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The defendant's books, though there is a gap of several years in his documentary evidence, go to show from 1867, at least, pretty constant exercise of possession over the land in dispute, and so far as they extend there is no more obvious reason to distrust them than those of the plaintiff.

Rodrigues as a defendant may be thought necessarily prejudiced. He is corroborated by his partner L. Quini; and if these men speak truly, they have held the land in dispute under Abdulla for four or five years. Domas Quini held the land as one of several partners from twelve or fourteen years ago for four years from Abdulla Khor. These transactions are supported by agreements, either separate or entered in the books of the defendant's employer. There are other agreements of persons who are now dead. The recent occupation by Rodrigues, Quini and Bastian Misquita (now dead) is deposed to by a labourer who worked under them. If the pretty consistent story of these witnesses is true, there can be no doubt that Abdulla has had possession for several years; but there are some obvious mis-statements in their depositions which cast a certain doubt on all they say.

Some external test of the truth of these contradictory bodies of testimony is obviously desirable if one can be found. It seems to be sound in the evidence of Mr. Morris and of the sepoy Lakshman. Bastian Misquita, claimed as a tenant by both parties, erected a shed on the land held by him. Narayan, in order to make out that he was certainly Virjivandas' tenant, places [223] this shed south of the line of stones which divides the field. Mr. Morris proves that the still existing platform is north of the line of stones. The fact would not be inconsistent with Bastian Misquita's tenancy of the whole field, but it is inconsistent with Narayan's honesty as a witness. Misquita was apparently a partner of Rodrigues and Quini, and the sepoy Lakshman says that he has seen Rodrigues in growing vegetables on the land said to be Abdulla's during the two years of his service in that neighbourhood. These indications are confirmed by the confused account given of the alleged dispossession by Mr. Virjivandas' witnesses. Amid the mass of dubious and of absolutely false testimony with which I have had to deal, only a very few statements can be taken as absolutely trustworthy; only a few facts are unquestionably established. Comparing the whole case on each side with the facts thus ascertained, I arrive finally at the conclusion that the dispossession alleged by the plaintiffs cannot be deemed proved, and, without discussing the fifth issue, I reject their claim with costs.

Decree for defendants.

Attorneys for the plaintiffs.—Messrs. *Prescot and Winter.*
Attorney for the defendants Nos. 1 and 3.—*Mr. H. W. Payne.*

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Before Mr. Justice West.

THE LONDON, BOMBAY AND MEDITERRANEAN BANK, (*Plaintiffs*) *v.* GOVIND RAMCHANDRA, (*Defendant*).* [11th, 12th and 19th February, 1881.]

Company—Winding up—Suit against contributory—Service of notices and orders—Contributory in India to English company—Last known address or place of abode—Rule 63 of the Rules of 1862—Jurisdiction.

The London, Bombay and Mediterranean Bank, a Joint Stock Company, registered under the English Companies' Act, 1862, was ordered to be wound

* Suit No. 420 of 1880.

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up by an order of the Court of Chancery in England in 1866, and, by a subsequent order of the said Court made in the winding up of the Bank, it was ordered that service of any notice, summons, order, or other proceeding in these [224] matters might be effected by putting such notices, etc., into any post office, either in England or at Bombay, duly addressed to such contributories being past members according to their respective *last known addresses or places of abode*. By a final balance order, dated 5th June, 1879, it was ordered by the Court of Chancery in England that the persons named in the schedule to the said order being contributories as past members of the said Bank should, within four days after the service of the said order, pay the amount set opposite to their names, with interest, from the 15th March, 1879. The defendant's name appeared in the said schedule, and the present suit was brought to recover the sum therein appearing as due from him to the Bank, *viz.*, Rs. 3,900. The defendant denied that he had ever held shares in the plaintiff's Bank, or that he ever had notice if any of the proceedings in the winding up. At the trial it appeared that all the various orders and notices to share-holders made in the winding up of the Bank prior to the balance order of the 4th June, 1879, had been sent by post to the defendant, addressed to him at No. 36, Fanasvadi, and were all returned undelivered. It was proved that he had never resided there; but that his brother had a place of business there, and that the defendant used occasionally to go there for the purpose of attending to his brother's business. It further appeared that the residence of the defendant, as given in the register of shareholders, was Loharchall, and not 36, Fanasvadi.

