

APPELLATE CIVIL.

(17)

1878

May 6.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.

WAGJI KORJI (ORIGINAL DEFENDANT), APPELLANT, v. THARIA TOPAN
(ORIGINAL PLAINTIFF), RESPONDENT.(1)

WAGJI KORJI (ORIGINAL DEFENDANT), APPELLANT, v. KHIMJI JERAM
(ORIGINAL PLAINTIFF), RESPONDENT.(2)

KHIMJI JERAM (ORIGINAL PLAINTIFF), APPELLANT, v. WAGJI KORJI
(ORIGINAL DEFENDANT), RESPONDENT.(3)

WAGJI KORJI (ORIGINAL DEFENDANT), APPELLANT, v. ARNOLD HINES
& Co., (ORIGINAL PLAINTIFF), RESPONDENTS.(4)

JIVANDAS EBJI (ORIGINAL PLAINTIFF), APPELLANT, v. WAGJI KORJI
(ORIGINAL DEFENDANT), RESPONDENT.(5)

KHIMJI JERAM (ORIGINAL PLAINTIFF), APPELLANT, v. WAGJI KORJI
(ORIGINAL DEFENDANT), RESPONDENT.(6)

SULLIMAN DAUD (ORIGINAL PLAINTIFF), APPELLANT, v. WAGJI KORJI
(ORIGINAL DEFENDANT), RESPONDENT.(7)

Zanzibar, Jurisdiction of British Consul at—Registration of British Subjects at Zanzibar—Stat. 6 and 7 Vic., c. 94—Order in Council of 9th August 1866—Articles 1, 6, 25, 30, 32, 35—Stat. 39 and 40 Vic., c. 46—Attachment, effect of.

The jurisdiction of the British Consul at Zanzibar to hear and determine suits of a civil nature between British subjects, depends upon whether the causes of action in such suits have arisen within the dominions of the Sultan of Zanzibar, and not upon the question whether the parties to such suits are resident within those dominions.

Under the treaty made in 1839 between Her Majesty the Queen and the Sultan of Muscat, British subjects are liable to be sued in the British Consular Court at Zanzibar by Americans as being subjects of another Christian nation; and by convention with the Rao of Kutch, made with the acquiescence of the Sultan of Zanzibar, natives of Kutch, having been subjected to the British Consular Court in the same manner as if they were British subjects, may be sued by Americans and others in that Court.

(1) Reg. Ap. No. 7 of 1877.

(4) Reg. Ap. No. 12 of 1877.

(2) Reg. Ap. No. 11 of 1877.

(5) Reg. Ap. No. 13 of 1877.

(3) Reg. Ap. No. 16 of 1877.

(6) Reg. Ap. No. 17 of 1877.

(7) Reg. Ap. No. 21 of 1877.

When the British Consul at Zanzibar has permitted persons, who have not been registered as under British protection, to bring and continue suits in his Court, that circumstance must be accepted as a sufficient indication that they have excused to his satisfaction their neglect to register under article 30 of the order in Council of 9th August 1866.

Quære—Whether Stat. 39 and 40 Vic., c. 46, deals with the order in Council of the 9th August 1866, except so far as that order relates to the slave trade.

THE above seven cases were regular appeals to the High Court of Bombay from the Court of the British Consul at Zanzibar. In all of them an objection was taken to the jurisdiction of the consul, and by consent of the parties all were heard together by the appeal Court upon this preliminary point.

Macpherson (with him *Shantaram Narayan* and *Gokuldas Kahandas*) for *Wagji Korji*, appellant in appeals Nos. 7, 11 and 12, and respondent in Nos. 13, 16, 17, and 21.

Latham (with him *leslie Crawford*) for *Tharia Topan*, respondent in appeal No. 7.

Mariott (*Advocate General*) with him *Nanabhai Haridas* and *Langley* for *Khimji Jeram*, respondent in No. 11, and appellant in appeals Nos. 16 and 17.

Lang (with him *Jefferson* and *Payne*) for respondent in appeal No. 12.

