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We must, therefore, discharge the order, and send back the case for a fresh decision, having regard to the third issue, which is to be understood as including the question whether the mortgage was valid beyond Yashvantrav's lifetime, and, if so, whether it was for a legitimate purpose so as to bind his sons. Costs to abide the result.

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ORIGINAL CIVIL.

Before Mr. Justice Farran.

THE BOMBAY UNITED MERCHANTS' COMPANY, LIMITED (*Plaintiffs*)
 v. DOOLUBRAM SAKULCHAND AND PURSHOTAM JAVER
 (*Defendants*).^{*} [23rd August, 1887.]

Contract—Sale of goods—Non-acceptance of goods—Contract for goods to be ordered from Europe—Such contract not fulfilled by offer of goods of same description not ordered out for purchasers, but bought by vendors in Bombay.

On the 7th August the defendants commissioned the plaintiffs to order out from Europe 500 cwts. copper braziers, September shipment, assorted in the manner set out in the indent signed by the defendants, "free on board, Bombay harbour," at the rate of £ 53-5 per ton. On the same day the plaintiffs sent a reply to the defendants' order in their usual form, partly lithographed and partly written, as [31] follows:—"We have the pleasure to inform you that we have received a telegram from our Manchester friends, and so far as the cyphers therein used, we learn that they advise the following purchases, which will be invoiced to you at your limit, subject to confirmation by letter as usual. Order this day 100 bundles of copper braziers, at £ 53-5 per ton, free on board, Bombay." As a fact, however, no telegram had been received from the plaintiffs' Manchester friends, and the plaintiffs had not learned that they had advised the purchases referred to in their reply. The acceptance of the plaintiffs' offer was really based on the plaintiffs' view of the probabilities of the copper market. The agents in England were unable to carry out the order, and it remained unexecuted. On the 26th October the plaintiffs having negotiated with one Naga Ducha to take over from him a September shipment of copper by the *S. S. Merton Hall*, answering to the defendants' order, and for the purpose of fulfilling it, wrote to the defendants as follows:—"We beg to inform you of the arrival of the *S. S. Merton Hall* with 100 packages of goods sold to you as per agreement No. 213; and have therefore to request payment of the cash for those goods, according to the terms of the agreement." The plaintiffs' negotiation, however, with Naga Ducha fell through, and they were unable to supply the defendants with the goods from the *Merton Hall*. The defendants, on the 30th October, wrote through their solicitors to the plaintiffs, stating that they believed the goods never came to Bombay, and that they considered the contract at an end. The plaintiffs, however, on the 29th October had succeeded in purchasing a September shipment of goods from one Beg Mahomed, corresponding to the order by the defendants. They then on the 31st October wrote to the defendants, informing them that it was a mistake of their clerk to advise the arrival of the defendants' goods per *Merton Hall*, and handing the defendants invoice of 100 bundles arrived *ex Tuban Head*. The defendants discovered that the plaintiffs had not ordered out these goods, but had purchased them in Bombay, and on that ground they refused to accept them. The price of copper had then fallen. The plaintiffs sold the goods by auction, and brought this suit against the defendants, to recover the difference between the price realized by the sale and the price which by their contract the defendants had agreed to pay. It was admitted by the plaintiffs, witnesses that it was intended, at the time the defendants gave their order, that the goods should be ordered out from England by the plaintiffs; and that this was the invariable course of business of the plaintiffs' firm—the present case forming the only instance to the contrary.

* Small Cause Court Suit No. 3319 of 1887.

Held, that the defendants were not bound to accept the goods offered by the plaintiffs; and that the plaintiffs were not entitled to recover the amount sued for.

An importing firm which accepts a commission to order out goods at a fixed rate, and undertakes that they shall be invoiced to the person giving the order at that rate, does not, (in the absence of proof of usage to the contrary), fulfil his contract by obtaining goods, answering to the terms of the order, from another firm in Bombay, and tendering them to the person giving the order.

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In this suit, which was originally brought in the Small Cause Court of Bombay, the plaintiffs on the 13th June, 1887, obtained [52] a decree against the defendants for Rs. 2,000 and costs. On the 20th June, 1887, the defendants filed a petition for a rehearing of the case by the High Court, under s. 38 of the Presidency Small Cause Court Act XV of 1882. On the 15th June, 1887, an order for rehearing was made by the High Court.

