1870.
Dec. 22.

Suits Nos. 410 *and* 411 *of* 1868.

HARIVALLABHDA'S KALLIA'NDA'S.....*Plaintiff.*
UTAMCHAND MA'NIKCHAND *et al.* .....*Defendants.*

Contempt of Court—Attachment—Service of Rule nisi *for Attachment in Foreign territories—Delay—Foreign Territories—Special Bailiff—Imprisonment—Criminal Side of Jail.*

On the 17th of December 1869 a rule *nisi* for the attachment, for contempt of court, of the defendants U., G., & T. was granted. The rule, owing to one of the defendants keeping out of the way, was not drawn up and served until the month of April following, when it was served upon the defendants in the territories of the Gáikvád of Barodá, the consent of the Gáikvád's Minister to serve the notice having been previously obtained.

On motion to make the rule absolute, it was held that the rule was served in time, and that the service of it in the Gáikvád's territories, with the consent of the Gáikvád, was valid service.

Whether the service would have been valid if such consent had not been obtained, *quœre?*

The High Court will not send a special bailiff into the Gáikvád's territories to arrest a defendant who has been guilty of a contempt of court, but the court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay.

A defendant guilty of contempt of court is liable to imprisonment on the criminal side of the Bombay Jail.

FOR the purpose of this report the facts in the above suits may be very briefly stated.

Harivallabhdás Kalliándás was the plaintiff in both suits.

In Suit No. 410 of 1868 the defendants were Utamchand Máṇikchand, Ghellábhái Hemchand, Baichand Vardmán, Amirchand Máṇikchand, and Tulsidás Kisandás.

The defendants in Suit No. 411 of 1868 were the same as in the former suit, with the exception of Tulsidás Kisandás, who was not a party to the second suit.

The plaintiff had entered into two separate partnerships, one with the five defendants in the first suit, the other with the four defendants in the second suit.

Both partnerships were formed with the same intention and for the same purpose, namely, that of purchasing diamonds, jewels, &c., and then selling them to the Gáikvád of

Barodá, who at the time the partnerships were entered into was expected to purchase such articles on an extensive scale. The present suits were brought by the plaintiff to get an account from the defendants of the partnership dealings and transactions. The plaintiff alleged that a considerable quantity of diamonds and jewels had been sold by the defendants (who were influential men at the court of the Gáikvád) to the Gaikvád on account of the partnerships for which the defendants had not accounted, and that a considerable quantity of diamonds and jewels also remained in the hands of the defendants unsold. He prayed that a receiver might be appointed in both suits to get in the outstandings of the partnerships, and to receive and sell the unsold diamonds, jewels, &c.

The defendants in their written statements denied that the plaintiff was their partner in the above transactions, and said that one Kalliándás Kirpárám, the father of the plaintiff, was their real partner. They also denied that they had in their possession any diamonds or jewels belonging to the partnership, with the exception of a few jewels of trifling value.

On the 5th of September 1868, WESTROPP, J., made absolute a rule *nisi* which he had granted for the appointment of a receiver in both suits. This rule was served upon Tulsidás Kisandás personally on the 26th of September 1868; on the defendants Utamchand and Hemchand on the 9th of October 1868, through their solicitors, Messrs. Rimington, Hore, and Langley, and upon the same day on the other defendants, Bháichand and Amirchand, through their solicitors, Messrs. C. E. and F. Stanger Leathes. Mr. Joseph Jefferson was by the order appointed receiver in both suits.

On the 1st of February 1869, WESTROPP, J., made absolute an order for the attachment of the defendant Utamchand, for not making over to the receiver "all the property forming part of the subject-matter of the above suits, and in the plaints in those suits mentioned, or either of them, which was in the hands, custody, possession, or power of the defendant Utamchand, or of his servants or agents."

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On the 14th of May 1869 Mr. Frank George Jefferson was appointed receiver, instead of his father, Mr. Joseph Jefferson, during the absence of the latter from Bombay, and the appointment was duly notified to all the defendants.

Both causes came on for hearing before COUCH, C.J., and on the 15th October 1869 decrees were made in both suits declaring the plaintiff to have been the partner in both partnerships, ordering the accounts of the partnerships to be taken, and directing that the order for a receiver in both suits should be continued.