Marriott (*Advocate General*) and *Starling* (with them *Macfarlane* and *Gilbert*) for appellant in No. 13, and with *Leslie Crawford* for appellant in appeal No. 21.

Shantaram Narayan and *Gokuldas Kahandas* for the respondent in appeals Nos. 13 and 21.

Counsel referred to Aitchison's Treaties (2nd ed.), Vol. IV and Vol. VII, p. 93, and Appendix p. clxxiv; the *Laconias*; (1) *Bardot v. The Augusta*; (2) H. M.'s order in Council of 9th August 1866; Rules made by the British Consul at Zanzibar, Nos. XX. and XXI.(3)

(1) Browning and Lushington Rep. 117; S. C. 2 Moo. P. C. C. N. S. 161; 33 L. J. Pro. M. & Adm. 11.

(2) 10 Bom. H. C. Rep. 110.

(3) The following are the rules referred to:—

Rule XX.—Every natural born British subject shall cause himself to be duly registered, in a register kept for the purpose at the Consulate, within thirty days

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WESTROPP, C.J.—The only question argued before us was the preliminary one, whether the British Consul at Zanzibar had jurisdiction in the suits whence the above regular appeals have arisen.

The defendant in those cases, Wagji Korji, is a native of Kutch and a subject of H. H. the Bao of Kutch. His learned counsel, Mr. Macpherson, states that Wagji Korji, during his boyhood, spent some years in Zanzibar, and afterwards returned to India, but subsequently on various occasions revisited Zanzibar, and was last there in A. D. 1872; and Mr. Macpherson says that for the purpose of discussing the present question as to the jurisdiction of the consul at Zanzibar to entertain these suits, but not for any other purpose, he, Mr. Macpherson, admits that Wagji Korji has carried on business and entered into engagements at Zanzibar. It appears that his father Korji Valabdás was registered in the British Consular Office at Zanzibar as a person entitled to British protection.

It further appears that the plaintiff Thária Topan, who is respondent in Regular Appeal No. 7, and the plaintiff Sulliman Daud, who is appellant in Regular Appeal No. 21, are respectively registered in the Consular Office as British subjects or entitled to British protection; and Mr. Macpherson admits that persons, so registered as entitled to British protection, are, for the purposes of jurisdiction, in the same position as British subjects. The plaintiff (respondent) in Regular Appeal No. 11 is a native and subject of Kutch, and not registered in the Consular Office. Regular Appeal No. 16 is a cross appeal on questions of account in the same suit as Regular Appeal No. 11. The plain- after his arrival at Zanzibar, or within thirty days after the publication of these rules; failing which, if he does not justify his neglect to the satisfaction of the Consul, he shall not be entitled to be recognized or protected as a British subject. Nevertheless, such neglect shall not be held to exonerate him from the consequences of any act contrary to the law which, as a British subject, he is bound to obey.

XXI.—All subjects of protected States in India shall cause themselves to be registered at the Consulate within thirty days after their arrival in Zanzibar, or within thirty days after the publication of these rules; failing which, they shall not be considered as being entitled to British protection.

N. B.—Such as have already registered themselves, are required to do so again

tiffs (respondents) in Regular Appeal No. 12 are subjects of the United States of America, and not registered in the British Consular Office. The plaintiff (appellant) in Regular Appeal No. 13 and the plaintiff (appellant) in Regular Appeal No. 17 are natives and subjects of Kutch, and not registered in the Consular Office.

In the suits, in which are the Regular Appeals Nos. 7, 11 and 12, the respective plaintiffs obtained decrees, on the merits, in their favour; but the plaintiff in No. 11 claims more than was awarded to him, and has filed cross Regular Appeal No. 16. The defendant has filed appeals Nos. 7, 11 and 12.

In the suits in which Regular Appeals Nos. 13 and 21 have been filed, the defendant obtained decrees on the merits, and the plaintiffs have appealed.

There were two other suits against the defendant in which he succeeded. In those suits no appeals have been filed.

