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MOOLCHAND
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as bailee. In this case he had not the goods in his possession, and could not re-deliver them; but he has, I think, fulfilled the alternative obligation, and by showing how he kept the goods, has enabled us to say that he has discharged his duty. The plaintiffs suggest that the loss arose by delivery of the cotton to the wrong purchasers. If that was the cause of loss, in my opinion, the defendant was not responsible for it. Although, therefore, I am unable to take the same view of the facts as the Chief Justice, I arrive at the same conclusion, and think the decree of the Court below ought to be affirmed.

I would add that the case of *Reeve v. Palmer* (1), which has been referred to, is altogether distinguishable. There the defendant did not show, as the defendant has shown in this case, what precautions he had taken for the safe protection of the property entrusted to him.

Attorney for appellants: Mr. Carapict.

Attorney for respondent: Mr. W. H. Abbott.

Before Sir Barnes Peacock, Kt., C. J., Mr. Justice Norman, and Mr. Justice Markby.

DHANRAJ v. GOBINDARAM.

Cause of Action—Letters Patent, s. 12.

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A., who resided and carried on business in the Upper Provinces, sent cotton for sale to B. in Calcutta, and drew Hoondis against it upon B., payable in Calcutta. The Hoondis were negotiated, and afterwards presented to B.'s gomasta in Calcutta, and there accepted and paid by him for B. In a suit by B. against A. for balance of account, *Held*, the whole cause of action arose in Calcutta within the meaning of section 12 of the Letters Patent.

THIS was an action brought to recover the balance of an account due by defendants to the plaintiffs for monies paid, for the use of the defendants, at their request. The plaintiffs resided at Koorja, but carried on business in Calcutta, through a managing gomasta. The defendants resided at Chandri, in the district of Moradabad. Some time in April 1866, the defendants employed the plaintiffs' agent, as their *Aratdar*, in

(1) 5 C. B. N. S., 84.

Calcutta, the nature of the business being the 'drawing of Hoondis by the defendants on the plaintiffs in Calcutta, and the sending of goods by the defendants to be sold there by the plaintiffs. Accordingly 27 bales of cotton were sent to the plaintiffs in April 26th, and delivered to them for sale on the defendants' account. In November, the defendants drew two Hoondis on the plaintiffs, which were negotiated, and afterwards presented to the plaintiffs' agent in Calcutta, and there accepted and paid by him, at the request of the defendants, by letter. The cotton was sold to one Khan Mohammed Dharamsi, who became insolvent, and thus the price was lost. Hence this action.

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The following was the form of Hoondi sent :

“Hoondi sent for realization to Bhai Ramlal Baddri Das, by Tipur Chand, on their own risk.

“Hoondi purchased and sent by Narang Roy Banraj, to Bhai Tipur Chand, on your risk.

“To Sahaji Har Gopalji and Ganesh Narayan, who are at Calcutta, the auspicious place. Accept the salutations of Poharmalji and Gobindaram. Further, we draw on you a Hoondi for (Rs. 1,000) one thousand rupees, half thereof being five hundred rupees. You will pay full, double of the latter sum, here deposited by Bhai Narang Roy Banraj, on Monday, the 14th day of the dark side of the moon, in Kartik. 51 days after date, you will pay the value to the respectable holder, after making enquiry, and taking precautions according to the bazaar practice. Date, the 14th day of the dark side of the moon, in Kartik, of the Sambat year, 1923.

“(Sd.) ARJUN DAS.”

(On the back)

“Hoondi accepted by Har Gopal Ganesh Narayan, in favor of Ramlal Baddri Das—3 days of grace. Ramlal Baddri Das received in full, through the hand of Chandi Sukal, Rs. 1,000.

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“ Pay full, double the sum of five hundred rupees, which is half of one thousand rupees, to Sahaji Har Gopalji Ganesh Narayan by Gobindaram.”

The case was undefended.

Mr. *Woodroffe* for the plaintiffs.—This suit is not brought on the bills, but on the consideration. The bills were negotiated before they were accepted, and the writing on them must be considered as a request to the plaintiff to pay the bills, and the request must be taken to have been made in Calcutta—*Joan Mull v. Mannulal* (1). It makes no difference whether the request to pay was made by sending the bills direct to Calcutta, or by various stages in the ordinary course of business. All the persons through whose hands those bills passed on their way to Calcutta, were merely agents, and this is a case of money being paid, under such circumstances that the law would imply an obligation to repay it, *Newcomb v. De Roos* (2); *Winter v. Round* (3); *Ishanchandra Sen v. D’Cruz* (4). The request was not completed until the bills arrived and were presented in Calcutta; *Roff v. Miller* (5); *Durgaprasad Bose v. Waters* (6). It is the same with an endorsement, to complete which there must be a delivery as well as merely writing the name on the bill. The cause of action being the request made by the defendant to the plaintiff, and this being not complete until it reached the plaintiff in Calcutta, the whole cause of action arose there.

PEACOCK, C. J.—In this case, the money was paid by the plaintiff in Calcutta, for the use and at the request of the defendant, and the liability arose from the implied contract between the parties that the money was to be repaid. The bills were made payable in Calcutta, and were presented there, and I am of opinion that the whole cause of action arose in Calcutta.

NORMAN, J.—There is here no express promise to indemnify. The defendant draws bills on the plaintiff, and makes them

(1) 1 I. J. N. S., 219.

(2) 6 Jur., N. S., 68.

(3) 1 Mad. H. C. R., 202.

(4) 1 I. J., N. S., 233.

(5) 19 L. J., O. P., 278.

(6) 1 I. J., N. S., 191.

payable in Calcutta; they are then negotiated, and in the ordinary course of business pass through various hands, and are presented in Calcutta. On these bills an implied contract arises, the plaintiff by accepting, promising to pay the bills 51 days after date, and the defendant undertaking to indemnify the plaintiff, if he has not sufficient funds in his hands to meet them when they become due. This is a sufficient indemnifying. This case does not exactly resemble any other case, as where bills are sent down to Calcutta to be accepted by the agent of the drawer, because here they have passed through the hands of third parties, nor as where there has been an interview between the plaintiff and the servant or agent of the defendant, and where an express contract has been come to. This, however, makes no difference. The bills were made payable and presented in Calcutta, and therefore I think, the whole cause of action arose in Calcutta.

MARKBY, J., concurred.

Attorney for the plaintiff: *Mr. Paliologus.*

Before Mr. Justice Norman.

WINTER v. GARTNER.

Execution-Creditor—Attachment—Insolvency of Judgment-Debtor—Sale by Order of Official Assignee—Subsequent dismissal of Insolvent's Petition—Attachment by another Execution-Creditor—New Vesting Order.

Property of A. was attached under a decree obtained by B. After the attachment, but prior to the sale, A. was adjudicated an insolvent, and the usual vesting order was made. On the following day, the agents of the Sheriff by the order of the Official Assignee, sold the property attached for the recovery of the amount of B's decree, &c., and the proceeds of the sale were handed over by them to the Official Assignee. Subsequently, the petition of the insolvent was dismissed. Immediately thereupon, on the same day, C., another execution-creditor attached the proceeds of sale in the hands of the Official Assignee. B. applied to the Court to order the Official Assignee to hand over the proceeds to the credit of his cause. On the same day, A. filed a fresh petition in the Court for the Relief of Insolvent Debtors and a second vesting order was made. C. claimed that the proceeds of sale should be handed over to him. *Held*, that B. was entitled to have the proceeds paid to him.

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