The suit was brought by the plaintiffs to recover damages sustained by them by reason of the defendants not taking delivery of certain copper braziers which had been ordered by them under an indent dated the 7th August, 1885.

The defendants were general merchants in Bombay, and had been in the habit of ordering out goods from England through the plaintiffs' firm. On the 7th August, 1885, the second defendant commissioned the plaintiffs to order from England, on account of his firm, one hundred bundles—equal to 500 cwts.—of copper braziers, at the price of £ 53-5 per ton, free on board, deliverable in Bombay harbour. He signed an indent, which was in the following form:—

Bombay, 7th August 1885.

" I
We hereby commission the United Merchants' Company, Limited, to order for $\frac{\text{my}}{\text{our}}$ account and risk the following goods from Europe, to be shipped as soon as possible by any steamer, and subject to the following conditions. Any dispute as to quality or condition of the goods or any dispute whatsoever is to be referred to the arbitration of two European merchants—one to be chosen by the indenter and one by the United Merchants' Company, Limited, on behalf of their manufacturer or agents, and their decision shall be binding upon both parties, whether they decide upon an allowance to the indenter or the total or partial rejection of the goods or otherwise.

" The prices mentioned are for goods, f. o. b., Bombay harbour, cash, and $\frac{\text{I}}{\text{We}}$ further agree to pay all charges for packing, forwarding, and shipping, as also for freight and insurance, which must be covered payable in Bombay or London above the full invoice amount.

" [53] The United Merchants' Company, Limited, or their agents can draw upon $\frac{\text{me}}{\text{us}}$ at..... days' sight at the current rate of exchange for the full invoice amount, and $\frac{\text{I}}{\text{We}}$ herewith bind $\frac{\text{my self}}{\text{ourselves}}$ to accept such draft on presentation and to pay it at maturity against delivery of the documents relating to such shipments, or, if required, by payment at current rate of exchange of the day by bank bill as usual.

" All risk of the voyage are for $\frac{\text{my}}{\text{our}}$ account.

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"I
We hereby agree to accept whole or any part of the order that may be practicable.

"In case of the order transmitted by wire the United Merchants' Company, Limited, do not hold themselves responsible for any mistake on the part of telegraph officials.

"Commission, *nil*.

"Shipment, September next.

"100 bundles, each weighing about 5 cwts.

"500 cwts. copper braziers assortment.

"Bombay harbour.

(Signed) PURSHOTAM JAVER,
for Doolubram Sakulchand."

On the same or following day the defendants received from the plaintiffs the following letter, stating that their indent had been duly accepted :—

"Bombay, 7th August, 1885.

"To DOOLUBRAM SAKULCHAND, Esq.

"We have the pleasure to inform you that we have received a telegram from our Manchester friends, and so far as regards the cyphers therein used, we learn that they advise the following purchases, which will be invoiced to you at your limit.

"Subject to confirmation by letter as usual.

"[54] Order this day (100) one hundred bundles of copper braziers, at £53.5 *per ton*, f. o. b., Bombay.

(Signed) F. D. PANDAY & Co.,
Agents."

On the 26th October, 1885, the defendants received from the plaintiffs the following notice of the arrival of the goods in Bombay :—

"Bombay, 26th October, 1885.

"To DOOLUBRAM SAKULCHAND, Esq.

"Dear Sir,—We beg to inform you of the arrival of the S. S. *Merton Hall*, with 100 packages of goods sold to you as *per agreement No. 213*, and have, therefore, to request payment of the cash for these goods, according to the term of the agreement.

"Our friends are requested to note that, in the event of goods invoiced in English price, the amount will be converted in Indian currency bearing interest at 9 *per cent. per annum*, at the rate of exchange ruling on the second mail day after the arrival of the steamer.

"100 bundles of copper sheets.

Yours truly,
(Signed) F. D. PANDAY Co.,
Agents."

