

ORIGINAL CIVIL.

Before Mr. Justice Farran.

PRA'GDA'S THA'KURDA'S AND OTHERS, (PLAINTIFFS), v. DOWLATRA'M
NA'NURA'M, (DEFENDANTS).*

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August 7.

Jurisdiction—Cause of action—Agreement at Delhi to pay money in Bombay—Hundi—Acceptance, what amounts to—Communication of acceptance to holder—Communication of acceptance to drawer—Omission by drawee to notify non-acceptance—Absence of entry of acceptance in drawee's books.

The plaintiffs, who traded in Bombay, had dealings with certain firms at Delhi. In December, 1884, it was agreed at Delhi between the plaintiffs and the defendant that, in consideration of the plaintiffs accepting a composition of eight annas in the rupee upon the debt due to them by a certain insolvent firm, which amounted to Rs. 11,101-2, the defendant would pay the amount of such composition to the plaintiffs. The plaintiffs in this suit claimed Rs. 5,530-9, being the amount of such composition. The defendant denied the jurisdiction of the Court, contending that no part of the cause of action had arisen within its jurisdiction. He alleged that the terms of the agreement were contained in a composition-deed which was executed at Delhi, &c. At the hearing, the Court found that, subsequently to the execution of the composition-deed, the plaintiffs' *munim*, who was anxious to return to Bombay, had a conversation with the defendant at Delhi with reference to the plaintiffs' claim upon the insolvent firm, at which the defendant proposed that he should give a letter to the plaintiffs' said *munim* with reference to the claim, and that the *munim* should give one to him; that the latter should, upon such letters being exchanged, return to Bombay, and that the defendant should remit the amount found due to the plaintiffs when the accounts had been made up. The following letter was accordingly written by the defendant and handed to the plaintiffs' *munim* :—

“Peace, prosperity. To Shripat Sháh Ganeshdás Thákurdás at that auspicious place the seaport (town) of Bombay. From Delhi written by Dowlatrái Shrirám, whose (salutations) victory to (the deity) Gopál do you be good enough to read. Further, do you be pleased to notice one (piece of) intelligence (as follows.) You had an account with Bhái Fatechand and Kanyálál Jugalkissan. I have paid off their debts at the rate of eight annas in the rupee. Therefore, as to whatever (amount) may be found (due) by your account on our making up the account according to the practice of the merchants, the same I will pay you at the rate of eight annas in the rupee. This *chitti* is written 21st December 1884.”

The plaintiffs' *munim* handed the following letter to the defendant :—

“To Sháh Dowlatrái Shrirám at that auspicious place, Delhi. From the seaport (town) of Bombay, written by Ganeshdás Thákurdás, whose salutations of victory * * * &c. Do you be pleased to read * * *. I have an account with Sháh Fatechand Kanyálál Jugalkissan, wherein Rs. . . . are claimable by me. On account of those rupees I will receive payment from you at the rate of eight

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annas n the rupee. A *chitti* in respect thereof I have obtained, in writing, from you, 21st December 1884."

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These letters were exchanged at Delhi, and the plaintiffs' *munim* then returned to Bombay.

Held, that the Court had jurisdiction. If the oral agreement between the defendant and the plaintiffs' *munim* were taken as the basis of the plaintiffs' claim, it was clear that part of the cause of action arose in Bombay, as payment to the plaintiffs was to be made in Bombay. The exchange of letters was a carrying out, in part, of the oral agreement. When that agreement was made, the defendant was under a legal obligation to pay the plaintiffs' claim upon the insolvent firm. The oral agreement varied the time, place, and mode of payment, as it was competent for the parties to vary them (Contract Act IX of 1872, secs. 72; 73). If the letters had varied the terms of the oral agreement, the latter would be modified by the later expressions of the will of the contracting parties; but they did not do so, and the oral agreement remained in force and unvaried. If, on the other hand, the letters were regarded as containing the contract, they were not of such a character as to exclude the proof, under section 92 of the Evidence Act I of 1872, of a separate oral agreement completely consistent with their terms, namely, that the payment they provided for should be made in Bombay.

