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invested in the bank were also her *stridhan*. The property left by Rajkore falls within one of the six classes of *stridhan*: see Mayne's Hindu Law, para. 288. This is her separate acquisition, and comes within the term "any other acquisition" under the Mayukha, pl. 2 and 3. The daughter's daughters are, therefore, the persons to succeed to it. The defendant Bhagwantrai has paid Rajkore's funeral expenses, and has also paid the debts of the plaintiff's husband, and is entitled to be recouped if the plaintiff is held entitled to the house and the money.

JUDGMENT.

SARGENT, C.J.—It has been found by the Assistant Judge that the house in question was given to Rajkore by a stranger to the family; and that the moneys invested in the Government Savings' Bank were earned by Rajkore herself. The law of inheritance as laid down in the Mayukha, (which would determine the course of inheritance in this case), prescribes that the devolution of such property should be as if Rajkore had been a male; it would, therefore, vest in the plaintiff as the nearest *gotraja sapinda*—*Vithaldas Manickdas v. Jeshubai* (1). It is clear, however, and [507] indeed was not disputed, that it would be contrary to equity and good conscience to allow her to recover the property from defendant No. 1 without permitting him to recoup himself out of it as to such moneys as he had expended either on Rajkore's funeral expenses or had paid at her desire to discharge the debts of her son Dhaneshwar. As the Assistant Judge has not recorded a finding on the fourth and fifth points raised by him, we must send down the case for a finding on the following issues:—

1. Did defendant No. 1 pay Rs. 269-6-6, or any and what sum for Rajkore's funeral expenses?
2. Did defendant No. 1 pay sums amounting with interest to Rs. 1,054, or any and what sum, in satisfaction of Dhaneshwar's creditors?
3. Was such last payment made at Rajkore's desire?

Findings to be sent to this Court within two months of the date of this order.

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Before Mr. Justice Scott.

KESSOWJI DAMODAR JAIRAM (*Plaintiff*) v. KHMJI JAIRAM (*Defendant*).^{*} [16th and 17th April, 1888.]

Jurisdiction—High Court of Bombay, jurisdiction of—Letters Patent, 1865, cl. 12—Persons not British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—Cause of action arising wholly outside the jurisdiction.

In cl. 12 of the Letters Patent, 1865, of the Bombay High Court, the words "if the defendant...shall...carry on business" must be interpreted to mean "if the defendant being a British subject...shall...carry on business," and where the liability of a foreigner is in question, the "carrying on business" must include actual residence.

^{*} Suit No. 299 of 1886.

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The scope and object of cl. 12 of the Letters Patent was to define the jurisdiction of the Municipal Courts of India. It must, therefore, be read by the light of the general principles of municipal jurisdiction, save so far as it expressly derogates from those general principles. All legislation is *prima facie*, territorial. It binds all subjects of the Crown, but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign.

[508] Every statute is to be interpreted and applied, so far as its language admits, so as not to be inconsistent with the comity of nations or with the established rules of international law.

A person not a British subject resident out of the jurisdiction, but carrying on a branch business in Bombay through an agent, is not liable to be sued in the High Court of Bombay where the cause of action has arisen wholly outside the jurisdiction.

Semle—The High Court has jurisdiction in such cases where the defendant is a British subject: see *Chinnammal v. Tulukannammal* (1).

[R., 20 B. 133 (143); 25 B. 529 (531); 11 M.L.J. 91 (105).]

THE plaintiff in this suit was a resident in Bombay. The defendant, who was the plaintiff's paternal uncle, resided at Cutch, but carried on business in Bombay, under the name of Jairam Sewji, by means of his *munim*. Both parties were subjects of the Rao of Cutch.

The plaintiff stated that Jairam Sewji, his grandfather, (the father of the defendant), had established and carried on an extensive business at Bombay, Cutch, and Zanzibar, under the name of Jairam Sewji. He died in 1866, leaving two sons, *viz.*, Damodar Jairam, (father of the plaintiff), and the defendant Khimji Jairam, who was then only ten years old; and after his death the business was carried on by his eldest son Damodar. In the year 1871 Damodar died, leaving the plaintiff, his only son, who was then three years old. From that time until the year 1876 the business was carried on by *munims*; but in 1876 the defendant Khimji Jairam, who had some time previously attained his majority, took charge of the business at Zanzibar, and at the same time negotiations were begun with a view to winding up the business at Bombay and Cutch. In the negotiations, Ladvahu, the mother of the plaintiff, acted for him, he being then a minor. An arrangement was ultimately made between the parties, and the assets of the firm at Bombay and Cutch were duly divided in 1878.