It appeared, however, that the plaintiffs' agents in Manchester had not executed the defendants' order, and had not sent them any goods to Bombay. The plaintiffs had accordingly negotiated with one Naga Ducha to take over from him a September shipment of copper by the S. S. *Merton Hall*, answering to the defendants' order; and believing they would thus be able to supply the required goods to the defendants, they wrote the above letter. The plaintiffs' negotiation, however, with Naga Ducha fell through, and they were unable to get the goods from the *Merton Hall*. The defendants on the 30th October, 1885, through their attorney wrote

the following letter, stating that they considered the contract to be at an end:—

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[55] " TO THE UNITED MERCHANTS' COMPANY, LIMITED.

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"Sirs,—I have been instructed by my client, Mr. Doolubram Sakulchand, that in the month of August last he ordered out, through you, 100 bundles of copper braziers, at £53-5 *per* ton, to be shipped in September. That, by a letter dated the 7th August last, you intimated to him that you had received a telegram from your Manchester friends that the said purchase will be invoiced to him at his limit, subject to confirmation as usual. That no such letter was ever received by him. That by a letter dated the 26th instant you advised him that his goods had arrived by the *S. S. Merton Hall*. That since the receipt of the said letter my client often called upon you for the invoice of the said goods and also tendered you the purchase-money, but you put him off from time to time under various pretexts. My client, therefore, concludes, from your aforesaid conduct, that his goods never came to Bombay, and he instructs me to give you this notice that he no longer considers himself bound by his aforesaid contract.

"Dated this 30th day of October 1885.

Yours truly,
(Signed) KHANDERAY MOROJI,
Solicitor, High Court."

The plaintiffs, however, on the 29th October had succeeded in purchasing a September shipment of goods from one Beg Mahomed, *ex Tuban Head*, corresponding to those ordered by the defendants, and on the 31st October, 1885, they wrote the following letter to the defendants:—

"*Bombay, 31st October, 1885.*

TO KHANDERAY MOROJI, Esq.,
Solicitor, High Court,
Bombay.

"Dear sir,—Your letter addressed to us on behalf of your client, Mr. Doolubram Sakulchand, with reference to the 100 bundles of copper sheets purchased by him as *per* agreement dated 7th August last, was only received by us late yesterday evening. In reply, we beg to inform you that it was a mistake of our clerk to advise the arrival of the goods *per Merton Hall*.

[56] "Enclosed we beg to hand you invoice of 100 bundles arrived *ex Tuban Head*, weighing lbs. 252,119, as *per* specification attached, amounting to lbs. 1,337-13-10, for which we request payment in terms of the agreement made by your client.

(Signed) F. D. PANDAY & Co.,
Agents."

The price of copper had then fallen, and the defendants having discovered that the plaintiffs had not ordered out these goods, but had purchased them in Bombay, refused to accept them.

On the 3rd November, 1885, the plaintiffs wrote the following letter:—

"*Bombay, 3rd November, 1885.*

" TO KHANDERAY MOROJI, Esq.,
Solicitor, High Court,
Bombay.

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" Dear Sir,—We are in receipt of your letter of yesterday. The real contract, as was perfectly well understood between the parties, was for the sale, by the company which we represent, to your client of the goods in question of September shipment. The reference in the printed form of the agreement signed by your client to the goods being ordered through our company from our Manchester agents was, to the knowledge of the parties, a mere surplusage, and no part of the actual contract, as is evidenced, among other things, by the fact that at your client's desire we signed and handed to him on the spot, and simultaneously with the execution of the contract paper by your client, the usual printed form purporting to be an intimation to the intended purchaser of the receipt of telegraphic advice by us from Manchester of the goods contracted for having been purchased; and this formality, which on any other supposition is not only unnecessary, but absolutely unmeaning, was gone through, as your client wished to have a voucher evidencing the formation of the contract. Under the circumstances of the case we were only bound, and have already repeatedly offered, to deliver to your client goods of the kind stipulated for, and of September shipment; but your client, who obviously thinks it convenient to ignore the receipt of the said printed form signed by us, wishes to get out of the [57] contract owing to a fall in the market, but we will hold him to the contract, and beg to give him this final notice through you, that, unless the goods offered by us are all taken delivery of, and paid for, within twenty-four hours after the receipt hereof by you, we will resell the same on his account and at his risk, and hold him liable for all the loss and deficiency that may arise thereby.

Yours faithfully,
 (Signed) F.D. PANDAY & Co.,
 Agents."