Held, also, that, having regard to the circumstances under which they were written, that a promise to pay in Bombay might fairly be inferred from the terms of the letters themselves. The defendant addressed the plaintiffs at Bombay from Delhi, and the plaintiffs addressed the defendant at Delhi from Bombay, and it might be concluded, from this, that the parties intended that the letters should have the same contractual effect as if they had been respectively written to, and from, the places to and from which they purported to be written.

Held, also, that the fact that the debt due from the insolvent firm to the plaintiffs, which the defendant had agreed to satisfy, had been contracted in Bombay would not give the Court jurisdiction independently of the stipulation, oral or documentary, by the defendant to pay in Bombay. It would be necessary for the plaintiffs to prove the existence of such debt, as showing the nature and extent of the defendant's promise, but the existence of the debt would not constitute a part of the plaintiffs' cause of action.

The insolvent firm had drawn certain *hundis* on the plaintiffs payable to the defendant. The defendant had endorsed them to one Motirám. The plaintiffs' Bombay firm was the agent of Motirám, and Motirám accordingly sent the *hundis* to the plaintiffs, as his agents, for realisation. The *hundis*, however, were dishonoured, and Motirám thereupon returned them to the defendant, and received their value from the defendant, who in this suit now sought to set off the amount so paid by them against the claim of the plaintiffs. It was contended that the plaintiffs were not liable, as there was no proof that the *hundis* had been accepted by them, it not having been shown that the acceptance had been communicated to Motirám, the owner of the *hundis*, and that until such communication the plaintiffs were at liberty to cancel their acceptance.

Held, that the acceptance by the plaintiffs was complete; and that the defendant was entitled to the set-off claimed. The *hundis* had come to the plaintiffs for acceptance on the 28th October, 1884, and their non-acceptance had not been notified to Motirám on the 3rd November. That would be an unreasonable period during which to hold the *hundis in dubio*. On the 30th October, the plaintiffs had stated by letter to the drawer's firm that the *hundis* had been accepted. That meant that all things had been done to make the acceptance complete. The absence of entries in the plaintiffs' book, with reference to the *hundis*, afforded no inference that they were not accepted.

Seemle a communication of acceptance to the drawer, or to a previous holder, binds the acceptor as well as a communication to the present holder, inasmuch as the acceptance enures for the benefit of them as well as for the actual holder, and the primary contract is between the drawer and the acceptor.

THE plaintiff stated that on the 21st December, 1884, at Delhi it was agreed between the plaintiffs and the defendant that, in consideration of the plaintiffs agreeing to accept a composition of eight annas in the rupee and in satisfaction of the amount then due to the plaintiffs by Fatechand Kanayálál and Kanayálál Jugalkissan, (which amount was Rs. 11,101-2-0), the defendant would pay the amount of such composition to the plaintiffs in Bombay. The plaintiffs claimed judgment against the defendant for the sum of Rs. 5,550-9-0, being the amount of such composition, with interest, &c.

The defendant in his written statement denied the jurisdiction of the Court, contending that no part of the alleged cause of action arose within the jurisdiction of the ordinary original civil jurisdiction of the High Court. He denied that he had ever agreed to pay any composition in Bombay, and alleged that the terms of the agreement between him and the plaintiffs were contained in a composition-deed, which was at Delhi; that he had never been furnished by the plaintiffs with any accounts of the dealings between them and the two firms of Fatechand Kanayálál and Kanyálál Jugalkissan, and that the furnishing of such accounts had been made a condition precedent to his paying any composition. He also submitted that in no event were the plaintiffs entitled to recover interest on the amount of composition.

