*Present:* Wood Renton C.J. and De Sampayo J. 1917.

SHAMJI GORDHANDAS & CO. *v.* RAMANATHAN & Co.

*297—D. C. Colombo, 46,717.*

*Action on a foreign judgment—Defendant born in South India, but carrying on business and residing in Colombo—Action brought in Bombay—Presumption as to jurisdiction of foreign Court—Is defendant bound by the Bombay judgment?*

Where a person resident in one country has his domicil in another, a judgment passed against him *in absentem*, and without notice, by a Court of the country of his domicil, to the jurisdiction of which he has not in any way submitted himself, cannot be enforced against him by an action in the country of his residence.

The plaintiffs sued the defendant, a Natukottai Chetty, "a subject of British India," who was residing and trading in Colombo, on a judgment obtained against him in the Small Causes Court in Bombay. The defendant had also a business connection with Bombay for a considerable period, and was represented there by an agent. He did not appear at the trial in Bombay; substituted service of summons on him was allowed by the Bombay Court.

*Held*, that the defendant was not bound by the judgment of the Bombay Court.

In an action on a foreign judgment the jurisdiction of the foreign Court is presumed.

THE facts are set out in the judgment.

*Bawa, K.C.* (with him *A. St. V. Jayawardene* and *Dias*), for defendant, appellant.

*Hayley*, for plaintiffs, respondents.

*Cur. adv. vult.*

November 20, 1917. WOOD RENTON C.J.—

The sum of money at stake in this action is comparatively small, but the point of law involved in it is of great legal and public interest and importance. The plaintiffs, Shamji Gordhandas & Company, are cloth merchants, carrying on business in Bombay. The defendant, who is stated to be a Natukottai Chetty and "a subject of British India," is at present trading in Colombo under the name of K. Ramanathan & Company. The plaintiffs allege that on August 30, 1916, they obtained judgment against him in the Court of Small Causes at Bombay for an amount which, in principal and interest,

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is now equivalent to Rs. 1,236.07 in Colombo currency, and they sue to recover that sum. The defendant in his answer admitted that he was a Natukottai Chetty and "a subject of British India," but denied that he had ever carried on business in Bombay; alleged that he had no notice, or even knowledge, of the plaintiffs' action against him in the Small Causes Court, and stated that he had never been "a subject of, or resident within," its jurisdiction. The following issues were framed at the trial:—

(1) Had the Small Causes Court no jurisdiction because the defendant resided outside its jurisdiction ?

(2) Was the defendant served with summons ?

(3) Even if issues (1) and (2) are answered in defendant's favour, is defendant none the less bound by the judgment ?

It was admitted by the plaintiffs' counsel that the defendant had not, in fact, appeared at the trial in the Small Causes Court. He stated in his evidence that he had not been personally served with summons, and that truth of this statement was established by the fact that the Court of Small Causes had allowed substituted service to be effected upon him by affixing a copy of the summons on a conspicuous part of the Court-house in Bombay. The learned District Judge on these materials rightly answered the second issue in the negative. He held on the first issue, on the assumed authority of the English case of *Roussillon v. Roussillon*,[1] that, as the defendant was "a subject of British India," he was bound by the decree of the Indian Court. There is nothing in the record to show the precise meaning of the third issue, and the learned District Judge did not deal with it in terms at all. It was, however, framed at the instance of the plaintiffs' counsel, and was probably designed to include all the other possible contentions for which the pleadings or the evidence might lay a foundation, *e.g.*, that either by birth or by domicil in British India, or by an acceptance of its authority, the defendant was subject to the jurisdiction of the Indian Court, whether he had resided within that jurisdiction or not. The learned District Judge gave judgment for the plaintiffs as prayed for, with costs. The defendant appeals.

His counsel argued, in the first place, that the plaintiffs had adduced no *primâ facie* proof that the defendant was a person over whom the Court of small Causes at Bombay had jurisdiction under any of the clauses in section 18 of the Presidency Small Cause Courts Act, 1882;[2] in the second place, that the defendant could not be brought within the jurisdiction of that Court by substituted service, as personal service had not been shown to have been impracticable; and in the last place, that, even if the Court was itself competent to entertain the action, the judgment could not be enforced against the defendant by an action in this country.

[1] *(1880) 14 Ch. D., at page 371.*

[2] *Act XV. of 1882.*

The first of these points is clearly untenable. In an action on a foreign judgment it is not necessary for the plaintiff to aver that the foreign Court had jurisdiction over the parties or the cause. Jurisdiction is presumed, and, where that presumption has not been rebutted, the Court in which the action on the foreign judgment is brought will not review the competency of, or an irregularity of the proceedings in, the foreign Court, or even the correctness of the foreign judgment itself, unless there has been something in the nature of a violation of the rules of natural justice.[1]

Section 14 of the Indian Code of Civil Procedure [2] provides that "the Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction."

