

FULL BENCH.

APPELLATE CIVIL.

1915.

July 15.

Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Batchelor, Mr. Justice Macleod, Mr. Justice Shah and Mr. Justice Hayward.

NARAYAN VITHAL SAMANT, APPLICANT, v. JANKIBAI KOM SITARAM SAMANT AND OTHERS, OPPONENTS.*

High Courts Act (24 & 25 Victoria, chapter 104), sections 2, 9 and 13—Amended Letters Patent, clauses 11 and 26—High Court Rules, Original Side, Rule 62†—High Court Rules, Appellate Side Rules 1 and 5—Single Judge sitting on the Original Side of the High Court—Power to stay suit pending before a Subordinate Judge's Court in the mofussil.

It is not competent to a single Judge of the Bombay High Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in the mofussil, unless authorised so to do by rules.

Per MACLEOD J.—A single Judge sitting on the Original Side of the High Court is competent to restrain the parties in a suit before him from proceeding with a suit in a Sub-Judge's Court in the mofussil, and so in effect stay the proceedings.

THIS was an application for transfer of a suit pending on the Original Side of the Bombay High Court to the Court of the First Class Subordinate Judge at Ratnagiri.

The applicant's brother Sitaram deposited in 1901 a sum of Rs. 8,000 with opponents Nos. 3 and 4; and a sum of Rs. 1,400 with opponent No. 5 at Malwan. Before starting on a pilgrimage Sitaram made a will in 1902, whereby he bequeathed his property to his

* Civil Application No. 55 of 1915.

† The rule runs as follows :—

RULE 62.—Any Judge of the High Court may, subject to any rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction vested in the High Court on its Original Side.

nephews, Vithal and Balkrishna (son of applicant) ; allowed a definite amount of maintenance to his wife Jankibai (opponent No. 1) ; and appointed opponents Nos. 3 to 6 as executors of the will. Sitaram was not heard of since he went on the pilgrimage.

On the 17th January 1913, opponent No. 1, through her constituted attorney opponent No. 2, took out letters of administration to the estate of Sitaram.

Opponent No. 3 filed an interpleader suit in the Court of the First Class Subordinate Judge at Ratnagiri, against the petitioner and the opponents. Shortly afterwards, opponents Nos. 1 and 2 filed Suit No. 246 of 1913 on the Original Side of the Bombay High Court against opponents Nos. 3 and 4 to recover Rs. 14,940 odd. This was followed by two more suits. One of them, Suit No. 319 of 1913, was instituted by the applicant against the opponents, in the Court of the First Class Subordinate Judge at Ratnagiri, to establish his claim to the property left by Sitaram. The applicant's son Balkrishna brought another suit (No. 321 of 1913) in the same Court, to establish his right under Sitaram's will.

On the 4th September 1914, opponents Nos. 1 and 2 compromised the claim in the High Court suit with opponent No. 3 at Rs. 10,000. The interpleader suit was consequently dismissed.

The opponents Nos. 1 and 2 next applied, on the 9th October 1914, on the Appellate Side of the Bombay High Court, for transferring Ratnagiri Suits Nos. 319 and 321 of 1913 to the Original Side of the High Court. This application was rejected.

On the 14th November 1914, opponents Nos. 1 and 2 applied to the High Court to make the applicant and opponents Nos. 5 to 9 party defendants to the High

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Court Suit No. 246 of 1913. The application was granted. Opponents Nos. 1 and 2 next obtained a rule against the applicant and others calling upon them to show cause why the Ratnagiri suits should not be stayed pending the disposal of the High Court suit. This rule was made absolute on the 21st December 1914.

The applicant filed the present application on the Appellate Side of the Bombay High Court, on the 25th January 1915, praying "that the Suit No. 246 of 1913 filed on the Original Side of the High Court be transferred to the file of the First Class Subordinate Judge's Court at Ratnagiri and consolidated with two Suits Nos. 319 of 1913 and 321 of 1913 now pending in that Court."

