paid to Venkatesh Shanbhog as son and heir of the original plaintiff, whose death is stated. It, therefore, seems to this Court to be clearly an application "to enforce" the decree, and to fall within art. 167 of sch. II of Act IX of 1871, and accordingly the orders of the Acting Judge of Kanara and of the Subordinate Judge of Kumta must be reversed with costs, and the decree be executed as prayed by the *darkhast* of the 3rd January, 1874.

Orders reversed.

1880 NOV. 29. APPELLATE CIVIL. 5 B. 246 = 5 Ind. Jur. 534.

5 B. 249.

[249] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Justice, and Mr. Justice M. Melvill.

GHANSHAMLAL (*Applicant*) *v.* BHANSALI (*Opponent*).*

[27th January, 1881.]

Code of Civil Procedure (Act X of 1877), s. 266— Jurisdiction — Decree—Execution—Attachment of debts arising out of claims over which the Courts have no jurisdiction —Debt—Subject of the Gaikwar—Subject of a Kathiawar State—Rajkot.

Debts due to a British subject by the Gaikwar Government or by a subject of that Government or of a state in the Province of Kathiawar, are not debts which under s. 266 of the Code of Civil Procedure (Act X of 1877), are liable to attachment in execution of a decree.

Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s. 266 of the Civil Procedure Code, Act X of 1877.

The mere circumstances that the garnishee is at the time of the application for attachment beyond the limits of British India, would not of itself render the debts not liable to be attached.

[R., 26 M. 423 (425, 426); D., 36 M. 1 (2) = 10 Ind. Cas. 665 = 22 M.L.J. 149 = 10 M.L.T. 570 = (1911) 1 M.W.N. 249.]

THIS was an appeal, under s. 588 of the Code of Civil Procedure (X of 1877), against an order of Rao Bahadur Mangeshrav Balvant, Subordinate Judge (First Class) at Surat.

The father of the applicant on 23rd September, 1863, obtained against the defendant Bhansali a decree for the execution of which he made several applications. The present was the last of such applications, and was dated 22nd March, 1880. It stated that the balance due on the decree was Rs. 1,68,968-10-0, and prayed for the attachment of the following two claims:—

"1st.—The amount of about Rs. 1,68,000, with interest thereon up to this date, due to the Baroda firm of Bhansali Manekchand Rupchand from the Gaikwar Sarkar on account of the karkhana (establishment) under the control of Jamadar Ganpatrav Talekar. The right to recover the said amount of Rs. 1,68,000.

"2nd.—There is an amount of about Rs. 84,000 due to the Baroda firm of Bhansali Manekchand Rupchand from Dungarshi Devshi, inhabitant of Rajkot. The right to recover the same as well as the right to recover the interest thereon to this date."

The Subordinate Judge rejected this application on the ground that "the claims which the petitioner wishes to have attached are [250] beyond British India; and, looking to the provisions of the law, the Court cannot legally exercise jurisdiction over them." The petitioner appealed to the High Court.

* Appeal from Order No. 21 of 1880.

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Nanabhai Haridas, Government Pleader, for the petitioner.—The law as to what property is liable to attachment, is contained in s. 266 of the Code of Civil Procedure, and that section makes "debts" attachable. This term is used without any qualification or reservation as to place or person. The English Common Law Procedure Act, 17 and 18 Vic., cap. 125, makes those debts only attachable as are owing by a person "within the jurisdiction." It is improbable that this restriction was overlooked by the Indian Legislature, and yet it does not find place in Act VIII of 1859 or X of 1877. It seems, therefore, that the Legislature does not intend to exempt from attachment debts which persons residing beyond British territory may owe to those residing within it. The former class of people are not necessarily beyond the reach of process of Court. Section 89 of the Code of Civil Procedure enacts how they can be served. The present application is one which satisfies all the conditions for its admission which are provided in s. 245, and, that being so, the Court was bound to "order execution of the decree according to the nature of the application." The provisions for carrying out the execution do not expressly say what is to be done in case the property sought to be attached consists of debts owing by persons not within British territory, but the Code nowhere says such property shall not be attached. Under s. 268 of the Code the Court should have attached the debts mentioned in the application, and then to have appointed a receiver under ss. 503 and 505, and he could then have taken the necessary steps for the realization of those debts. There is no reason to believe that the Government of the Gaikwar would raise objections. The Gaikwar might assist as he did in the case of *Harrivallabhdas Kalliandas* v. *Uttamchand Manikchand* (1). A Court of Equity in England will appoint a receiver over estates in Ireland: *Langford* v. *Langford* (2). It is not at all improbable that, if a receiver be appointed, the Government of the Gaikwar of Baroda as well as of the Thakor of Rajkot may be willing to assist the receiver in the [251] realization of the debts. Whatever the case may be with the Gaikwar, the Courts in Kathiawar are not beyond British trrritory. As the Privy Council remarks in *Damodar Gordhan* v. *Deoram Kanji* (3), "the whole jurisdiction exercised by the Chiefs of all the seven classes is treated as conferred upon them by the British Government." (See page 147.)