On the 17th of December 1869, COUCH, C. J., granted a rule *nisi* for an attachment against all the defendants, except Bháichand Vardmán, for contempt in not obeying the order of the 5th of September 1868.

This rule was, on the 7th of April 1870, served upon the defendant Utamchand with the Gáikvád's consent in the territories of that prince. On the same day the rule was served on the defendants Ghellábhái and Amirchand, also in the Gáikvád's territories, the consent of the Resident at Barodá and of the Chief Minister of the Gáikvád having been first obtained. The rule was also served upon Tulsidás in Barodá on the 26th May 1870.

On the 20th day of June 1870, *Atkinson*, Serjeant, moved for a rule *nisi* calling upon the plaintiff to show cause why the service of the rule of the 17th September 1869 on the defendants Utamchand and Ghellábhái should not be set aside. The grounds on which he moved are stated in the judgment of the court. That motion was heard before WESTROPP, C.J., and MELVILL, J., together with the motion of the plaintiff to make absolute the rule *nisi* for attachment for contempt.

Anstey for the plaintiff.

Atkinson, Serjeant (with him *Macpherson*), for the defendants Utamchand and Ghellábhái.

Mayhew for the defendant Amirchand.

Cur. adv. vult.

Dec. 22nd, 1870. WESTROPP, C.J. (after stating the facts of the case, and pointing out that no cause had been shown

on the merits against the issuing of an attachment against the defendants for contempt, proceeded) :—

Mr. Serjeant Atkinson, on behalf of the defendants Utamchand Mánikchand and Ghellábhái Hemchand, moved for a rule *nisi* calling on the plaintiff to show cause why the rule *nisi* of the 17th December 1869 should not be set aside: 1*st*, because it was drawn up and served too late; and 2*ndly*, because the service was effected in a foreign territory, that of the Gáikvád at Barodá. On the first point the learned counsel cited *Kenney* v. *Hutchinson* (*a*), a Common Law case quite dissimilar in its circumstances to the present case, and, therefore, inapplicable. It is not pretended that any injury whatever has accrued to the defendants by the delay which occurred in drawing up the rule *nisi*, or that since that rule *nisi* was granted, on the 17th of December 1869, they have taken one single step towards compliance with the order of the Court, made on the 5th of September 1868, appointing the receiver, and directing the defendants to make over to him the jewels &c. the property of the partnership. The delay which has occurred since the drawing up of rule *nisi* has been chiefly occasioned by the persistent evasion of the service of that rule by the defendant Tulsidás Kisandás, as well while he was resident in Bombay as afterwards in Barodá, where the sheriff's bailiff eventually succeeded in serving him on the 26th of May last at 3 o'clock in the morning. The conduct of the defendants has been so fraudulent and contumacious as to disentitle them to any consideration whatever. We think that the first ground (delay) on which the learned Serjeant rested his motion completely fails.

On his second objection, namely, that the service of the rule *nisi* having been made in a foreign country is invalid, we think that the learned Serjeant must be equally unsuccessful. The defendants have never denied or disputed the jurisdiction of this court to entertain these suits, or that the causes of action accrued within that jurisdiction. They have appeared in them by attorney and counsel. Decrees have been pro-

(*a*) 6 M. & W. 134.

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nounced against them. The rule *nisi* has been required by the court to be served upon them *personally*, to satisfy its conscience that they certainly have notice of the application against them. That application is for an attachment for contempt of the order of the court, but the court does not propose, nor is it asked by the plaintiff, to direct the execution of that attachment in the Gáikvád's territory; whether His Highness the Gáikvád may, or may not, himself or by his ministers, authorize or direct its execution in his territories, or whether this court would uphold such execution, if so permitted or directed by that sovereign, there is not any present necessity to consider. We are now only concerned with the validity of the service of the rule *nisi* for that attachment, which operates as a notice to the defendants personally that an application for an attachment has been made, and was intended to give them an opportunity of coming in to oppose it, and to show, if they can, that they have not committed any breach of the order of the 5th of September 1868, which has been continued by the decrees of Sir Richard Couch on the 15th of October 1869. This case, therefore, is not on all fours with the case of *Cassim Azim Dooplay* v. *Cassim Mahomed Barroocha* (*b*), cited for the defendants, in which Peacock, C. J., and his colleagues gave it as their opinion that a special bailiff cannot be sent to serve in a foreign territory the summons initiating an action. Putting out of view for the moment the permission here accorded by the foreign sovereign, this case more nearly resembles *Stockport* v. *Hawkins* (*c*), in which the defendant resided at Boulogne, in France, to avoid his creditors in England, and a notice in a suit in England served on him at Boulogne that a writ of *scire facias* to revive a judgment had been lodged with the Sheriff was held to be a well-served notice. But whatever objection there might have been to the service of the rule *nisi* in this case has been completely removed by the fact that His Highness the late Gáikvád, through his chief minister of state, granted his permission that the rule *nisi* might be served upon the defendants in

