1943 *Present :* **Howard C.J. and Keuneman J.**

ABDUL CADER, Appellant, *and* MEERA SAIBO, Respondent.

*53 (Inty.)—D. C. Colombo, 12,153.*

*Jurisdiction—Action on promissory note—Made at Badulla—Payable at Badulla—Place of payment—Cause of action.*

Plaintiff sued the defendant in the District Court of Colombo as the indorsee of a promissory note made by the defendant in favour of V and endorsed by the latter to plaintiff.

The note, which was payable on demand, was signed at Badulla and in the body of the note the defendant's address was given as Lower street, Badulla.

*Held,* that the intention of the parties was that Badulla should be the place of payment and that therefore the cause of action arose at Badulla. *Narayanan Chetty v. Fernando* (*2 C. L. R. 30*) followed.

[1] *L. R. 1 Ex. 364, 367.*

APPEAL from a judgment of the District Judge of Colombo. The facts appear from the head-note and the argument.

*H. V. Perera, K.C.* (with him *C. Renganathan*), for the defendant, appellant.—The District Court of Colombo had no jurisdiction to try this case. The promissory note was made at Badulla and payable on demand. A promissory note made at a certain place, the maker being described as of the same place, is, in the absence of express provision to the contrary, a note payable at that place. The case of *Narayan Chetty v. Fernando* [1] is directly applicable. See also sections 45 (4) (*b*), 90 and 87 of the Bills of Exchange Ordinance (Cap. 68). Further, the plaintiff is indorsee and not the payee; the maker of a note cannot be expected to know who and where an indorsee is. The cause of action must be held to have arisen at Badulla and not at Colombo.

*N. E. Weerasooria, K.C.* (with him *N. Nadarajah, K.C.*, and *C. Thiagalingam*), for the plaintiff, respondent.—The promissory note is payable on demand and not one payable at a particular place. No presentment for payment was necessary in order to render the maker liable. The only ground on which jurisdiction was fixed in *Narayan Chetty v. Fernando* (*supra*) was that of endorsement. Section 45 (4) (*b*) of Cap. 68 has to be read in conjunction with sections 87 and 88, and the effect is that presentment for payment is necessary only when a particular place is mentioned, in the body of the note, for payment. In the circumstances of the present case the rule that the debtor must seek out the creditor must prevail—*Ponniah v. Kanagasabai* [2], *Dias v. Constantine* [3], *Siyatuhamy v. Fernando* [4], *Fernando v. Arunasalempillai* [5], *Ratnapala v. Marikar* [6].

[HOWARD C.J.—Have you any English cases in point?]

*Read v. Brown* [7], though not directly in point, is helpful.

*Buxton v. Jones* [8] is referred to in *Narayan Chetty v. Fernando* (*supra*).

*H. V. Perera, K.C.*, in reply.—The rule in English law that the debtor must seek out the creditor is not an unalterable one. See Vol. 7 of *Halsbury's Laws of England* (*2nd ed.*), *Art. 275*. The place of performance is to be found in the provisions of the Bills of Exchange Ordinance; section 45 (4) (*b*) is a provision applicable both to bills of exchange and promissory notes and is unaffected by sections 87 and 88. In Ceylon the cause of action contemplated in section 9 (c), of the Civil Procedure Code cannot arise in more than one place. *Read v. Brown* (*supra*) may be of assistance only in a case where the cause of action is permitted to arise "partly or wholly" at a place. In the present case the failure, at Badulla, to pay on receipt of the letter of demand gave rise to the cause of action.