It was intended and desired by the defendant and Ladvahu, on the plaintiff's behalf, to wind up and divide between the plaintiff and the defendant the assets of the business at Zanzibar also, and on the 19th May, 1881, terms of arrangement were agreed on by the defendant and Ladvahu, the material part of which [509] was that a lump sum of 2,25,000 dollars was to be paid to the plaintiff as his share, and that in consideration thereof he should release all the claims to the said Zanzibar business and the assets thereof, and give over the same to the defendant absolutely. This money was duly paid to Ladvahu, and the release was executed.

On the 3rd September, 1885, the plaintiff attained majority, and after making enquiries satisfied himself that the arrangement made by his mother on his behalf was disadvantageous to him, and that a very much larger sum ought to have been paid to him as his share in the Zanzibar business. He, therefore, filed this suit, praying that the above arrangement and release should be set aside; that the accounts should be taken, &c.

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The defendant filed a written statement, of which the only portion material to this report is the following:—"The defendant says that the property, the subject-matter of this suit, is situate in the foreign territory of Zanzibar; that the defendant and the plaintiff are subjects of His Highness the Rao of Cutch; and that the release, which the plaintiff seeks to set aside, was executed at Wadhwan, in accordance with an award made in Cutch, and the defendant does not reside in Bombay, nor is his principal place of business there. He submits that under these circumstances leave to file this suit under cl. 12 of the Letters Patent of this Honourable Court was improperly granted to the plaintiff, and that this Honourable Court has no jurisdiction to hear and determine this suit."

The suit now came on for the determination of the preliminary issue raised upon the above clause of the written statement, *viz.*, whether this Court had jurisdiction to try the suit.

It was admitted by the plaintiff, that the defendant was a subject of the Rao of Cutch, and that no part of the cause of action arose in Bombay.

It was admitted by the defendant that he carried on business in Bombay through agents, he himself being a resident at Cutch. The defendant also admitted that he possessed some landed property within the jurisdiction of the Court.

[510] *Lang* and *Jardine*, appeared for the plaintiff.

Latham (Advocate-General), *Farran* and *Inverarity*, appeared for the defendant.

Latham.—The question is, whether this Court has jurisdiction over foreigners residing abroad, but carrying on business in Bombay, when no part of the cause of action has arisen in Bombay. The defendant is not a British subject, but a subject of the Rao of Cutch. He does not reside within the jurisdiction, although he has property within its limits; but he carries on business in Bombay by his agents. He does not personally carry on this business. In this case, moreover, the cause of action is not in any way connected with this business, and no part of it has arisen in Bombay. We submit that under these circumstances this Court has no jurisdiction.

We contend that the expression "carry on business" in cl. 12 of the Letters Patent implies a personal attendance to the business carried on. That was the carrying on of business which was to be sufficient under the Letters Patent to give jurisdiction. We admit that this point seems to have been decided adversely to us by Sargent, J., in *Harivallabhdas Kallindas v. Utamchand Manikchand* (1); see also *Muthaya Chetti v. Allan* (2), but the question does not seem to have been discussed. However, these decisions are against us with reference to the meaning of that expression, and we are bound by them, unless reversed by the Court of Appeal.

But we contend that the carrying on of business, which is to give jurisdiction, must be by a defendant who is a British subject or a foreigner resident within British dominions. The words "being a subject or a foreign resident" must be read into cl. 12 after the word defendant. This must be the intention of the clause; except by express words, no Court could be held to have jurisdiction over foreigners resident abroad. Such a jurisdiction cannot be implied. This Court has no such personal

jurisdiction. Of course, if by express word such a jurisdiction was given, the Court would be bound to exercise it, but that would be a breach [511] of international law, and a judgment in exercise of such jurisdiction would be a nullity outside British India : see Maxwell on Statutes, (2nd ed.), ch. 6.

In construing statutes there is always a presumption that they do not extend the jurisdiction beyond the dominion. There are, no doubt, exceptions, but they apply only to British subjects—Maxwell, (2nd ed.), ch. 6 ; s. 1, p. 168. Again, there is always a presumption against any violation of international law being intended—Maxwell, pp. 173—176. In *Niboyet v. Niboyet* (1), James, L. J., says : “ Of course it is always to be understood and implied that the legislature of a country is not intending to deal with persons or matters over which, according to the comity of nations, the jurisdiction properly belongs to some other sovereign or state.” The decision there was that the English Divorce Court had jurisdiction over a foreigner resident, though not domiciled. We do not deny, that if the defendant in this case resided in Bombay, this Court would have jurisdiction : see also *Firebrace v. Firebrace* (2); see Maxwell on Statutes, ch. VI, s. 3, p. 181 (2nd ed.), as to the construction of statutes conferring rights which affect foreigners. *Jefferys v. Boosey* (3) decides that a statute cannot confer any right or privilege on a foreigner resident abroad without express words. *A fortiori* it would seem that a burden or liability cannot be imposed without express words. Lord Cranworth (p. 954) was of opinion that the word “ author ” in an English statute must be held to refer only to British authors : see also Lord St. Leonards’ opinion (p. 980). So we contend that the word “ defendant ” in cl. 12 means British defendant. A foreigner, no doubt, may sue in our Courts, but in doing so he submits to the *lex fori* and must conform to the procedure—*Lopez v. Burslem* (4) ; *Cope v. Doherty* (5).