There was no appearance on the other side.

JUDGMENT.

The judgment of the Court was delivered by

SARGENT, J.—This is an appeal from an order made *ex parte* by the First Class Subordinate Judge of Surat, rejecting an application by the plaintiff and decree-holder in suit No. 306 of 1863 for the attachment of two several debts alleged to be owing to his judgment-debtors, the defendants in the above suit. These debts are described in the application for attachment as respectively due to the defendants' Baroda firm of Bhansali Manekchand Rupchand by the Gaikwar Sarkar on account of the karkhana under the control of Jamadar Ganpatrav Talekar and by one Dungarshi Davshi, inhabitant of Rajkot. The Subordinate Judge refused the application on the ground that both the claims were beyond the limits of British India. What the Subordinate Judge meant by the claim being beyond such limits, is not so clear as might be wished. The mere circumstance that the garnishee is, at the time of the application, beyond

(1) 7 B. H. C. R. O. C. J. 172.
(2) 5 L. J. Ch. (N. S.) 60.
(3) 3 I A. 102=1 B. 367.

1881 JAN. 27; APPELLATE CIVIL. 5 B. 249.

those limits, would not of itself, we think, render the debts not liable to be attached. In the English Common Law Procedure Act, 17 and 18 Vict. cap. 125, by which debts were for the first time made liable to attachment in execution of a decree, the debts are expressly confined to debts owing by person "within the jurisdiction." That restriction is not found either in s. 236 of Act VIII of 1859 or in s. 266 of the present Civil Procedure Code (Act X of 1877). And as s. 94 of the Act of 1877 provides for "all notices and orders required by the Code to be given to or served on any person being served in the manner provided for the service of summonses," (which would include service by post where the person resides out of British India as provided by s. 89), such notices and orders as are required to be served to effect the [252] attachment of a debt could be served in conformity with the above section when the garnishee was not within the limits of British India. But it is not improbable that the meaning of the Subordinate Judge was that no Court in British India had jurisdiction over the claims in question, and such claims at least, we cannot doubt, are not debts liable to be attached under s. 266. The ss. 268, 301 and 503 of the Civil Procedure Code, which provide the machinery for executing a decree by attachment of a debt, would in such a case be virtually an attempt to interfere in the interest of a third person in the jural relations arising out of a cause of action over which, *ex hypothesi*, no Court in British India has or even claims jurisdiction. In the absence of proof of such an extension of the usual comity of Courts of Justice by express agreement with any particular foreign State as would justify such interference, it must on general principle be inferred that such claims, at least, could not have been in the contemplation of the Legislature. With respect to the first claim sought to be attached, it is quite plain that it is one over which no Court in British India has jurisdiction, and that, too, whether it be regarded as a claim against the Gaikwar Government as it was described in the application itself, or as against the controller of the karkhana as it was described at the hearing, the entire cause of action being in that case outside the limits of British India. As regards the second claim alleged to be against an inhabitant of Rajkot, it is clearly one beyond the jurisdiction of any Court to which the Civil Procedure Code applies. It was, indeed, contended that Kathiawar was British territory on the strength of certain observations of the Privy Council in the case of *Damodar Gordhan* v. *Deoram Kanji*(1), but whether or no the Privy Council be correct in that opinion, and it is to be remarked that, as appears from the judgment of the Privy Council, such was not the opinion of the Secretary of State in 1865, it appears that the Civil Courts in many of the states of Kathiawar, including the State of Rajkot (which is a state of the 2nd Class) are purely Native Courts entirely independent of the Courts of British India, and over which neither the Government of India nor the Government of Bombay assumes to exercise any control, except, indeed, as an act of state; and in the absence of [253] any materials for concluding that an order of a Court in British India, such as is contemplated by s. 268 of Civil Procedure Code, would be recognized by such Native Civil Courts, we cannot, we think, distinguish them from foreign Courts, for the purposes of the present question.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

(1) 3 I.A, 102=1 B. 367.