(*b*) 10 Cal. W. Rep., Civ. R. 349. (*c*) 7 Jur. 1015.

Barodá. If the sovereign of a foreign territory previously assents to and authorises such a proceeding as has taken place here, there cannot be said to have been any violation of territory. It cannot be maintained that he, an absolute sovereign, had not power to waive any objection which there may have been to the service of this rule *nisi*. It is very much to the credit of His Highness to have shown such comity towards one of the courts of Her Britannic Majesty, and the more especially high-minded on his part as showing his indisposition to screen one of the principal defendants, Utamchand Máṇikchand (who then was or lately had been one of His Highness's own servants), from the consequences of that servant's dishonest and fraudulent conduct. For these reasons we have no doubt that the learned Serjeant's motion should be refused with costs, and it is so refused, accordingly.

The learned Serjeant, on behalf of the same defendants, Utamchand and Ghellábhái, next asked *ore tenus* for a commission to Barodá to examine those defendants and some other witnesses, under Sec. 177 of the Civil Procedure Code, for the purpose of obtaining evidence in opposition to the plaintiff's motion that the rule *nisi* should be made absolute. Both of those defendants were served with the rule *nisi* of the 17th of December 1869 on the 7th of April 1870, and the motion to make it absolute did not come on until the 20th of June. If they had any sound and honest reasons to offer against the issuing of the attachment, they had an abundance of time and opportunity to do so. Upon a timely application the Resident or some other gentleman at Barodá would have been authorised to take the affirmation of the defendant Utamchand Máṇikchand to any affidavit which he might have deemed it proper to make in support of his defence, if any. There were not any attachments out against the defendants Ghellábhái and Tulsidás, and there was, therefore, not any reason why they should not have come here to make affidavits. But if they had asked in proper time I am not prepared to say that I should not have permitted them to make affidavits at Barodá before the Resident. The application, however,

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on behalf of the defendants Utamchand and Ghellábhái was deferred until the 20th of June on the return of the rule *nisi*; and we are perfectly certain that it was so deferred, and has been made for the sole purpose of further delay and evasion in complying with the order of the court, in pursuance of the same fraudulent and contumacious policy which has marked their conduct throughout these suits, and that they have not any *bonâ fide* defence whatever.

The court accordingly made an order that an attachment should forthwith issue against the defendants Utamchand, Ghellábhái, and Tulsidás,* and that they should pay the costs of the motion and of the attachment, but intimated that in making the order it did not direct its execution beyond British territory.

On a subsequent day (the 27th of January 1871) *Anstey*, on behalf of the plaintiff, moved for leave to send a special bailiff to the railway station at Barodá (which is in British territory) to take into custody the persons of the defendants Utamchand, Ghellábhái, and Tulsidás, stating that the Gáikvád was willing to hand over these persons to British jurisdiction. He cited Rule 55 of the Rules of the late Supreme Court.

WESTROPP, C. J.:—The railway station at Barodá being in British territory annexed to and forming part of the Presidency of Bombay (*a*), I see no objection to the Sheriff sending a special bailiff or bailiffs if necessary to Barodá station to take these persons into custody. The special bailiff must be cautious not to act as such outside British territory. I only authorise him to take these persons into custody if he find them within British territory forming part of this Presidency; I make no direction as to how they are to be brought to the Barodá station. That is a matter which rests with the Gáikvád, whose conduct, I may add, throughout these proceedings has been highly creditable to him. With

* By consent the rule *nisi* for attachment so far as it related to the defendant Amirchand was not made absolute.