A strict construction is applied to acts creating or delegating jurisdiction—Maxwell on Statutes, (2nd ed.), p. 357. The Letters Patent come within that class : see *Cookney v. Anderson* (6) ; see [512] also Foote’s Private International Jurisprudence, p. 250 *et seq.* There must be a cause of action arising within the jurisdiction ; otherwise a plaintiff must go to the Court of the defendant—*Matthæi v. Galitzin* (7) ; *Davis v. Park* (8).

The English Judicature Acts do not give the English Courts the wide jurisdiction which is claimed for this Court in the present case. A suit such as this could not be tried in the English Courts : see Supreme Court Rules, Order XI. That order is exhaustive, and all cases must fall within some class mentioned there—*Eager v. Johnstone* (9). The Courts at home have a discretion—*Societe Generale de Paris v. Dreyfus* (10) ; but there is no discretion given to the Courts in India ; therefore the clause must be construed strictly as to foreigners and the power of summoning them. In *Whaley v. Busfield* (11) the power to serve a summons was held not to extend to an originating summons : see also *In re Anglo-African Steam Ship Company* (12), and in commerical matters *The Queen v. Keyn* (13).

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(1) L. R. 4 Prob. Div. 1 (7).

(3) 4 H.L.C. 815, (895).

(5) 4 K. & J. 369=2 De. G. & J. 614.

(6) 1 De. G. J. & S. 365.

(9) 22 Ch. Div. 86.

(12) 32 Ch. Div. 348.

(2) L.R. 4 Prob. Div. 63.

(4) 4 Moore’s P.C. 300 (305).

(8) L.R. 8 Ch. 862 (note).

(7) L.R. 18 Eq. 340.

(10) 29 Ch. Div. 239.

(13) 2 Ex. Div. 63.

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If this Court has a personal jurisdiction over non-resident foreigners by reason merely of their carrying on a business here through agents, it is bound to exercise it so that a suit may be brought here against any such person, although he may reside in New York or Paris and although the whole cause of action has arisen there. This would be a most abnormal personal jurisdiction—*Reg v. Lewis* (1); Story's Conflict of Laws, s. 539 *et seq.* It is here pointed out that attachment of property does not give jurisdiction over the person. *A fortiori* the mere existence of property within the jurisdiction does not.

The case of *Ex parte Blain* (2) is very analogous to the present case. There the Court held it had no jurisdiction over a foreigner, although the act of bankruptcy was committed in England. We submit, on the authority of the above cases, that this Court has no jurisdiction.

[513] *Jardine*.—We must take cl. 12 of the Letters Patent as we find it. This Court cannot insert words to limit the meaning of the expression actually used. The only case directly in point is in our favour, *Harivallabhdas Kallikandā v. Utamchand Manikchand* (3). That was a decision upon this very clause, while all the cases that have been cited are decisions on English statutes. It is possible that the Legislature may have intended to confer on the Courts here a different measure of jurisdiction from that exercised in England. The circumstances here are completely different. The foreign countries present to the mind of the English Legislature in framing their statutes and of the English Judges in construing them are civilized countries such as France, Germany, &c., all of which possess systems of law and elaborate legal machinery. An Englishman can sue a Frenchman in France and get judgment there, and then sue in England on the foreign judgment, and thus make the defendant's property in England available to satisfy his claim. But the situation in India is entirely different. We are surrounded by Native States, with rude systems of law and imperfect judicatures, the decrees of which English Courts cannot recognize or enforce—*Bhavanishankar Shevakram v. Pursadri Kalidas*(4) and *Himmatlal v. Shivajirav*(5). If we get a decree in this case in Cutch against the defendant we could not execute it against his property in Bombay. The presidency towns in India are full of foreigners carrying on business as agents for the principals who reside in these Native States. How are these principals to be reached if this Court has no jurisdiction? This was the question for the Legislature. Obviously, the principle of the "comity of nations" cannot apply to such conditions and no arguments or authorities based on international law are in point. The Letters Patent in view of these circumstances recognized constructive residence as giving jurisdiction. The jurisdiction is expressly given by the clause over those who "carry on business," and this Court cannot take it away. Our case is that any foreigner carrying on business in Bombay is an inhabitant of Bombay and is within the jurisdiction according to cl. 12 [514] of the Letters Patent—*In re Hurruck Chund Golicha* (6). Counsel commented upon the English authorities cited by the other side, and contended that they were not applicable to India.