The application was heard by Scott C. J. and Batchelor J. when their Lordships referred the following question to a Full Bench:—

"Whether it is competent to a single Judge of this Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in the mofussil unless authorized so to do by rule?"

The referring judgment was as follows:—

SCOTT, C. J.:—The applicants pray that a suit instituted and now partly tried on the Original Side of the High Court may be removed for trial to the Court of the Subordinate Judge of Ratnagiri along with certain other suits now depending between parties to the Original Side suit in the Court at Ratnagiri.

The reason of the application which is of a very unusual nature rests upon the necessity to which the applicants in Ratnagiri have been reduced by an order in the Original Side suit passed by a single Judge staying the suits in the Ratnagiri Court.

It is contended by the applicants that the order was *ultra vires* and should be disregarded and a decision to that effect would satisfy them as it would enable them to proceed with their suits.

It is clear beyond argument that the High Court can stay the hearing of a suit in a Subordinate Court, but the question is whether any Judge sitting alone is entitled thus to exercise the functions of the High Court in its Appellate Jurisdiction.

The High Court is established by Royal Letters Patent under 24 & 25 Vict., Ch. 104. Section 2 of that Statute provides that the High Courts respectively shall consist of a Chief Justice and a limited number of Judges. Under section 9 each High Court is to have and exercise such jurisdiction as the Crown by Letters Patent may grant and direct and, unless otherwise directed, all jurisdiction and power and authority of the old Supreme and Sudder Courts.

The only provision for delegation by the High Court of the exercise of its Original and Appellate Jurisdictions by one or more Judges or Benches of Judges is contained in section 13.

Such delegation is to be effected by rule.

Where the rule empowers a single Judge or a Bench of two Judges to exercise any of the jurisdictions of the High Court such Judge and Judges become the Committees of the High Court to the extent to which the rule empowers him or them to act.

In accordance with the statutory authority the High Court has since long provided for the exercise of jurisdiction by such Committees.

Rule 1, Chapter I of the Appellate Side Rules, says :—
“ The Civil and Criminal Jurisdiction of the Court on the Appellate Side shall, except in cases where it is

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otherwise provided for by these rules or ordered by the Chief Justice, be exercised by a Division Court consisting of two Judges.”

Rules 2 and 3 enumerate the Appellate Side matters which may be disposed of by a single Judge.

Rule 5 states that applications for the transfer of suits from Civil Courts in the mofussil to the High Court under section 24 of the Civil Procedure Code shall be made to, and disposed of by, a Division Court of two Judges and when the application is granted the record and proceedings shall be sent to the Original Side where the suit will be tried.

It is noteworthy that such an application was made to a Division Bench of the Appellate Side by the present opponents for the transfer of the Ratnagiri suits under section 24 but it was rejected and after such rejection a single Judge of the Original Side passed an order staying the further hearing of the suits.

It is, we think, clear that such an order appertains to the Appellate, and not to the Original Jurisdiction of the High Court; and the contention that this jurisdiction may be exercised by a single Judge charged with the exercise of Original Jurisdiction, appears to us to be exposed to doubt. The only cited authority in favour of this contention is to be found in the judgment of Phear J. in *The Queen v. Ameer Khan*⁽¹⁾, where that learned Judge held that a single Judge, sitting on the Original Side of the Court, had power to entertain an application for the removal of a criminal case from a mofussil Court to the High Court in the exercise of the latter Court's Extraordinary Original Criminal Jurisdiction. It is true that this judgment was referred to with approval by Batty J. in a criminal case (*Emperor v. Robert Comley*)⁽²⁾ which came up to this High Court from

(1) (1871) 7 Ben. L. R. 240.

(2) (1904) 29 Bom. 575.

