Present : Bertram C.J.

1921.

RAMALINGAM *v.* MOHIDEEN.

653—P. C. Jaffna, 14,882.

*Contract—Right of action where contract only in part performed—*Quantum meriut*—Hire of motor car to proceed to Mullaittivu and bring back a patient to Jaffna—Breakdown of car on return journey—Is hirer entitled to claim any portion of stipulated hire ?*

The accused contracted with the owner of a motor car for a stipulated sum to proceed from Jaffna to Mullaittivu and bring back a patient to Jaffna. On the return journey, when the car had only proceeded about 20 miles, it broke down, and the accused had to take his patient by carriage to a railway station, 5 miles off, and to proceed by train to Jaffna.

Held, that the accused was not liable to pay any portion of stipulated sum by way of hire.

THE facts appear from the judgment.

Balasingham, for the defendant, appellant.—The learned Magistrate is wrong in holding that it was not specially agreed that nothing was to be paid. Considering the distance, and the fact that the road runs for the most part through jungle and forest, where help is not available, it is but natural that the defendant should stipulate for a good and reliable car. In any event the

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plaintiff cannot recover for the portion of the journey accomplished by the car on a *quantum meriut.*

J. Joseph, for the respondent.—The learned Magistrate was right in ordering payment of a reasonable sum for the distance covered.

July 28, 1921. BERTRAM C.J.—

This is an unusual case. It is a complaint under section 49 of the Vehicles Ordinance, that a person has refused to pay to the proprietor of the vehicle the sum justly due for its hire.

The person against whom the complaint is brought contracted with the owner of a motor car to proceed from Jaffna to Mullaittivu and bring back a patient to Jaffna. On the return journey, when the car had only proceeded about 20 miles, it broke down, and the traveller had to take his patient by carriage to a railway station, 5 miles off, and to proceed by train to Jaffna.

The defendant, indeed, alleges that the proprietor of the vehicle guaranteed that it would not break down, or that, in other words, if it broke down, nothing would be due. The learned Judge has ignored this evidence, I think, quite rightly.

It is conceded, however, that the contract was for the motor car to go from Jaffna to Mullaittivu and back to Jaffna. Mr. Joseph says that all that the Judge had to do was to estimate what was justly due, that is to say, equitably and justly due in the circumstances. I take it, however, that in estimating what is justly due, the learned Judge must have regard to the actual contract, and that contract was to take the patient all the way from Mullaittivu to Jaffna.

I have no authority on the Roman-Dutch law on the matter, but the English authorities are well established. They start from *Cutter v. Powell.*[1] The headnote of that case is: "If a sailor hired for a voyage take a promissory note from his employer for a certain sum, provided he proceed, continue, and do his duty on board for the voyage, and before the arrival of the ship he dies, no wages can be claimed either on the contract or on *quantum meriut.*" In the notes the learned author of *Smith's Leading Cases* observes: "Few questions are of so frequent occurrence, or of so much practical importance, and at the same time so difficult to solve, as those in which a dispute is where an action can be brought by one who has entered into a special contract, part of which remains unperformed."

The law as laid down in *Cutter v. Powell*[1] is still the law of England (see page 17 of the volume quoted).

"The law," says A. L. Smith, M.R., in *Sumpter v. Hedges,*[2] "is that where there is a contract to do work for a lump sum, until the work is completed, the price of it cannot be recovered."

[1] *Smith's Leading Cases, vol. II., from 6, Term Reports, 320.*
[2] *(1898) 1 Q. B. 673.*

Other cases are cited in the same connection. It seems to me that this is a reasonable principle to apply to this Colony, and particularly reasonable in the present case.

What the present complainant contracted for was a motor car to take a patient from a house in Mullaittivu direct to a house in Jaffna. That contract is not satisfied by the patient first of all being taken 20 miles in a car, then transferred by carriage to a railway station, and then, with all the inconveniences of railway travelling by train, to another station, and then from that station to his house.

I do not think that it would be equitable in the circumstances that the proprietor of the car should recover anything.

I must, therefore, allow the appeal, with costs.

Appeal allowed.