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tendered damages for breach at the rate he now seeks to impose on Abraham.

Fulchand, the defendant's Munim, is emphatic that he did not know or care who was Bhclaram's principal. The defendant cannot therefore contend with any hope of success that Abraham cannot be allowed to take advantage of the contract if the ordinary law of principal and agent applies.

It is clearly proved that the market rate at the time of breach was Rs. 78-8-0.

Decree reversed. Decree for plaintiff in terms of paragraph (a) of the prayer of the plaint with costs throughout on defendant.

Solicitors for the appellant: Messrs. *Ardeshir, Hormasji, Dinshaw & Co.*

Solicitors for the respondents: Messrs. *Malvi, Hiratal Mody & Co.*

*Decree reversed.*

G. G. N.

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## CRIMINAL REFERENCE.

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*Before Mr. Justice Heaton and Mr. Justice Shah.*

EMPEROR v. PUNJA GUNI.\*

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ber 27.

*High seas—Offence committed by a foreigner on a foreign ship—The ship 18 miles off Karwar coast—Jurisdiction of British Indian Court to try the accused—Admiralty Offences (Colonial) Act (12 & 13 Vic., c. 96)—Statute 23 & 24 Vic., c. 88—Merchant Shipping Act (57 & 58 Vic., c. 60), section 686.*

\* Criminal Reference No. 43 of 1917.

The accused who was a subject of the State of Junaghad, committed an offence on a ship owned by a subject of the Junaghad State, when it was on the high seas some 18 miles off the coast of the Kanara District. A question having arisen whether he could be tried for the offence by the First Class Magistrate of Karwar :—

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*Held*, that the Magistrate had no jurisdiction to try the accused.

THIS was a reference made by E. H. Leggatt, Sessions Judge of Kanara.

The reference was in the following terms :—

“ Accused is charged with attempt to murder. The offence is stated to have been committed in a vessel sailing from Cochin to Bombay while on the open sea about eighteen miles from the land.

“ According to the complainant, the vessel belongs to the accused and the accused is a subject of the Junaghad State and a resident of Veraval.

“ Jurisdiction is conferred by the Admiralty Offences (Colonial) Act, 1849, 12 & 13 Vic., c. 96 or by section 686 of the Merchant Shipping Act, 1894, 57 & 58 Vic., c. 60.

“ Apparently the accused is not a British subject, and the first part of section 686 of the Merchant Shipping Act, therefore, does not apply. The second part will not apply unless the ship is a British ship. The term British ship is defined by section 1 of the same Act; and as the owner is not, as stated above, a British subject, the ship cannot be deemed to be a British ship within the meaning of the Act. Section 686 of the Act, therefore, does not apply at all.

“ Adverting now to the Admiralty Offences (Colonial) Act, 1849, section 1 confers on the Courts in the British India jurisdiction in any case in which a person within the Colony (that is, British India under the Admiralty Jurisdiction (India) Act, 1860, 23 & 24 Vic., c. 88)

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is charged with the commission of any offence committed upon the sea, or in any haven, river, creek or place where the Admiral or Admirals have power, authority or jurisdiction.

“Now the accused, though not a British subject, would certainly come within the meaning of the words ‘any person within the Colony’ and the offence, if any, was certainly committed on the sea, and it might, therefore, be argued, and it is so argued by the Public Prosecutor, that any person within British India can be tried by the Court for an offence committed anywhere at sea, even though the accused be not a British subject and the ship be not a British ship.

“The question, however, arises whether the words ‘where the Admiral or Admirals have power, authority or jurisdiction’ apply to qualify the word ‘sea’. I think they do; for the Act is entitled ‘an Act to provide for the prosecution and trial in His Majesty’s Colonies of offences committed within the jurisdiction of the Admiralty’. The Act, therefore, will not apply to offences committed outside the jurisdiction of the admiralty and confers no authority on the Courts of British India to try such offences.

“The term ‘jurisdiction of the Admiralty’ is not defined in that Act. But in the Territorial Waters Jurisdiction Act, 1878, 41 & 42 Vic., c. 73 we find that section 2 runs as follows:—

“‘An offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty’s dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship,.....’

“The definition of ‘territorial waters’ is given in section 7 where it is stated :

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“For the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty’s dominions.’

“It, therefore, appears that an offence committed more than one marine league from the coast is not an offence within the jurisdiction of the Admiral, and is not within the purview of the Admiralty Offences (Colonial) Act, 1849, and the offender, if he be not a British subject, cannot be tried by the Courts of British India unless the offence was committed upon a British ship.