In the suits in which Regular Appeals Nos. 7, 11, 12, 13, 16 and 21 have been filed, the jurisdiction of the consul was denied by the defendant, but held by the consul to exist.

In the suit in which Regular Appeal No. 17 has been filed, the defendants denied the jurisdiction, and the consul—so far as we can understand, upon the ground that such property as the defendant had in Zanzibar was under attachment in the other suits, and, therefore, the right to it was in abeyance—held that he could not be regarded as the owner of property in Zanzibar, and, therefore, was not subject to the jurisdiction of the Consular Court. This ruling of the consul was admitted to be erroneous. Until there be a sale in execution of the estate of a defendant, the right of property remains in him. The attachment does not divest that right; although, when the sale takes place, priority of attachment may affect the distribution of the proceeds of such sale. “The period, when the execution is consummate, is not the seizure, but the sale under the writ.”(1) And Garrow, B., said in *Higgins v. McAdam*:(2) “The rule is that when execu-

(1) *Per* Alderson, J., in *Giles v. Grover*, 9 Bing. 128 at p. 160.

(2) 3 Y. & Jer. 1 at P. 13. See also *Gamble v. Bholagir* 2, Bom. H. C. Rep. O. C. J. at P. 155, and *The Secretary of state v. Bombay L. & S. Co.*, 5 Bom. H. C. Rep. 23, O. C. J.

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tion is executed, the property is changed; and execution is said to be executed when a sale has taken place. "In cases where the property itself is the matter in dispute, its locality, especially if the property be immoveable, may seriously affect the question of jurisdiction; but that is not so in mere money actions relating to commercial claims, such as the present suits. So far as the question of jurisdiction in them is concerned, it does not in any respect depend upon the point whether the defendant has property within the dominions of the Sultan of Zanzibar. We shall presently show that, if the cause of action arose within those dominions, that fact would, in connection with the other circumstances in the present suits, give jurisdiction to the consul. Now, as we understand, it is not disputed, for the purposes of the question of jurisdiction, that the causes of action (if any) did arise within those dominions; but it is contended that there is not jurisdiction: 1st, because the defendant was not resident within the dominions of the Sultan of Zanzibar in A. D. 1876, when the suits were commenced; 2ndly, because he was not either a British subject or registered in the British Consulate as under British protection; and, 3rdly, (as regards Regular Appeals Nos. II (and 16), 12, 13, and 17 only,) because the plaintiffs are neither British subjects nor registered as under British protection.

By a treaty(1) made at Zanzibar on the 31 May 1839 between Her Majesty the Queen and H. H. the Sultan (Imam) of Muscat, the 1st article provided for the right of the subjects of each of the contracting parties to reside and trade in the dominions of the other, with all the privileges, &c., accorded to the most favoured nations; the 3rd article provided for the mutual appointment of consuls by the same parties; and the 5th article was as follows:—

"The authorities of H. H. the Sultan of Muscat shall not interfere in disputes between British subjects, or between British subjects and the subjects or citizens of other Christian nations. When differences arise between a subject of the dominions of H. H. the Sultan of Muscat and a British subject, if the former

(1) Aitchison's Treaties, Vol. VII, P. 93 *et seq.* (ed. of 1876.)

is the complainant, the cause shall be heard by the British Consul or Resident Agent, who shall administer justice thereupon. But if the British subject is the complainant against any of the subjects of H. H. the Sultan of Muscat or the subjects of any other Mahomedan Power, then the cause shall be decided by the highest authority of H. H. the Sultan of Muscat, or by persons nominated by him; but in such case the cause shall not be proceeded in, except in the presence of the British Consul or Resident Agent, or by some person deputed by one or other of them, who shall attend at the Court House, or where such matter shall be tried. In causes between a British subject and a native of the dominions of H. H. the Sultan of Muscat, whether tried before the British Consul or Resident Agent or before the above mentioned authority of H. H. the Sultan of Muscat, the evidence of a man proved to have given false testimony on a former occasion shall not be received."

