

1878.
February, 22.

OLIVER v. THE CEYLON COMPANY, LIMITED.

D. C., Colombo, 68,520.

Judgment of foreign Court—Action thereon—Plea of want of jurisdiction of foreign Court—Conduct of defendant in foreign Court—Liability of defendant.

Where, on an agreement between plaintiff and defendant by means of letters and telegrams that plaintiff should ship certain quantities of rice at certain prices f. o. b. at Negapatam in South India to the defendants in Colombo, and that defendants should pay the prices stipulated to the plaintiff at Negapatam by means of bills of exchange, plaintiff sued the defendants in the Munsiff's Court at Negapatam for the recovery of a balance sum of Rs. 810, and the defendants appeared by a duly authorized attorney, took part in the settlement of issues, and no issue was framed as to the jurisdiction of the Court, but on the trial day they objected by counsel to the jurisdiction of the Court and declined to take part in the trial,—

Held, that the Munsiff rightly rejected the plea of jurisdiction at so late a stage of the case, and the judgment entered by him was obligatory on defendants.

Per PHEAR, C.J.—The law of the place where the contract is to be fulfilled is the law to which recourse must be had for all that concerns the discharge of the obligation, as well as probably for the means and forms by which the creditor can compel the debtor to pay the debt.

THE plaintiff set out in his libel that on the 18th February, 1875, in the Munsiff's Court of Negapatam, in the District of Tanjore, the plaintiff brought an action against the defendants and recovered the sum of Rs. 810·82 by the judgment of the said Court, together with costs amounting to the sum of Rs. 142·50, and the said judgment was still in force and unsatisfied. The plaintiff also claimed from the defendants the said sum of Rs. 810·82 under the common money counts.

The defendant pleaded *inter alia* that the Munsiff's Court of Negapatam had no jurisdiction to entertain the subject-matter of the suit, and that no cause of action by the plaintiff against the

defendants ever arose within the jurisdiction of the said Court, nor were the defendants ever resident or possessed of any property within the said jurisdiction.

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Issue thereon.

From the proceedings had before the Munsiff, it appeared that the action at Negapatam was for the recovery of the balance of rice consigned by the plaintiff to the defendants in Colombo under a contract entered into entirely by means of letters and telegrams between the defendants in this country and the plaintiff at Negapatam. After the plaintiff had filed his plaint the defendants appeared, but before they pleaded the plaintiff applied for and obtained leave to amend his plaint, and accordingly on the 20th November, 1874, the plaintiff filed an amended plaint, to which the defendants did not formally plead, but agreed to the settlement of certain issues which were duly committed to writing. The trial of these issues was fixed for the 15th February, 1875. The defendants appeared on the trial day by counsel, but objected to the jurisdiction of the Court, and declined to take any part in the trial. The issues were all found in favour of the plaintiff.

The learned District Judge of Colombo upheld the jurisdiction of the Munsiff's Court and entered up judgment for plaintiff as prayed.

On appeal, *Cayley, Q. A.*, and *Browne* appeared for defendants and appellants.

Grenier, for respondents.

The following authorities were referred to in the argument:—*Indian Act VIII. of 1859, section 5; Schisby v. Westenholz (40 L. J. N. S. C. L. 73); Buchanan v. Rucker (9 East 192); Story on Conflict of Laws, 733; Borthurch v. Walton (24 L. J. C. P. 83); Wild v. Sheridan (21 L. J. Q. B. 260); De Cosse Brissac and Rathbone (30 L. ex. N. S. 238); Munroe v. Pelkington (31 L. J. Q. B. 88); Vaughan v. Eldon (44 L. J. C. P. 64); Bank of Australia v. Nias (16 Q. B. 717).*

The judgment of the Court, having been reserved, was delivered by PHEAR, C.J., as follows, on the 22nd February, 1878:—

The plaintiff's libel alleges that the Munsiff's Court of Negapatam, in India, on the 18th February, 1874, in an action then pending in that Court at the suit of the present plaintiff against the present defendants on a cause of action specified, did adjudge and order the present defendant to pay the present plaintiff a sum of money equivalent to Rs. 810·82, together with a further sum of money by way of costs equivalent to Rs. 142·50, and that this judgment still remains unsatisfied.

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And on this ground the plaintiff sues the defendant in the District Court of Colombo to enforce payment by them of the aggregate sum of Rs. 953·32 with interest in discharge of the obligation arising from this adjudication and order.