“In the case before me, the accused is not a British subject and the ship is not a British ship ; and the offence, if any, having been committed more than one league from the coast, I am of opinion that the First Class Magistrate has no jurisdiction.”

When the reference was first heard on the 26th September, 1917, their Lordships expressed a desire to hear the Junaghad State on the question.

Accordingly, when the reference was heard again, the State put in an appearance.

*Taraporewala with Bhaishankar. Kanga & Girdharlal*, for the Junaghad State:—The offence here was admittedly committed on the high seas by a Junaghad State subject on board a ship owned by a Junaghad State subject. The jurisdiction of the Courts in India to try offences committed on the high seas is

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derived under the Merchant Shipping Act (57 & 58 Vic., c. 60) and the Admiralty Offences (Colonial) Act (12 & 13 Vic., c. 96) which was extended to India by 23 & 24 Vic., c. 88. The jurisdiction under the Merchant Shipping Act is confined to offences committed on a British ship. A British ship is defined by section 1 of the said Act. The definition of a British ship is the same in the previous Merchant Shipping Act (17 & 18 Vic., c. 104, section 18): It was decided under the old Act that a ship was not a British ship if the owner was not a natural born British subject: see *Reg. v. Bjornsen*<sup>(1)</sup>.

The jurisdiction which was originally exercised by the Admiral was by various statutes transferred to the Common Law Courts and the Central Criminal Court in England. The Admiralty Offences (Colonial) Act (12 & 13 Vic., c. 96) extended such jurisdiction to the Colonies, and 23 & 24 Vic., c. 88, section 1, applied the same Act to India. The question, then, is what was the jurisdiction exercised by the Admiral in respect of offences committed on the high seas? It was held in *Reg. v. Keyn*<sup>(2)</sup> by the whole of the Court that the Admiral had no jurisdiction to try offences by foreigners on board foreign ships on the high seas and that the subsequent Statutes only transferred to the Common Law Courts and the Central Criminal Court the jurisdiction formerly possessed by the Admiral. The majority of the Court decided that the Admiral had no jurisdiction in respect of offences committed by foreigners on board foreign ships even within the limit of three miles from the shore of England: see *Reg. v. Keyn*<sup>(2)</sup>. The Territorial Waters Jurisdiction Act (41 & 42 Vic., c. 73) was then passed with a view to confer jurisdiction on English Courts in respect of

(1) (1865) L. & C. 545.

(2) (1876) 2 Ex. D. 63.

offences committed by foreigners on board foreign ships within the three miles' limit.

[HEATON J. :—The difficulty in our mind lies as to the Admiralty Offences (Colonial) Act, 1849.]

The effect of the Act is only to delegate to the Colonial Courts the jurisdiction which the English Courts already possessed, and which the Admiral had in old days.

There is by international laws a limit set to the legislative power of every civilized country for the jurisdiction of its Courts. No State has any power to legislate save over its own subjects and over persons within its own territory. A ship has always been regarded a part of the territory of the country to which the ship belongs. In the words of Sir R. Phillimore "the merchant vessel on the open sea is subject only to the law of her flag, that is, the law of the state to which she belongs": see *Reg. v. Keyn*<sup>(1)</sup>. The Courts in England have never assumed jurisdiction to try a foreigner for an offence committed by him on board a foreign ship on high seas.

How then can the jurisdiction which the English Courts have never claimed to exercise and do not possess be said to have been conferred on the Indian Courts by the Admiralty Offences (Colonial) Act, which is identically in the same terms as the Statutes which transferred the jurisdiction of the Admiral to the Common Law Courts of England?

The point, however, that can be made against us is that Junaghad is a tributary State of British India. The Junaghad ship can only ply under the protection of the British navy. How can such a State claim to have jurisdiction even over its own ships? But the doubt

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<sup>(1)</sup> (1876) 2 Ex. D. 63 at p. 71.

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is met by *Reg. v. Bjornsen*<sup>(1)</sup>: and the fact that it has been finally decided by the Privy Council that Kathiawar as a whole is not within the King's dominions: see *Hemchand Devchand v. Azam Sakarlal Chhotamlal*<sup>(2)</sup>.

Section 188 of the Criminal Procedure Code does not apply, for in *Queen-Empress v. Natwarai*<sup>(3)</sup> it was held that a Baroda subject is not a Native Indian subject.