The plaintiffs subsequently sold the copper braziers, which they had offered to the defendants, by public auction; and having realized considerably less than the contract price they brought this suit in the Small Cause Court against the defendants for the balance, and obtained a verdict for Rs. 2,000 and costs.

The case now came on for rehearing before Farran, J.
Lang, for the plaintiffs.
Macpherson and Jardine, for the defendants.

JUDGMENT.

FARRAN, J.—The facts in this case, except in details which appear to me of but little importance, are not really in dispute. The plaintiffs are a company whose business is to receive indents in Bombay, order out goods from Europe to fulfil such indents, and deliver such goods to the indentors in Bombay. The defendants for some time prior to the transaction in question dealt with the plaintiffs' company. On the 7th August, 1885, the defendant signed one of the plaintiffs' usual indent forms, by which he commissioned the plaintiffs to order for their account from Europe, to be shipped as soon as possible by any steamer and subject to certain printed conditions, the following goods:—100 bundles, each weighing about 5 cwts.—equal to 500 cwts.—copper braziers, assorted in a certain manner set out in the indent, at £53-5 per ton, free on board, Bombay harbour. The first condition provided for the reference of any disputes as to quality or condition of the goods to arbitration. The next related to the payment, which was to be in cash for goods,

free on board, Bombay harbour. The latter portion of it, which provides for the payment of shipping [58] charges, &c., by the defendants, must be rejected as inconsistent with the rest of the order. The next is as follows:—"The United Merchants' Company, Limited, or their agents, can draw upon me at.....days' sight at the current rate of exchange for the full invoice amount, and I herewith bind myself to accept such draft on presentation and to pay it at maturity against delivery of the documents relating to such shipments, or, if required, by payment at current rate of exchange of the day by bank bill as usual." The alternative mode of payment is in writing. This fact and the number of the days' sight being left blank shows that it was intended that payment in this case was to be in cash. Then comes—"All risks of the voyage are for my account." Then—"I hereby agree to accept the whole or any part of the order that may be practicable." Then—"In case of the order being transmitted by wire, the United Merchants' Company, Limited, do not hold themselves responsible for any mistake on the part of telegraph officials." Then—"Commission *nil*." Lastly, "Shipment, September next."

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Before accepting such an indent as the above, it is usual for the plaintiffs' company to telegraph to their agents in England to ascertain whether the order can be carried out at the rate proposed. This was not done in the present case, as the defendant did not wish the delay or expense of a telegram, but desired the company either to accept the order at once or refuse it. The company departed from their usual practice, because Carramchand Cullianji, one of the directors, expressed his willingness to take the risk upon himself. The order was, in fact, accepted by the company on his account and at his risk. This, however, did not affect the defendant, or alter his legal position in reference to the company. As far as the defendant was concerned, he commissioned the plaintiffs to order out for him 500 cwts. copper braziers, September shipment, and agreed to accept the whole 500 cwts. and pay for them in cash at the rate of £53-5 per ton, free on board, Bombay harbour, on their arrival.

On the same day the plaintiffs gave or sent to the defendant a reply, in their usual form, to his order, partly lithographed and partly written, as follows:—"Bombay, 7th August, 1885. The [59] United Merchants' Company, Limited, to Doolubram Sakulchund, Esq. We have the pleasure to inform you that we have received a telegram from our Manchester friends, and so far as regards the cyphers therein used, we learn that they advise the following purchases, which will be invoiced to you at your limit, subject to confirmation by letter as usual:—Order this day 100 bundles of copper braziers at £53-5 per ton, free on board, Bombay." This reply, from the word "order" to the end, is written. That word and the portion preceding it are lithographed. As a fact, however, no telegram had been received from the plaintiffs' Manchester friends, and the plaintiffs had not learnt that they had advised the purchases referred to in their reply. This was probably known to the defendant as well as to the plaintiffs. It was suggested that the telegram referred to in the reply might relate to a prior offer which the plaintiffs had received by telegram about a fortnight before, and which they had not accepted, but the suggestion appears to me to be without foundation. The acceptance of the defendant's offer was really based on Carramchand's view of the probabilities of the copper market.