(*a*) Bombay Act I. of 1862.

respect to Rule 55 of the Supreme Court Rules (which, under Rule I. of Chap. II. of the High Court Rules, is, to the extent permitted by that rule, applicable at the original side of the High Court), it may be useful to say that it (Rule 55), so far as it treats Salsette and Karanjá as within the *ordinary* limits within which the Sheriff should execute process, has, I believe, for a long time past been obsolete. Colaba (not Angria's Colaba), Old Woman's and Butcher's Islands, which are also mentioned in that rule, are appurtenances of the Island of Bombay, but Salsette, Elephanta, Hog Island, and Karanjá form part of the Mofussil of the Presidency of Bombay. Butcher's Island is a corruption of Putachoes Island, which Dr. Fryer (Letter II., Chap. III., p. 76, of his Travels) describes as "a garden of melons (Putacho being a melon)," and was taken by Sir Gervase Lucas in 1666-67 from the Portuguese by force (Fryer, ibid. p. 64). Bombay Reg. III. of 1799 illustrates the fact that Old Woman's, Colaba, Cross (*alias* Gibbet Island), and Butcher's Islands were immediate dependencies of Bombay, and that Salsette, Karanjá, Elephanta, and Hog Islands belonged to the Mofussil. By that Regulation, the Civil Judge for Salsette, Karanjá, Elephanta, and Hog Islands was (sec. 2) created Revenue Judge for the Island of Bombay. Sec. 7 gave him cognizance of suits relating to revenue due to the East India Company "from the Island of Bombay or the adjacent dependencies of Old Woman's, Colaba, Cross, and Butcher's Islands," but he had not any other jurisdiction over them, for they, as immediate dependencies of Bombay, were civilly and criminally under the Recorder's and Supreme Courts, which were prohibited from entertaining suits relating to the revenue under the management of the Governor in Council. This prohibition rendered the appointment of a Revenue Judge, specially for the last five islands, necessary. "The islands of Salsette and Caranja and their dependencies,"—by which latter expression I understand Elephanta and Hog Islands to be intended,—are mentioned in Bombay Regulation II. of 1827, Appendix E, as part of the Zillá of the Northern Konkan, *i.e.*, now the Zillá of Tháṇá.

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The defendants were on a subsequent day brought to Bombay, and, by order of the court, were lodged in jail on the criminal side.

Attorneys for the plaintiff: *Acland, Prentis, and Bishop.*

Attorneys for the defendants Utamchand and Ghellabhái: *Rimington, Hore, and Langley*; Amirchand: *Leathes and Crawford.*

Referred Case.

Dec. 15.

DOSA'BHA'I KA'VASJI .....*Plaintiff.*
KHERBA'DJI HORMASJI .....*Defendant.*

Small Cause Court—Reference of Case—Act XXVI. of 1864, *Secs.* 7 *and* 8—*Promissory Note—Stamp—Penalty on Unstamped Promissory Note —Act XVIII. of* 1869, *Sec.* 28.

The Judge of a Small Cause Court, before referring a case for the opinion of the High Court under Secs. 7 and 8 of Act XXVI. of 1864, ought to *conclude* the hearing of the case, and to give judgment thereon contingent upon the opinion of the High Court.

Under Sec. 28 of Act XVIII. of 1869, a Court has no power to admit in evidence an unstamped promissory note (payable on demand or otherwise) upon the payment of the stamp duty, and the penalty laid down in Sec. 20 of that Act.

CASE stated for the opinion of the High Court by John O'Leary, First Judge of the Bombay Court of Small Causes, under Sec. 7 of Act XXVI. of 1864:—

"In the course of the hearing of the above case, which came on before me on the 28th day of July 1870, Mr. Morobá Kánobá, as Pleader for the defendant, tendered in evidence a Gujaráti document. It bore an adhesive stamp value one anna, and no other stamp. It was proposed to be made use of as a promissory note; and I was of opinion that it was a promissory note within Cl. 25 of Sec. III. of the General Stamp Act, 1869, and that, being payable 'otherwise than on demand,' it required a stamp of twelve annas, under Cl. 2, Sch. I. of the said Act.