Held that the notices, orders, &c. prior to the order of 5th June, 1879, were not so served as to make the defendant subject to that final order; that the obligation to obey the command of the Court of Chancery contained therein had not arisen as aginst the defendant; and that, consequently, the present suit must fail.

It is a leading principle of English law, always understood except when expressly excluded, that a person proceeded against in a Court must have due notice of the proceeding. Failing such notice, he is entitled to protection if the judgment or order obtained in his absence is made the ground of a suit in any Court governed by English principles. The Court of Chancery in England had not in this case so called the defendant before it as to enable it in his absence to pronounce a definitive order against him or to bind him in the Court of his *domicile*, although he was included in the order of the Court of Chancery.

The fact that the defendant frequently attend his brother's place of business at No. 36, Fanasvadi, was not sufficient to make that place his "last known address." If there had been evidence that he had used No. 36, Fanasvadi as an address for receiving letters, that might probably have been sufficient. It would then have been known as his address—at least as an address.

The address or residence of a member of a company entered in the register of shareholders, although sufficiently ascertained for the purpose of communication from the company, is not, therefore ascertained for a service of legal proceedings. For the purpose of such service care must be taken to find out the last known places of abode of the alleged contributory and to effect the substituted service there.

[D., 11 B. 241 (244).]

THE plaintiffs sued the defendant as a contributory, whose name appeared on the B list of contributories, to recover the sum of [225] Rs. 3,900 (the equivalent of £390) due from him in respect of certain shares standing in his name. The London, Bombay and Mediterranean Bank have been registered in England under the English Companies' Act, 1862, and had a branch office at Bombay and other places.

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 liquidators were duly appointed. By a subsequent order of the Chancery Division of the High Court of Justice in England made in the winding up of the said Bank, and dated the 4th August, 1877, it was ordered "that service of any notice, summons, order or other proceeding in these matters not requiring personal service, upon such of the contributories, being past members of the said Bank, whose respective last known addresses or places of abode are situate out of England (whether in Bombay or

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any other part of India or elsewhere), and on whose behalf respectively no appearance shall have been entered pursuant to the 62nd Rule of the General Orders and Rules of this Court of the 11th November, 1862, *may be effected by putting such notice*, copy of summons, order or other proceeding, together with a copy of this order, as a prepaid letter *into any post office receiving house* in England ; or as to such of the said contributories being past members whose last known addresses or places of abode are situate in India, either in England or at Bombay, duly addressed to them respectively according to their respective last known addresses or places of abode, in the same manner as service as aforesaid may be effected upon the other contributories of the said Bank whose last known addresses or places of abode are situate in England, and on whose behalf respectively no appearance shall have been entered as aforesaid."

The plaint further stated that by a final balance order, dated the 5th June, 1879, it was ordered that the persons named in the schedule to the said order being contributories as past members of the said Bank should, *within four days after the service of the said order*, pay the amount set opposite their names with interest from the 15th March, 1879, at 5 per cent.; that the defendant's name appeared in the said schedule as a contributory, and that the sum appearing as due from him was the sum sued for. The plaint **[226]** also stated that a copy of the order of the 5th June, 1879, was duly served upon the defendant on the 6th August, 1880.

The plaint described the defendant as a clerk in the post office, formerly shroff in the Agra Bank, and residing at Fanasvadi, No. 36, outside the Fort of Bombay.

In his written statement the defendant denied that he had ever held shares in the plaintiffs' Bank, or that his name appeared in the schedule of contributories. He also denied all knowledge of the various orders of the High Court of Justice in England made in the winding up of the said Bank, and he denied that he had been served with a copy of the order of the 5th June, 1879, or that he ever had notice of any of the proceedings in the matter. He also denied that he had been a shroff in the Agra Bank, or that he resided at No. 36, Fanasvadi.

At the hearing the following issues were raised :—

1. Whether the defendant had been served with the order of the 5th June, 1879, or received notice thereof.

2. Whether the Court in England had jurisdiction to pronounce the order in the sense that the requisite conditions as to notice to the defendant had previously been satisfied.