JUDGMENT.

SCOTT, J.—This is a preliminary issue of great importance. It raises the question whether subjects of the Native States of India resident

(1) Dears & Bell C.C. 182.

(2) 12 Ch. Div. 522.

(3) 8 B.H.C.R. O.C.J. 236.

(4) 6 B. 292.

(5) 8 B. 593.

(6) 5 C. 605.

out of the jurisdiction but with a branch business in Bombay, are liable to be sued in this High Court when the cause of action arose entirely out of the jurisdiction. The subjects of the Native States of India are foreigners in the sense required here, just as much as say the natives of France. They have their own Courts, their own jurisprudence, their own procedure and the criminal and civil jurisdiction of the Courts of British India is by treaty excluded from them. A decision in favour of jurisdiction might have curious consequences. If, for instance, a native of France entered into a contract with a French architect for building a house in Paris on certain terms and conditions, the tribunals of this city would be competent to hear a suit brought by one of those parties against the other on a breach of the contract, provided the defendant carried on business through an agent in Bombay. Or, to come nearer home, subjects of the Nizam, resident in the Nizam's territory, would be able to sue each other in this High Court for breaches of contracts made, and to be carried out in that territory, provided that the defendant carried on a branch business by means of an agent in Bombay. Still, my duty is only to administer the law as it stands—"jus dare non jus dicere."

The facts of the particular case are as follows:—The parties are natives of Cutch—not British subjects, but subjects of the Rao of Cutch. The plaintiff, lately come of age, asks for a release of the 19th May, 1881, to be set aside, which was made during his minority concerning a family partnership carried on in Zanzibar, and concerning certain family property in Cutch. The release was passed at Wadhwan. Thus the contract, which is the cause of action, was made and the subject-matter of the suit is situated entirely outside the jurisdiction of this Court. It is admitted, however, that the defendant possesses [515] some property in Bombay, and carries on a branch business through an agent here. But the cause of action is wholly independent of that business.

It is important to note that since the Order in Council relating to Zanzibar passed in 1884, suits between British protected subjects then (such as subjects of Cutch) are heard before the Consular Court there, with an appeal to the appellate side of this High Court. Thus the parties have a *forum* in Zanzibar. They have another *forum* in Cutch, and it is worth noting that a recent Act of the Government of India (Act VII of 1888) gives to judgments of Native States of India some of the force, though not all the force, accorded to foreign judgments generally by the Code of Civil Procedure.

The question, of course, depends entirely on the terms of s. 12 of the Letters Patent, by which the original civil jurisdiction of this High Court is defined. The earlier portion of the section does not require consideration, as it is admitted that the cause of action arose wholly without the jurisdiction, and that the defendant did not dwell or personally carry on business for gain within the limits. Therefore, the precise words of the Letters Patent requiring interpretation are "the said High Courts shall be empowered to receive, try and determine suits * * * if the defendant at the time of the commencement of the suit, shall * * * carry on business * * * within such limits." What, then, is the meaning of the term 'defendant'? What is the meaning of the term 'carry on business'? I have had the advantage of most able arguments from the Advocate-General and Mr. Farran on the one side and from Mr. Jardine on the other, and they furnished me with many authorities that bear upon the point.

The defendant's argument against the jurisdiction is twofold: 1st, that the carrying on of business must be a personal carrying on, and not a carrying

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on through an agent; and 2ndly, that the 'defendant' mentioned in the section must be held to mean British subject and not a foreign 'defendant'. As regards the first objection, I am bound by authority. As a Judge of the first instance I must follow the decision of various High Courts of India, and [516] hold that 'a carrying on of business through an agent' satisfies the section--*Chinnammal v. Tulukannatmmal* (1); *Muthaya Chetti v. Allan* (2). The second point is one of much greater difficulty. Mr. Jardine relied upon a *dictum* of the present Chief Justice in *Harivallabhdas Kallindas v. Utamchand Manikchand* (3), that an inhabitant of Baroda was constructively an inhabitant of Bombay, because he carried on banking business here by a *munim*, and as such was subject to the orders and process of the High Court in the exercise of its equity jurisdiction. This *dictum* is quoted in the head-note of the case as a decision. But a careful reading of the facts of the case and the judgment shows that it was only a *dictum*. The application before the Court was to order Gopalrav Myral inhabitant of Baroda, to deliver up certain jewels in his possession to certain sequestrators named by the Court. The decision of the Judge was that "such an order, although not in terms, would be virtually an interference with the rights of a sovereign independent prince the Gaikwad * * * and would provoke a most inconvenient conflict of authority. * * * * It was incumbent on the plaintiff to present such a case to the Court as would leave no doubt either as to jurisdiction or even conflict of authority. * * * * Under the present circumstances I must discharge the rule."