He further claimed, in case this suit should be held maintainable by the plaintiffs, to set off against their claim, and to recover from them the amount of two *hundis* for Rs. 2,500, each of which

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he alleged he was a holder for value. These *hundis* had been drawn by the firm of Fatechand Kanayálál in favour of the defendant on the plaintiffs in Bombay, and (the defendant alleged) were duly accepted by the plaintiffs. The defendant had transferred them to one Motirám Jamnádás, who sent them to the plaintiffs in Bombay for realisation, but they were dishonoured by the plaintiffs. Motirám Jamnádás then retransferred them to the defendant, recovering the value thereof from the defendant, who at the time of the suit was the holder of them. The defendant claimed to recover the said value from the plaintiffs, together with the expenses he had incurred, amounting, in all, to Rs. 5,151-9-0.

Macpherson and *Inverarity* for the plaintiffs.

Lang and *Russell* for the defendant.

The following authorities were cited. As to jurisdiction, *Mulchand Joharimal v. Suganchand Shivdas*⁽¹⁾; *Thornton v. Maynard*⁽²⁾; *The London, Bombay and Mediterranean Bank, Limited, v. Badee Beebee*⁽³⁾; *De Souza v. Coles*⁽⁴⁾; *Katrick Churn Setty v. Gopálkisto Paulit*⁽⁵⁾; *Muhámmad Abdul Kádar v. The East Indian Railway Company*⁽⁶⁾; *Bishunath v. Ilahi Bakhsh*⁽⁷⁾; *Cox v. Troy*⁽⁸⁾; *Chapman v. Cottrell*⁽⁹⁾; *Henry Ayres v. The South Australian Banking Company*⁽¹⁰⁾.

FARRAN, J. :—The first issue to be decided in this suit is as to the jurisdiction of the Court to entertain the plaintiff's claim. The facts, which it is necessary to consider before deciding it, are not in dispute, except as to details. I hold them to be proved as follows:—The plaintiffs carry on business at Bombay, Calcutta, and Cawnpore, and had dealings with a firm which carried on business at Delhi and elsewhere under the names of Fatechand Kanayálál and Kanayálál Jugalkissan. The plaintiffs' Calcutta, Bombay, and Cawnpore accounts with this firm, (which I may, for brevity, call the insolvent firm), were kept separate and distinct. The defendant carries on

(1) I. L. R., 1 Bom., 23.

(9) I. L. R., 1 Mad., 375.

(2) L. R., 10 C. P., 698.

(7) I. L. R., 5 All., 277.

(3) I. L. R., 5 Bom., 42.

(8) 5 B. & Ald., 478.

(4) 3 Mad. H. C. Rep., 384.

(10) 34 L. J. Ex., p. 186.

(5) I. L. R., 3 Calc., 264.

(6) L. R., 3 P. C., 549.

business at Delhi, where he has, at least, two firms: one carried on in the name of Dulubrái Sewráam and another in the name Sivaráam Tedaráam.

On the 3rd March, 1884, in consequence of a telegram received from Delhi, Kápurchand, the plaintiffs Bombay *munim*, proceeded to Delhi, and found that the insolvent firm had stopped payment.

After Kápurchand had been some time at Delhi, a *panch* was appointed—by whom is not very clear—to suggest or make some arrangement for the settlement of the affairs of the insolvent firm, the creditors of which seem to have all been collected at Delhi. The *panch* suggested an arrangement whereby the defendant was to take over the assets of the insolvent firm, and was to pay its creditors at the rate of eight annas in the rupee on the amount of their claim. An agreement was thereupon drawn up in Hindustáni, written in the Persian character; and it was signed by the members of the insolvent firm, by the several members of the *panch*, and by the defendant described as creditor. This agreement purports to be made between the insolvent of the first part, the *panch* or arbitrators of the second part, and the creditors, who have signed below, of the third part. It recites that the arbitrators had made an arrangement with the defendant for the payment of money to the creditors of the insolvent firm at the rate of eight annas in the rupee, and proceeds:

“And we, the creditors, of the third part, whose signatures are written below, make a declaration as follows:—We agree to accept our debt at the rate of eight annas per rupee;—and as soon as each one creditor of us shall receive the amount of his debt in the above-mentioned proportion, either in *hundis* of 34 days’ time or in ready money, or partly by *hundis* or partly in ready (money) to be received according as the creditors may approve (them), each one creditor (of us) shall pass (in writing) a receipt in full satisfaction of the debt due to him. But several of us, creditors, who at first filed suits, will also receive the costs of the Court, besides the above-mentioned 8 annas, and with regard to the settlement of debts due to us

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there will not be remaining any claim against the creditors and the insolvent debtors. Therefore the three parties mentioned above have passed, in writing, these few words of their own free will, in order that the same may serve as a voucher—nothing more.”

On the face of the document it would seem that the arbitrators, and not the defendant, undertook the responsibility of paying the creditors eight annas in the rupee; and that the defendant was responsible to the arbitrators, and not to the creditors, for the due payment of that sum. The signatures of the creditors were not, however, taken to this document, but to a blank sheet of paper (exhibit E). The reason for this was, as the defendant's *munim*, Kanjimal, stated, that it was not intended that the agreement should become operative, unless all the creditors assented to take eight annas in the rupee upon their claims. Kapurchand says that he signed the blank paper upon an agreement between him and the defendant, that the defendant was to pay eight annas in the rupee upon the plaintiffs' claim; and that he made no other arrangement. He signed at a place, called Motirám's *Kothá*, in the presence of the other creditors and the arbitrators. There is no evidence that the agreement (exhibit No. 2) was read to Kápurchand, or that he ever saw the document itself; he could not, of course, read it. The fair inference, I think, to be drawn from the evidence is that Kápurchand knew that arbitrators were appointed to make a settlement, and that they had made one; that he was told, probably by the defendant's people, or by the defendant, that if he agreed to take eight annas in the rupee he should sign exhibit E, and that the defendant would then pay him eight annas in the rupee under the directions of the arbitrators, and that he neither saw nor had read to him the document, exhibit No. 2. It does not, however, seem to me to be material to determine with exactness the extent to which Kápurchand, as representing the plaintiffs, was bound by the terms of exhibit No. 2. I think it is clear that when Kápurchand signed exhibit E (together with the requisite number of other creditors), the defendant became liable, either directly or indirectly, to pay the plaintiffs eight annas in the rupee on their claim against the insolvent; and, I think, it is most probable that if the plaintiffs had sought to enforce the claim

before the passing of the letters, presently to be referred to, they could only have done so in accordance with the terms contained in exhibit No. 2.

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When the creditors had signed exhibit E, the work of settling with them began, and progressed rapidly. They produced their accounts or copies of them, which were compared by the *mehṭá* of the insolvent's firm, and when the amount due to each creditor was ascertained he was paid at the rate of eight annas in the rupee upon the amount of his claim by the defendant's *munim*, who attended at Motirám's *Kothá* with *hundis* and cash for that purpose.

The plaintiffs' Calcutta and Cawnpore accounts were duly compared, but some difficulty arose about ascertaining the amount due to them upon their *Bombay* accounts. The defendant's witnesses say that the difficulty was caused by Kápurchand not having with him, or not producing, the plaintiffs' *Bombay* account. Kápurchand says that the accounts were not made up, because the defendant refused to receive the copies of the *Bombay* accounts which Kápurchand had brought with him, stating, as a reason, that the books of the insolvent, requisite for comparison with them, were in the Court. I do not consider it necessary to decide which account is the more correct, or whether either of the accounts is correct. Notwithstanding that the accounts were not made up, Kápurchand continued on the most friendly terms with the defendant. This is clear from the terms in which exhibits M and N are written.