The Stat. 6 and 7 Vic., c. 94 (A. D. 1843) reciting that Her Majesty "hath power and jurisdiction within divers countries and places out of Her Majesty's dominions," enacted that it shall be lawful for Her Majesty to hold, exercise and enjoy any power or jurisdiction which Her Majesty now hath or may at any time hereafter have within any country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory. The second article declared that "any act, &c., which may at any time be done in pursuance of any such power and jurisdiction of Her Majesty in any country or place out of her dominions, shall, in all Courts within Her Majesty's dominions, be deemed, &c., as valid and effectual as though the same had been done according to the local law then in force within such country or place."

By an order of Her Majesty in Council of the 9th August 1866,⁽¹⁾ reciting the last-mentioned statute, and that Her Majesty hath power and jurisdiction in the dominions of H. H. the Sultan of Zanzibar and its dependencies, and that it is expedient to make provi-

(1) This order will be found in vol. VII of Aitchison's Treaties, Appendix p. clxxiv (ed. of 1876).

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sion for the due and effectual exercise of such power and jurisdiction, it was, by the 1st article, ordered, in pursuance of the same statute, "that Her Majesty's Consuls appointed to reside in the dominions of the Sultan of Zanzibar shall have full power and authority to carry into effect and to enforce, by the means and in the manner hereinafter mentioned and provided, the observance of the stipulations of any treaty or convention, or of any regulations appended to any treaty or convention, now existing, or which may hereafter be made between Her Majesty, her heirs and successors, and the Sultan of Zanzibar, his heirs and successors; and to make and to enforce, by fine or imprisonment, or both, Rules and Regulations for the observance of the stipulations of any such treaty or convention, and for the peace, order and good government of Her Majesty's subjects being within the dominions of the Sultan of Zanzibar, his heirs and successors." The sixth article ordered "that all suits, disputes, differences and causes of litigation of a civil nature arising between British subjects within the dominions of the Sultan of Zanzibar, shall be heard and determined by Her Majesty's Consul, who shall be the sole judge and arbiter thereof respectively." The same article gave an appeal against the decision of Her Majesty's Consul to the High Court of Bombay in cases where the sum or matter at issue is of the amount or value of 200 dollars, provided that the intending appellant should, within fifteen days after the determination of the case by the consul, give "by himself or his agent" to the consul notice in writing of his appeal to the High Court of Bombay. The rest of the article is not material in the questions awaiting our decision. Upon that article it was contended on behalf of Wagji Korji that at the time of the institution of the several suits against him in the Consul's Court, he (Wagji) was not resident of Zanzibar, and, therefore, not subject to the jurisdiction of that Court. It was argued that the words "within the dominions of the Sultan of Zanzibar" applied to their immediate antecedents "British subjects", and not to the earlier words "causes of litigation of a civil nature". In that article itself the words "or his agent" are suggestive that the residence of the parties or either of them in the dominions of the Sultan of Zanzibar is not essential to jurisdiction. However, the 25th article is conclusive on the point. It ordered "that the

High Court of Bombay shall have and may exercise, concurrently with Her Majesty's Consul, authority and jurisdiction in regard to all suits of a civil nature between British subjects, arising within any part of the dominions of the Sultan of Zanzibar." The position of the word "arising" in that article shows that Her Majesty in Council then treated the previously-conferred jurisdiction of the consul as dependent on the question whether the causes of action arose within the dominions of the Sultan of Zanzibar, and not upon the question whether the British subjects (between whom such causes of action arose) were resident within those dominions. Assuming Wagji Korji to come either directly or constructively within the descriptions of a British subject, the objection to the jurisdiction of the consul, on the ground of the non-residence of Wagji Korji in Zanzibar at the time of the institution of the suits, must fail.

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We next proceed to refer to other documents to show that Wagji Korji, although a native of Kutch and a subject of the Rao of that province, is to be deemed, for the purpose of the jurisdiction of the British Consul at Zanzibar, virtually a British subject. Those documents also support the thesis that residence is not an essential ingredient of such jurisdiction.