Aden, but the reference was made in apparent ignorance of Rule 6 of the Appellate Side Rules which provides that applications for the withdrawal of a criminal case to the High Court for trial shall be made to, and disposed of by, the Division Court to which Criminal Appellate business is allotted. And, in considering the effect of such a rule upon the present question, we have to reckon with the view taken by a Judge of this Court in *Maganlal v. The Bombay Co. Ltd.*⁽¹⁾, where Tyabji J. held that a single Judge's power to exercise the functions of the High Court was limited to the cases where, by the Rules of the High Court, the exercise of such functions was entrusted to the single Judge. If this view is sound, it suggests further that the true principle is that the jurisdiction of the High Court is properly exercisable by the High Court alone, as a body, except in so far as the exercise of such jurisdiction has been committed by lawful delegation to some, or to one, of the Judges composing the Court.

But as the matter is of considerable practical importance and appears to be involved in much uncertainty of judicial opinion, we think it desirable that a reference should be made to a Full Bench. The question referred will be whether it is competent to a single Judge of this Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in the mofussil unless authorised so to do by rule.

On the 2nd July 1914, the reference was heard by Scott C. J. and Batchelor, Macleod, Shah and Hayward, JJ.

Coyaji, with *A. G. Desai*, and *Hiralal & Co.*, for the applicant.

(1) (1904) 7 Bom. L. R. 143.

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Kanga and Mulla, with *Ardeshir Hormasji, Dinshaw & Co.*, for opponent No. 2.

P. B. Shingne, for opponent No. 3.

K. N. Koyaji, for opponent No. 5.

Coyaji:—We submit that the answer to the question referred must be in the negative.

Section 9 of the Charter Act (24 &c. 25 Vic. c., 104) enacts that the High Court is to have and exercise all such jurisdiction as the Crown by Letters Patent may grant and direct. Section 13 enacts that the exercise by one or more Judges, of the original or appellate jurisdiction of the High Court is to be governed by rules to be made by the High Court. The Amended Letters Patent, clauses 12 to 16 grant and declare the powers which the 'High Court' is to exercise. Clause 36 declares the powers of single Judges and Division Courts; and appears under the heading of "Powers of single Judges and Division Courts." The result of reading clause 36 of the Amended Letters Patent with sections 9 and 13 of the Charter Act is that the jurisdiction of the High Court is properly exercisable by the High Court alone as a body, except in so far as the exercise of such jurisdiction is lawfully delegated to some or to one of the Judges composing the Court. Where the Judges of whom the High Court is composed are numerous, it is obvious that there should be a division of the functions which the High Court is established to perform. Such division of functions is provided for under section 13 of the Charter Act and clause 36 of the Amended Letters Patent. But no Bench can assume the performance of functions not assigned to it, or assume performance of functions expressly assigned to another Bench.

[*BATCHELOR, J.*:—Clause 36 declares: "Any function which is hereby directed to be performed by the said

High Court of Judicature at Bombay in the exercise of its original or appellate jurisdiction, may be performed by any Judge or any Division Court thereof, appointed or constituted for such purpose... ”]

The reference is to sections 13 and 14 of the Charter Act.

Our High Court has framed rules for the exercise of the power of removal of suits from mofussil Courts. See Rules 1 and 5* of the Appellate Side Rules; and Rule 28† of the Original Side Rules. Under these Rules, an application for transfer of suit from the mofussil Court to the High Court must first be made to the Division Bench on the Appellate Side; and when an order is made, the papers in such suit are finally forwarded to the original side of the High Court.

The function in question here is the directing a mofussil Court to stay a suit pending before it. The Rules clearly say to whom this function is assigned. A single Judge sitting on the Original Side is not appointed or constituted for this purpose (clause 36).

The view that a single Judge's power to exercise the functions of the High Court is limited to the cases

* RULE 1.—The Civil and Criminal Jurisdiction of the Court on the Appellate Side shall, except in cases where it is otherwise provided for by these rules or ordered by the Chief Justice, be exercised by a Division Court consisting of two Judges.

RULE 5.—Applications for the transfer of suits from Civil Courts in the mofussil to the High Court under section 24 shall be made to, and disposed of, by, a Division Court. When the application is granted, the record and proceedings shall be sent to the Original Side, where the suit will be tried.