In this state of affairs, Kápurchand fell ill, and became anxious to return to *Bombay*, and asked to have the *Bombay* account settled. He and the defendant then had a conversation, during which the defendant proposed that he should give a letter to Kápurchand about the claim, and that Kápurchand should give one to him, and that Kápurchand should, upon such letters being exchanged, return to *Bombay*, and that the defendant should remit the amount found due to the plaintiffs after the accounts had been made up. Kápurchand agreed to this arrangement. Doubt is sought to be thrown on the fact of this arrangement having been come to between the defendant and

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Kápurchand, by the suggestion that the defendant is an old man, and does not personally attend to business, and because his *munim*, Johárilál, who has come to Bombay to give evidence by proxy for the defendant, says that he did not say he would send the money to Bombay, nor did the defendant to his knowledge so promise. Johárilál's account of the conversation, which resulted in the writing of the exchanged letters, is this:—"Kápurchand said to me I have made my signature to the *panchnámá*. The accounts are not ready; therefore do you pass me a writing. Therefore I gave the writing (exhibit F) to him. This and exhibit G (the reply) were written, at the same time, at Motirám's *Kothá*. Defendant was not there present. I wrote exhibit F. The body of exhibit G is written by Golerám." The suggestion, that the defendant is old and did not personally attend to business, is quite incorrect. Johárilál did not support it. Two letters, (exhibits M and N), which Kápurchand received from the defendant after his return to Bombay, are in the handwriting of the defendant himself, and relate to these very accounts. I am persuaded that Kápurchand had a conversation with the defendant about his return to Bombay, and about the exchange of letters; and it is so probable that the defendant told Kápurchand that he would send the money to Bombay, that I see no reason to doubt Kápurchand when he says so. There is no possible reason why he should not. The plaintiffs had other accounts with the defendant, the balance upon which would naturally be remitted in the ordinary course of business. The terms of the letters themselves are entirely consistent with Kápurchand's account, and so are the terms of the letters (exhibits M and N) to which I have referred. Muddun Gopál, the defendant's vakil, when, shortly afterwards, writing on the 15th February, 1885, to the plaintiff, says: "As soon as you send my client a detailed statement of the accounts, they will examine the same, and the amount legally due to you from the firm of Fatechand Kanayálál will be at once remitted."

After this arrangement, letters were exchanged between the defendant's *munim* and Kápurchand. Exhibit F (written by the defendant) runs thus: "Peace, prosperity. To Shripat Sháh Ganeshdás Thákurdás at that auspicious place the seaport

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(town) of Bombay. From Delhi written by Dowlatrái Shrirám whose (salutation) victory to (the deity) Gopál do you be good enough to read. Further, do you be pleased to note one (piece of) intelligence (as follows.) You had an account with Bhái Fatechand and Kanayálál Jugalkissan. I have paid off their debts at the rate of eight annas in the rupee. Therefore, as to whatever (amount) there may be found (due) by your account on our making up the account according to the practice of the merchants, the same I will pay you at the rate of eight annas in the rupee. This *chitti* is written 21st December, 1884."

The reply, (exhibit G), written by the plaintiffs' *munim*, was as follows. "To Sháh Dowlatrái Shrirám at that auspicious place, Delhi. From the seaport (town) of Bombay, written by Ganeshdás Thákurdás, whose salutations of victory, * * * &c. Do you be pleased to read * * * I have an account with Sháir Fatechand Kanyálál Jugalkissan, wherein Rs. are claimable by me. On account of those rupees I will receive payment from you at the rate of eight annas in the rupee. A *chitti* in respect thereof I have obtained in writing from you, 21st December 1884."

Kápurchand after this received the amount at eight annas in the rupee due at foot of the plaintiffs' Calcutta and Cawnpore accounts in *hundis* and cash, and signed the acknowledgment (exhibit G.) The next day, I think it was, he returned to Bombay. At this time all the other creditors had been paid off, or shortly after it they were paid off. The plaintiff was the only Bombay creditor. The defendant then writes exhibits N and M. A dispute about whether the plaintiffs had accepted a certain *hundi* arose. Vakil's and solicitor's letters (exhibits H, I, J, and K) passed, and the plaintiffs filed this suit, the plaint being accepted under section 12 of the Letters Patent.