3. Whether the defendant was included in that order, and was bound by it for the purpose of this suit.

It was proved that the balance order of the 5th June, 1879, upon which the present suit was based, was sent in an envelope addressed to the defendant at No. 36, Fanasvadi. From there it had been returned undelivered to the post office in which the defendant was a clerk. There the packet was presented to him, but he refused it, saying it was not for him. It was also proved that the defendant resided at Loharchall, and that he had never resided at 36, Fanasvadi ; that his brother had a place of business at the last-mentioned place; and that the defendant used occasionally to go there for the purpose of attending to his brother's business, and that summons in this suit had been served upon the defendant while there.

The residence of the defendant, as given in the book of the plaintiff's Bank, was Loharchall and not No. 36, Fanasvadi. All **[227]** the various orders and notices to shareholders made in the winding up of the Bank

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prior to the balance order of the 5th June, 1879, had been sent by post to the defendant addressed to him at No. 36, Fanasvadi, and had been returned undelivered. The question was accordingly raised, whether the defendant had been duly served with these prior notices and orders, inasmuch as they had not been addressed "to his last known address or place of abode" in accordance with Rule 63 of the English Rules of 1862 (1).

Starling and *Russell*, appeared for the plaintiffs.

P. M. Metha and *Mankar*, appeared for the defendant.

JUDGMENT.

21st February. WEST, J.—The evidence of Hari Gopal and Sudashiv Waman so far supports that of Balkrishna Bapuji, that there is no reasonable doubt but that the defendant was formerly employed under the shroff in the Agra Bank. Hari Gopal, who was in a position to know, says he was there in 1864-65, and left on the suspension of payments by the Bank in 1866. He resided, as he still resides, at Loharchall. A person of his address, and answering to this description, was the one who signed the memorandum and articles of association of the London, Bombay and Mediterranean Bank. He signed four transfers of shares also, and a receipt for scrip certificates which have been put in evidence. The defendant says these signatures are not his, and the cashier at the post office, where the defendant has been employed for several years, thinks they were made by some one else. Mr. Pallonji, however, has not been in the way of becoming specially acquainted with the defendant's hand-writing by the frequent extended perusal which awakens a perception [228] of minute characteristics as in the face of a friend. He speaks chiefly by comparison, and his testimony is subject to much deduction, as, on the other hand, is that of Mr. Stead. But on the whole evidence and a careful comparison of the signatures on the post office payments with those imputed to the defendant. I am satisfied that the writing was really his. This conviction is strengthened by his having purposely disguised his hand in signing papers in this suit, so that it is difficult, if not impossible, to identify it in style with the undoubted signatures on the pay-sheets.

Govind Ramchandra, the defendant, is then the Govind Ramchandra who was once a shareholder. If the orders making him a contributory have satisfied the requisite formal conditions, he is bound by them; but whether these conditions have been satisfied, is a serious question. For the purpose of furnishing materials for the B list of contributories as past members of the company, the address of the defendant was given to the Court of Chancery as 36, Fanasvadi, Bombay. The address in the register was Loharchall; but the liquidators' agent, Mr. Stead, had been told by one of his servants—though by whom he cannot say—that the defendant resided then at 36, Fanasvadi. To this address the notices intimating that the list would be settled, that it had been settled, and that the defendant

(1) Rule 63.—"Service upon contributories and creditors shall be effected (except when personal service is required) by sending the notice or a copy of the summons, or order or other proceedings through the post in a prepaid letter addressed to the party himself at the address entered or last entered pursuant to the preceding rule; or, if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him pursuant to the foregoing rule 20; and such notice or copy, summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office." See Buckley's Companies Practice (3rd ed.), 492.