† RULE 28.—When an order is made by the High Court, Appellate Side, under the Extraordinary Civil Jurisdiction for the removal of a suit from any Subordinate Court, the Registrar, High Court, Appellate Side, shall transfer the papers in such suit when received, to the Prothonotary, who shall treat the suit as a suit filed on the Original Side.

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where by the Rules the exercise of such functions was entrusted to a single Judge seems to have always been adopted by our High Court. There is no decided case expressly on this point; but there are expressions of opinion by different Judges which strengthen my contention.

In *Achratlal Girdharlal v. The Guzerat Spinning and Weaving Company Limited*⁽¹⁾, an application was made for the transfer of a suit from the file of the First Class Subordinate Judge of Ahmedabad to the High Court. Their Lordships there said: "An application, such as this is, for the transfer of a suit from a Mofussil Court may be regarded as one made to this Court in its original jurisdiction, and according to sections 13 and 14 of the High Court's Act (24 & 25 Vic. c., 104) and the Rule, Chapter II, section 4††, of those made under the statute, should be dealt with by either a single Judge or a Division Court constituted according to the determination of the Chief Justice as to the class of cases to be taken up by each Judge either singly or in a Division Court. In the present instance there had been no express determination by the Chief Justice that the Judges of this Division Court should be a Division Court for the purpose of exercising the branch of the original jurisdiction which consists in dealing with applications for the transfer of original suits; but he has now, on the matter being brought to his notice, constituted us a Court for this purpose. Any question as to jurisdiction is thereby prevented." If a single Judge or a Division Court is the same as the High Court and can assume jurisdiction without the aid of Rules, then there was no meaning in the objection

(1) (1879) P. J., 29.

†† SECTION 4.—The Original Civil Jurisdiction of this Court, ordinary and extraordinary, shall be exercised by one or more Judges sitting separately, or by Division Court, constituted by two or more Judges.

raised by counsel and no necessity for the reference by their Lordships to the Rules.

In *Pirbhai Khimji v. B. B. & C. I. Rail. Co.*⁽¹⁾, Green J. sitting on the Original Side directed a case there pending in the Bombay Court of Small Causes to be removed in the High Court. This particular question (*viz.*, as to the power of a single Judge) was not raised there; but the only question discussed was whether the High Court had superintendence over the Bombay Court of Small Causes.

In *Jairamdas v. Zämental*⁽²⁾, Russell J. expressed a doubt as to whether a single Judge on the Original Side could entertain an application for transfer of a suit from the Bombay Court of Small Causes to the High Court. Mr. Justice Tyabji in *Maganlal v. Bombay Co. Ltd.*⁽³⁾ expressed himself clearly on the point and ordered a transfer.

It is true that in *Emperor v. Robert Comley*⁽⁴⁾, Batty J. has observed that a single Judge of the Bombay High Court could direct transfer of a criminal case from Aden to the High Court. Rule 6§ of the Appellate Side Rules, does not seem to have been brought to the notice of the Judge. He simply relied on *The Queen v. Ameer Khan*⁽⁵⁾. In the Calcutta case, no reference is made to clause 36 of the Amended Letters Patent: but the learned Judge follows the existing practice of the Court (pp. 248, 249).

(1) (1871) 8 Bom. H. C. R. (O. C. J.) 59.

(2) (1903) 5 Bom. L. R. 201.

(3) (1904) 7 Bom. L. R. 143.

(4) (1904) 29 Bom. 575.

(5) (1871) 7 Ben. L. R. 240.

§ RULE 6.—Applications under section 526, Criminal Procedure Code, or the Letters Patent for the withdrawal of a case to the High Court for trial shall be made to, and disposed of by, the Division Court to which the criminal business is allotted, and that Court shall also, if it thinks fit, make the direction contemplated in section 267 of the said Code.

