not at Purulia. The plaintiffs have appealed to this Court and on their behalf the decision of the learned Judicial Commissioner has been questioned on the ground that the Court at Purulia had jurisdiction to entertain the suit, because the contract on which the claim is founded was made at that place. In my opinion this contention is well founded and must prevail.

Section 17 of the Code of Civil Procedure—I quote only so much of it as bears on the present question—provides that subject to the pecuniary or other limitations referred to in section 16, all suits other than those mentioned in that section, shall be instituted in a Court within the local limits of whose jurisdiction the cause of action arises. Explanation III then lays down that in suits arising out of contract, the cause of action arises within the meaning of this section at any of three specified places, the first of which is the place where the contract was made. The question, therefore, which arises for decision, is as to the place where the contract, upon which the plaintiffs found their claim in this case, was made. It is argued on their behalf that Purulia is such place; in my opinion this contention is manifestly right. The substance of the transaction is that Thompson drew the cheques at Midnapore in favour of Nathuram and made them over to Khudiram with the intention that the latter should present them to the former at Purulia and receive payment, that Nathuram should then present the cheques to the drawees at Calcutta, and be repaid the amount advanced, and that, finally, in the event of Nathuram failing to be re-imbursed by the drawees, he would be entitled to call upon the drawer to pay. There was, therefore, a proposal by Thompson to Nathuram that the latter should pay to the creditor of the former, and when he had done so, should be repaid by the bankers of the former. This proposal was made from Midnapore, was communicated to Nathuram at Purulia and was accepted by him there, by performance of the condition of the proposal, namely, the payment of money to Khudiram, within the meaning of section 8 of the Indian Contract Act. It follows, therefore, under sections 10 and 25 of the Indian Contract Act that the contract was completed as soon as the consideration was paid and [889] as this was done at Purulia, the contract must be taken to have been made at that place within the meaning of section 17 of the Civil Procedure Code. This view is supported by the high authority of Savigny, who in his System of Modern Roman Law, Vol. VIII, section 371 (Savigny's Conflict of Laws, Tr. Guthrie 2nd Edition, p. 214) observes as follows: "Contracts are mostly entered into at a personal meeting of the

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two parties; then the place of this meeting is also the place where the obligation originates. But it is a much more frequent and more difficult case where the contract is not entered into at a personal meeting of the parties, but by a messenger, by a document signed by the parties at different places, or what is most usual, by a simple correspondence. In such cases, the true place of the contract has been most keenly disputed. Three different questions naturally arise, although most jurists do not discriminate them. Where is the contract made? What place is to fix the forum? What the local law? To the first, I answer without hesitation, that the contract is concluded where the first letter is received and the assenting answer is despatched by the receiver; for at this place a concurrent declaration of intention has been arrived at. The sender of the first letter is, therefore, to be regarded, as if he had gone to meet the other, and had received his consent. This opinion has been adopted by several." Savigny goes on to point out, however, that in his opinion the forum of the obligation ought not to be necessarily identical with the place where the contract is made, and, that the person, who makes the offer, ought not to be subjected to the jurisdiction of the Court of the place, where the contract is completed. Our Code of Procedure, however, has enunciated a different doctrine, making a suit arising out of a contract maintainable in the Court of the place where the contract was made. See also Bar's Private International Law, Tr. Gillespie, 2nd Edition, pages 280 289 and 596, where the conflicting views of various jurists, to which reference is made in the passage quoted from Savigny, are discussed. The view that I have taken appears also to be in accordance with that taken in England, where the rule is stated to be that, when contracts are entered into between parties residing in different countries through the medium of letters, the place where the final assent has [890] been given by one party to an offer made by another, is the place where the contract is considered to have been made (Addison on Contracts, 10th Edition, page 59; Burge on Colonial and Foreign Laws, Vol. III, page 753). This has also the high authority of Lord Lyndhurst L. C., who observed in the course of his speech in the House of Lords in the case of *Albion Fire Insurance Co. v. Mills* (1), that if "I send an agent to reside in Scotland and he in my name enters into a contract in Scotland, the contract is to be considered as mine, where it is actually made; it is not an English contract, because I actually reside in England; if my agent executes it in Scotland, it is the same as if I were myself on the spot and executed it in Scotland." Substantially the same view has been followed by the Chief Court of the Punjab in *Mahammad Shaffi v. Karamat Ali* (2) where it was held that a contract must be deemed to be made in the place where the offer is accepted. The Purulia Court had accordingly jurisdiction to entertain this suit.

The result, therefore, is that this appeal must be allowed, the decree of the Judicial Commissioner reversed, and the case remitted to him to be heard on the merits. The Respondent must pay the appellants their costs of this appeal. As the appeal was decided on a preliminary ground by the Court below, we direct under section 13 of the Court Fees Act that the amount paid by the appellants as Court-fees on the memorandum of appeal presented to this Court, be refunded to them.

Appeal allowed.

(1) 3 W. & S. 218, 233; 5 Scots. Rev. (2) (1896) Punjab Rec. No. 76.
Rep. H. L. 108, 118.