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had been made a contributory for £390, were sent. They were all returned undelivered. On those preceding the balance order the reason given is that the addressee has not been found. It is plain that the defendant was often at 36, Fanasvadi, where his brother had a printing press. The summons in this case was served on him there. But this would not make it his "last known address or place of abode." In *Ex parte O'Loghlen* (1) a gentleman who attended an office in Westminster for several months in every year was described as residing there. But James, L.J., said that was "a place . . . . . in which he would no more be said to reside than I can be said to reside in the rooms attached to this Court." If there were evidence that the defendant had actually used 36, Fanasvadi, as an address for receiving letters, that might possibly be sufficient. It would then be known as his address, at least as an address; but there is [229] no such evidence going even so far as to show previous enquiry made at the place. Mr. Stead speaks merely upon information which was hearsay gathered by some person unknown, and for which no one is responsible. Instead of being the known address of the defendant, 36, Fanasvadi was merely his conjectured address, and the conjecture seems to have been wrong.

The last actually known address of the defendant seems to have been Loharchall. A letter or notice sent to him there would have been sufficient as between him and the company while in its normal state. Mr. Russell pointed out a rule of the company by which, as he thought, no service of notice was necessary at all on a member residing without the jurisdiction of the Court of Chancery, and hence he would have had me draw the inference that the mode of service could not be a material question relating, as it did, to a work of mere supererogation. But the address of a member of a company, though sufficiently ascertained by registration for the purposes of communication from the company, as under No. 35 of the model rules appended to the Indian Companies Act X of 1866, is not, therefore, ascertained for a service of legal proceedings. The convention was not entered into in contemplation of such proceedings. They are meant to subject the person affected to compulsion, and, as said in *Ex parte Chatteris* (2), the usual care must be exercised to find out, at least, the last known place of abode of the alleged contributory, and to effect the substituted service there. It would, indeed, be an absurd rule if putting a notice into the pigeon-hole of an office in London had to be treated as actual service of a summons on a native resident of Bombay. When, therefore, it is sought to make a man responsible as a contributory, neither the rule in the memorandum of association nor the register of shareholders enables the liquidator to escape from the necessity of exerting himself to find out the real address of a person on whom he proposes to bring the coercion of the Courts to bear. Such coercion can be exercised only under special safeguards, which are as necessary in the case of one charged as a contributory as in the case of any other alleged debtor. In England there are advertisements which bring pro-[230] ceedings in a winding-up to the knowledge of every one interested, and there are people who can be made responsible for misinformation as to an address; but the case is different in both respects as to a contributory in India to an English company. He does not habitually read English newspapers, nor does any one in England know his address except by hearsay.

(1) 6 Ch. App. at p. 406.
(2) L. R. Ch. App. 227. The case of *De Beauvain*, 39 L J. Ch. agrees with this.

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The company in this case being an English one, subject to the English statutes, I thought it probable that before placing on the list of contributories the name of any one residing out of their local jurisdiction, the Courts in England would require proof of real service. If they did require this, and after investigation determined that a particular person had been duly served and proved to be a contributory, it might be very doubtful whether a British Court anywhere could question their decisions. The matter would, *prima facie*, be within their jurisdiction under the statutes, and the statutes are binding so far as their intention extends everywhere within the British dominion(1). I see, however, on reference to Mr. Buckley's work (3rd ed.), p. 492, that the practice has been adopted of treating as sufficient "service of notice of an intention to make a call made through the post on a contributory out of the jurisdiction so far as to warrant the mere making of a call." The reason given is that "upon any proceedings in the foreign Court to enforce payment of the call it would be open to the contributory to raise the question of the validity of that mode of service (2). I should have thought that on principle an effectual service which may reasonably be supposed to have brought the matter home to the consciousness of the person to be charged, ought to be proved before making an order against him, as, if he should come within the English local jurisdiction, the foreign Court could not intervene to protect him against execution. In *Copin* v. *Adamson* (3) it was ruled that the local law of a company's head office may be in the fullest sense accepted by becoming a shareholder, and that, in spite of complete ignorance of what had been done, a person pronounced a contributory [231] by the local Court under the foreign law could be sued on the judgment in English Court. By joining the company the member chose his forum and its law. The same principle would apply, *a fortiori*, to the case of proceedings in the case of an English company under English statutes against a British subject in an English Court; but the extent of the jurisdiction is a reason, as regards foreign residents, for exactness of procedure, and the modes of substituted service provided by the rule 63 (4) under the Joint Stock Company's Act may properly be construed as applying to things to be done within the jurisdiction according to the analogy of the Bankruptcy Act (5). A notice posted to a resident in Paris during the siege could not be supposed to reach him; and it is a leading principle of the English law, always understood, except when expressly excluded, that a person proceeded against in a Court must have due notice of the proceeding(6). Failing such notice he is entitled, as indeed the case in the Weekly Reporter clearly recognizes, to protection if the judgment or order consequently obtained in his absence is made the ground of a suit in any Court governed, as this is, by English principles. Here there was not *de facto* notice, or what could be deemed equivalent to it. There was no investigation of the alleged "last known abode or address" of the defendant. It was not vouched for to the Court by any one who personally knew it. The mere fact that the defendant may at the post-office have seen the envelope, containing an extract from the balance order,