In our present Civil Procedure Code we have no corresponding enactment, and the extent to which a Court in this Colony can inquire into the regularity of the proceedings that led up to a foreign judgment forming the subject of an action before it, must be governed by English law.

Moreover, the evidence in this case shows, not only that the defendant had had a close business connection with Bombay for a considerable period, but that he was represented there by an agent, whom he admits that he left behind him for the purpose of collecting debts. The letters P 1 and P 2, dated respectively February 5, 1915, and August 20, 1914, show that the statement in his evidence that he had no Bombay house in those years is incorrect. The material in the record, as it stands, supplies, in my opinion, *primâ facie* evidence that, in those years, he was "carrying on business," within the meaning of section 18 (*c*) of the Presidency Small Cause Courts Act, 1882,[3] within the jurisdiction of the Bombay Court. In this connection I may refer to the case of *Girdhar Damodar v. Kassigar Hiragar*,[4] in which it was held that, where a foreigner did not reside in Bombay, but carried on business there by his *munim*, the Small Causes Court had jurisdiction, under section 18 of the Act of 1882,[3] to try a suit brought against him.

The second of the three points above mentioned fails also. Under Order 5, rule 20, of the Indian Code of Civil Procedure,[5] substituted service in the manner adopted in the present case may be ordered where the Court is satisfied that the defendant is keeping out of the way, or that, for any other reason, personal service cannot be effected. It must be presumed that the Court of Small Causes in

[1] *See Robertson v. Struth, (1844) 5 Q. B. 941; Houldsitch v. Donegal (Marquis of), (1834) 8 Bli, N. S. 301; Castrique v. Imrie, (1870) L. R. 4 H. L. 414; Pemberton v. Hughes, (1899) 1 Chancery 781; and the local case of Sulaiman v. Ibrahim (1890) 9 S. C. C. 131.*

[2] *Act V. of 1908.*

[3] *Act XV. of 1882.*

[4] *(1893) I. L. R. 17 Bom. 662.*

[5] *And see Act XV. of 1882, s. 23.*

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Bombay satisfied itself that one or other of those conditions existed before substituted service was allowed. But the matter does not rest on a mere legal presumption. The relevant proceedings in the action in Bombay are filed of record in this case, and it appears that, before permitting substituted service, the Court of Small Causes was in presence of an affidavit by the plaintiffs' manager containing the following allegations: (*a*) That his firm held the defendant's acknowledgment in writing of the notice of demand sent to his address in Colombo; (*b*) that, before filing the suit, he had ascertained through a merchant in Colombo that the defendant's address still remained the same; (*c*) that a summons to appear and defend the suit was transmitted to Colombo for service upon him there; (*d*) that it was subsequently sent back to Bombay with a return certifying that the defendant was " not known "; and (*e*) that, on consulting his original informant on the subject, a telegraphic reply was forthcoming, " Ramanathan " (*i.e.*, the defendant) " in Colombo. " The Court of Small Causes was amply justified on these materials in directing substituted service of the summons to be effected.

There remains, however, for consideration the question whether the judgment of the Court of Small Causes is capable of being enforced against the defendant by an action here, on the ground either that he was born in British India, or that he is still domiciled there in spite of his residence in Colombo. The defendant is bound by his own admission in his answer—an admission repeated by his counsel at the trial—of the allegation in the plaint that he was and is " a subject of British India. " Neither in the answer nor in the admission at the trial is the sense in which those words were being used expressly defined. But I am strongly inclined to think that the position which the defendant intended to take up was merely that he was not subject, by residence or otherwise, to the jurisdiction of the particular tribunal in which he was being sued. The form in which the first issue is stated, and the carefulness shown by the defendant in his evidence in dissociating himself from any connection with Bombay, support that view. It is clear, however, that a defence to the action on that ground is one that ought to have been raised in the Small Causes Court in Bombay, and that it would be of no avail as an answer to an action in this Colony on a judgment passed against him in the Bombay suit. The sole fact of the birth of the defendant in British India—apart from any question of domicil—would not, in my opinion, suffice to render him liable to the jurisdiction of the Indian Courts. The " table of the classes of cases, " as it has been judicially described,[1] in which Fry J. in *Roussillon v. Roussillon* [2] laid down the conditions of the enforcement by the English Courts of a foreign judgment *in personam*, no doubt