*Cur. adv. vult.*

October 21, 1943. HOWARD C.J.—

In this case the plaintiff sued the defendant on a promissory note for the sum of Rs. 1,650 made by the defendant to one Vellathamby who indorsed it to the plaintiff. The note was signed at Badulla, was payable on demand and in the body of the note the defendant's address was given

[1] (*1891*) *2 C. L. Rep. 30.*
[2] (*1932*) *35 N. L. R. 128.*
[3] (*1918*) *20 N. L. R. 338.*
[4] (*1920*) *21 N. L. R. 494.*
[5] (*1919*) *6 C. W. R. 151.*
[6] (*1919*) *6 C. W. R. 247.*
[7] *L. R. 22 Q. B. D. 128.*
[8] *133 E. R. 256.*

as of Lower street, Badulla. By a letter dated January 10, 1940, the plaintiff's Proctor writing from Kegalla demanded from the defendant immediate payment of the sum of Rs. 3,300 being the principal and interests due on the note. In that letter the plaintiff was described as "of Rambukkana". The money due on the note not having been paid, the plaintiff commenced proceedings for its recovery in the District Court of Colombo. On objection being taken by the defendant to the jurisdiction of this Court, the question was decided as a preliminary issue in favour of the plaintiff. From this decision the defendant has now appealed to this Court.

The learned District Judge has found (*a*) That the plaintiff was resident in Colombo, (*b*) That the principle of English law that a debtor must seek out and pay his creditor at the latter's residence or place of business applies. Hence the cause of action arises at Colombo and the action was properly instituted in that Court. I will deal with (*b*) first. By virtue of section 97 (2) of the Bills of Exchange Ordinance (Cap. 68) the rules of the common law of England apply to promissory notes. No doubt the rule of law in cases of contract is that the action could be brought in a place where the money had to be paid, and, in the absence of any stipulation in regard to it, the rule of English law that a man should seek out his creditor and pay him would apply. Thus it was so held in an action for goods sold and delivered (*vide Dias v. Constantine* [1], followed in *Siyathuhamy v. Fernando* [2]). In the former case Bertram C.J., in his judgment stated as follows :—

"The question therefore, is, at what place under the contract was the payment to be made? The place of payment under the contract is the place where the parties to the contract intended the payment to be made. In this case the contract does not expressly mention any place of payment. Consequently, what we have to discover is the implied intention of the parties.

There have been several cases in England on this point, and it is a rule of English law that it is the duty of a debtor to seek out and pay his creditor, if the creditor is within the jurisdiction, at the creditor's residence or place of business. The relevancy of that rule in regard to this matter is this, that under the English law, in determining what was the intention of the parties, this is a circumstance which the Court naturally looks at. The debtor being under an obligation to seek out and pay his creditor, the Court assumes that the parties, if they did not mention the place of payment, contracted on that basis."

It has been contended by Counsel for the respondent that the same principle applies with regard to a promissory note and in this connection has referred us to the decision of Macdonell C.J., in *Ponniah v. Kanagasabai* [3]. The head-note in this case is as follows :—

"Where a promissory note made by the defendant in favour of the plaintiff was silent as to the place of payment—

*Held*, that an action may be brought on the note in the Court within whose jurisdiction the plaintiff resided, as the debtor must seek out the creditor at his residence or place of business."

[1] *20 N. L. R. 338.* [2] *21 N. L. R. 494.* [3] *35 N. L. R. 128.*

The following passage appears in the judgment :—

"The rule of English law seems to be this ; that you must discover the place of payment from the expressed intention of the parties. Here there was no expressed intention. The note was silent as to the place of payment and the learned Commissioner was dissatisfied with such evidence as was addressed to him on that point. Then in the absence of anything from which one can fairly deduce what was the intention of the parties as to the place of payment one is thrown back on what seems to be the English rule that the debtor must seek out the creditor at his residence or place of business. This gives a Court jurisdiction to entertain a case brought on a promissory note at the place where the plaintiff resides. The only difficulty I feel on this point is the case that has been cited to me in *17 N. L. R., p. 479*, which is a two-Judge decision. It is possible that that case can be distinguished on the facts, but in any event it does not seem at any time to have been followed and is in effect dissented from in a decision of another case which too has been decided by two Judges[1]. If that is so, then I think I am at liberty to apply what is plainly the rule laid down by Statute, viz., that the debtor must seek out the creditor at his residence or place of business. From that it follows that a creditor can sue, at the place where he resides, on a promissory note."

