ORIGINAL CIVIL.

Before Mr. Justice Macleod.

UDERAM KESAJI (PLAINTIFF) *v.* HYDERALLY ABDUL KAYUM (DEFENDANT).* 1908. *October* 15.

Jurisdiction—Power of High Court to restrain by injunction a person from proceeding with a suit in the Small Causes Court.

The High Court of Bombay has inherent power to restrain by injunction a defendant in a suit filed in the High Court from proceeding in the Small Causes Court at Bombay with a suit filed by the defendant referring to the same matter to which the suit in the High Court relates; or from filing further suits relating to the same subject matter pending the hearing of the High Court suit.

Jairamdas v. *Zamonlal*(1) not followed.

THE plaintiff brought a suit in the High Court on its original side on the 17th September 1908 against the defendant, praying that the lease dated the 18th October 1907 passed by the plaintiff in favour of the defendant be avoided and rescinded and praying that the defendant might be restrained by injunction from proceeding with two suits filed by him in the Court of Small Causes in Bombay and from filing further suits with reference to the same lease.

The said Small Cause Court suits were filed by the defendant against the plaintiff to recover from the latter the rent due under the lease up to the end of April 1908.

On the 28th September 1908 the plaintiff served a notice of motion on the defendant calling upon him to show cause why the two suits filed by him in the Small Causes Court against the plaintiff should not be stayed until the disposal of this suit.

Jinnah for the plaintiff in support of the notice of motion.

The High Court has power to grant the injunction asked for. See *Rash Behary Dey* v. *Bhowani Churn Bhose*(2) and *Mungle Chand* v. *Gopal Ram*(3).

* Suit No. 792 of 1908.

(1) (1903) 27 Bom. 357. (2) (1906) 34 Cal. 97.
(3) (1906) 34 Cal. 101.

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Robertson for the defendant.

The Court has no power to grant the injunction: see *Jairamdas* v. *Zamonlal*[1]. The proper remedy of the plaintiff was to get the Small Causes Court suits removed to the High Court.

If the Court is inclined to grant the plaintiff's application the plaintiff should be put on terms by being required to deposit in Court the amount of the defendant's claim.

MACLEOD, J.:—The plaintiff has filed this suit praying for a declaration that he is entitled to avoid the lease to him by the defendant of certain premises, dated the 18th October 1907, as modified by a writing of the 6th December 1907. Before this suit was filed the defendant had filed two suits Nos. 5609 and 12929 of 1908 in the Small Causes Court for rent due under the said lease. The plaintiff now moves for an order and injunction of this Court to restrain the defendant from proceeding with the said Small Causes Court suits and from filing further suits with reference to the said lease pending the hearing of this suit.

It cannot be denied that as the plaintiff's liability to pay rent under the lease depends on whether he will be successful in avoiding it, it is highly desirable that these suits should be stayed provided the defendant is in no way prejudiced thereby. Mr. Robertson, counsel for defendant, however, argued that the Court had no jurisdiction to grant the injunction.

By the Letters Patent of 1823 the Supreme Court was authorized and empowered to make such further and other interlocutory rules and orders as the justice of the proceeding might seem to require and it was further ordained that the Supreme Court should also be a Court of Equity.

By section 9 of 24 and 25 Vic. c. 104 it was enacted that the High Courts to be established under that Act should have and exercise all such civil jurisdiction, original and appellate, and all such power and authority for and in relation to the administration of justice as Her Majesty might by Letters Patent grant

(1) (1903) 27 Bom. 357.

and direct, and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the Legislative Powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Courts to be established in each Presidency should have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under that Act.

The amended Letters Patent of 1865 are silent on the subject of interlocutory rules and orders but under clause 19 the law or equity to be applied in each case coming before the High Court in the exercise of the ordinary original civil jurisdiction shall be the law or equity which would have been applied by the High Court if the Letters Patent had not issued. It follows, therefore, that the High Court has power to make such interlocutory rules and orders as the justice of the proceeding may require provided they are not directly prohibited by the Letters Patent or by statute.

Section 53 of the Specific Relief Act (I of 1877) is as follows :—

"Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure."

Sections 492 to 497 are the only sections of the Civil Procedure Code of 1882 dealing with temporary injunctions.

Sections 492 and 493 enact that under certain circumstances the Court may grant temporary injunctions.

I am asked to hold that the powers of the Court to grant temporary injunctions are limited to those cases in which the circumstances detailed in sections 492 and 493 exist, and I have been referred to a decision of Russell, J., in *Jairamdas* v. *Zamonlal*[1] as establishing that proposition.

Mr. Robertson argued that that decision was binding upon me on the doctrine of *stare decisis*.

It is necessary, therefore, to consider what was the actual point decided by the learned Judge in that case, because the doctrine does not become applicable unless the point is the same.

(1) (1903) 27 Bom. 357.

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It often happens that when a case is carefully examined it will be found that the judge has not decided what it is argued he has, or that what at first sight may appear to be a principle of general application can only apply to the particular facts of the case. The injunction was refused in that case because it did not come within the terms of sections 492 and 493 of the Civil Procedure Code, but I do not find that it was laid down as an abstract proposition that owing to the provisions of those sections the Court could not grant a temporary injunction in exercise of its inherent equitable powers to do what was justice and for the advantage of the parties.