No doubt the learned Judge did say in an earlier portion of his judgment (p. 240) "it was admitted that Gopalrao Myral resides at Baroda, but that he carries on the business of a banker both here and at Baroda—at the former place by means of his *munim*, Vishnu Trimbak, under the name of Gopalrav Myral. There can be no doubt, therefore, that he would be liable to be made a defendant to a suit in this Court under s. 12 of the Letters Patent of the High Court." This strong expression of opinion from such a distinguished legal authority as that of the present Chief Justice would ordinarily lead me at once to follow him. But it is quite clear that the important point which has, in the present case, been so fully and ably argued before me, *viz.*, the point that s. 12 cannot have [517] been intended to include foreigners in cases where they are themselves beyond the jurisdiction, and the cause of action arose wholly outside it, was not discussed. As, therefore, the *dictum* cited was not strictly necessary to the decision of the particular point at issue then before the Court, and as a new line of argument has now been developed before me, which was not presented in the previous case, and might have altered the learned Judge's opinion, I think I am at liberty to consider the question as of first impression and for the first time presented for judicial decision.

The cases in the Indian Reports on this question are few, and I can find none which interprets s. 12 of the Letters Patent on this point of jurisdiction over non-resident foreigners in suits where the cause of action arose wholly outside the territorial limits.

The following passage from a carefully considered judgment of Bayley, J. in *Khimji Chaturbhuj v. Sir Charles Forbes, Bart.* (4), seems to me to have a material bearing upon the point:—

"The plaintiffs' contention as to the proper construction to be placed upon cl. 12 of the Letters Patent certainly derives no countenance

(1) 3 M.H.C.R. 146.

(2) 4 M. 209.

(3) 8 B.H.C.R. O.C.J. 236 (243).

(4) 8 B. H. C.R. O. C. J. 102 (113, 114.)

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from the opinion expressed by Her Majesty's Secretary of State for India in the letter dated 14th May 1862 to the Governor General of India in Council accompanying the original Letters Patent of the High Court to be established in Bengal, a letter which was printed in 1862 with the Act of Parliament and the Letters Patent of the High Court of Bombay in the little book containing the Rules of the Bombay High Court. In para. 16 of that letter, Sir Charles Wood said: 'As it is very desirable that every suit should be instituted in the Court of the district in which the property forming the subject of dispute is situated, or in which the cause of action has its origin, or in which the defendant resides or carries on business, the jurisdiction hitherto exercised by the Supreme Court (on the ground of constructive inhabitancy or otherwise) over persons and property beyond the local limits of the Presidency Town, but within the limits of the Presidency or Division [518] subject to the authority of the High Court, has not been vested in the High Court.' And at para. 20 he said: 'As already observed, the effect of cl. 12 will be to confine the ordinary original civil jurisdiction of the High Court within narrower limits than the Civil jurisdiction exercised by the Supreme Court.' This letter, of course, affords no assistance in the interpretation to be put upon cl. 12 of the Letters Patent, and I merely notice it to show that the framer of the Letters Patent of 1862 stated he had no intention of extending, or of even continuing, the old Supreme Court jurisdiction by way of constructive inhabitancy or residence."

The analogous principle, that the Municipal Courts of India have no jurisdiction over foreign criminals in cases where the offence has been committed by a foreigner in a foreign State, such as the Native State of Kolhapur, has been distinctly settled—*Reg v. Pirtai* (1). But for the settlement of this particular question of civil jurisdiction it is necessary to turn to general principles and to English decisions.

The English law is laid down in the Judicature Act Order XI. It must, however, be first stated that the jurisdiction given by the Judicature Act does not correspond exactly to that given by the Letters Patent. The Judicature Act is limited by ss. 1 and 2 of Order XI, where the defendant is out of the jurisdiction, to cases where (a) the whole or part of the subject-matter is within the jurisdiction, or (b) where the contract in question was made or broken within the jurisdiction, or (c) where the act or thing in dispute was done or is situate within the jurisdiction. The words "or if the defendant at the time of the commencement of the suit shall carry on business" do not occur in the Judicature Act, as they do in the Letters Patent. It seems to me clear the suit would not lie in an English Court.

But do the words just cited from the Letters Patent bring it within the jurisdiction of an Indian Court? That depends on whether the word 'defendant' in connection with the carrying on business must necessarily have been confined to British subjects. It certainly could not have been intended to be confined to British [519] subjects so far as the *dwelling* or *personally* working for gain within the jurisdiction is concerned. Foreigners resident within our territory are undoubtedly subject to our jurisdiction. Do foreigners resident outside the jurisdiction, but carrying on trade within it, stand on a different footing? The jurisdiction of this High Court is carefully defined and limited by statute. The Letters Patent were issued in pursuance of powers given by 24 & 25 Vic. c. 104, the Act for establishing High Courts of Judicature in India, and those Courts were to have all

(1) 10 B.H.C.R. 356.

