1893
Nov. 14.

PRIVY COUNCIL.

18 B. 294 (P.C.) = 21 I.A. 13 = 6 Sar. P.C.J. 396.

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## PRIVY COUNCIL.

PRESENT:

*Lords Hobhouse, Macnaghten, and Morris, and Sir R. Couch.*

*[On appeal from the High Court at Bombay.]*

GOSWAMI SHRI 108 SHRI GIRDHARIJI MAHARAJ, (*Appellant*) *Plaintiff v.* SHRI GOVARDHANLALJI GIRDHARIJI, (*Respondent*) *Defendant.** [14th November, 1893.]

*Jurisdiction—Carrying on business—"Dwell"—Letters Patent*, 1865, *cl.* 12.

The expression "carry on business" in cl. 12 of the Letters Patent, 1865, is intended to relate to business in which a man may contract debts, and ought to be liable to be sued by persons having business transactions with him.

The defendant, who was an Acharya of the Vaishnav community and was head of their institution at Nathdwara in Udepur, where he usually resided, was, when this suit was brought, in Bombay for a time. He had in the latter place a treasurer and other servants employed in an establishment for the collection and entry of gifts made by devotees; and there, also, donations, made in like establishments elsewhere, were received for transmission to Nathdwara. The defendant, also, while in Bombay accepted offerings on ceremonial visits made, or received, by him personally; but no bargain for the amount was made beforehand.

*Held*, that in the above transactions there was no "carrying on business" within cl. 12 of the Letters Patent, 1865.

[295] APPEAL from a decree (24th July, 1891) of the High Court (*see supra* p. 290) affirming a decree (20th June, 1890) made by that Court in its ordinary original jurisdiction (1).

The suit (3rd May, 1889) out of which this appeal arose, was for discovery, by the defendant, of articles and sums of money, in addition to those specified in a schedule to the plaint, and claimed by the plaintiff as owner; and in default, for Rs. 31,45,171, with a further sum for interest.

The question now raised was whether the Court below had rightly construed cl. 12 of the Letters Patent of 1865, in deciding that the defendant was not subject to the local jurisdiction. There was no dispute as to the facts, on this appeal.

The plaintiff (now appellant) was, until the year 1876, Tikait Maharaj (religious head) of the Vaishnav shrine of Shri Nathji at Nathdwara in Udepur in Rajputana. In that year he was deprived of the office, and expelled from the Rana's territory. His son, the present defendant, was installed in his place. In February, 1889, the defendant, who resided at Nathdwara, left that place, and visited temples and shrines in Gujarat, Kathiawar and elsewhere. He came to Bombay on the 2nd April, 1889, intending to make a short stay there. On the 3rd May following, this suit was commenced against him by his father. The defendant remained in Bombay till the 11th August, 1889, detained by domestic occurrences.

The plaintiff alleged that, at the time of his compulsory departure from Udepur, he had private treasure at Nathdwara amounting to the sum claimed in this suit. This property he had, as he alleged, then and there entrusted to the care of his son, the defendant, with instructions to forward it to him. These instructions had not been carried out.

In his defence, the son denied that any such private treasure had been entrusted to him; denied that he had written letters acknowledging this trust; and denied being subject to the local jurisdiction.

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On the last issue only, the suit was heard by Farran, J., in the original jurisdiction (1). The Judge dismissed the suit, holding [296] that jurisdiction over the defendant had not been made out with reference to cl. 12 of the Letters Patent of 1865, which is as follows :—

"And we do further ordain that the said High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try, and determine suits of every description, if in the case of suits for land or other immoveable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen either wholly, or in case the leave of the Court shall have been first obtained, in part within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, in which the debt or damage or value of the property sued for does not exceed one hundred rupees."

At the hearing of the evidence given as to the kind of business said to have been carried on by the defendant in Bombay was, generally, to the following effect :—That the defendant had in Bombay an establishment, called by the witnesses a *pedhi*, in which a *chaudhari* or treasurer, a *munim*, and *mehtas*, and servants, were regularly employed. Offerings made to Shri Nathji by devotees were paid into this *pedhi*, and other offerings to shrines at Nathdwara, of which the defendant claimed to be the head, and offerings to the defendant, personally, in that character. There were similar establishments in other places over the Presidency, and the offerings collected in them were transmitted to the Bombay *pedhi*, and dealt with there. The moneys from that *pedhi* were sent to Nathdwara, sometimes by *hundis* drawn in that place on the Bombay *pedhi*, by which the *hundis* were honoured and paid ; and were sent, sometimes, by the purchase of articles for the defendant's use, which were despatched to Nathdwara. The balances, not immediately wanted, were deposited with soukars, who allowed interest on the sums from time to time in their hands. The sums coming into the *pedhi* at Bombay, from these sources, for transmission to Nathdwara were considerable ; and might be roughly estimated at Rs 2 lakhs per annum.

The Judge did not consider that any of the above transactions brought the defendant within cl. 12, on the ground of his carrying on business in Bombay. The judgment, which also dealt [297] with other grounds, on which it had been alleged for the plaintiff that the defendant came within the clause, is reported at length at p. 543 of I. L. R., 14 Bom.

On appeal, the appellate High Court (Sargent, C. J., and Telang, J.) affirmed the decision of the first Court (see *supra*, p. 292).

The plaintiff appealed to the Privy Council.

Mr. *J. D. Mayne* and Mr. *J. H. A. Branson*, for the appellant :—According to the evidence, the defendant, being both the spiritual head and general manager of the affairs of the institution at Nathdwara, made collections in Bombay in the manner in which a business may be said to be carried on. In his capacity as spiritual guide he possessed, according to the belief of his followers, attributes enabling him to promote their well-being. In this regard, he received gifts from devotees, and made collections through an agency, with a set of clerks and servants in Bombay.