If the oral agreement between the defendant and Kápurchand be taken as the basis of the plaintiffs' claim, it is clear that part of the cause of action arose in Bombay, as that is the place in which the payment was to be made. In this view, the exchange of letters would be a carrying out, in part, of that oral agreement. I think, having regard to the sequence

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of events, that this is the most correct mode of regarding the transaction. When that agreement was made, the defendant was under a legal obligation to pay the plaintiffs' Bombay claim upon the insolvent firm, and probably in accordance with the conditions of the deed, (exhibit No. 2). The oral agreement varied the time, place, and mode of payment, as it was competent for the parties to vary them—Contract Act IX of 1872, secs. 72 and 73. It is, I think, quite clear that this was intended, from the absence from the letters, (exhibits F and G), of all reference to the composition-deed. The oral agreement was, I think, complete before the letters were exchanged, although until then it might not be readily credited. If the letters had varied the terms of the oral agreement, the latter would be modified by the later expression of the will of the contracting parties; but they do not do so; and the oral agreement remains in force and unvaried. If, on the other hand, the letters are looked upon as containing the contract between the parties, (supported by the former consideration), I think they are not of such a character as to exclude a separate oral agreement, completely consistent with their terms, from being proved under section 92 of the Evidence Act I of 1872, namely, that the payment they provide should be made in Bombay. Lastly, I think, having regard to the circumstances under which they were written, that a promise to pay in Bombay may fairly be inferred from the terms of the letters themselves. The defendant addresses the plaintiffs at Bombay from Delhi, and the plaintiffs address the defendant at Delhi from Bombay. I conclude from this that the parties intended that the letters should have the same contractual effect as if they had been respectively written to, and from, the places to, and from, which they purport to be written. Mr. Lang asks, if that be so, why they did not insert, in the body of the letters, a stipulation as to payment in Bombay? The answer would appear to be that they thought they had sufficiently indicated their intention by the form they had adopted. I feel much confidence that, when these letters were written, it was the intention of the defendant to remit the money to Bombay, and that it

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would long ago have been remitted had it not been for the dispute about the *hundis*. I think, I ought, as far as possible, to construe the document so as to carry out the intention of the parties to it. The idea, that a stipulation to pay in Bombay would confer jurisdiction upon the High Court here, to enforce the contract, no doubt never entered into the minds of either of the parties.

It has been argued that, independently of the stipulation, oral or documentary, by the defendant to pay in Bombay, this Court has jurisdiction to try this suit, inasmuch as part of the cause of action—namely, the existence, in Bombay, of the debt due from the insolvent firm to the plaintiff—arose in Bombay, and that fact must be proved before the plaintiff can recover in the suit. The leading case upon this point, by which the Court is bound, is that of *Mulchand v. Suganchand*⁽¹⁾. There it was held that the dishonour, in Bombay, of a *hundi* drawn and indorsed to the holder out of Bombay, constitutes part of the cause of action in a suit by the holder against a prior indorser. Westropp, C. J., says in delivering judgment: “We must consider that several matters combine to make up a cause of action, and that, in such a case as the present, the dishonour of a bill or *hundi* by the drawee is a part of the cause of action of the holder against the indorser. It has been held that notice of dishonour is a material part of the cause of action against an indorser, and that being so it seems to us to follow, as a matter of course, that the dishonour itself must also be a material part of the cause of action.” The result, therefore, would seem to be that, if what can properly be described as a material part of the cause of action takes place within the jurisdiction of a High Court, that Court has jurisdiction when the plaint is accepted under clause 12. The inquiry to be made in each case is, did a material part of the cause of action arise within the local jurisdiction? This is also in accordance with the ruling of Sir Adam Bittleston in *DeSouza v. Coles*⁽²⁾. Mr. Macpherson cites *Wirth v. Austin*⁽³⁾ as an authority for a broader proposition, namely, that any fact, which a plaintiff

(1) I. L. R., 1 Bom., 23, at p. 43. (2) 3 Mad. H. C. Rep., p. 384.