In the 4th vol. of Mr. Aitchison's Treaties, from p. 1 to p. 40, (2nd ed.), are many treaties, conventions, &c., between the British and the Rulers of Kutch. The 12th article of one of these treaties (dated 4th December 1819) is: "The Rao, his heirs and successors engage not to enter into negotiations with any Chief or State without the sanction of the British Government, but their customary amicable correspondence with friends and relations shall continue." (1)

A correspondence between the Political Agent and H. H. the Rao of Kutch has been obtained by this Court from the Secretariat. It contains a *vad* from Major Short, the Political Agent, addressed to the Rao, and dated 26th September 1865, and is as follows:—

"It appears that your subjects frequent the Port of Muscat and other places on the Arabian and African coasts and the Persian Gulf and that complications frequently arise in regard to misdemeanours and miscellaneous affairs between those persons themselves and

(1) Aitchison's Treaties, Vol. IV, p. 20 (2nd ed.)

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those persons and persons subjects of the above-named places, as well as with British subjects and subjects of other Powers. The British Consul at Muscat now writes to Government *that subjects of the Rao of Kutch have hitherto always applied to him for settlement of their claims and disputes*; but he is doubtful whether, in point of (British) law, he is justified in exercising jurisdiction over them. Government have referred the question to me to ascertain what your views on it may be. I shall be glad to be favoured with them as soon as convenient."

The Rao replied by a *yad*, dated 30th October 1865 (11th Kartuck Sud Samvat 1922 (1) which runs thus: "You addressed me a *yad*, No. 586, dated 26th ultimo, in which you stated that from what the British Consul at Muscat writes to Government it seems that the Kutch subjects who frequent that port have, up to this time, applied to him for the settlement of their claims and disputes; but he now doubts whether, according to British law, he is justified in interfering in their cases, or in exercising jurisdiction over them or not, and, therefore, Government have referred the question to you to ascertain my views on the subject. You wrote to this effect, with reference to which I have to state that *I have no treaty with only one but the British Government*, and since the date of our treaty with it I have relied on Government alone for protection. I trust, therefore, that Government will henceforth care for my subjects, who visit Africa, Persia and other countries for trade and other purposes, in the same way as they may care for their own subjects in the said countries in virtue of the treaties which they have made with them, *and in the same way as they have hitherto treated my subjects there*. You will write to Government what you may think proper on the subject."

On the 24th April 1869 H. H. the Rao of Kutch issued a proclamation to his subjects, which opens thus: "To wit: That for the security of those among you who, for the purposes of trade, &c., permanently reside in or *come and go to and from* the country of Zanzibar, I have, at the suggestion of Government, given notice in a *yad* under date the Kartuck Sud 1st Samvat 1922, (2) through

(1) Either this is a mistake for the 1st Kartuck Sud Samvat 1922 given in the proclamation of 24th April 1869 as the date of the *yad*, or *vice versa*.

(2) See the preceding note.

the Political Agent to the exalted Government, that the claims and disputes with any other persons of those who permanently reside in, or *frequent* for the purposes of trade, the ports of Muscat and other places in Africa and Arabia and the Persian Gulf and in other countries where my subjects may reside, should be settled by the British Government in the same way as if you were its own subjects, consequent upon the treaties concluded with Government.”

The three last-mentioned documents, when read together, tend to show that, for some time previously to the date of the earliest of them, the British consuls in the ports of the Iman of Muscat, then also Sultan of Zanzibar, used to exercise jurisdiction over the subjects of the Rao of Kutch, who resided in or visited those ports, and who voluntarily resorted to those consuls for that purpose; and that, on the expression of a doubt by the British Consul at Muscat as to his authority in that respect, the Government of Bombay submitted the matter through the Political Agent to the Rao of Kutch, who, admitting that he had no treaty with any Government except the British, requested that Government to continue through its consuls to protect and exercise jurisdiction over his subjects who might visit Africa, Arabia, Persia and other countries in the same way as in the case of British subjects. The proclamation of 1869, addressed to his subject by H. H. the Rao, shows in distinct terms that he authorized the British consuls to exercise a civil jurisdiction, not only over those Kutchis who might permanently reside in, but also over those who “come and go to and from the country of Zanzibar,” and this, too, in “claims and disputes with any other persons,” in the same way as if the Kutch were British subjects. We think that the defendant, albeit that he was not residing in Zanzibar at the time of the commencement of the suits against him in 1876, was as a subject of H. H. the Rao of Kutch, who occasionally (at least) carried on business at Zanzibar and frequented that port, liable, in respect of causes of action arising there between him and other persons, to be sued in the Consular Court, and was made so by his own sovereign by convention with the British Government, and, moreover, that his own sovereign did not make any stipulation that such jurisdiction should exist only on the

