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5 B. 38 = 5 Ind. Jur. 372.

transactions of the firm. During his father's lifetime he was joint owner of the firm of Jivram Haribhai. After his father's death he acquiesced in the continuance of the firm under the same name, and ostensibly, therefore, with the same constitution. He has never done any act to divest himself of his share in the business. He has given no notice of repudiation and has made no partition with his brothers. He has only been absent for six years ; and there would, therefore, be nothing to prevent him from demanding his share of the partnership stock, or claiming to share in the profits. We can see no reason for exempting him from the ordinary rule of Hindu law, which makes every member of a united family liable for debts properly incurred by a manager for the benefit of the family. The eldest brother Someshvar must be regarded as manager on behalf of the family of so much of the family property as is represented by the trading business ; and it has never been suggested that the debt due to the plaintiff, for goods supplied to the shop, was not properly and necessarily incurred in the course of the ordinary transactions of the firm, and presumably, therefore, for the benefit of all the joint owners of the firm.

For these reasons we reverse the decree of the District Court, and restore that of the Subordinate Judge. Costs of appeal and second appeal on respondent Mangal.

Decree reversed.

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5 B. 42 = 5 Ind. Jur. 422.

[42] ORIGINAL CIVIL.

Before Sir Charles Sargent, Justice.

THE LONDON, BOMBAY AND MEDITERRANEAN BANK, LIMITED (*Plaintiffs*) *v.* BADEE BEEBEE AND OTHERS (*Defendants*).* [26th November, 1880.]

Jurisdiction—Cause of action—Letters Patent, 1865, *cl.* 12—*Company—Winding up—Suit on foreign judgment—Balance order—Service on defendant.*

The defendant, who resided outside the jurisdiction of the High Court, was sued at Bombay as a contributory upon a balance order made by the Court of Chancery in England in the winding up of the plaintiffs' bank. It was contended on his behalf that no part of the cause of action had arisen within the jurisdiction, and that the suit was therefore not maintainable. The plaintiffs contended that service of the balance order upon the defendant was necessary and constituted part of the cause of action, and that such service had been effected upon the defendant in Bombay, the Court had jurisdiction.

Held, that service of the balance order upon the defendant was not necessary, and that as no part of the cause of action had arisen within the jurisdiction, the suit should be dismissed.

THIS was a suit brought by the plaintiffs against the defendants as heirs and legal representatives of one Cazee Bhawoodeen, deceased, to recover Rs. 1,200, the balance of a call of £10 per share alleged to be due in respect of certain shares in the plaintiffs' bank standing in the name of the deceased.

By an order of the High Court of Chancery in England, dated the 20th July 1866, the plaintiffs' bank was ordered to be wound up, and by a subsequent order liquidators were appointed. On the 28th July 1870, the same Court ordered a call of £10 per share to be made upon the contributories, and by a balance order made on the 25th January 1871, it was

* Suit No. 50 of 1877.

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directed that "the contributories of the said bank should, on or before the 14th September 1871, *or within four days after service of the now stating order upon them respectively*," pay to the liquidators the sum set opposite their names, together with interest at the rate of £5 per cent. per annum until payment.

The present suit was based upon the balance order, and the plaint alleged that a copy of the said order had been served upon the said Cazee Bhawoodeen in Bombay on the 6th November 1874.

[43] The defendants pleaded to the jurisdiction, on the ground that Cazee Bhawoodeen (the original defendant) was not dwelling, or carrying on business, or personally working for gain within the local limits of the High Court at the time the plaint was filed. This was admitted by the plaintiffs; but it was contended by the plaintiffs that the service of the balance order was necessary before the suit could be brought in, and that such service was therefore a part of the cause of action arising within the jurisdiction, and that leave to sue having been duly obtained under cl. 12 of the Letters Patent, 1865, the suit was rightly brought in the High Court.

Starling and *Russell*, for the plaintiffs.—An order of the Court of Chancery differs from a decree. Service of the former is necessary before it can be enforced: Daniel's Ch. Pr., p. 1114. [SARGENT, J., referred to the *Land Credit Company of Ireland* v. *Lord Fermoy* (1).] The terms of the balance order upon which we sue contemplate service: *Adkins* v. *Bliss* (2) is not in point. The balance order is in the same form as the call order, and is to be similarly construed; and the call order under the rules of Courts 38 and 39 (3) could not be enforced without previous service: Daniel's Ch. Pr., p. 903.

[44] *Farran* and *P. M. Metha*, for the defendants.—This is a suit upon a foreign judgment. There is no doubt that ordinarily in the case of such a judgment service is not necessary before filing a suit upon it. No averment of such service was contained in the declaration: see *Bullen* and *Leake's* Precedents: see, also, No. 27 of the form annexed to Civil Procedure Code (Act X of 1877): Roscoe on Evidence. The cause of action on a foreign judgment is the implied promise by the defendant to pay the amount of the judgment: see *Leake on Contracts* (ed. 1878), p. 128.

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(1) L.R. 5 Ch. Ap. 323. (2) 2 De G. and J. 286.

(3) Rule 38.—All orders for payment of calls, balances, or other monies due from any contributory or other person, shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the company, unless on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator: Provided that where any such order has been made directing payment of a specific sum into Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order, or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

Rule 39.—At the time of the service of any order for payment into the Bank of England the official liquidator shall give to the party served a notice, to the purport or the effect set forth in Form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in Form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned. [See Buckley on Companies (3rd ed.), pp. 485-86.]

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We rely, also, on the decision by Marriott, J., in the *London, Bombay and Mediterranean Bank* v. *Wamanrao Ramachandra* (1), where it was held that service of the balance order is no part of the cause of action.

JUDGMENT.

SARGENT, J.—This action is brought upon a balance order made in the winding up of the plaintiffs' bank by the Court of Chancery in England.

The case of the *Land Credit Company of Ireland* v. *Lord Fermoy* (2) is an authority that service of a decree or order of the Courts of Chancery is not requisite as a preliminary to its execution except in proceedings founded on the old process of contempt; but it was contended that the words of the balance order which called upon the defendants to pay "on or before the 14th September 1871 or within four days after service of the order" made it obligatory upon the plaintiffs to effect such service. I think, however, that the case of *Adkins* v. *Bliss* (3) is conclusive that these words do not impose any such obligation.

Lastly it was argued that, having regard to its own rules in similar cases, this Court would not treat the order as constituting a cause of action until it had been served. No doubt rule No. 34 requires that orders for calls should be served (4), but there is no **[45]** similar provision with regard to any other orders of the Court. Moreover there is a note to call order issued in the present case informing the contributories that unless the sums demanded should be paid by a certain day, an application would be made to the Court. This order gave all necessary information as to the nature and amount of the claim made by the plaintiffs and the steps which they were prepared to take in order to enforce their claim.

Upon the whole I am of opinion that service of the balance order upon the defendants in this case was not necessary, and, therefore, was no part of the plaintiff's cause of action. No part, therefore, of the cause of action having arisen within the jurisdiction of this Court, the suit must be dismissed with costs.

Suit dismissed.

Attorneys for plaintiff: Messrs. *Tobin* and *Roughton*.
Attorney for defendants: Mr. *Khanderav Moroji*.

(1) Suit 149 of 1876 decided on 1st May 1880. Not reported.
(2) L.R. 5 Ch. Ap. 323. (3) 2 De G. and J. 286.
(4) Rule 34.—When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless, for any special reason, the Judge shall so direct. [See Buckley on Companies (3rd ed.), p. 484.]