The passage from Blackstone on the rule of *stare decisis* quoted by Davar, J., in *Jamshedji C. Tarachand* v. *Soonabai* (1) refers more to the days when judicial decisions were considered as enunciations of what was the common law of England. The principles to guide one in applying the rule appear in more modern form in the American and English Encyclopædia of Law, 2nd Edition, Vol. 26, from p. 158 onward.

The passages I quote are especially valuable as the position of the Courts of the various States in America as regards their respective decisions is very much the same as that of the various High Courts in India.

"*Decisions of co-ordinate Courts.* To secure uniformity of decisions a Court will, as a general rule, adhere to a principle laid down by a Court having co-ordinate jurisdiction until it is changed by the decision of a higher Court . . . The rule however is not considered absolutely binding but may be departed from in the discretion of the Court. So a Court will not follow the decisions of a co-ordinate Court where they are evidently made through mistake or are so clearly erroneous that the error is undoubted."

"*Single decisions.* Distinction has also been drawn in the application of the doctrine of *stare decisis* where only one decision is relied upon as establishing the doctrine. For a variety of reasons a series of decisions will be given more

(1) (1907) 33 Bom. 122 at p. 147.

weight than a single decision. There is less likelihood of error; any previous decision or statutes overlooked in the one may be considered in subsequent cases."

"Also the opinion and decision of a Court must be read and examined as a whole in the light of the facts upon which it is based, and not applied by picking out particular parts or sentences. The facts are the foundation of the entire structure, which cannot with safety be used without reference to the facts. The decision is only an authority for what it actually decides and cannot be quoted for a proposition which may seem logically to follow from it."

The last passage is especially pertinent to the present case, as it is only by inference that it can be said that the learned Judge laid down the abstract proposition above referred to. The decision by itself amounts to this, that the injunction was refused in that particular case because it did not come within the terms of sections 492 and 493 of the Civil Procedure Code.

But the question whether the powers of the High Court are limited by the provisions of the Civil Procedure Code is dealt with exhaustively by Woodroffe and Mookerjee, JJ., in *Hukum Chand Boid* v. *Kamalanand Singh*[1].

At page 931 Woodroffe, J., says:—

"The Code does not as I have already had occasion to hold, *Punchanon Singh* v. *Kunuklota Barmoni*[2] affect the power and duty of the Court, in cases where no specific rule exists, to act according to equity justice and good conscience, though in the exercise of such power it must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intentions of the Legislature . . . The Court has, therefore, in many cases, where the circumstances require it, acted upon the assumption of the possession of an inherent power to act *ex debito justitiæ* and to do that real and substantial justice for the administration, for which it alone exists. It has thus been held that, although the Code contains no express provision on the matters hereinafter mentioned, the Court has an inherent power *ex debito justitiæ* to consolidate. . . . These instances (and there are others) are sufficient to show, firstly that the Code is not exhaustive and, secondly, that in matters with which it does not deal, the Court will exercise an inherent jurisdiction to do that justice between the parties."

(1) (1905) 33 Cal. 927. (2) (1905) 3 C. L. J. 29.

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At p. 940, Mookerjee, J., says:—

"I entirely repudiate the theory that our powers are rigidly circumscribed by the provisions of the Code, and that we have no power to make a particular order, though it may be absolutely essential in the interest of justice, unless some section of the Code can be pointed out as a direct authority for it . . . Such a theory, moreover, is entirely inconsistent with various decisions of the Judicial Committee and of the different High Courts of this country, among which I need only mention those in the cases of *Ram Kirpal* v. *Mussumat Rup Kuari* (1) . . . *Surendranath Banerjea* v. *The Chief Justice and Judges of the High Court of Bengal*(2)" &c.

Section 53 of the Specific Relief Act merely states that temporary injunctions are regulated by the Code of Civil Procedure, it does not enact that the Court shall grant only such temporary injunctions as are provided for in the Code. So that Mr. Robertson's argument could only prevail if the Code had prescribed that the Courts should only grant temporary injunctions under the particular circumstances detailed therein and no others. That this is not the effect of sections 492 to 497 has been decided in *Rash Behary Dey* v. *Bhowani Churn Bhose*(3) and *Mungle Chand* v. *Gopal Ram*(4).

In my opinion I am at liberty to follow those decisions.

I therefore grant the injunction asked for but as the defendant might be prejudiced in the event of the plaintiff failing in this suit I direct as suggested by counsel during the argument that plaintiff do bring into this Court within one week Rs. 1,450 the total of the amounts sued for in the Small Causes Court suits.

Costs of the motion to be costs in the cause.

Attorneys for plaintiff: *Messrs. Jehangir, Mehta and Somji.*

Attorneys for defendant: *Messrs. Pestonji, Rustim and Kola.*

B. N. L.

(1) (1883) L. R. 11 I. A. 37.
(2) (1883) L. R. 10 I. A. 171.
(3) (1906) 34 Cal. 97.
(4) (1906) 34 Cal. 101.