(3) L. R., 10 C. P., p. 689.

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must prove in his action, constitutes part of the cause of action, and the existence of any such fact within the High Court's local limits gives such Court jurisdiction when the aid of clause 12 is invoked. I may possibly be stating his proposition more broadly than he expressed it. The question in *Wirth v. Austin*⁽¹⁾ was whether the whole cause of action arose within the jurisdiction of the Lord Mayor's Court; and it was argued that it did not, because the cheques, upon which the action was brought, were drawn upon, and dishonoured at, the Huddersfield branch of the Midland Banking Company. Lord Coleridge says: "It is said that the action is not maintainable without proof of presentment and dishonour there." He then goes on to show that such proof was, in that particular case, unnecessary, because the drawee of the cheque had no funds at Huddersfield, and knew that his cheque would not be accepted. The opinion expressed in that case is on all fours with the decision of this Court in *Mulchand v. Suganchand*⁽²⁾. It is an authority for the proposition that, in ordinary cases, the presentment and dishonour of a cheque or bill forms part of the cause of action in a suit against the drawer of the cheque or bill. If proof of such presentment and dishonour outside the jurisdiction is necessary, the whole cause of action cannot be said to arise within the jurisdiction; but it is not an authority for holding that whatever must be proved in a suit constitutes part of the cause of action.

In this case the question is does the existence of a debt due from the insolvent firm to the plaintiffs, constitute part of the plaintiff's cause of action? The consideration for the defendant's promise was the receipt, by him, of the assets of the insolvent firm and the mutual agreement of the creditors to accept eight annas in the rupee upon the amount of their claims. The defendant's promise was, not to pay one-half of the debts of the insolvent firm, but to pay a sum equal in amount to one-half of such debts, the receipt of which payment was to operate as a discharge of the insolvent's debts. The debt due from the insolvent firm to the plaintiffs was no part of the plaintiffs' cause of action, but it was the measure of the obligation which the defendant un-

(1) L. R., 10 C. P., p. 689.

(2) I. L. R., 1 Bom., 23.

dertook. To illustrate my meaning. If a builder in Bombay were to contract to build there a tower of the same dimensions and materials as the Kootub at Delhi, and were to be sued for not fulfilling his contract, the plaintiff would have to prove the existence, dimensions, and materials of the Delhi tower, but they would not constitute part of his cause of action. The proof of them would be proof of the nature and extent of the defendant's promise. I do not think, therefore, that, independently of the terms of the defendant's contract on the part of the plaintiff, the cause of action arose in Bombay. Upon the former ground, however, I must hold that this Court has jurisdiction to entertain this suit.

The plaintiffs' claim is for Rs. 5,550-9-0. The defendant does not admit that the double of that sum was due from the insolvent firm to the plaintiff, and claims a set-off of Rs. 5,000, which, however, if allowed, will have the effect of increasing the plaintiffs' claim by Rs. 2,500.

On the 16th of September, 1884, the insolvent firm of Fatechand Kanayálál drew two *hundis*, of Rs. 2,500 each, upon the plaintiffs' Bombay firm in favour of the defendant's Delhi firm of Shivrám Sadurám, the one payable fifty-three and the other fifty-five days after date (exhibits Nos. 3 and 4). These *hundis* were sold and endorsed by the defendant's firm to Motirám Jamnádas, and by the latter were sent to the plaintiffs' Bombay firm for collection from that firm; the endorsement, or enfacement, usual in such cases, being made upon the *hundis*. The amount of the *hundis*, when collected, was to be credited by the plaintiffs to Motirám Jamnádas at due date. The question I have to determine is, whether the plaintiffs accepted those *hundis*. They did not pay them; and Motirám Jamnádas received their amount from the defendant. The defendant claims to recover from the plaintiff the amount so paid. This he is entitled to do if the plaintiff accepted the *hundis*.

