

1938

Present : Maartensz and Keuneman JJ.

STORER v. SINTHAMANY CHETTIAR.

277—D. C. Negombo, 10,023.

Promissory note—Payable at Negombo—No particular place specified—Presentment for payment—Bills of Exchange Ordinance, No. 25 of 1927, s. 88 (1).

Where a promissory note made at Chilaw, where the maker was resident, was made payable at Negombo,—

Held, that presentment for payment was not necessary to render the maker liable as the place of payment had not been sufficiently specified in the note.

A PPEAL from a judgment of the District Judge of Negombo.

G. E. Chitty, for defendant, appellant.

N. Nadarajah (with him E. B. Wikramanayake), for plaintiff, respondent.

March 17, 1938. MAARTENSZ J.—

THIS is an action to recover from the executrix *de son tort* of his estate the amounts due on two promissory notes made at Negombo by the late Mr. E. C. S. Storer and which purport to be payable at Negombo.

The defendant appeals from the judgment which was entered against her.

¹ 46 M. L. J. 341 : 19 L. W. 367.

² 92 I. C. 520 : A. I. R. 1926 Mad. 540.

The defendant is resident and the estate of the late Mr. Storer is situated outside the jurisdiction of the District Court of Negombo. The first contention in appeal was that the District Court of Negombo had no jurisdiction to entertain the action. It was argued that when an executrix *de son tort* is sued, the cause of action is the fact of intermeddling and nothing else. This argument was not supported by authority and is in my opinion unsound. Intermeddling renders the intermeddler liable to pay the debts of the deceased. The cause of action of a creditor is the non-payment of his debt and the jurisdiction of the Court to entertain the action to recover it must be determined by the provisions of section 9 of the Civil Procedure Code.

The second and final contention was that the defendant was not liable on the notes as they were not presented for payment at the place at which they were payable as required by section 88 (1) of the Bills of Exchange Ordinance No. 25 of 1927.

Section 88 (1) enacts as follows: "Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable".

The two notes sued on are printed forms with the blank spaces appropriately filled up. The relevant portions read as follows:—

"Negombo, (date).

On demand the undersigned E. C. S. Storer, Proctor of Chilaw, promise to pay to (names of payees) or to any of them or on the order of them or any of them at Negombo, the sum of"

The notes are signed : " E. C. S. Storer ".

The District Judge found that the maker was a Proctor residing in Chilaw with no interests or business in Negombo, and that Negombo being a fairly large town, "the absence of a particular home or office at which payment is to be made makes it impossible for the plaintiff to present the notes for payment at Negombo" unless Mr. Storer was met in Negombo either "casually" or "by arrangement".

He went on to hold that no place of payment is mentioned in the notes so as to make presentation for payment imperative. The appellant's Counsel contended that "Negombo" was a sufficiently specific description of the place of payment to make the notes payable at a particular place and presentment for payment imperative. In support of his argument he cited the case of *Hardy v. Woodroffe*¹.

The note sued on in that case was "Payable at Guildford" where the maker had no residence. The note was presented at two banks and then treated as dishonoured. This was held to be a sufficient presentment. I do not think this case is of assistance to the appellant as the question whether "Guildford" was sufficiently specific to make the note payable at a particular place was not raised or decided.

The question as to what degree of particularity is necessary to make a note payable at a particular place does not appear to have been raised or decided in any case, and we have to decide whether "Negombo" is a

¹ (1818) 2 Stark 319.

sufficiently specific description of the place of payment by first impression, I do not think a general rule can be laid down, for in my opinion the answer to the question whether such a description is sufficiently specific must depend on the circumstances of each case. Where the place at which a note is payable is not specific, but there are circumstances to show where in that place payment is to be made, then the note should be presented for payment at the place indicated by the circumstances.

Thus, if a note payable at Negombo is made by a person who lives or has a place of business in Negombo, or it can be gathered from the course of business carried on between the maker and the payee where presentment for payment should be made, Negombo would, in my opinion, be a sufficiently specific description of the place where the note is payable to render presentment for payment imperative. But where, as in this case, there are no circumstances from which the place where payment is to be made in Negombo can be gathered—and it does not even appear whether by “Negombo” is meant the town or district—the notes, in my judgment, are not made payable at a “particular” place, and presentment for payment is not necessary to render the maker liable.

I would dismiss the appeal with costs.

KEUNEMAN J.—I agree.

Appeal dismissed.