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the jurisdiction in the presidency for which they were respectively established, that Her Majesty should by Letters Patent grant. It is quite clear from this that the Bombay High Court was only invested with jurisdiction in *British India*, saving certain exceptions to be declared by the Governor General. It must also be noted that it was laid down by Green, J., (confirmed in appeal by the present and late Chief Justice), that there is no presumption in favour of jurisdiction in the Courts of India beyond what is expressly conferred by the Charters of constitution (12 Bom. H.C. Rep., 113, at p. 121, affirmed I. L. R., 1 Bom., 23). If we read the Letters Patent by the light of the charter of the Supreme Court, which defined the jurisdiction before the Letters Patent were issued and the High Court created, we find the authority of the Court strictly limited to British subjects and to inhabitants of the Presidency of Bombay. But the Courts which preceded the High Courts had stretched the meaning of the word "inhabitants" so as to cover cases of what was called constructive residence, where defendants carried on trade by means of agents. (See the case in *Morely's Digest*, Vol. II, 66, decided by Sir. F. H. East.) Bayley, J., in the case already cited shows that this doctrine of constructive residence was not intended to have legislative sanction in the High Courts. Moreover, none of those older cases extended that principle, in terms, to residence in Native States, which obviously stand on a different footing as regards the execution of decrees.

Now to return to the present case. The Native States are foreign territory beyond our jurisdiction, and the inhabitants of Native States, such as Cutch, apart from the abovenamed [520] exceptions, are foreigners. Can one native of Cutch, under these circumstances, sue another native of Cutch in this Court, when the cause of action arose and the subject-matter of the suit is wholly outside the limits of the jurisdiction, merely because the defendant has some property, and carries on some business here through an agent? The Court, under such circumstances, would, according to decisions I am bound to follow, have jurisdiction under the Letters Patent, if he were a British subject. Does the fact of the defendant being a foreigner take away that jurisdiction? No doubt the ordinary rule is that the jurisdiction of Municipal Courts is limited and territorial, and does not go beyond those limits within which the compulsory process of the Court will operate to compel obedience to its orders and decrees. This rule is founded on international comity, and in the absence of express words it governs the general words of Acts of Parliament. * * * Maxwell, (*Interpretation of Statutes*, Ch. VI, p. 119) says: "Primarily, the legislation of a country is territorial," and the presumption in the absence of express words is that Acts of Parliament do not operate on the subjects of the enacting State beyond the territorial limits of that State; and *a fortiori* does not operate on foreigners beyond those limits. And again he says: (p. 123) "It is an admitted principle of public law, that ... a nation has no jurisdiction over offences committed by foreigners out of its territory," and every statute must be interpreted as not to be inconsistent with that established rule. But, as the same author points out, if the language of the Act expressly applies to foreigners abroad, the Court must obey and administer it as it stands.

Now does this cl. 12, as judicially interpreted by the Courts of India, bring all persons carrying on trade by an agent within the jurisdiction into the same category as those who dwell or personally work for gain—

two classes over whom there is certainly jurisdiction whatever may be their nationality? Or does it, even when so widely interpreted, still stop short of non-resident foreigners? The scope and object of the clause was, no doubt, to define the jurisdiction of the Municipal Courts of India. It must, therefore, be read by the light of the general principles of municipal jurisdiction, save so far as it expressly [521] derogates from those general principles. I have already stated these general principles, but they are still more completely set out in the following passage from Story's Conflict of Law:—"No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions. Every exertion of authority of this sort beyond this limit is a mere nullity, and incapable of binding such persons or property in any other tribunals (s. 539)." Of course the case is changed if the foreigner defendant is within the jurisdiction. A jurisdiction *in personam* is immediately created, and effect would be given to the Court's decree by a coercion to be exercised within its own jurisdiction—*Penn v. Lord Baltimore* (1). The jurisdiction of the sovereignty over citizens within the territory is complete, and over foreigners whilst resident within the territory is complete (Story, s. 541); and "if the Court had acquired jurisdiction of the person by his being within the State, the Court will compel him, by attachment, to do his duty under his contract or trust." (Kent. Com., Vol. 3, p. 463); see also Westlake Private International Law, C. 5.; and Savigny on Obligations, (ss. 28-29; §§ 371-372; Guthrie's Translation, p. 220.)