The defendants in effect answer that the Munsiff's Court had no jurisdiction to make the order as alleged, and that if it was in fact made, it has no legal force as against them.

There is no dispute between the parties as to the facts, and the sole question for this Court is whether or not the decree, which the Munsiff's Court did unquestionably affect to pass as between the present plaintiff and the present defendants, operated to subject the defendants to such an obligation to pay to the plaintiff the amount of money mentioned, as the Courts of this country ought to enforce or give effect to (*William v. Jones*, 13 M. & W. 633 ; *Goddard v. Gray*, 6 L. R. Q. B. 139).

Now, the cause of action upon which the suit in question was instituted in the Munsiff's Court is stated in the amended plaint filed by the plaintiff therein, as follows :—

“ On the 17th December, 1873, plaintiffs consigned to defendants
“ 1,142 bags of rice, as per vessel called ‘The Chaldea.’ The
“ value of each of the bags was Rs. 7-12-0, and each bag
“ contained 174 lb. of rice. But in the account sent by plaintiff
“ it was by mistake entered that each bag contained 164 lb., and
“ the value was drawn from the bank at Negapatam accordingly
“ on the day the rice was consigned by plaintiff on behalf of the
“ defendants. Afterwards it was discovered by plaintiff that
“ there was a deficiency of 10 lb. in each of the bags, and the
“ plaintiff informed it to the defendants on the 30th January,
“ 1874, and the defendants have acknowledged the mistake by
“ their letter of 31st January, 1874. The total value of the rice
“ thus sent in excess of 10 lb. per bag is ‘Rs. 700, of which
“ the defendants have paid Rs. 41-7-5, and the balance due is
“ Rs. 658-8-7, and which he now seeks to recover.

“ Plaintiff consigned to defendants 800 bags of rice on 3rd
“ January, 1874, as per ‘Assyria,’ each of those bags contained
“ 174 lb. of rice, but in the accounts sent by plaintiff it was by
“ mistake entered that each of the bags contained 164 lb. of rice ;
“ that error, too, was discovered on the 30th January, 1874, and
“ the defendants were informed of it. And the defendants
“ acknowledged that each of the bags contained 170 lb. of rice, and
“ paid the plaintiff the value thereof ; they have not paid the value
“ of difference of 4 lb. of rice : the value under ~~the~~ that head for 3,200 lb.
“ of rice on the 800 bags at the rate of 4 lb. per bag is Rs. 175-0-7,
“ and this is another item which is sought to recover.

“ The total of both items amounts to Rs. 814-3-2, and the interest thereon amounts to Rs. 80, and the plaintiff sues the defendants to recover the same. Total amount of claim is Rs. 894-15-9.

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“ That the value of rice consigned by plaintiff to defendants as per ‘ Asia ’ mentioned in the libel has been paid in full value of the rice sent by ‘ Chaldea.’ The defendants, says the plaintiff, wrote to say that the rice sent by ‘ Asia ’ was found deficient. Therefore the plaintiff says that it should have been entered ‘ Chaldea ’ and consignment per her instead of ‘ Asia ’ and consignment per her, which the plaintiff now amends and brings his suit as stated above.”

The original plaint itself does not appear among the copy proceedings of the Negapatam Court.

The defendants appeared by a duly authorized attorney in his suit. They did not file a written statement in answer to the plaint, but they were present at the hearing for the settlement of issues ; and it was at their instance that the two first issues, which are directed to the jurisdiction of the Court to adjudicate upon the matter of suit, were framed.

The following are the issues which were thus settled in their presence on the 18th December, 1874 :—

“ (1) Has the plaintiff sufficient status to maintain this action in this Court or not ?

“ (2) In what place was plaintiff bound to deliver to defendants the rice, for the value of which claim is made in the libel ?

“ (3) In the place in which plaintiff was bound to deliver rice to defendant, how much was it he delivered through ‘ Chaldea,’ what is the amount he received upon it, and what is the balance ?

“ (4) In the place where plaintiff was bound to deliver rice to defendant, how much he did deliver through ‘ Assyria,’ what is the amount received thereupon, and what is the balance due ?”

And at the same time it was ordered that : “ The further inquiry in this matter will take place on the 13th February, 1875, when the parties will have to be ready with their witnesses.”