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Where under the Rules made under the Charter Act, particular functions are assigned to particular Divisions, all matters relating to such functions belong exclusively to such particular Divisions. What the Rules do is to divide the functions. A particular Bench takes cognizance of all matters falling within that function. The Rules do not take away any power or jurisdiction. But the exercise of that power or functions should be exclusive. Within the exercise of these particular functions, the Judge does exercise the plenary powers of the High Court. It is confusion of thought to say that this leads to the diminution of jurisdiction exercised by any other Bench of the Court.

Arguing by analogy, take the case of the Supreme Court of Judicature in England. Prior to the Judicature Act of 1873 there were different Courts exercising different functions. All these Courts were, by the Judicature Act, united and consolidated together as one Supreme Court. Notwithstanding such amalgamation and consolidation, opinion still exists that the Probate Division is exclusively seized of the power of granting and revoking probates: see Williams on Executors, p. 210.

Kanga.—Our submission is that the question referred must be answered in the affirmative.

Every Judge of the High Court has jurisdiction to exercise the full powers of the High Court and the Rules framed by the High Court apportioning the business cannot take away such a power. Further, each Judge of the High Court is the High Court and has jurisdiction to exercise the full powers of the High Court unless limited by Rules. Again, if there are no Rules it cannot be said that an order for stay appertains to the appellate jurisdiction. In the absence of any Rule it does appertain to the High Court which may

mean any Judge or the full Court, that is, all the Judges of the High Court.

There are no Rules framed by the High Court as regards staying of suits in the mofussil Courts. It cannot, therefore, be contended that the order for stay of such suits appertains to the appellate jurisdiction. The order for stay appertains to the full Court : all the Judges together can alone stay the suit in absence of Rules.

First, then, each Judge has jurisdiction to exercise all the powers of the High Court ; and any order which the High Court can pass, can be passed also by any Judge of the High Court. Section 2 of the Charter Act deals with constitution of the High Court ; and enacts that it shall consist of the Chief Justice and a certain number of Judges. Section 9 refers to jurisdiction and powers of the High Court : it vests every jurisdiction in the High Court ; and it invests the High Court with the jurisdiction and powers exercised by the Supreme Court. Every Judge of the Supreme Court had the power to exercise all the powers of the Supreme Court : for it is expressly ordained in the Supreme Court Charter :—“ And we do further will and ordain, that all the Judgments, Rules, Orders, and Acts of authority or power whatsoever, to be made or done by the said Supreme Court of Judicature at Bombay, shall be made or done by and with the concurrence of the said three Judges, or so many or such one of them as shall be on such occasions respectively, assembled or sitting as a Court, or of the major part of them so assembled and sitting. ” Thus, the judgment of the single Judge is the judgment of the High Court : and the order that each Judge passes is the order of the High Court.

Section 13 deals with the mode of the exercise of the Original and Appellate Jurisdiction by the High Court :

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that is, the High Court may, by its Rules, provide for the exercise of the Original and Appellate Jurisdiction vested in the High Court. This section does not take away the jurisdiction conferred by section 9. It cannot also be taken away by the Rules framed by the High Court. They are only meant for administrative convenience. The object of the Rules is not to make several Judges with limited jurisdiction ; but to ensure expeditious and effective despatch of judicial business.

It is not correct to say that by Rule you can make each Judge a High Court ; and that without the Rules each Judge is not a High Court. If the argument of the other side is correct, it would come to this, that the effect of the Rules is to confer on each particular Bench of the High Court a portion of the jurisdiction of the High Court. The High Court rarely acts as a whole. If then the High Court means all the Judges put together the result is that we have a group of Courts of imperfect limited jurisdiction.

The intention of the legislature seems to be that each Judge has jurisdiction to exercise all the powers of the High Court. The mode in which those powers are exercised is shown by Rules. Otherwise, there is no meaning in the last words of section 13. The Rules cannot limit the jurisdiction which is conferred by the Crown on the High Court. The judicial validity of acts done by each Judge, if *bona fide*, cannot depend upon whether the particular matter lies within the limits of that Judge by rule of apportionment.

