Present: Lascelles C.J. and Wood Renton J. 1913.

MOHAMADO *v.* SILVA.

334—D. C. Colombo, 33,454.

Promissory note—Printed form headed "Colombo"—Note made elsewhere—Oral evidence may be led to prove where the note was made—Place of payment—Evidence.

The plaintiff sued in the District Court of Colombo the defendant, who was a resident of Kotadeniya, on a promissory note made at Kotadeniya, within the jurisdiction of the District Court of Negombo, but which was headed "Colombo, January 14, 1909." The note was made on a printed form, and the word "Colombo" and the figures "190" were in print. It was contended for the plaintiff that the form of the note was such that the District Judge should not have heard evidence as to the place where the note was made, and that the word "Colombo" was a term of the contract which could not be varied by oral evidence.

Held, that under the circumstances oral evidence was admissible to prove that the note was made at Kotadeniya and not in Colombo.

Held, further, that as the plaintiff had sought to confer jurisdiction on the District Court of Colombo, by averring in his plaint that the note was made in Colombo (and framing an issue on it), it was not open to him to urge in appeal that the word "Colombo" was a clear indication of the place of payment without having raised that issue at the proper stage.

WOOD RENTON J.—The appearance of the word "Colombo" on the note constitutes only *primâ facie* evidence of the place where the note was made and possibly where it was paid. It cannot in any sense be regarded as a term of the contract between the parties.

APPEAL from a judgment of the District Judge of Colombo (H. A. Loos, Esq.). The facts appear from the judgment.

E. W. Jayewardene, for the plaintiff, appellant.—The place of making of the note is stated on the face of the note to be Col Oral evidence is not admissible to show that the note wa

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elsewhere. 'The word " Colombo " at the top of the note is a term of the written contract which cannot be varied by oral evidence.

Wherever the note was made, the note was payable in Colombo, inasmuch as the only place mentioned in the note was Colombo. The Colombo Court had, therefore, jurisdiction to try the case.

Counsel cited *Narayen Chetty v. Fernando;*[1] Bills of Exchange Act. section 45, sub-section (4); *Vanderdockt v. Thellusson.*[2]

Wadsworth, for defendant, respondent.—Every plaint must contain a statement of facts setting out the jurisdiction of the Court to try and determine the claim (section 45, Civil Procedure Code). The plaint here stated that the note was made at Colombo, within the jurisdiction of the Colombo Court. This statement was specially traversed as required by section 76, Civil Procedure Code. An issue was framed, the plaintiff consenting, as to whether the note was made at Kotadeniya, within the jurisdiction of the Negombo Court. And on that issue alone the parties went to trial. No question of place of payment arose in the lower Court, and no mention of it is made in the petition of appeal. The plaintiff should not be allowed in appeal to make a different statement of facts which will give jurisdiction to the Colombo Court.

Oral evidence can be led to show where the note was made. The word " Colombo " on the top of the note does not form part of the terms of the contract.

Jayewardene, in reply.

February 3, 1913. LASCELLES C.J.—

This is an appeal against a judgment of the District Court of Colombo dismissing the plaintiff's action on a promissory note on the ground that the District Court of Colombo had no jurisdiction to entertain the action. The plaintiff in his plaint averred that the note in question was made at Colombo, within the jurisdiction of the District Court of Colombo. The defendant by his answer traversed his plea, and averred that the promissory note was made at Kotadeniya, outside the jurisdiction of the District court of Colombo, and that that Court had no jurisdiction to entertain the action. On this plea an issue was framed whether the promissory note sued on was made at Colombo or at Kotadeniya. Thus, the jurisdiction which the plaintiff claimed was based on the contention that the note was made at Colombo, and it was on this footing that the action went to trial. After hearing a good deal of evidence on both sides, the learned District Judge came to the conclusion that the note was made at Kotadeniya, and that his Court had no jurisdiction to try the action. On the appeal, it has been suggested the note, wherever it was made, was payable at Colombo, and

[1] (91) *2 C. L. R. 30.*

[2] *(1849) 19 L. J. Com. Pl. 12.*

on that ground the District Court had jurisdiction to deal with the action. I am of opinion that we ought not now to go into that question. The plaintiff was required by the Code to indicate the ground on which he founded the jurisdiction of the Court. The ground which he named was that the note was made at Colombo, and the case having gone to trial on an issue on this point accepted by both parties, we ought not now to allow the plaintiff to allege jurisdiction on another and distinct ground. Against the finding of the District Judge on the facts no very serious argument has been addressed to us. But it is alleged that the form of the promissory note is such that the District Judge should not have heard evidence as to the place where the note was made. The promissory note is in a common form. It is headed " Colombo, January 14, 1909," " Colombo " and the figures " 190 " being in print. It is contended that the presence of the word " Colombo " at the head of the bill is a term of the contract which cannot be varied by oral evidence. The presence of the word " Colombo " at the head may or may not be an indication of the place where the note is payable. But, in my opinion, it is in no sense a term of the contract which cannot be varied by oral evidence. It is quite apart and distinct from the body of the note in which the terms of the contract are contained. No authority has been cited which really bears out the contention of the appellant. The only case cited which in any way resembles the present one is the case of *Vanderdockt v. Thellusson.*[1] But there the words indicating the place of payment of the promissory note were in the body of the note. In my opinion the judgment of the District Judge is right, and the appeal must be dismissed with costs.

WOOD RENTON J.—

I entirely agree. The appeal has been argued before us on a point of law which was not taken at the trial, and is not mentioned in the petition of appeal. Both sides were content to go to trial on the footing that the issue of jurisdiction depended upon the question of fact whether the promissory note in suit was made at Colombo or at Kotadeniya. The finding of the learned District Judge on that issue of fact has not been seriously contested here. But the appearance, at a later stage of the proceedings in the District Court, of the learned counsel for the appellant here was signalized by the emergence of a point of law on the face of the record. He invited the District Judge to frame an issue raising the contention that the word " Colombo " was a term of the written contract between the parties and that it was not competent for the defendant to lead evidence that the note was made elsewhere. The District Judge declined to accept that issue at the late stage of the hearing at which

[1] *(1849) 19 L. J. Com. Pl. 12.*

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he was invited to frame it. But I agree with my Lord the Chief Justice that the point is untenable. It may be that the appearance of the word " Colombo " on the note constitutes *primâ facie* evidence of the place where the note was made, and possibly where it was to be paid. But it is *primâ facie* evidence only. It cannot in any sense be regarded as a term of the contract between the parties. The issue, however, on which the case has been argued in appeal is that the word " Colombo " is a clear indication of the place of payment. It appears to me that that issue was not taken at the proper stage of the proceedings, and that we should not entertain it now.

Appeal dismissed.