[1] *Per Kennedy L. J. in Emmanuel v. Symon, (1908) 1 K. B., at page 312.*
[2] *(1880) 14 Ch. D., at page 371.*

includes the proposition that such endorsement may be obtained where the defendant is, at the time of the judgment in the action, a subject of the sovereign of the country in which the action is brought. But in most of the cases from which that proposition has been extracted, the country in which the judgment sued on was given was " foreign " in the strict sense of the term, viz., a country in which the sovereign was one other than the sovereign of the British Empire. In *Schibsby v. Westenholz*,[1] the defendant, who was a Dane, resident in London, sued upon a judgment obtained in France, and the dictum of Blackburn J., " if the defendants had been at the time of the judgment subjects of the country whose judgment is sought to be enforced against them, we think that its laws would have bound them," must be looked at in the light of the expert evidence before him, that by the law of France a French subject may sue a foreigner, though not resident in France, and of the provisions of article 14 of the Code Civil. *Roussillon v. Roussillon* [2] was the case of a French judgment obtained against a Swiss subject resident in England. Apart from the effect of special legislative enactments, such as we find in article 14 of the Code Civil, the *ratio decidendi* in such cases is that a subject is bound by his allegiance to obey the commandments of his sovereign, and, therefore, of his sovereign's Courts. In the ordinary legal sense there can, of course, be no tie of allegiance between a British subject and that part of the Empire to which, by birth, he may belong. Allegiance is the tie that binds him to the sovereign.[3] It was argued, however, that as a judgment of a Court in British India is a " foreign judgment " within the meaning of the definition of the latter term in section 5 of the Civil Procedure Code, an artificial meaning should be attached to the expression where the judgment of a Court of British India is concerned. That contention is expressly negatived by the decision of Atkin J. in *Gavin Gibson & Co. v. Gibson*,[4] in which all the English authorities are reviewed and distinguished or applied. The only case that may be regarded as a direct authority to the contrary is that of *Douglas v. Forrest*,[5] in which it was held that a Scottish judgment obtained against a defendant resident abroad would be enforced in England if the defendant were a native of Scotland. It would appear, however, that one of the grounds of this decision was that the defendant had property in Scotland, a circumstance which the recent decision of the Court of Appeal in *Emmanuel v. Symon* [6] shows to be clearly irrelevant. I would respectfully adopt the observation of Atkin J., that *Douglas v. Forrest* [5] belongs to a period when the law relating to foreign judgments had not been investigated as fully as at the present time, and should not be regarded as a decision that judgments

[1] *(1870) L. R. 6 Q. B. 155.*
[2] *(1880) 14 Ch. D., at page 371.*
[3] *In re Johnson, Roberts v. Attorney-General, (1903) 1 Ch. 821.*
[4] *(1913) 3 K. B. 379.*
[5] *(1828) 4 Bing. 686.*
[6] *(1908) 1 K. B. 312.*

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obtained in the Courts of the British dominions against absent defendants born in that part of such dominions over which the Courts have territorial jurisdiction are on that ground only binding elsewhere.

In *Gavin Gibson & Co. v. Gibson*,[1] however, the question as to what the position of matters would be if the defendant, although not resident, had been domiciled, in the Colony (Victoria) on a judgment in one of whose Courts he was sued in England, did not expressly arise for adjudication. Atkin J. held that on the material before him, the existence of an Australian domicil had not been established, and he disposed of the question, which it had thus become unnecessary to consider, whether if the defendant's domicil had been in Victoria, an English Court would have been bound to give effect to a Victorian judgment against him in a personal action for debt, with the words: "I am content to record a doubt." The point is dealt with in the same sense by Professor Dicey [2] as follows: "Is the domicil of the defendant, as contrasted with and in the absence of residence, sufficient to give a foreign Court jurisdiction? This question must, it is submitted, be answered in the negative. X is a British subject residing in England, but domiciled in France. An action is brought against him in Paris. He is served with process or notice of process in England. The French Court has (*semble*) no jurisdiction."

The evidence before us in the present case is not sufficient to prove affirmatively that the defendant, in spite of his residence in Ceylon, was domiciled in British India. But, in view of the terms of his answer, and of the tenor of some of his evidence, I should have been disposed to have sent the case for the trial of an issue on that point, if it would have served any useful legal purpose. But, in the absence of any authority to the contrary, I think that we ought in this matter to follow the dictum of Atkin J. and the opinion of Professor Dicey. The passage in Lord Halsbury's *Laws of England*,[3] to which the plaintiffs' counsel referred us, and in which emphasis is placed upon the fact that a man's domicil of origin or, where that has been acquired, his domicil of choice governs his civil status, does not appear to me to justify the conclusion that, where he is resident in another country, a judgment passed against him *in absentem*, and without notice, by a Court of the country of his domicil, to the jurisdiction of which he has not in any way submitted himself, can be enforced against him by an action in the country of his residence. [4]

On these grounds I would set aside the decree under appeal, and direct decree to be entered up dismissing the plaintiffs' action, with the costs of the action and of the appeal.

DE SAMPAYO J.—I agree.

*Set aside.*

[1] *(1913) 3 K. B. 879.* [2] *Conflict of Laws, 2nd ed. 368.* [3] *Vol. 6, p. 183*
[4] *Cf. Sirdar Gurdyal Singh v. Rajah of Faridkote, (1894) A. C. 670, at page 683.*