Clause 36 of the Amended Letters Patent is only an enabling section. It does not confer or take away jurisdiction. The first part of the clause seems to be a preliminary to the second part.

[SCOTT, C. J. :—If you look at the Original Letters Patent, you will find that the second portion of the clause has been subsequently added.]

In *Achratlal Girdharlal v. The Guzerat Spinning and Weaving Company Limited*⁽¹⁾, the application was heard by a Special Bench appointed by the Chief Justice. In *Pirbhai Khimji v. B. B. & C. I. Rail. Co.*⁽²⁾, the transfer of suit applied for was from the Presidency Court of Small Causes to the Bombay High Court. The decision in *Jairamdas v. Zamentlal*⁽³⁾ has been dissented from by the Calcutta High Court in *Rash Behary Dey v. Bhowani Churn Bhose*⁽⁴⁾ and *Mungle Chand v. Gopal Ram*⁽⁵⁾. In *Geffert v. Ruckchand Mohla*⁽⁶⁾, an application was made to a single Judge on the Original Side for having a suit filed in the High Court stayed and the plaint returned for prosecution to the mofussil Court.

Secondly, we submit that each Judge of the High Court is the High Court, and can exercise the functions of the High Court unless limited by Rules. In the absence of any limitation by Rules what is there to prevent each Judge from acting as the High Court. When there are no Rules clause 36 of the Amended Letters Patent will not apply. If there are no Rules made under clause 13 does it follow that the Original and Appellate Jurisdiction is to be exercised by the Full Court ?

[SCOTT, C. J. :—Jurisdiction in the abstract is divided broadly into Original and Appellate. If the Original Jurisdiction is defined expressly, the rest is Appellate Jurisdiction.]

(1) (1879) P. J. 29.

(2) (1871) 8 Bom. H. C. R. (O. C. J.) 59.

(3) (1903) 5 Bom. L. R. 201.

(4) (1906) 34 Cal. 97.

(5) (1906) 34 Cal. 101.

(6) (1888) 13 Bom. 173.

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The division of Jurisdiction into Original and Appellate is not exhaustive : and it does not necessarily follow that everything that cannot be taken up on the Original Side can be taken up on the Appellate Side. If the Original Jurisdiction is to be confined to what is expressly mentioned, how can a Judge sitting on the Original Side take cognizance of the Lunacy and other proceedings ?

The power of staying suits is given neither by the Charter Act nor by the Letters Patent. It is the inherent jurisdiction of the High Court. Under section 151 of the Civil Procedure Code each Judge of the High Court will have the whole of the powers of the High Court. Section 13 of the Charter Act provides for "the exercise of jurisdiction." Civil Procedure Code, section 115, shows that "exercise of jurisdiction" is not the same as "jurisdiction." There is a distinction between want of jurisdiction and irregular exercise of jurisdiction. In the present case all that can be said at the most is that the single Judge has exercised his jurisdiction with irregularity, only if there is a rule to that effect.

Logically, if each Judge is not the High Court and if each Judge has a portion of the Jurisdiction of the High Court conferred on him by Rules, then it follows that each Appeal Court also has a portion of the Jurisdiction conferred on it and hence in the absence of Rules an order for stay or transfer or other acts of similar nature should be by the Full Court, that is, all the Judges.

In England, notwithstanding the division of several Jurisdictions of the High Court, there are cases to show that if an admiralty suit is filed after the Judicature Act in the King's Bench Division, that Court has jurisdiction to try the suit : *The Gertrude*^(a).

^(a) (1888) 13 P. D. 105.

Coyaji, in reply :—Looking to all the provisions of the Amended Letters Patent, it appears the powers are all conferred on the High Court. Clause 40 differentiates between High Court and single Judges of the High Court.

There are no Rules for staying suits pending in the mofussil Courts. Rule 1 of the Appellate Side Rules is sufficiently comprehensive to include such a power. The phrase "Appellate Jurisdiction" in the Charter Act and the Letters Patent is not strictly confined to Appellate Side matters; it includes powers of revision: see *Abdul Karim v. Municipal Officer, Aden*⁽¹⁾ In the absence of Rules, the power of staying suits would rest with the whole High Court. It cannot rest with a single Judge. If such Judge attempted to exercise it, it would be beyond his powers.