The question, then, is narrowed to whether the words "If the defendant carry on trade within the limits", as interpreted by the decisions that it is not necessary he should *personally* carry on trade, must be taken to include non-resident foreigners, who carry on trade here by an agent. None of the Indian decisions have gone so far. They have only decided the matter as regards British subjects. The question remains open as regards foreigners. But can I give the same word 'defendant' in the same sentence a double meaning, *i.e.*, a limited sense as regards jurisdiction over those who carry on trade, and a general sense inclusive of foreigners and British subjects in its application to those who personally work for gain or dwell there? I think, on the whole I can do so. To do otherwise would be contrary to the general presumption, that the Legislature does not intend to exceed its jurisdiction; and it would be a violation of the rule that every statute is to be interpreted and applied so far as its [522] language admits, so as not to be inconsistent with the comity of nations, or with the established rules of private international law. All general terms must be narrowed in construction to avoid any such violation. A careful consideration of *Ex parte Blain* (2), a case strongly relied upon by the Advocate-General and Mr. Farran, shows that the English Courts entirely support this view. That case decided that the general word "debtor" used in the Bankruptcy Act of 1869, *did not apply* to a foreigner resident abroad, even though he was a member of an English firm who had traded and contracted debts in England. But in *Ex parte Crispin* (3) it was decided that the same general word in the same statute did apply to a foreigner domiciled abroad if he commits an act of bankruptcy in England, although he may have left England, before the petition for adjudication was presented. In the circumstances of the case the defendant was held not to come within this principle; but the principle is clearly

(1) 2 Wh. & Tu. L. Ca. 1047. (2) L.R. 12 Ch. Div. 522. (3) 8 Ch. App. 374.

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laid down. Thus the same general word in a statute has been held to apply to foreigners in one set of circumstances and not to apply to them in another. So in the present case the word 'defendant' may include foreigners when they personally work or dwell within the jurisdiction, and yet exclude them when they are non-resident, and an attempt is made to sue them on a cause of action arising elsewhere, simply because they carry on business here through an agent.

The decisions that British subjects can be sued under such circumstances do not militate against the general principles of comity that I have cited, and, therefore, the question of non-resident foreigners may be considered independently.

In *Ex parte Blain* (1) the principles laid down by the Judges who composed the Court are so much in point that I must speak of the case more in detail. The question was whether the English Court of Bankruptcy had jurisdiction to make an adjudication of bankruptcy against a foreigner domiciled and resident abroad. It was held that, although he was a member of an English firm which had traded and contracted debts in [523] England, still the Court had no jurisdiction over a foreigner who had never been in England. The Court of appeal there decided that, *prima facie*, an English statute affects only English subjects or foreigners who come, either permanently or temporarily, within the allegiance of the British Crown. James, L. J., said: (p. 526) "It appears to me that the whole question is governed by the broad, general, universal principle that English legislation, unless the contrary is expressly enacted or so plainly implied as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction. Every foreigner who comes into this country, for however limited a time, is during his residence here within the allegiance of the Sovereign, entitled to the protection of the Sovereign and subject to all the laws of the Sovereign. But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English Legislature could have ever intended to make such a man subject to particular English legislation."

Brett, L. J. said: (p. 528) "It is said that the case is literally within the words of the statute, and so, no doubt, it is. But does it follow that, because a case is literally within the words of a statute of any country, therefore it is within the jurisdiction of the Courts of that country? Certainly not. The governing principle is that all legislation is *prima facie* territorial, that is to say, that the legislation of any country binds its own subjects and the subjects of other countries who for the time being bring themselves within the allegiance of the legislating power."

Cotton, L. J., says: (pp. 531, 532) "Let us see what the case is. We are not dealing with the question which might arise if an English Act of Parliament had expressly said that, as against a Chilian subject, or any other alien who had never been in *England*, the Court should, on certain facts being proved, entertain a petition and make an adjudication. In such a case it might be the duty of the Court, acting in the execution of the English Act of Parliament, whatever the consequences might be, and however

(1) L. R. 12 Ch. Div. 522.

[524] foreign nations might object, to say, this is the English statute, and we must act on it, and the question which you, a foreigner, raise we are bound to disregard. I do not say that would be so, because, if the Act had clearly gone beyond the power of the English Legislature, there might be a question. But that is not so here. All we have to do is to interpret an Act of Parliament which uses a general word, and we have to say how that word is to be limited, when of necessity there must be some limitation. I take it the limitation is this, that all laws of the English Parliament must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them, and also all aliens who come to this country, and who, during the time they are here, do any act which, on a fair interpretation of the statute as regards them, comes within its provisions. * * * *

* * * As regards a British subject, whether he is here or not, he can be made bankrupt if the Act of Parliament has declared that, in the events which have happened, he can be made bankrupt. But, as regards foreigners, there is *prima facie* no right to bind them if they are not here. I think, therefore, that the true interpretation of the general word “debtor” in the *Bankruptcy Act* is, a debtor subject to the English bankruptcy law.”

