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with the same crime. By exculpating himself Govinda fails to provide this guarantee, and his statement must also be set aside in weighing the evidence against Daji.

This reduces the evidence to the deposition of Manu Mali, for the evidence of Babaji and Shiva—besides being conflicting—is not very material. Manu's evidence is not free from objections. He does not make his statement till after the arrival of the chief constable to his village for conducting the investigation. It is not quite unusual in this country for ignorant people to withhold information of the kind. They are afraid of being charged with complicity in the crime they have happened to witness. At the same time the evidence of timid people given after some delay must be received with considerable caution. It is not safe to give ready credence to such testimony. Shorn of Govinda's evidence, the case is quite barren. It bears, moreover, indications of police manipulation, and we are unable to uphold the convictions.

We accordingly reverse the sentences, but not without regret. The case has not been efficiently handled, and justice has possibly been defeated. We are unable to say to whom this result is due; but there has been mismanagement on the part of some one there is but little doubt. A strong suspicion remains in our mind as to the guilt of Daji. But under the circumstances we must acquit both him and Govinda.

Conviction reversed.

APPELLATE CIVIL.

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

February 14.

BHAVANISHANKAR SHEVAKRAM AND ANOTHER, PLAINTIFFS,
v. PURSADRI KALIDAS, DEFENDANT.*

Jurisdiction—Judgment—Decree—Native Courts, suit on decree of—Suits in India on judgments of Courts in India—Suit on foreign judgment—Jurisdiction of Small Cause—Court Civil Procedure Code (Act X of 1877), Section 434.

No suit is maintainable in any Court in British India founded upon the judgment of a Court situate in a Native State.

* Small Cause Court Reference 5 of 1880.

The Courts of British India cannot enforce the decrees of any Native Courts, except as provided by section 434 of the Civil Procedure Code, Act X of 1877. Under that section the decrees of certain Native Courts may be executed in British India, as if they had been made by the Courts of British India.

A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property.

A foreign judgment creates an obligation belonging to the class of implied contracts.

A Court which entertains a suit on a foreign judgment cannot institute an inquiry into the merits of the original action or the propriety of the decision.

Quære—Whether suits on foreign judgments are maintainable in the Civil Courts of India?

UNDER section 617 of Act X of 1877, this case was referred for the opinion of the High Court by C. M. Cursetji, Judge of the Small Cause Court of Ahmedabad.

On the 14th August, 1877, the plaintiffs obtained a decree against the defendant, for a sum less than Rs. 500, in one of the Courts of His Highness the Gaekwar of Baroda. Both the parties resided in Ahmedabad, and the plaintiffs sued the defendant, on the said decree, in the Small Cause Court of that place. The defendant pleaded that the Court had no jurisdiction to entertain the suit. The Judge of the Small Cause Court was of opinion that he had jurisdiction.

There was no appearance for the plaintiffs.

Manekshah Jahangirshah for the defendant.

MELVILL, J.—The question referred for our decision is whether the Court of Small Causes at Ahmedabad has jurisdiction to entertain a suit on a foreign judgment.

If we were to give a general answer to a question stated in such general terms, we should say that, in our opinion, a Court of Small Causes is as competent as any other Court to entertain a suit on a foreign judgment, provided that the judgment be for a sum not exceeding Rs. 500. In *Mancharam Kallhandas v. Bakshe Saheb* (1), Couch, C. J., expressed a doubt whether the obligation created by a judgment comes within the terms of sec-

(1) 6 Bom. H. C. Rep., 231.

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tion 6 of Act XI of 1865, namely, "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages." But for many years past this Court has consistently held that Courts of Small Causes have jurisdiction over claims arising out of implied, as well as express, contracts. Thus, in *Dullab Shivalal v. T. C. Hope* (1), it was held that a Court of Small Causes has jurisdiction over a claim to recover back taxes illegally levied. Similar decisions were passed in regard to a suit for money had and received by the defendant to the use of the plaintiff: *Ratan-shanker v. Gulabshanker* (2); and a suit by one surety against another for contribution: *Hari Trimbak v. Aba Saheb* (3). These are a few instances, among many, of implied contracts which Courts of Small Causes have been held competent to enforce. The obligation arising out of a foreign judgment is of a similar nature. The law raises an implied contract to pay a sum of money adjudged to be due from one man to another by the sentence of a foreign or Colonial Court (Addison on Contracts, 6th ed., p. 40). The principle, as stated by Parke, B., in *Williams v. Jones* (4), is that "where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and Colonial Courts are supported and enforced." This is equivalent to saying that a foreign judgment creates an obligation belonging to the class of implied contracts, which are described as arising from the "general implication [and intendment of the Courts of judicature, that every man hath engaged to perform what his duty or justice requires:" 3 Blk. Com., 163, 164. To the same effect are the observations of this Court in *Umedchand v. Sha Bulakidas* (5).

But the wider question remains whether any Court in British India ought to entertain a suit founded, as this suit is, upon the judgment of a Court situate in a Native State? As observed by

(1) 8 Bom. H. C. Rep., 213.

(2) 10 Bom. H. C. Rep., 21.

(3) I. L. R. 4 Bom., 321.

(4) 13 M. & W. at p. 633.

(5) 5 Bom. H. C. Rep. 16, O. C. J., at p. 22.