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condition of his subjects being registered at the British consulate as under its protection, or on the condition that the parties, who sued his subjects, or whom his subjects sued, should be registered at the consulate. No doubt the treaty of 1839, between Her Majesty the Queen and the Sultan of Muscat, would have prevented the Kutchis from suing, in the British Consular Court, the subjects of the Sultan or of any other Mahomedan power; but it left the Kutchis (as virtually British subjects) at liberty to sue and liable to be sued by British subjects or citizens of other Christian nations in that Court, and also liable to be sued there by subjects of the Sultan or of any other Mahomedan power. The exclusion of the interference of the Sultan in disputes between British subjects and between them and the subjects or citizens of other Christian nations, implied that the British Government would, through the medium of its own consul (the right to appoint whom was stipulated for in the same treaty) settle such disputes; as otherwise the subjects of Christian nations, other than the British, would be left without redress against British subjects. We must recollect, too, that article 1 of the order in Council of the 9th August 1866 directed that the consul should have "full power and authority to carry into effect and enforce" the stipulations of any such treaty, and that article 35, to which we shall presently refer, of the same order renders the term "British subjects" applicable to all persons enjoying Her Majesty's protection in Zanzibar. For these reasons we think that, by virtue of the treaty, British subjects were liable to be sued in the British Consular Court by Americans as being subjects of another Christian nation, and that Kutchis by convention with their own sovereign, and without any objection by the Sultan of Zanzibar, but on the contrary with his acquiescence, having been subjected to the British Consular Court in the same manner as if they were British subjects, may be sued by Americans and others in that Court. It cannot, moreover, be said that the plaintiffs (respondents) in Regular Appeal No. 12 are proceeding in a British Court against the will of the representative of their nation. Their agent, Captain Hathorne, who instituted the suit, is himself the American

Consul at Zanzibar. We think that the jurisdiction of the British Consul is strongly supported by the case of the *Laconia*, (1) although we admit that there is no such express provision here as there was in the 64th article of the order in council of the 27th August 1860 cited in that case. But we think that the jurisdiction is necessarily implied in the treaty of 1839, and it appears from the statement of Dr. Kirk, the Consul at Zanzibar, to have been often exercised. Dr. Lushington in the case of the *Laconia* said: "Though the Ottoman Porte could give and his given to the Christian Powers of Europe authority to administer justice to their own subjects according to their own laws, it neither has professed to give, nor could give to one such Power any jurisdiction over the subjects of another Power. But it has left those Powers at liberty to deal with each other as they may think fit, and if the subjects of one country desire to resort to the tribunals of another, there can be no objection to their doing so with the consent of their own sovereign and that of the sovereign to whose tribunals they resort. There is no compulsory power in an English Court in Turkey over any but English subjects; but a Russian or any other foreigner may, if he please, voluntarily resort to it with the consent of his sovereign, and thereby submit himself to its jurisdiction." He had previously said: "It must always be borne in mind that in almost all transactions, whether political or mercantile, a wide difference subsists in the dealings between an oriental and a Christian State and the intercourse between two Christian nations"—and again: "But though, according to the laws and usages of European nations, a cession of jurisdiction to the subjects of one state within the territory of another, would require, generally at least, the sanction of a treaty, it may by no means follow that the same strict forms, the same precision of treaty obligation, would be required or found in intercourse with the Ottoman Porte"—or we would add *à fortiori* with the Sultan of Zanzibar. We have seen that the acquisition of jurisdiction is by the Stat. 6 and 7 Vic., c. 94, recognized as by "usage and sufferance" as well as by treaty, &c.