It may be argued that bankruptcy proceedings are not a fair analogy for ordinary civil proceedings, as an act of bankruptcy must be a personal act and cannot be committed through an agent. But the principles expounded in *Ex parte Blain* (1) go beyond the bankruptcy question, and apply to all questions of jurisdiction where foreigners are concerned. Moreover, the Courts in England lay down rules quite as rigid in every kind of civil dispute. Thus in the case of *Norris v. Chambers* (2) Lord Campbell decided that the Court would not interfere if the subject-matter of litigation was in a foreign country, where there were Courts having the means of deciding upon and enforcing the rights of the parties. Now not only are there Native Civil Courts in Cutch, but by the treaty which the British Government concluded with the Rao of Cutch in 1819, the British civil and criminal jurisdiction was [525] excluded from Cutch, and this treaty remains still in force. It is true that, so far as certain political duties and feudatory obligations are concerned, Cutch must be considered as part of British India, but for the present purpose it is a foreign country regulated by separate laws and by a separate administration of justice. The practical inconvenience of dealing with the case in this Court is obvious. The partnership in question was conducted in Zanzibar, and the immoveables are in Cutch. The expense of the suit will be great, and assuming that the plaintiff obtains a decree, how is it to be enforced? Attachment, sequestration, arrest, and, in short, all the processes of execution have no efficacy outside our jurisdiction, and the only legal mode of enforcement would be to proceed on our decree, in the Cutch Courts, as in the case of a foreign judgment. I have already shown what Courts there are in Zanzibar, the other *forum* open to the parties. There is a decision much to the point in a case (*Matthæi v. Galitzin* (3)) where a Russian subject not resident in England attempted to restrain an English company from paying over to another non-resident Russian subject moneys accruing from a Russian mine. Malins, V. C., said: “It is no part of the business of this Court to settle disputes between foreigners. There must be some cause for

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(1) L.R. 12 Ch Div. 522.

(2) 3 De. G. F. & J. 589.

(3) 18 Eq. 341.

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giving jurisdiction to the tribunals of this country; either the property or the parties must be here, or there must be something to bring the subject-matter within the cognizance of this Court." The case of *Cookney v. Anderson* (1) is also much in point in the principles laid down by Lord Westbury and the Vice-Chancellor. Although the case itself has since been overruled in *Drummond v. Drummond* (2), the general principles were expressly approved.

Now to sum up my decision. To decide that we have jurisdiction would be contrary to international comity and a violation of the principle that "no sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions." *Extra territorium jus decenti impune non paretur*. There is no Indian decision in favour of jurisdiction where the defendant is a non-resident foreigner, [526] and the cause of action arises wholly outside the jurisdiction. The English decisions are all against such a jurisdiction. General principles are against it. If such cases were admitted our decisions might prove a mere nullity, a *brutum fulmen*. *Ex parte Blain* (3) clearly shows that any departure from the ordinary principles of jurisdiction requires the sanction of express legislation, and that mere general words are not sufficient. Just as in that case the word "debtor" was held only to mean a "debtor subject to English bankruptcy law," so in this case I hold that the words "if the defendant * * shall carry on business" in cl. 12 of Letters Patent must be interpreted to mean "if the defendant being a British subject * * * shall * * carry on business:" and that where the liability of a foreigner is in question, the "carrying on" must include actual residence. I must, therefore, decide this preliminary issue in favour of the defendant, with costs.

Attorneys for plaintiff: Messrs. *Craigie, Lynch and Owen*.

Attorneys for defendant: Messrs. *Litte, Smith, Frere, and Nicholson*.

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr.
Justice Scott.

MOTIRAM BHAGUBHAI (*Appellant*) v. THE GORDON MILLS,
LIMITED, IN LIQUIDATION (*Respondent*).
[3rd August, 1888.]

Company—Winding up—Resolution to wind up—Dissentient shareholders—Notice of dissent—Requirements of such notice—Indian Companies Act VI of 1882, s. 204.

The shareholders of the Gordon Mills having passed a resolution for the voluntary winding up of the company, five dissentient shareholders gave notice of their dissent by a letter to the liquidators in the following terms:—

"With reference to the resolutions to wind up the above company voluntarily and which were passed and confirmed on 14th instant, we hereby give you notice under s. 204 of the Indian Companies Act VI of 1882, and require you to purchase the interest held by us in the said company at such price as may be determined either by private arrangement or by arbitration, as we are dissentients from such resolutions."

(1) 31 Beav. 452=1-De G. J. & S. 365.

(2) 37 L.J. Ch. 811.

(3) L.R. 12 Ch. Div. 522.