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Reference was made to the *pedhi*. If these transactions were not in the nature of a contract between the defendant and the worshippers, still that would not necessarily negative the carrying a business within the meaning of cl. 12. The proceedings, so far as they went, were a business for certain purposes; and there were the arranging, entering, and transmission of gifts. In connection with the argument, reference was made to *Rolls* v. *Miller*(1) and *Smith* v. *Anderson*(2).

Sir *J. Rigby*, Q. C. (Solicitor General), Mr. *R. B. Finlay*, Q. C., and Mr. *H. Sutton*, for the respondent, were not called upon.

## JUDGMENT.

Their Lordships' judgment was then delivered by

LORD MORRIS.—The suit, out of which this appeal arises, was brought by the appellant against the respondent in the High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction, and the question for determination in the High Court and here is, whether the High Court had jurisdiction to hear and determine the suit. Both Courts below have determined that there was no jurisdiction.

The 12th section of the Letters Patent of 1865, establishing the High Court, is as follows, so far as it is material to the [298] matter now in dispute:—"And we do further ordain that the said High Court * * * shall be empowered to receive, try, and determine suits of every description * * * if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits."

The greater portion of the arguments in the Courts below was addressed to the contention that the defendant "dwelt" in Bombay, within the meaning of the section, and that, therefore, he was liable to the High Court's jurisdiction. That point was abandoned by the plaintiff on the argument before this Board, his counsel confining himself to the contention that the defendant "carried on business" within the meaning of the section.

The phrase "carry on business," as has been often said, is a very elastic one, and is almost incapable of definition. The tribunal must in each case look to the particular circumstances. It appears to their Lordships that the Letters Patent intended it to relate to business in which a man might contract debts, and ought to be liable to be sued by persons who had business transactions with him.

There is nothing of this kind here. The defendant is the high priest of the shrine of Shri Nathji, at Nathdwara, in the territories of the Rana of Udepur. At the time of this suit he was on a temporary visit to Bombay, for the purpose of meeting his devotees. He has in Bombay an establishment called a *pedhi* in which a treasurer and servants are regularly employed. Into this *pedhi*, offerings made by devotees to the shrine of Shri Nathji, and to other shrines at Nathdwara, of which the defendant claims to be the owner, are paid. The defendant has similar establishments in other places in the Bombay Presidency, and the offerings collected there are transmitted to the *pedhi* in Bombay. Something like two lakhs of rupees pass into this *pedhi* in the course of each year. While the defendant was in Bombay he received his followers, and when invited to do so he visited their houses. On the occasions of such visits he invariably received an offering in money, but no bargain for the amount was

(1) 27 Ch. D. 71. (2) 15 Ch. D. 247.

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made before hand. Such offerings were strictly personal, and were not paid into the *pedhi*.

[299] Their Lordships are unable to hold that either the payment of the offerings in the *pedhi*, or the receipt of them by the defendant personally, constitutes "carrying on business" within the meaning of the Letters Patent. Devotion to the shrine was the reason for the offerings in each case.

Their Lordships will, therefore, humbly advise Her Majesty that the judgment of the appellate Court should be affirmed, and this appeal dismissed. The appellant will pay the costs of this appeal.

*Appeal dismissed.*

Solicitors for the appellant:—Messrs. *Hore and Pattisson.*
Solicitor for the respondent:—Mr. *Edward F. Turner.*

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**18 B. 299.**

## ORIGINAL CIVIL.

*Before Mr. Justice Farran.*

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CURSETJI JEHANGIR KHAMBATTA AND ANOTHER (*Plaintiffs*) *v.* W. CROWDER AND ANOTHER (*Defendants*).*
[11th, 15th, 16th and 18th January, 1894.]

*Arbitration—Award—Setting aside award—Arbitrator receiving evidence from one side in absence of other side—Misconduct—Civil Procedure Code (XIV of 1882), s. 521—Contract—Contract to sell from 2,500 to 3,500 tons of coal—Breach of contract—Non-delivery of coal—Damages—Number of tons on which damages to be calculated.*

An arbitrator ought not to hear or receive evidence from one side in the absence of the other side, without (if he does) giving the other side affected by such evidence the opportunity of meeting and answering it. This proposition is, however, subject to the qualification that the parties may agree that a reference may be conducted in any particular way, and such an agreement may be either express or implied from their conduct during the arbitration, and they may also expressly or by their conduct waive their objection to an irregular course of conduct on the part of the arbitrator.

Where an arbitrator received certain papers and documents from the defendants in a suit referred to his arbitration, together with a letter from the defendants containing certain comments on the documents sent to him and made his award without giving the plaintiffs an opportunity of seeing the said papers and documents, and of meeting the inferences deducible from them.

*Held*, that there was such a breach of duty on the part of the arbitrator as entitled the plaintiffs to have the award set aside.

On the 18th May, 1893, the defendants sold to the plaintiffs "the entire cargo of coal per steam-ship ———May shipment, *via* canal, amounting to 2,500 to 3,500 tons or thereabouts." The defendants intended a certain steamship called the "Ethelaida," [300] which carried a cargo of 3,395 tons of coal to satisfy this contract. This ship, however, did not load in May, and consequently her cargo did not fulfil the conditions of the contract. From the day of making the contract the plaintiffs had been urging the defendants to declare the name of the vessel in which the coal contracted for was to be shipped. On the 14th June the defendants by letter informed the plaintiff that the "vessel chartered for their May shipment" had not loaded in May, and they offered to cancel the contract. On the same day, however, and about an hour after the plaintiffs had received this letter, and before they had replied to it, the defendants sent them another letter as follows:—"We have now been informed that the boat, our coals have been loaded

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* Suit No. 415 of 1893.