*S. S. Patkar*, Government Pleader, for the Crown:— In section 1 of the Admiralty Offences (Colonial) Act (12 & 13 Vic., c. 96), the words "where the Admiral or Admirals have power, authority or jurisdiction" qualify only the words "haven, river, creek or place" and not the word "sea". If it was intended that the words qualified "sea" then the word "such" in the latter part of the same section should also have been used by the legislature to qualify the term "sea".

The wording of the section would show that the Karwar Court has jurisdiction but the Act by its title only refers to offences committed within the jurisdiction of the Admiralty. The import of the words "where the Admiral or Admirals have jurisdiction" is that the Admiral has jurisdiction where, great ships go, i.e., they refer to "haven, river, creek or place," which are navigable. But the title of the Act would restrict the operation of the Act to offences within the jurisdiction of the Admiral which would extend to (a) British subjects at sea, (b) persons on board ships which by nationality or situation are subject to British jurisdiction when offence is committed, (c) persons charged with piracy: see *Halsbury*, Vol. IX, pp. 273 to 275.

(1) (1865) L. & C. 545.

(2) (1905) L. R. 33 I. A. 1.

(3) (1891) 16 Bom. 178.

[SHAH J. :—There is no doubt that in England the power is not claimed to try a foreigner for an offence committed on high seas on a foreign ship?]

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That is so : see *Reg. v. Lewis*<sup>(1)</sup> ; *Reg. v. Lopez*<sup>(2)</sup> and *Reg. v. Keyn*<sup>(3)</sup>.

[SHAH J. :—Then why should not these Statutes be constructed with reference to that principle?]

The question is whether the accused is a foreigner. The subject of a Native Indian State cannot be placed on that footing : as the Native States are under the suzerainty of the British Crown the subjects of Native States are British subjects for international purposes : see Ilbert's Government of India, p. 292 ; Lee-Warner's Native States of India, Ch. IX and particularly p. 259. The subject of Junaghad State is a British Subject so far as the international law is concerned.

It does not appear whether the Junaghad State has an Admiral or Admiralty jurisdiction. The ship, it is stated, would carry a British flag. On the other hand, subjects of Native States are not considered as British subjects for the purposes of the criminal law : see *Queen-Empress v. Natwarai*<sup>(4)</sup>.

HEATON, J. :—The present matter has been referred to us by the Sessions Judge of Kanara in the following circumstances.

A subject of the State of Junaghad in Kathiawar was arrested in Bombay and accused of committing a serious offence on a ship belonging to a Junaghad subject on the high seas some eighteen miles or thereabouts from the coast of the Kanara District. Having been arrested in Bombay the accused was taken to Karwar. He was placed before the First Class Magistrate

(1) (1857) 26 L. J. M. C. 104.

(3) (1876) 2 Ex. D. 63.

(2) (1858) 27 L. J. M. C. 48.

(4) (1891) 16 Bom. 178.

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there and on the point being raised that Magistrate held that he had jurisdiction to enquire into the case. The Sessions Judge, however, doubted whether these proceedings were founded on any jurisdiction and has submitted the case to us for our orders.

If we find that the Kanara Courts have not jurisdiction, we shall have so to express our opinion and leave it to the Magistrate to discharge the accused. It cannot be doubted that some Court somewhere has jurisdiction to try this offence. And seeing that the accused is a subject of the Junaghad State and that the ship on which the alleged offence is said to have been committed belongs to a subject of that State and has not been registered as a British ship, we thought it proper to give notice to the Junaghad State. Mr. Taraporewala has appeared as counsel to represent the State and has put before us an interesting argument. But though, as I have said, there must be jurisdiction somewhere to try this offence, what we have to consider is whether the Courts of the Kanara District have such jurisdiction. The case is certainly not provided for either by the Code of Criminal Procedure or the Indian Penal Code. The offence, if any, committed, is not territorially an offence under the Indian Penal Code, nor is it an offence which is made triable by any of the provisions of the Criminal Procedure Code. We must, therefore, look elsewhere for a foundation for jurisdiction if such jurisdiction exists in the Kanara Courts. We have looked elsewhere, under the assistance afforded us by the counsel for the Junaghad State on the one hand and the Government Pleader on the other and we have undoubtedly derived great assistance from their arguments.