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(1) Brwong and Lushington's Rep. 117, S. C. 2 Moo. P. C. C. N, S, 161; 33 L. J. Prob, 11,

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On the question of registration, we must revert to the order in Council of the 9th August 1866. The 30th article is: " And it is further ordered that a register shall be kept by Her Majesty's Consul of all British subjects and of all natives of British protected States in India who may claim British protection residing within the dominions of the Sultan of Zanzibar; and that every British subject, now residing within such dominions, who shall not have been already enrolled in such Consular register, shall, within a reasonable time after the promulgation of this order, such time to be specified in a note affixed and publicly exhibited in the Consular Office, apply to the Consul to be enrolled in such register; and every British subject who may arrive within the said dominions (except British subjects borne on the muster-roll of any British ship arriving in any port of Zanzibar) shall within a reasonable time after his arrival, such time to be specified as aforesaid, also apply to the Consul to be enrolled in such register; and any British subject who shall refuse or neglect to comply to be so enrolled as hereinbefore mentioned, and who shall not excuse such refusal or neglect to the satisfaction of the Consul, shall not be entitled to be recognized or protected as a British subject in respect to any suit, dispute or difficulty in which he may have been or may be engaged or involved within the dominions of the Sultan of Zanzibar, at any time when he shall not have been or shall not be so enrolled."

We think that the fact, that the consul has permitted those plaintiffs, who have not been registered as under British protection, to bring and continue their suits, must be accepted as a sufficient indication that they have excused to his satisfaction their neglect to register. The same remark applies to the non-registration of the defendant. The fact, too, that his father (the *pater familias*) had been registered, and that the defendant had never renounced the protection of the British Government, to which as a member of the family he would have been entitled, would probably be regarded as a sufficient reason for overlooking the want of personal registration by the defendant. It lies with the consul, rather than with either party, to object that the plaintiff or defendant is not, by reason of neglect to register, entitled to the protection of the

consul. We do not think that Rules Nos. 20 and 21,(1) made by the consul under article 1 of the order of Council of the 9th August 1866, carry the necessity of registration any further than Article 30 of the same order.

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It is important to observe, also, that the 32nd article of the same order provides. "That nothing in this Order contained shall be deemed or construed to prevent Her Majesty's Consul within the dominions of the Sultan of Zanzibar from doing or performing any act whatsoever which British Consuls with in any other state in amity with Her Majesty are by law, *usage or sufferance* entitled or enabled to perform." And article 35 ordained that "the provisions of this Order relating to British subjects shall extend and apply to all subjects of Her Majesty, whether by birth or by naturalization, and also to all persons enjoying Her Majesty's protection in the dominions of the Sultan of Zanzibar, &c. This article renders the sixth article (which declares rather than creates his civil jurisdiction) and the 30th article applicable to all persons (including, in our opinion, as well the subjects of the Rao of Kutch who reside at, as those who visit or frequent Zanzibar for the purpose of trade or business) enjoying Her Majesty's protection in the dominions of the Sultan.

We have not called to our aid the recent Stat. 39 and 40 Vic., c. 46, (A. D. 1876)—1st, because it did not receive the Royal assent or come into force until subsequently to the institution of the present suits, and, 2ndly, because it was an Act for the more effectual suppression of the slave trade; and it may possibly be doubted whether, although the order in Council of the 9th August 1866 is dealt with in that Act, it is to be regarded as dealt with otherwise than so far as that order relates to the slave trade. That is a point on which we do not express any opinion.

Nor have we considered it necessary to inquire how far, by exhibits 80, 81, and other documents, the defendant has limited his right to object to the jurisdiction of the Consular Court.

For the reasons already given, we must hold that the consul had jurisdiction to entertain the suits in which all of the above-named appeals have been brought.

(1) *Supra*, page 59, note (3)