The *hundis* were received by the plaintiff on the 28th of October, 1884 (9th *Kártik Sud*, *Samvat* 1941). The letter covering them is not put in, nor is the plaintiff's acknowledgment of the receipt of the *hundis* before me. On the 30th October, 1884, (11th *Kártik Sud*, *Samvat* 1941), the plaintiff wrote (exhibit No. 5) to

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the insolvent firm (*inter alia*) as follows : " Further, *hundis* for Rs. 5,000, drawn by the people of the piece-goods shop, were received as payable. The same are accepted." The insolvent firm of Fatechand Kanayálál is the piece-goods shop, and their firm was at Delhi. [After discussing the evidence upon this point, His Lordship continued.] I am unable to come to any other conclusion than that the plaintiff wrote to the insolvent firm of Kanayálál Jugalkissan that the exhibits 3 and 4, drawn by the insolvent firm of Fatechand Kanayálál, had been accepted,—that is, in effect, that they informed the drawers that their *hundis* were accepted.

It is contended that though this be so, there is no proof that the *hundis* have been accepted, as it is not shown that such acceptance was communicated to Motirám Jamnádas, the owner of the *hundis*, and that until such communication the plaintiff was entitled to cancel his acceptance. The cases of *Cox v. Troy*⁽¹⁾, *Chapman v. Cottrell*⁽²⁾, and *Van Diemen's Land Bank v. Victoria Bank*⁽³⁾ are relied upon.

They establish that the liability of the acceptor does not attach (by English law) by merely writing his name upon, but upon the subsequent delivery of, the bill; or upon communication to, or according to the directions of the person entitled to the bill, that it has been so accepted: see Byles on Bills (14th ed.), p. 263. I do not see, in principle, why a communication of the acceptance to the drawer or previous holder would not bind the acceptor, as well as a communication to the holder, as the acceptance enures for the benefit of them as well of the actual holder, and the primary contract is between the drawer and the acceptor. The question does not seem to have arisen, but the statement of the English law in Byles on Bills (14th ed.), p. 263, would seem to be stereotyped in the Indian Negotiable Instruments Act XXVI of 1881, sec. 7.

In the present case, the plaintiff was himself the agent of the holder of the *hundis*, and had the *hundis* indorsed to him and in his possession for collection, as well as being the drawee of the

(1) 3 B. & Ald., p. 430.

(2) 34 L. J. Ex., 186.

(3) L. R., 3 P. C., p. 524

hundis. The plaintiff was, therefore, the proper person to whom the acceptance should have been communicated. If, as a fact, he accepted the *hundis* in his capacity of drawee, as agent of the holder, he must have had that fact notified to himself. The acceptance would then be complete and irrevocable. I am confirmed in this view by a consideration of the case of *Lysaght v. Bryant*⁽¹⁾.

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Did he, in fact, accept them? I think that it must be held that he did. They came to him for acceptance on the 28th October, 1884, and he had not notified their non-acceptance to Motiram Jamnadas on the 3rd November. This would be an unreasonable time to hold them *in dubio*. It is not improbable that he notified their acceptance to Motiram himself, but there is no proof that he, in fact, did so; but on the 30th October he stated to the drawer's firm, clearly and unequivocally, that he had accepted them. That must mean that he had done all things requisite to make the acceptance complete; and I must, therefore, hold that the acceptance was complete.

No entries were made in the plaintiffs' books with reference to the *hundis*. There would not be such entries made as in *Mulchand v. Suganchand*⁽²⁾, as the amounts were not to be credited till due date; and entries, such as were made in *Dawlatram v. Bulakidas*⁽³⁾, would not be necessary, as the *hundis* themselves were with the plaintiff. The absence of entries, therefore, affords no inference that the *hundis* were not accepted. I must allow the set-off.

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(1) 9 C. B., 46.

(2) I. L. R., 1 Bom., 23.

(3) 6 Bom. H. C. Rep., p. 24.