

THE  
INDIAN LAW REPORTS,  
BOMBAY SERIES.

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ORIGINAL CIVIL.

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*Before Mr. Justice West.*

HASSONBHOY (PLAINTIFF AND ANOTHER) v. COWASJI JEHangIR  
JASSAWALLA (DEFENDANT).\*

*Contempt—Committal for contempt—Jurisdiction of High Courts in India—Power to commit for contempt—Civil Procedure Code (Act X of 1877), Section 136—Procedure.*

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Feb. 21, 22,  
24; March 10.

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Under the authority conferred by the charters of the Supreme Courts and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by committal for contempt.

As regards the High Courts in India the remedies provided by section 136 of the Civil Procedure Code (Act X of 1877) in cases of disobedience to an order of Court may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience.

An application may properly be made in Court to commit for contempt of an order made in Chambers.

IN this case the defendant, on the 25th November, 1880, obtained a *rule nisi* calling on the second plaintiff (Hirjibhai) to show cause why he should not be committed for contempt in disobeying an order made by Marriott, J., on the 25th September, 1880, directing him to give to the defendant inspection of all documents in his possession, or under his control, of the defendant and of his wife Dosibai. The rule now came on for argument.

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*Inverarity* for the plaintiff showed cause and (*inter alia*) contended that the application for commitment ought to have been made in Chambers, and, further, that the Court had no power to punish the plaintiff for disobedience of the order, except under the provisions of section 136 of the Civil Procedure Code (Act X of 1877), the effect of which was to deprive the High Court of its former jurisdiction to commit for contempt.

*Lang* for the defendant, *contra*.

WEST, J.—In the application with which I have to deal, the defendant Cowasji prays that the second plaintiff, Hirjibhai, may be committed for contempt in not obeying the order made by Marriott, J., on the 25th September, 1880, that he should give to the defendant inspection of all the documents in his possession, or under his control, of the defendant and of his wife Dosibai. [After some observations, not material to this report, his Lordship continued :—]

As to the propriety of an application for committal for contempt being made in Court, I have no doubt at all. It may be that such a motion may be made in Chambers, and that thereon the party complained against may be called on to show cause in Chambers when the order disobeyed was originally made in Chambers (1); but that course, if allowable, as one or two instances seem to show, by no means implies that a motion in Court is not admissible: see *Ashmore v. Rypley* (2); *Fall v. Fall* (3). It seems to me, as a matter affecting personal liberty, to be one that ought in general and on principle to be dealt with in open Court; and it is clear that such has been the practice in the Courts in England. Matters relating to the production of evidence may, no doubt, be dealt with under our rules by a Judge in Chambers, but the meaning of that is, that matters relating to the production of evidence in the regular progress of a cause and with this as their sole end, may be thus disposed of. In one sense every step of the series in a suit is connected with the production of evidence. The rule is empowering, not exclusive, and could not in any case be construed fairly as depriving a Judge in Court of his

(1) On the judicial character of orders in chambers see the opinion of Wilmut, C.J., in *R. v. Almon*, Wilmut's Notes, p. 264.

(2) 2 Scott N. R. 203.

(3) 2 Dowl. 88.

jurisdiction to hear and dispose of an accusation of contempt attended, if proved, with severe penal consequences to the offender.

The order itself, which it is said has been disobeyed, is founded on an application of the kind provided for in section 134 of the Code of Civil Procedure; and, relying on sections 136 and 632, Mr. Inverarity, for the plaintiff Hirjibhai, has contended that the specific remedies provided by the former section for failure to comply with the order of the Court, exclude the remedy by way of attachment and committal for contempt which was formerly available. He relies on the omission from section 136, which is otherwise copied from an order under the English Judicature Act, of the provision for punishing contumacy in this class of cases by committal. The omission, it is plain, has been made with deliberation, but it may be accounted for by the width of operation which the Code was intended to have. It is to govern generally all proceedings in all Civil Courts. It is at least doubtful whether a great many of the Courts in India had any authority, before the new Code became law, to commit for contempt otherwise than in *facie curiæ* (1), for which a special procedure was provided (2); and where the authority did not exist, it seems certain that it was meant to be withheld in such cases as the one now before me. This would account for the omission, from the enactment of the Code, of the provision for committal contained in the English rule, and giving an authority which, as to the superior Courts here, it may properly have been supposed would continue to subsist, as it had subsisted before, until expressly withdrawn by the Legislature. "It is supposed", says Sir P. B. Maxwell, "that the Legislature would not make so important an innovation (as a curtailment of the jurisdiction of a superior Court) without any explicit expression of its intention" (3), "Where, on the other hand, a statutory power is conferred for the first time upon a Court and the mode of exercising it is pointed out, it means that no other mode is to be adopted" (4), and thus the inferior Courts' authority derived from the Acts of the Indian

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(1) See Bac. Abr., Tit. Courts and their jurisdiction in general (E.); *R. v. Almon*, Wilmot's Notes at p. 254; *R. v. Lefroy*, L. R. 8 Q. B., 134.

(2) Act XXIII of 1861, sec. 21.

(3) Maxwell on Statutes, p. 105.

(4) *Per* Sir G. Jessel in *Taylor v. Taylor*, L. B. I. Ch. Div. at p. 431.

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Legislature is strictly limited by them. But a different conclusion must prevail in the case of the chief Courts of record already armed with power to vindicate their authority. "The process of attachments for contempts", it is said, "must necessarily be as ancient as the laws themselves. For laws without a competent authority to secure their administration from disobedience and contempt would be vain and nugatory. A power, therefore, in the Supreme Courts of Justice to suppress such contempts by an immediate attachment of the offender, results from the first principles of judicial establishments and must be an inseparable attendant upon every superior tribunal" (1).

It has been said indeed "that the High Courts in India have no inherent jurisdiction of their own as have the superior Courts in England" (2). But they have the authority conferred on them by the charters of the late Supreme Courts and continued by their own Letters Patent. This has, by the High Court at Calcutta, been held not to have been cut down by the Code of Civil Procedure: *Martin v. Lawrence* (3), and it certainly includes the power to commit for contempt. Such a power indeed must exist somewhere in order to secure the administration of the law, and it can be safely restricted in the case of the lower Courts only because it is held and exercised by those to which they are subordinate: see *Poth. Pand., Lib. II, tit. I, art. 2*; *R. v. Almon* (4). As regards the High Courts, therefore, the remedies provided by section 136 may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience. [His Lordship proceeded to discuss the merits of the case and finally discharged the rule.]

*Rule discharged.*

Attorneys for the plaintiffs.—Messrs. *Jefferson, Bhaishankar and Dinsha.*

Attorney for the defendant.—Mr. *H. W. Payne.*

(1) 4 Stephen's Blackst. 428.

(3) I. L. R. 4 Calc., 655.

(2) *Per Bayley, J.*, 8 Bom. H. C.

(4) *Wilmot's Notes*, 256-9.

Rep., 108.