

1932

Present : Macdonell C.J.

PONNIAH *v.* KANAGASABAI.

99—C. R. Jaffna, 20,637.

Jurisdiction—Action on promissory note—No mention of place of payment—Rule of English Law.

Where a promissory note made by the defendant in favour of the plaintiff was silent as to the place of payment,—

Held, that an action may be brought on the note in the Court within whose jurisdiction the plaintiff resided, as the debtor must seek out the creditor at his residence or place of business.

A PPEAL from a judgment of the Commissioner of Requests, Jaffna.

Nadarajah, for appellant.

Chelvanayagam, for respondent.

December 9, 1932. MACDONELL C.J.—

This was an action on a promissory note where the learned Commissioner found all the facts in the case in favour of the plaintiff but ruled that he had no jurisdiction and therefore dismissed the action. The facts were that this was a promissory note made by the defendant in favour of the plaintiff at Hatton and that no place of payment is mentioned on the note. It is common cause that the defendant resides in Colombo and it is not disputed that the plaintiff gave up his residence in Hatton and now resides at Jaffna. He brought this action in the Court of Requests of Jaffna and the only question before us is, had the Court of Requests in Jaffna jurisdiction to try this action? The point has been raised on this appeal but it was not raised before that in all questions of Law of Merchants including negotiable instruments the law of England is to apply. This was enacted so long ago as Ordinance No. 7 of 1852, section 2. It is repeated in the Sale of Goods Ordinance, No. 11 of 1896, section 58, sub-section (2), and, which is more to the point repeated in our Bills of Exchange Ordinance, No. 25 of 1927, section 98 (2). The rule of English law seems to be this; that you must discover the place of payment from the expressed intention of the parties. Here there was no expressed intention. The note was silent as to the place of payment and the learned Commissioner was dissatisfied with such evidence as was addressed to him on that point. Then in the absence of anything from which one can fairly deduce what was the intention of the parties as to the place of payment one is thrown back on what seems to be the English rule that the debtor must seek out the creditor at his residence or place of business. This gives a court jurisdiction to entertain a case brought on a promissory note at the place where the plaintiff resides. The only difficulty I feel on this point is the case that has been cited to me in *17 N. L. R.*, p. 479, which is a two Judge decision. It is possible that that case can be distinguished on the facts but in any event it does not seem at any time to have been followed and is in effect dissented from in a decision of another case which too has been decided by two judges (*20 N. L. R.*, p. 338). If that is so, then I think

I am at liberty to apply what is plainly the rule laid down by Statute, viz., that the debtor must seek out the creditor at his residence or place of business. From that it follows that a creditor can sue, at the place where he resides, on a promissory note. I conclude, therefore, that as the creditor was resident at Jaffna the Court of Requests of Jaffna had jurisdiction in this case. If that is so, the appeal must be allowed. The learned Commissioner has found on the facts that the defendant does owe the money and therefore I can in setting aside the order that he has made direct that judgment be entered below for the plaintiff as prayed for. As the attention of the Court of Requests was not directed at all to this point, i.e., that in a matter involving the law merchant, English law has to be applied, I think the best thing would be to make order that each side should bear its costs in the Court below. The plaintiff will have the costs of the appeal.

Appeal allowed.