It will be observed that the learned Chief Justice found himself unable to deduce anything as to the intention of the parties. Moreover he failed to follow a previous decision by two Judges, namely, *Saibo v. Senanayake*[2]. So far as the present case is concerned, *Ponniah v. Kanagasabai* (*supra*) can be distinguished on the ground that the maker was sued by the indorsee and not by the payee. In *Saibo v. Senanayake* (*supra*) it was held that the District Court of Colombo had no jurisdiction in respect of the plaintiff's claim on a promissory note made outside the territorial limits of the jurisdiction of the Court, no place of payment being mentioned in the note, but the payee being resident in Colombo at the date of the action. It is difficult to understand the dictum of Macdonnel C.J. in *Ponniah v. Kanagasabai* (*supra*) that the decision in *Saibo v. Senanayake* (*supra*) is inconsistent with that in *Dias v. Constantine* (*supra*) which related to a sale of goods. There can be no doubt that if *Saibo v. Senanayake* is good law it is applicable to the facts of the present case. The case of *Narayan Chetty v. Fernando*[3], cited by Mr. Perera, is also a direct authority for the contention of Mr. Perera that the cause of action in this case did not arise at Colombo, but at Badulla. In that case the action was brought by the indorsee in the District Court of Negombo against the maker of a promissory note made at Chilaw, but indorsed at Negombo. It was held that the cause of action arose at Chilaw and the District Court of Negombo had no jurisdiction. The report of this case does not disclose the residence of the plaintiff.

[1] *20 N. L. F*

[2] *17 N. L. R. 479.*

[3] *2 C. L. Rep. 30.*

The general rule with regard to the place of performance of a contract is stated in *Volume 7 of Lord Hailsham's Halsbury's Laws of England at p. 195, para. 275,* as follows :—

"Where no place for performance is specified either expressly or by implication from the nature and terms of the contract and the surrounding circumstances, and the act is one which requires the presence of both parties for completion, the general rule is that the promisor must seek out the promisee and perform the contract wherever he may happen to be. This rule applies not only to contracts for the payment of money, but to all promises for the performance of which the concurrence of the promisee is necessary."

It is, however, a matter of some significance that not one English case has been cited to show that the general rule with regard to contracts has been applied to a promissory note. The inference to be deducted from this absence of authority is that the nature of the contract evidenced by the promissory note, particularly its indorsability to a person whose residence is unknown at the time of the execution of the note, precludes the applicability of the general rule. In a note to paragraph 275 of *Volume 7 of Halsbury's Laws* the reader is referred to Volume II. for the place of payment with regard to Bills of Exchange and Promissory Notes. It would, therefore, appear that Bills of Exchange and Promissory Notes do not come within the general rule which I have stated. The position is regulated by the Statutory provisions of the Bills of Exchange Act, or, in Ceylon, by the Bills of Exchange Ordinance. Section 45 (4) (*b*) of this Ordinance is as follows :—

"Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented."

In section 90 (1), it is provided that subject to the provisions of Part IV. and except as by this section provided, the provisions of the Ordinance relating to bills of exchange apply, with the necessary modifications, to promissory notes. We have, therefore, to consider whether there is anything in Part IV. of the Ordinance to render section 45 (4) (*b*) inapplicable to a promissory note. Section 88 (1) provides that where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable. In sub-section (2) it is provided that presentment for payment is necessary in order to render the indorser liable. Section 87 (1) also provides that where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement, otherwise the indorser is discharged. In this case a demand was made by D 3. This amounted to a presentment of the note in accordance with section 45 (4) (*b*). In my opinion the making of the note at Badulla, the insertion of the maker's address as Lower street, Badulla, and the demand for payment addressed to the defendant at Badulla indicate that the intention of the parties was that Badulla should be the place of payment. Following the cases I have cited, the cause of action, therefore, arose at Badulla and not at Colombo. In view of the conclusion at which I have arrived on this question, it is unnecessary

to decide whether the plaintiff can be considered for the purposes of bringing this action as resident in Colombo. Only after considerable hesitancy did the learned Judge come to the conclusion that he was. In my opinion the question is shrouded in grave doubt.

For the reasons I have given, the appeal is allowed with costs in this Court and the Court below.

KEUNEMAN J.—I agree.

*Appeal allowed.*