As I have stated above, the usual course of the plaintiffs' sending a telegram and waiting for a reply before accepting the defendant's order

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was not adhered to, as Carramchand took the risk as well as the possible profit of the order upon himself. That circumstance, it seems to me, cannot alter the legal effect of the plaintiffs' reply in the same way, as it did not affect the legal results flowing from the defendant's order. The plaintiffs are in the same position exactly as if the usual course had been pursued. The defendant's order, as summarised above, is accepted by the plaintiffs thus:—The goods you have ordered will be invoiced to you at your limit, namely 100 bundles of copper braziers at £53-5 *per ton*, free on board, Bombay. The reasons which induced the plaintiffs to accept the order seem to me to be quite immaterial, whether it was the receipt of a telegram assuring them that the order could be carried out at the defendant's limit, or the fact that Carramchand's undertaking placed them in the same safe position as if such a telegram had been received. The plaintiffs, in consideration of the defendant's order and the undertakings contained in it, promise the defendant that the goods [60] ordered by him will be invoiced to him at the agreed rate. That acceptance or promise is in the same lithographed terms as the plaintiffs use in accepting and promising to fulfil all similar orders, and is, it seems to me, attended with the same legal consequences. I find nothing in the oral evidence which prevents me from giving effect to the contract between the plaintiffs and the defendant evidenced by the written agreement. The evidence of the plaintiffs' agent is that Carramchand directed him to draw out the usual form.

On the 11th August, 1885, the plaintiffs wrote to their Manchester agents to send them the goods which the plaintiffs had ordered at £53-5 *per ton*. This indent the plaintiffs cancelled by telegram early in September, reducing their limit by 5s. *per ton*. The agents were unable to carry out the order at the reduced limit, and it remained unexecuted. On the 26th October, the plaintiffs through Carramchand had negotiated with one Naga Ducha to take over from him a September shipment of copper by the *Merton Hall*, answering to the defendant's order, and for the purpose of fulfilling it; so they wrote on that day to the defendant as follows:—"We beg to inform you of the arrival of the S.S. *Merton Hall* with 100 packages of goods sold to you as *per* agreement No. 213, and have, therefore, to request payment of the cash for those goods, according to the terms of the agreement." The negotiation with Naga Ducha fell through, and the defendant, therefore, could not get the goods from the *Merion Hall*. He, on the 30th October, wrote through his solicitors to the plaintiffs, stating that he believed the goods never came to Bombay, and he considered the contract to be at an end. The plaintiffs on the 29th October had succeeded in purchasing, through Carramchand, a September shipment of goods from Beg Mahomed, corresponding to those ordered by the defendant. They then on the 31st October wrote to the defendant, informing him that it was a mistake of their clerk to advise the arrival of the defendant's goods *per Merton Hall*, and handing the defendant invoice of 100 bundles arrived *ex Tuban Head*. The defendant found out that the plaintiffs had not ordered out those goods, but purchased them in Bombay, and he repudiated them on that ground. The price of copper had then fallen. The plaintiffs [61] sold the goods by auction, and now sue for the difference in price between that realised and that which the defendant had contracted to pay.

The question is, whether, under the circumstances, they are entitled to recover it. That question is one of general importance. It amounts to this. When a firm, like the plaintiffs, accept a commission to order out

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goods from Europe at a specified rate, and undertake that the goods will be invoiced to the indenter at that rate, do they fulfil their contract by offering to their indenter goods which they have procured in Bombay from another house answering the description of the goods ordered through them? It appears to me that the custom of the trade, if there be one, ought properly to be invited to solve that question (see *Johnson v. Raylton* (1)). No evidence of any custom has, however, been adduced, and I must, therefore, decide it upon principle. It is admitted by the plaintiffs' witnesses that it was intended, at the time when the defendant gave his order, that the goods should be ordered out from England by the plaintiffs, and that this was the invariable course of business of the plaintiffs' firm, the present case forming the only instance to the contrary. The plaintiffs usually have the goods they order out invoiced to themselves, and when they receive such invoice, they re-invoice them to the persons for whom they order out the goods. In the case of copper braziers the goods do not bear any distinctive marks, showing that they have been imported through the plaintiffs. The only mark on them is the shipping mark on the outer sheet of each bundle, which varies according to the pleasure of the agent who ships the goods. There does not appear to be any particular advantage in having the copper selected by the plaintiffs' agents. In fact, in the case of copper braziers, it does not appear to make any difference to the indenter whether they are imported by the firm from or through whom he obtains the goods or not. In the case of goods of other descriptions, there may be, and no doubt is, an advantage, real or supposed, in ordering them out by a particular firm.

