

1930

Present : Akbar J.

SUBATHERIS v. SINGHO.

173—C. R. Negombo, 36,983.

Jurisdiction—Action for contribution—Cause of action—Residence of defendant.

Where one of two joint-debtors paid the whole debt and sued his co-debtor for contribution,—

Held, that the cause of action was the refusal of the defendant to contribute and must be deemed to have arisen where the defendant resides.

APPEAL from a judgment of the Commissioner of Requests, Negombo.

R. C. Fonseka, for plaintiff, appellant.

Ranawake, for defendant, respondent.

November 13, 1930. AKBAR J.—

This appeal is only on a point of law, but it is an interesting point and it has been very strenuously argued by counsel for the appellant, Mr. Fonseka. The simple point is this. The plaintiff and the defendant in this case were judgment-debtors in a decree in a case in the Negombo District Court, No.3,044, and the plaintiff paid the full debt due by him and his co-debtor in satisfaction of the decree in that case. Thereupon the plaintiff had the right to ask for contribution from the defendant in this case of his share. It is

admitted that both the plaintiff and the defendant are resident outside the jurisdiction of the Court of Requests of Negombo. The plaintiff, no doubt, had the right to ask for contribution, but where did the cause of action arise? It is admitted in this case that the only test of jurisdiction is "where did the cause of action arise?" A cause of action arises when there is a denial of a right, or a refusal to fulfil an obligation.

Under the Roman-Dutch law, as I understand it (see the case of *Dias v. Constantine*¹) the obligation is cast on the creditor to seek out the debtor, and therefore the plaintiff in this case must seek out the debtor and ask for payment. The denial, if there is one, will be in the place of residence of the defendant which is admittedly outside the jurisdiction of the Negombo Court of Requests. The plaintiff brought this action on the footing that the defendant refused to contribute, and such refusal must be deemed to have occurred where the defendant resides according to the Roman-Dutch law. That being so, the Negombo Court of Requests had no jurisdiction to try this case.

This appeal must be dismissed with costs.

Appeal dismissed.

¹ 20 N. L. R. 338.