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Blackburn, J., in *Godard v. Grey* (1), "it is not an admitted principle of the law of nations that a State is bound to enforce within its territories the judgment of a foreign tribunal. Several of the Continental nations (including France) do not enforce the judgments of other countries, unless where there are reciprocal treaties to that effect. But in England, and in those States which are governed by the common law, such judgments are enforced, not by virtue of any treaty, nor by virtue of any statute, but upon the principle stated by Parke, J., in *Williams v. Jones*." Here, in India, the jurisdiction of our Civil Courts is carefully defined by statute; and, if it had been intended that suits should be brought in those Courts on foreign judgments, it might have been expected that such suits would be expressly provided for. It cannot be said that the question of foreign judgments escaped the notice of the Legislature; for by section 14 of Act X of 1877 a foreign judgment is allowed to be pleaded in bar, no doubt on the principle that "*nemo debet bis vexari pro eadem causa*." But the Code contains no provision for making a foreign judgment an engine of attack, as well as a means of defence. It is not, however, necessary for us to express any general opinion upon this question. The reports show that suits on the judgments of French Courts in India have been entertained by the Calcutta and Madras Courts (2); and we are not by any means to be understood as saying that those suits were improperly entertained. What we are now concerned with, is the judgments of Courts situate in Native States. We cannot find in the reports a single instance in which a suit founded upon the judgment of such a Court has been entertained by a Court in British India, and in the absence of precedent, we are not disposed to express an opinion favourable to the entertainment of such suits. There has been much conflict of opinion as to the conclusiveness of foreign judgments (*vide* Mr. Smith's notes to the Duchess of Kingston's case (3); Taylor on evidence, sec. 1553; Story on the Conflict of Laws, sec. 607); but it may now be taken as established that a Court which entertains a suit on a foreign judgment.

(1) L. R. 6 Q. B., 139.

(2) 4 Calc. W. Rep., 108; 15 Calc. W. Rep., 500; 8 Mad. H. C. Rep., 14.

(3) 2 Smith's L. Cases, p. 730 (6th ed.)

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cannot institute an inquiry into the merits of the original action, or the propriety of the decision. It can feel no confidence that it is doing justice between the parties, except in so far as such confidence is based upon its general belief that the tribunals of the foreign State ordinarily conduct judicial inquiries with intelligence and integrity. Are we justified in reposing such confidence in the tribunals of Native States? Some Courts in Native States may be sufficiently well constituted, and their proceedings sufficiently well conducted, to entitle their judgments to respect; but this is notoriously not so in regard to other States, and indeed, must be regarded as the exception rather than the rule. Our Courts are not in a position to draw distinctions, which would necessarily be individious, and not necessarily correct, between the Courts of different Native States, Section 434 of the Code of Civil Procedure imposes this duty upon the Governor General in Council, who is certainly the best informed, and, therefore, the fittest authority to discharge it. That section provides that "the Governor General in Council may from time to time, by notification in the *Gazette of India* (a) declare that the decrees of any Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor General in Council, may be executed in British India, as if they had been made by the Courts of British India, and (b) cancel any such declaration." We think that it is safe and proper to hold that the Legislature did not intend that the Courts of British India should in any way enforce the decrees of any Courts situate in Native States, except such Courts as may have been notified by the Governor General in Council under section 434. It follows at once from this that a suit cannot lie in a British Court upon the judgment of any Native Court not so notified. As regards Courts which have been so notified, section 434 provides that their decrees may be executed in British India as if they had been made by the Courts of British India. We think that it was clearly the intention of the Legislature that the decrees of the privileged Native Courts should occupy the same position as the decrees of British Courts, and should not carry with them any greater advantages. If, therefore, a suit would not lie upon the judgment of one of

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our own Courts, neither is there reason to suppose that it will lie upon the judgment of one of the privileged Native Courts. Now, upon this question we may refer to the observations of Couch, C. J., in *Mancharam v. Bakshe Saheb* (1). The question which he was considering was whether a suit could be maintained upon the judgment of a Court in British India? He said: "The Legislature has been careful in the Limitation Act to provide that the judgments and decrees of Civil Courts shall be enforced within certain periods; and if an action might be brought upon a judgment or decree which is within those provisions, the Law of Limitation might be evaded. When an action on a judgment or decree will not give to the plaintiff a higher or better remedy than he already has, there is no advantage in allowing it to be brought; and it would be contrary to the spirit of the Code of Civil Procedure to do so. Where it will give a higher or better remedy, the case is different, and there are cases in which an action may be the only mode of enforcing a judgment or decree." In the last paragraph the Chief Justice was probably referring to judgments of a Court of Small Causes, on which suits are permitted to be brought in the High Court, in order to obtain execution against immoveable property. Except in this peculiar case, it must be taken to be settled that a suit will not lie in our Courts upon the judgment of any Court in British India; and it follows, for the reasons which we have stated, that a suit will not lie upon the judgment of any Native Court, although such Court may have been notified under section 434. The decrees of the Courts so notified may be enforced by execution in the ordinary manner, but not by a suit upon the judgment.

It is not stated in this reference whether any notification has been made under section 434 in favour of the Courts of His Highness the Gaekwar. We have not been able to find any such notification in the *Gazette of India*; and it is probably because no such notification has been made that the decree-holder in this case has resorted to the expedient of bringing a suit upon his judgment. Our reply to the Judge of the Court of Small Causes must be that the suit cannot be maintained.

(1) 6 Bom. H. C. Rep., 231.