Section 151 of the Civil Procedure Code is a comprehensive section, which declares jurisdiction not only in the High Court, but all Courts.

The two Calcutta cases referred to are clearly distinguishable. The Judges in those cases were exercising personal jurisdiction on the parties before them.

Where a single Judge stays a suit pending in the mofussil Court, he is really exercising jurisdiction on the mofussil Court.

Kanga referred to *Hiralal v. Bai Asi*⁽²⁾.

C. A. V.

RACHELOR, J.:—The question referred to the Full Bench should, in my opinion, be answered in the negative.

The jurisdiction of this Court, and of the Judges composing the Court, is determined by the Statute 24 & 25

⁽¹⁾ (1903) 27 Bom. 575.

⁽²⁾ (1897) 22 Bom. 891.

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Vic., c. 104, by the Letters Patent issued thereunder and by the Rules framed by the Court under the authority conferred by section 13 of the Act. By section 9 of the Act, it is provided that the Court shall have and exercise all such jurisdiction as Her Majesty may, by Letters Patent grant and direct. Primarily, therefore, it is upon the Court that the jurisdiction is conferred, and section 2 of the Act provides that the Court shall consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty may appoint. Section 13 empowers the Court by its own Rules to "provide for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges...of the original and appellate jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice." In the exercise of this power this Court has made Rules for the exercise of jurisdiction by the Judges both on the Original and the Appellate Side.

The intent and effect of these provisions seem to me to be that the jurisdiction conferred is conferred on the Court as a body: it is the Court which is to "have and exercise" the jurisdiction granted: but, inasmuch as it would not be "convenient for the due administration of justice" that the entire Court should have to sit for the valid determination of every suit and appeal and application, power is given to the Court to make Rules for the exercise of the Court's jurisdiction by one or more Judges within the limits and subject to the conditions prescribed by the Rules. The powers so delegated would thus fix the limit within which such Judge or Judges would be competent to exercise the Court's jurisdiction, and any order made by a Judge or Judges in excess of this authority would be void as being beyond the jurisdiction which the Judge or Judges were legally authorised to exercise.

Now the particular order with which we are here concerned is an order made by a single Judge, sitting in the exercise of the Court's Ordinary Original Civil Jurisdiction, for the stay of a suit pending in the Court of the Subordinate Judge of Ratnagiri. But, by clauses 11 and 36 of the Letters Patent and Rule 62 of the Original Side Rules of this Court, the local jurisdiction of the learned Judge was confined to the Town and Island of Bombay. It is clear, therefore, and it was scarcely contested in argument, that the order under discussion appertains to the Appellate Side of the Court. The same result would follow if the order could properly be attributed to this Court's general powers of superintendence conferred by section 15 of the Act, for under that section, the powers granted are powers of superintendence over all Courts subject to this Court's Appellate Jurisdiction. This being so, the case falls under Rule 1 of the Appellate Side Rules, which provides that, with certain exceptions not now material, the civil jurisdiction of the Court on the Appellate Side shall be exercised by a Division Court consisting of two Judges. It follows, therefore, that the order now in question was made by the learned Judge in excess of the jurisdiction which he was legally empowered to exercise.

If that be so, it seems to me unarguable that the Judge acquired jurisdiction by the mere circumstance that the order was passed on an application made in a suit which the Judge had jurisdiction to try. And as to the contention that substantially the same result could have been secured by an order *in personam* restraining some of the parties from proceeding with the Ratnagiri suit, and that an order of this nature would have been within the Judge's competence, it is enough to say that that is not the order which was made, or which arises for consideration on the question submitted to this Bench. I think, therefore, that we should refrain from

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expressing any opinion as to the validity which might attach to any such order *in personam*, and should content ourselves with returning a negative answer to the question referred to us.

