

1920.

Present: Ennis J.

SIYATUHAMY v. FERNANDO.

307—C. R. Kegalla, 15,998.

Jurisdiction—Action for goods sold and delivered—Action may be brought where money had to be paid—Rule of English law as to place of payment.

An action on a contract for goods sold and delivered could be brought in a place, *inter alia*, where the money had to be paid, and in the absence of any stipulation in the contract in regard to it, the rule of the English law that a man should seek out his creditor and pay him would apply.

THE facts appear from the judgment.

H. V. Perera, for plaintiff, appellant.—As the place of payment was not an express term of the contract, the question arises, Where should the plaintiff have been paid? There is no specific provision relating to the matter in the Sale of Goods Ordinance, No. 11 of 1896, but section 58 (2) provides for the application of the English law in a *casus omissus*. The rule of the English law is that a debtor should seek out and pay his creditor. Accordingly, the plaintiff should have been paid at Rambukkana, where he resides and carries on business. His cause of action, being the non-payment, therefore arose at Rambukkana. Hence, the Court of Requests of Kegalla has jurisdiction.

Counsel cited *Dias v. Constantine*,¹ *Fernando v. Arunasalempillai*,² and *Ratnapala v. Marikar*.³

J. S. Jayawardene (with him *Goonewardene*), for defendant, respondent, commented on the authorities cited.

February 12, 1920. ENNIS J.—

This was an appeal from a dismissal of the plaintiff's action on the ground that the Court had no jurisdiction to try the case. The action was one for a balance of Rs. 151.10 due for goods sold and delivered. It appears that the contract was made in Ganipola, and that the plaintiff resided in Rambukkana, within the jurisdiction of the Court. The rule of law in cases of contract would be that the action could be brought in a place, *inter alia*, where the money had to be paid, and in the absence of any stipulation in the contract in regard to it, the rule of English law that a man should seek out his creditor and pay him would apply. The English law with regard to the sale of goods, so far as the Sale of Goods Ordinance, No. 11 of

¹ (1918) 20 N. L. R. 338.

² (1919) 6 C. W. R. 151.

³ (1919) 6 C. W. R. 247.

1896, made no specific provision, was applied by section 58 (2) of that Ordinance. The point at issue was decided in the case of *Dias v. Constantine*,¹ and has been followed since.

In the circumstances, I would hold that the Court had jurisdiction, and, inasmuch as the Court dealt with the other issues in the case and decided that if it had jurisdiction the plaintiff would be entitled to a decree for Rs. 72.60, I set aside the decree, and enter judgment for the plaintiff for that sum, with costs. The plaintiff is entitled to the costs of the appeal.

Appeal allowed.

1920.

ENNIS J.

*Siyatuhamy
v. Fernando*