

Present : Middleton J.

July 10, 1911

LALLYETT v. NEGRIS & CO.

211—C. R. Nuwara Eliya, 5,052.

Jurisdiction—Order from Nuwara Eliya to Colombo for hams—Hams sent V. P. P.—Contract entered into in Colombo—Action for breach of contract—Nuwara Eliya Court has no jurisdiction—Civil Procedure Code, s. 9.

The defendants advertised hams for sale, and the plaintiff by letter posted at Nuwara Eliya placed an order with them for three hams, which were despatched by value-payable post to Nuwara Eliya, and duly received and paid for. The plaintiff, alleging that the hams were unfit for human consumption, sued defendants at the Court of Requests of Nuwara Eliya to recover Rs. 40.53 as damages for breach of contract.

Held, the Court of Requests of Nuwara Eliya had no jurisdiction to try the case. The contract was made in Colombo.

THE facts of this case are fully set out by Middleton J. in his judgment as follows :—

“ This was an action by the plaintiff, who resides in Nuwara Eliya, against the defendants, who carry on business in Colombo, to recover Rs. 40.53 as damages for breach of contract in delivering three hams alleged to be unfit for human consumption, and for a second cause of action for the same amount as money payable by the defendant to the plaintiff for money received at Nuwara Eliya for the use of the plaintiff.

“ The plaint averred that the defendants advertised hams for sale, and that in consequence plaintiff, by letter posted at Nuwara Eliya, placed an order with them for three hams, which were despatched by value-payable post to Nuwara Eliya, and duly received and paid for, including carriage, by the plaintiff, and having been cooked were found unfit for human food.

“ The defendant pleaded to the jurisdiction of the Nuwara Eliya Court, and the Commissioner of Requests upheld the plea under section 9 of the Civil Procedure Code and dismissed the action, holding that the contract sought to be enforced was made in Colombo that the cause of action arose there, and that claim for carriage and packing, &c., was so entirely subsidiary to the first cause of action as to be included in it.”

The plaintiff appealed.

J. W. Silva (with him *Canakaratne*), for the plaintiff, appellant.—
The contract was entered into at Nuwara Eliya, and not in Colombo.

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The offer on the part of the defendant was the advertisement. The acceptance of the plaintiff was the letter ordering the hams. The letter was posted at Nuwara Eliya. The acceptance was therefore at Nuwara Eliya. Counsel cited *Carlile v. Carbolio Smoke Ball Co.*,¹ *Anson*, 45, 26.

The delivery of the hams in Colombo to the carrier was not delivery to the plaintiff under section 31 of the Sale of Goods Ordinance, as the defendants sent the hams by value-payable parcel, and delivery was on payment only at Nuwara Eliya. The cause of action, therefore, arose at Nuwara Eliya.

Bartholomeusz, for the defendants, respondents.—The offer in this case consisted in the plaintiff's letter to defendants, and the acceptance consisted in the conduct of the defendants in sending up the hams in terms of the order. The delivery of the hams was in Colombo. Delivery to the carrier was delivery to the plaintiff.

Silva, in reply.

Cur. adv. vult.

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His Lordship set out the facts, and continued :—

In my opinion the Commissioner was right. There is no evidence on the record to show what the terms of the advertisement were, and in the absence of these I should deem it merely an invitation to do business, like the issue of a bookseller's catalogue, not an offer intended to create, and capable of creating, legal obligations. *Carlile v. Carbolio Smoke Ball Co.*¹ does not therefore apply.

It could hardly be said that after defendants had run out of the hams they advertised, that the plaintiff by ordering some had laid the defendants under a contractual obligation to supply the number ordered, or that the defendants were bound to supply hams if they deemed plaintiff incapable of paying for them. The same observation would apply to books, of which the bookseller might have only a limited number.

The contract is formed by offer and acceptance, and I must treat the plaintiff's letter as the offer, and the despatch of the hams from Colombo was conduct communicating the acceptance. (*Anson* 26). An offer is made when, and not until, it is communicated to the offeree (*idem*, 23), and a contract is made when the acceptance is communicated, and acceptance must be communicated by words or conduct. The offer and acceptance, therefore, both took place in Colombo, and the case of *Cowan v. O'Connor*² applies. A contract also is presumptively made at the place of acceptance. (*Leake on Contracts*, p. 25, 4th ed.) The contract, therefore, in this case sought to be enforced, in the absence of any evidence to show the contrary, was made in Colombo.

¹ (1893) 1 Q. B. 256.

² (1888) 20 Q. B. D. 640.

The defendants would only be liable if the hams were despatched from Colombo in a bad condition, not if they went wrong on the journey, unless the packing or some other act of theirs conduced to their deterioration on the journey, as delivery to the carrier under section 31 of "The Sale of Goods Act, 1896," is delivery to the buyer. The allegation here is that the hams were despatched in a bad condition from Colombo, and therefore the alleged cause of action arose in Colombo. It was not contended before me that the alleged second cause of action was maintainable, and I agree with the Commissioner that the charges for freight and packing really form part of the contract price. I think therefore, that the appeal must be dismissed with costs.

If the plaintiff has to go to Colombo to sue the defendants, and take his witnesses there, and succeeds in establishing his case, he would no doubt be entitled to all costs resulting from, and properly incurred in, doing so.

Appeal dismissed.

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J.

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