SCOTT, C. J.:—I agree.

SHAH, J.:—I agree.

HAYWARD, J.:—I agree.

MACLEOD, J.:—The applicants presented a petition to a Division Bench on the Appellate Side of the High Court praying that a Suit 246 of 1913 instituted and then partly tried on the Original Side of the High Court might be (1) removed for trial to the Court of the First Class Subordinate Judge of Ratnagiri, and (2) consolidated with two suits pending in that Court.

A preliminary objection to the granting of the latter prayer was constituted by the fact that an order had been made on the 21st December 1914 in Suit 246 of 1913 whereby the proceedings in the two suits in the Ratnagiri Court had been stayed. The applicants contended that this order was *ultra vires* and could, therefore, be disregarded. If they obtained a decision to that effect they could proceed with their suits.

The question, therefore, arose whether the Judge had jurisdiction to make the order of the 21st December 1914. The Division Bench being of opinion that the authorities on the point were conflicting referred the following question to a Full Bench :—

“Whether it is competent to a single Judge of this Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge’s Court in the mofussil, unless authorised so to do by rule.”

I should like to point out that the question seems to arise not on the application for a transfer of the High Court suit to the Subordinate Judge’s Court, for if that

application were granted the suit would be transferred and all interlocutory orders made in the suit would go with it, but on the application for a consolidation of the suit, when transferred, with other suits pending in the same Subordinate Judge's Court, since if the Subordinate Judge could not proceed with these suits, it would be of little use consolidating another suit with them.

There is no provision in the Civil Procedure Code for the consolidation of suits, but a Court has inherent jurisdiction under section 151, to consolidate two or more suits pending before it. The High Court, however, has no jurisdiction to entertain an original application for the consolidation of suits pending before a District Court and the case is still stronger when the suits are pending in different Courts.

The applicants have really adopted this novel procedure in order to get rid of the order of the 21st December 1914 and I venture to submit that on the facts before us anything that we may say regarding the jurisdiction of the Judge to make that order will be *obiter*.

However this point was not taken by the opponents' counsel in his argument and I therefore proceed to deal with the question referred to us on its merits.

I have had the advantage of reading the judgment of my brother Batchelor and while I am in accord with the greater part of it it seems to assume that the order in question was a prohibition, nor can I agree that the question is so concise and free from ambiguity as to admit of a direct answer. For the question may refer to three possible orders which a Judge might make.

A Judge sitting on the Original Side might make an order for a stay of proceedings at the instance of a party to a suit in a Subordinate Judge's Court. It is beyond controversy that such an order would be without jurisdiction.

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Secondly, a Judge at the instance of a party in a suit pending before him might issue a prohibition to a Subordinate Judge against proceeding with a suit between the same parties.

Such an order would clearly be without jurisdiction.

Thirdly, a Judge might restrain the parties in a suit pending before him from proceeding with a suit in a Subordinate Judge's Court in the mofussil. Such an order would, in my opinion, be with jurisdiction under section 151 of the Code.

In *Mungle Chand v. Gopal Ram* ⁽¹⁾ under the Code of 1882, Sale J. went so far as to restrain the parties in a suit before him from proceeding with a suit pending in the Court at Bareilly, but his attention does not seem to have been drawn to the provisions of section 56 of the Specific Relief Act.

An order *in personam* to stay proceedings is, in effect, an injunction for though it may be desirable it is not always necessary that an order, which prevents the parties from doing certain acts, should contain the words 'enjoin' or 'restrain.' For instance, an order appointing a Receiver of certain property is also an injunction restraining the parties from dealing with that property. Nor is an order *in personam* limited to the act of the parties within the local limits of the Ordinary Original Civil Jurisdiction of the High Court except by express enactment.

In my opinion, therefore, a single Judge sitting on the Original Side of the High Court is competent to restrain the parties in a suit before him from proceeding with a suit in a Subordinate Judge's Court in the mofussil, and so in effect stay the proceedings.

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(1) (1906) 34 Cal. 101.