(1) See *Per* Blackburn, J., in *Schibsby* v. *Westenholz*, L. R. 6 Q. B. 161. *Ex parte* Blain, L. R. 12 Ch. Div. 522, (532). *Per* Cotton, J.
(2) *Re Gen International Agency Co.* 15 W. R. 973. (3) L. R. 1 Ex. D. 17.
(4) See Buckley on Companies, p. 492.
(5) See *Ex parte O'Loghlen*, L.R. 6 Ch. Ap. 411.
(6) See Story's Conflict of Laws, ss. 609, 610.

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was not a service of that order. Much less were the previous notices so served as to make the defendant subject to the final order.

For these reasons, and as the English Courts abnegate the function of inquiring into the sufficiency of notice, I am obliged to make the inquiry, and I find that the notice to the defendant and the balance order of the 5th June, 1879, were not served either as a summons in a suit or according to the order made under the Indian Joint Stock Companies Act which follows that under the English statute which I have already referred to. [232] The obligation to obey the command of the Court of Chancery has not arisen as against the defendant, and the foundation of the present suit fails. Taking the issues 2 and 3, as from the arguments they were meant to be taken, in the sense of questions as to whether the Court of Chancery had so called the defendant before it as to enable it in his absence to pronounce a definitive order against him, and had exercised this power so as to bind him in the Court of his domicile, I must find in favour of the defendant, although he was included in the order of the Court of Chancery. There are inaccuracies of expression in the issues, and I have at the last stage modified them, with the consent of counsel for the plaintiffs, so as to state more neatly the points actually in contravency. The real question was, whether the Court of Chancery, exercising as to the subject-matter an undoubted jurisdiction, had made an order without an essential preliminary condition of its binding the defendant in this case having been satisfied. The Court of Chancery had jurisdiction of the matter and could have concluded it; but in finding that the notices were not sufficient to make the balance order of the 5th June, 1879, binding on the defendant as a contributory, I exercise a function necessary to prevent injustice through the action of this Court, and one which the English Court intends to be used in the proper cases to prevent unqualified effect being given to its own apparently final orders.

I reject the claim with costs.

Attorneys for the plaintiffs—Messrs. *Tobin* and *Roughton*.

Attorney for the defendant—Mr. *Shamrao Pandurang*.

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Before Mr. Justice West.

SAKHARAM KRISHNAJI AND ANOTHER, (*Plaintiffs*) *v.* MADAN KRISHNAJI AND THREE OTHERS, (*Defendants*).*

[17th, 19th, 21st, 22nd and 24th March, 1881.]

Evidence—Registration Act III of 1877, *ss.* 17, 49, *Clauses (b) & (c)—Unregistered document—Document to contradict witness—Meaning of word "declare" in s.* 17 *of Act III of* 1877—*Acknowledgment, necessity for registration of.*

S and R sued their brothers M and V in 1880 for partition of the family property. The defendants pleaded that the property had been partitioned [233] in 1870, and that the various members of the family had been ever since in possession and enjoyment of their respective shares. At the hearing a document was produced by the defendant M, dated the 13th January 1877, which was proved to have been signed by his three brothers, S, R and V, on the occasion of M's effecting a mortgage of part of the property. This document contained the following words:—

"Our eldest brother M has built houses and is building new houses on property appertaining to his share . . . To the same we three persons and our heirs and representatives have no interest of any kind whatever. If we or they should

* Suit No. 418 of 1880.