It is noteworthy (in passing) that the objection to the jurisdiction of the Munsiff’s Court, which has been pressed before us on the ground of the defendants being foreigners not resident within the territorial jurisdiction of that Court (in effect a claim of personal exemption to the jurisdiction, independent of the matter of suit), finds no place among these issues.

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February 22. 1874. After this settlement of issues, namely, on the 27th December, the professional gentleman who represented the defendants in the suit in the Munsiff's Court wrote to his clients in Colombo the following letter :—

Your favour of the 8th instant is to hand. I put in the grounds of our objections on the 18th, and the Court recorded the issues, as would appear from the copy of the issue papers I have herein enclosed for your information. The case is to come on for trial hearing on the 15th February, 1875. You will on perusal of the said papers be pleased to let me have a list containing all the names of the witnesses whose evidence may appear to you to be of use in the case, so that I may take out summons for their appearance before the Court. The list must also show the several facts each of those witnesses will be able to bear out. I beg you will spare no time in sending up the list, as I will have to put in interrogatories as soon as possible to enable the Court to send out Commission for the examination of those witnesses that may live in Ceylon. I think it will save much delay and inconvenience if you could kindly manage to send over a person to me who will be able to furnish me with the necessary information I may require. You have probably no documentary evidence to adduce ?

It is plain from this letter that up to this stage of the suit the defendants, whether well advised or not, had taken no step to repudiate the authority of the Munsiff's Court to entertain the suit, nor, indeed, had they in any degree withdrawn from the proceedings. On the contrary, although they no doubt objected to the jurisdiction of the Munsiff to hear and determine the subject of dispute laid in the plaint, they raised an issue on this very subject for trial and submitted it to the Court for judicial determination. And there is nothing on the record which is before us to show that they were even absent from the Court when the trial of issues took place. But, however this may be, we are of opinion that, after having taken part in the suit up to and inclusive of the stage of framing the issues and submitting them to the Court for trial and determination, it is too late for them to say that they will not be bound by the decision of the Court because they are not subject to its jurisdiction (see judgment of HANNEN, J., in *Goddard v. Gray* already cited).

And if we turn to the contract which the defendants admit that they made with the plaintiff, as evidenced by the letters of the defendants themselves filed in the record, we see very strong reason to think that the Munsiff's Court at Negapatam was entirely right in entertaining the plaintiff's suit. The substantial features of that contract were on the one side the shipment by the plaintiff of certain specified quantities of rice at certain specified rates of payment f. o. b. at Negapatam to the defendants in Colombo, and on the other the payment by the defendants on their receiving the rice of the price thereof to the plaintiff at Negapatam. The

machinery of the bills of exchange merely served to regulate the means, mode, and time by which and when this payment should be effected. The price agreed upon covered delivery on boardship at Negapatam, but the freight and insurance were additional charges to be borne by the defendants. Clearly, the transit to Colombo was at their risk. Negapatam appears to have been the "home" of the contract in all respects. The whole matter of it began and ended there. At any rate it was there that the defendants undertook to perform their part of it, namely, the payment of the money; and in undertaking to pay the money to the plaintiffs at Negapatam, the defendants must be taken to have subjected themselves as regards any question relative to that payment to the law of that place, and by consequence have agreed to submit to the authority of the tribunals which are there concerned with the interpretation and enforcement of that law. It seems to be the very general opinion of text writers on International Law, that the law of the place where the contract is to be fulfilled is the law to which recourse must be had for all that concerns the discharge of the obligation, as well probably as for the means and forms by which the creditor can compel the debtor to pay the debt. Voet says (*lib. 5, tit. 1, section 73*): *Ratione contractus forum competens sortitur reus eo in loco in quo contractus vel quasi contractus celebratus, seu perfectus est si modo reus illic inveniatur, &c.* It may be a question whether, had the case in fact been that the defendants did not appear in suit instituted against them by the plaintiff in the Negapatam Court, they could have been compelled to come in, or, in default of so doing, could have been in any manner proceeded against as if they were present. But we are not concerned with that question now, for they did in fact appear in the suit and, as we have seen, took considerable part in it. Being in this way actually present in the Court, as the subject of suit being such as the Court was in all respects competent to adjudicate upon, they did not escape liability to the final consequences of the suit by merely leaving Court (if they did so) before the issues on the merits came to be considered.

On these grounds we are of opinion that the defendants are bound by the decree passed against them by the Munsiff's Court of Negapatam, and that the judgment given by the District Court in favour of the plaintiff for the amount of that is right.

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