The construction of the contract cannot, however, vary according to the goods to which it is applied. The importance of the [62] stipulation is really immaterial. The sole question is, is it a term of the contract that the plaintiffs shall order out the goods? Can this be really doubted? The proposal is that the plaintiffs shall order out the goods to be paid for at a certain rate. The acceptance is an undertaking that the goods shall be invoiced to the defendant at that rate. That, in my opinion, means that the goods shall be ordered out and invoiced to the defendant at that rate; otherwise it would be an acceptance of it, with a modification which, until the modification was itself assented to, would not constitute a contract. The case of *Johnson v. Raylton* (1) is important as showing that if it can be gathered expressly or impliedly from an order for goods and its acceptance that the goods are to be of the manufacture of the person accepting the order, the latter will not fulfil his contract by supplying goods in all respects answering to the description contained in the order if they are not of his own manufacture. Upon that point there was no difference of opinion between Lord Bramwell and his colleagues. Their difference of opinion consisted in this. Was a stipulation that the goods were to be manufactured by the plaintiff to be implied into the contract without evidence of custom? Lords Justices Cotton and Brett thought that it was. Lord Bramwell thought not. To use the words of Brett, L. J., in that case—"It seems to me to be more consonant with the ordinary simplicity of fair mercantile business, and more in accordance with legal principles, to say" that an importing firm which accepts a commission to order out goods at a fixed rate, and undertakes that they shall be invoiced to the person giving the order at that rate, does not fulfil his contract by obtaining goods answering to the terms of the order from another firm in

(1) L.R..7 Q.B. Div. 438 (454).

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Bombay and tendering them to the person giving the order than (in the absence of evidence of usage) to say the contrary that this is so through the practical effect of an order like the present, when accepted, is to constitute the relation of vendor and purchaser between the parties. As to the legal relation which such a contract creates, see *Ireland v. Livingston* (1). I have already pointed out that it was the admitted intention of the parties that the defendant's order [63] should be carried out in England in the usual manner. The terms of the plaintiffs' letter (written under the instructions of Carramchand) offering the defendant goods *ex Merton Hall* and *ex Tuban Head* in fulfilment of his order, indicate, I think, an intention on the plaintiffs' part to conceal from the defendant the fact that they had not themselves ordered out the goods. Their present contention is for the first time set up in their letter of the 3rd November, 1885.

It is to be regretted that the law in this case does not allow of an appeal from my decision, as it involves a question of importance. I dismiss the suit with costs, including costs of application for new hearing.

Attorneys for the plaintiffs: Messrs. *Bamanji and Hormasji*.

Attorney for the defendant: *Mr. Khanderav Moroji*.

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APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

In re PREMCHAND DOWLATRAM.* [9th February, 1887.]

Civil Procedure Code (Act XIV of 1882), s. 174—Production of document—Court's jurisdiction to punish a witness for refusing to produce a document—Procedure—Indian Penal Code (Act XLV of 1860), s. 175—Criminal Procedure Code (Act X of 1882), s. 480.

A witness was summoned to produce a document in Court in connection with a certain suit. He attended the Court, but did not produce the document, stating on oath that it was not in his possession. But this statement was disbelieved, and the Court fined him Rs. 75, under s. 174 of the Code of Civil Procedure (Act XIV of 1882).

Held, that the fine was illegally levied. The jurisdiction of the Court to punish under s. 174 of the Civil Procedure Code exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court.

The case of a witness who having a document will not produce it, is provided for by s. 175 of the Indian Penal Code (Act XLV of 1860), and s. 480 of the Code of Criminal Procedure (Act X of 1882).

Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

[64] THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant, Premchand Dowlatram, was summoned to produce certain books of account in suit No. 1382 of 1895 pending in the Small Cause Court at Ahmedabad. He attended the Court in obedience to the summons, but did not produce the books required, stating on oath, as an excuse, that they were in the possession of his partner, who refused to

* Application under Extraordinary Jurisdiction No. 62 of 1886.

(1) 5 H.L. 395.