

ORIGINAL CIVIL.

Before Mr. Justice Hill.

ROGHOONATH MISSER v. GOBINDNARAIN.

1895

*Jurisdiction—Suit on Hundi—Cause of action—Endorsement by payee—
Alleged agreement between payee and drawer.* January 5.

A *hundi* drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapore and Calcutta, was endorsed at Calcutta by the payee to a firm at Calcutta and dishonoured by the drawer's firm at Bombay. In a suit brought in Calcutta by the endorsee to recover the value of the *hundi*, the defence was raised that the Court had no jurisdiction to entertain the suit.

Held, that the endorsement having taken place in Calcutta, part of the cause of action arose in Calcutta, so as to give the Court jurisdiction. *Kellie v. Fraser* (1), and *Doya Narain Tewary v. Secretary of State* (2), approved.

THE plaintiffs' firm of Roghoonath Dass Soonder Dass were in 1891 carrying on business as shroffs and merchants in Calcutta, while the defendants, under the name of Rambux Jaichand, were, besides other places, also carrying on business as shroffs and merchants in the city of Benares.

The plaintiffs alleged that on 6th November 1891 the *gomastah* of the defendants' firm at Benares drew on his own behalf upon his firm at Bombay a *hundi* in favour of a firm of Bholanath Bissessur Persaud carrying on business at Mirzapore and Calcutta. The *hundi* was for Rs. 2,500, payable sixty-five days from the date of drawing. On 9th of November 1891, the firm of Bholanath Bissessur Persaud in Calcutta endorsed the *hundi* over to the plaintiffs' firm in Calcutta, who discounted it and paid its full value.

The *hundi* was then sent by the plaintiffs to a Bombay firm, Lalla Mull Sungun Lall, for realization from the defendants' firm at Bombay. Under instructions from Benares it was dishonoured, and on 9th January 1892, duly protested, and this suit was instituted by the plaintiffs to recover the amount. Apart from certain defences raised on the facts of the case, the defendants resisted the claim, on the ground that the High Court of Calcutta had no jurisdiction to entertain the suit, and that leave under clause 12 of the Charter to institute the suit ought not to have been granted.

(1) I. L. R., 2 Calc., 445.

(2) I. L. R., 14 Calc., 456.

1895

ROGHONATH
MISSEK
v.
GOBIND-
NARAIN.

Mr. Mitter and Mr. Chowdhry for the plaintiffs.

Mr. O'Kinealy and Mr. Dunne for the defendants.

Mr. Dunne, in support of the contention that the Court had no jurisdiction, cited the following cases: *Wilde v. Sheridan* (1); *DeSouza v. Coles* (2); *Aris v. Orchard* (3); *Dhanraj v. Gobindaram* (4); *Buckley v. Hann* (5).

Mr. Mitter *contra* cited *Pragdas Thakurdas v. Dowlatram Nanuram* (6); *Wirth v. Austin* (7); *Kellie v. Fraser* (8).

HILL, J.—This is an action for the recovery of Rs. 2,500, the amount of a *hundi* together with interest and protesting charges, by the endorsees against the drawers of the *hundi*.

The defendants have pleaded several matters in answer to the action, some of which relate to the performance on the plaintiffs' part of formal acts, such as the presentation of the *hundi* for acceptance and payment, and notice of dishonour. It was also pleaded that the plaintiffs were merely the agents of their endorsers for the purpose of collecting the amount of the *hundi*, and were bound accordingly by an arrangement between their endorsers and the defendants by which the former were precluded from recovering on the *hundi*. In addition to these pleas, it was also objected that this Court had no jurisdiction to entertain the suit.

The contention with respect to this last point, which it is necessary to dispose of before dealing with the merits of the case, was that no part of the cause of action arose within the local jurisdiction of the Court, and that, accordingly, and notwithstanding leave given under clause 12 of the Charter, the Court has no jurisdiction over the suit. What appears is that the defendants' firm drew the *hundi* at Benares, on a branch of their firm at Bombay, in favour of a firm of Bholanath Bissessur Pershad, which carried on business at Mirzapore and Calcutta, and that the latter firm endorsed the *hundi* to the plaintiffs at Calcutta. Mr. Dunne's argument for the defendants was that no act, which cannot be attributed directly and immediately, that is, without the intervention of any third person, to the defendant, can enter into the cause

(1) 21 L. J., Q. B., 260.

(3) 6 H. and N., 160.

(5) 5 Exch., 43.

(7) L. R., 10 C. P., 689.

(2) 3 Mad. H. C., 384.

(4) 1 B. L. R., O. C., 76.

(6) L. L. R., 11 Bom., 257.

(8) L. L. R., 2 Calc., 445.

of action, and that, accordingly, the endorsement to the plaintiffs in the present case, which alone was relied upon to give the Court jurisdiction, formed no part of the cause of action. He contended that his proposition was supported, not only by the cases cited by the plaintiffs, but also by others which he himself cited. Since in all of them the act upon which the Court founded its jurisdiction was either in reality or in effect the act of the defendant, I cannot say I am prepared to go that length with Mr. Dunne. But at all events none of these cases seem to me to involve any principle, the effect of which would be to limit the scope of the cause of action in the manner contended for. Indeed the tendency of some of them, such as *Kellie v. Fraser* (1) and *Doya Narain Tewary v. The Secretary of State for India* (2), which were relied upon by the plaintiffs, and by which, I think, I ought to be guided, seems to me to be quite to the contrary. In the former of these cases, Mr. Justice Kennedy described the cause of action (in relation to the 12th clause of the Charter of this Court) as "the entire bundle of facts which would of necessity be proved." Clearly the endorsement to the plaintiffs in an action on a *hundi* by endorser against drawer is one of such facts. Again, in the latter case, Mr. Justice Mitter says : "It has been uniformly held here that the words 'the whole cause of action' in section 12 of the Letters Patent mean *all* things necessary to give a right of action," from which it would follow that anything necessary to give a right of action would constitute part of the cause of action. The right of action of a plaintiff suing as endorser of a *hundi* is directly dependent on the endorsement, which, accordingly, on the principle stated by Mitter, J., must form part of the cause of action. Since, therefore, the endorsement to the plaintiffs in the present case took place in Calcutta, a part of the cause of action arose here, and, leave having been given, the Court has jurisdiction.

[A decree was entered in favour of the plaintiffs for the amount claimed with interest and costs.]

Attorney for the plaintiffs : Babu *G. N. Dutt*.

Attorney for the defendants : Mr. *M. Camell*.

C. H. G.

(1) I. L. R., 2 Calc., 445.

(2) I. L. R., 14 Calc., 256.

1895

ROGHONATH
MISSEB
v.
GOBIND-
NARAIN.