The most natural enactment to turn to in the first instance is no doubt the Merchant Shipping Act which

is 57 & 58 Vic., c. 60. The pertinent section there is 686 which tells us that if the ship were a British ship, no doubt British Courts would have jurisdiction. British ship is defined in section 1 of the same Act and indubitably the ship in this case cannot be a British ship unless the owner of that ship comes under the head "natural born British subject" for he does not come under any of the other heads. We do not think that the expression "natural born British subject" in the Merchant Shipping Act can be read to include a natural born subject of the Junaghad State. So far as our researches have gone, we can find no suggestion in any case dealing with the Statute Law relating to, or the written law of, British India which bring a natural born subject of the Junaghad State within the meaning of the expression "natural born British Subject."

Whatever meaning these words might bear in international or diplomatic matters it seems to me that we must treat them when used in the Merchant Shipping Act as having the meaning which appropriately attaches to them for the purpose of the written law of this country. In that view they cannot include a natural born subject of the Junaghad State.

Then we have been referred to the Admiralty Offences (Colonial) Act of 1849, 12 & 13 Vic., c. 96. It was suggested, when this matter was first argued before us, that within the words of that Statute we could find justification for saying that the Courts in the Kanara District had jurisdiction. The words of that Act in clause 1 refer to a jurisdiction in regard to offences committed upon the sea and also to offences committed in any haven, river, creek or place. It also refers to the jurisdiction of the Admiral or Admirals and the question arises as to whether the word "sea" there used means only that part of the sea over which the Admiral or Admirals has or have jurisdiction or whether

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it means the sea generally. If it means the latter, then seeing that the accused was found in India, the Courts would have jurisdiction to deal with him. But if the word "sea" therein used means only that part of the sea over which the Admirals have jurisdiction, then the Court would not have jurisdiction in this particular case; for Admirals have jurisdiction over the sea within territorial waters and a ship at a distance of eighteen miles from the coast is undoubtedly outside territorial waters. Personally I have no doubt that the word "sea" as used in this Statute means that portion of the sea over which the Admiral has jurisdiction, for two reasons: firstly, the Act is described as an Act to provide for the prosecution and trial in Her Majesty's Colonies of offences committed within the jurisdiction of the Admiral. That description implies that the Act is dealing only with places or with so much of the sea as the Admiral has jurisdiction over. That is the first reason. The second reason is this; that the jurisdiction given by this Statute to Colonial Courts, which jurisdiction has been extended to India by an Act of 1860, 23 & 24 Vic., c.88, is a conferred jurisdiction. The intention, it seems to me quite plainly, is that Colonial Courts, and within that expression we must include Indian Courts, shall have conferred upon them the same jurisdiction as British Courts possess in British territory to which British Statutes relate. Such jurisdiction in Britain is discussed in the case of *Reg. v. Keyn*<sup>(1)</sup>, and there can be no doubt after reading that case that the Admiral's jurisdiction in Britain does not extend as regards the open sea beyond territorial limits which are some three miles from low water mark. If that is the only jurisdiction of the Admiralty Courts in Britain and if the Statute, 12 & 13 Vic., is intended to extend such

<sup>(1)</sup> (1876) 2 Ex. D. 63.

jurisdiction to Colonial Courts, then it is quite impossible to suppose that this Statute gave to Colonial Courts jurisdiction in the matter of offences committed on non-British ships on the high seas outside the territorial limits. These two reasons seem to me to show satisfactorily that we cannot find a basis for jurisdiction in the Kanara Courts in virtue of this Statute, 12 & 13 Vic., c. 96.

I have now exhausted all the sources which were suggested to us as a possible foundation for jurisdiction in the Kanara Courts, and I cannot myself think of any other source. The conclusion to my mind is quite inevitable that the Kanara Courts have no jurisdiction in this case. I do not think it is in any way necessary to proceed to consider what Court or Courts has or have jurisdiction.

The order that we must make, therefore, is that the First Class Magistrate in Kanara has no jurisdiction to deal with this alleged offender and that he should make an order discharging him.

The case is one which I have decided according to a somewhat narrow but, as it seems to me, a correct view of the law relating to jurisdiction. But the case suggests that the matter is one both of theoretical and practical importance, and I think the judgment of this Court should be sent to the Government of Bombay so that if they are so minded, they may address the Government of India on the subject with a view to determining whether Legislation of any kind is necessary for the purpose of regulating jurisdiction in cases of this kind.

SHAH, J. :—I agree.

*Order accordingly.*

R. R.