

1907.
June 10

Present: Mr. Justice Wood Renton.

KARUPPEN CHETTY v. PALANIAPPA CHETTY.

C. R., Colombo, 2,085.

Promissory note—Bills of Exchange Act, s. 87 (1)—Presentment for payment necessary—Non-presentment—Excuse.

Under section 87, sub-section (1), a note, which by its own terms is payable at a particular place, must be presented at such place for payment, unless there is some excuse for not doing so; and where a note is not so presented, the maker is not liable thereon.

THE plaintiff sued the defendant on a promissory note made by him in favour of Messrs. Carson & Co., who endorsed the note to the plaintiff. The note was made payable at the office of Messrs. Carson & Co.; but the note on the due date was at the National Bank, where it had been discounted by Messrs. Carson & Co. The defendant pleaded want of due presentment. The Commissioner (J. S. Drieberg, Esq.) gave judgment for the plaintiff, holding that the reason for the non-presentment at Messrs. Carson & Co.'s office was the fact that the defendant was not there on the day of payment.

The defendant appealed.

Wadsworth, for the defendant, appellant.

Van Langenberg, for the plaintiff, respondent.

10th June, 1907. WOOD RENTON J.—

In my opinion this appeal should be allowed. The appellant was sued in the Court of Requests, Colombo, as the maker of a promissory note in favour of Messrs. Carson & Co. It was a note which by its own terms was made specially payable at the offices of the payees, and it was therefore their duty, in virtue of section 87, sub-section (1), of the Bills of Exchange Act of 1882, to present it for payment at the place named in the body of the note, unless there was some excuse for not doing so within the meaning of section 46 of the Act of 1882. In the present case what took place was that the payees discounted the note with the National Bank of India, and it has been held by the learned Judge on the facts that there never was any presentment or demand for payment at the office of Messrs. Carson & Co. at all. It has further been held by the Judge that the reason for this non-presentment must be taken to be a fact that the defendant-appellant was not there on the day

of the payment, and on that ground he has decided this issue in favour of the respondent. So far as I can discover from the record there is no evidence that the defendant-appellant was not at Messrs. Carson & Co.'s offices on the day in question, and in any event it was the duty of the respondent to prove that the note was in fact presented for payment according to its tenor. It is not suggested by Mr. Waldock, a partner in Messrs. Carson & Co.'s or by their broker, in their evidence, that there was any such default on the part of the appellant. On the other hand, they allege what I must suppose to be a mercantile usage among Chetties to meet such notes by payment at the Bank and not at the places named in the body of the notes themselves. But the evidence falls far short of establishing any usage of this description, and it appears to me that the appeal should be allowed. In the course of Mr. Van Langenberg's argument, I was inclined to think that the case ought to be sent back for the framing of a new issue, which would determine the question whether there was any excuse for non-presentment under section 46 of the Act of 1882. But, on re-consideration, I think the parties should be held to the issues which they have framed or accepted, and I therefore allow this appeal with costs. It may perhaps be desirable that I should give a reference to the cases which have been cited in the argument in support of the construction I have placed on section 87 of the Act of 1882. They are as follows: *Sanderson v. Bowes*;¹ *Spindler et al. v. Grellett*;² *Kanther Ponnambalam v. Chinnatamby Kurunather*.³

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Appeal allowed; action dismissed.

¹ (1811) 14 *East* 500.

² (1847) 1 *Exch.* 384.

³ (1884) 6 *S. C. C.* 8.