

Present : Lascelles C.J. and De Sampayo A.J.

1912.

WORMAN & CO. v. NOORBHAI

142—D. C. Colombo, 30,435.

Action on a foreign judgment—Is defendant bound by the judgment?

Plaintiffs obtained judgment against the defendant in the Court of Small Causes of Calcutta, but the defendant was not domiciled within the jurisdiction of the Indian Courts, and was not resident there at the time of the action against him, and did not appear to the process or agree to submit to the jurisdiction of the Court of Small Causes.

The plaintiffs subsequently sued the defendant in the District Court of Colombo on the judgment of the Calcutta High Court.

Held, that the defendant was not bound by the decree of the Calcutta Court.

THE facts are set out in the judgment of the District Judge (H. A. Loos, Esq.):—

The plaintiffs seek to recover from the defendant the sum of Rs. 2,282, which is the amount for which they obtained judgment against him in the Court of Small Causes of Calcutta in India.

The defendant pleads that the Calcutta Court had no jurisdiction to entertain the action against him, presumably meaning that the contract sued upon was made in Colombo, and that he was a resident in Colombo at the date of the institution of the action in Calcutta, although he does not say so in his answer.

He also pleads that he was not served with summons in that action, and had no notice whatever of any proceedings against him in the Calcutta Court.

The parties went to trial on the following issues, viz.:—

- (1) Had the Court of Small Causes, Calcutta, jurisdiction to entertain the action against the defendant?
- (2) Was summons served upon the defendant in that action?

The plaintiffs stated that the contract sued upon was executed in Calcutta, and presumably satisfied the Calcutta Court that it was executed at Calcutta, for otherwise that Court would have had no jurisdiction to try the action, the defendant being resident outside the jurisdiction of that Court, admittedly.

If, as a matter of fact, the contract in question was executed in Colombo, as the defendant states, and showed on the face of it that it was executed in Colombo, it is quite clear that the defendant would have produced a copy of the contract in support of his statement. He has not produced it, however, and he gives no explanation of his failure

1912.
 Worman
 & Co. v.
 Noorbhai

to do so. He says he may have a copy of the contract, but he cannot remember if he looked for it. I cannot believe that the defendant would not remember if he looked for his copy of the contract, nor that he would not have produced it, or have noticed the plaintiffs to produce a copy of it, if it would have established that it was executed in Colombo and not in Calcutta as stated by plaintiffs.

If what the defendant states is true, that the contract on the face of it shows that the place of its execution was Colombo, there is no doubt that a copy of the contract would have been produced by him. His failure to do so convinces me that the contract was executed in Calcutta, and that the Calcutta Court accordingly had jurisdiction to entertain that action.

The other issue raised is as to whether summons was served upon the defendant in that action. It is proved that the summons was forwarded to the defendant under registered cover by post. The defendant admits that if a registered letter had been forwarded to him there is no doubt that he would have received it; but he states that he received no registered letter from Calcutta containing a summons in respect of the contract in question.

From the copy of the proceedings (C) of the action in the Calcutta Court, it appears that that Court was satisfied that summons had been duly served on the defendant, and recorded a finding to that effect. I see no reason whatever to doubt that the summons was served upon the defendant in the Court of Small Causes action.

The onus lay on the defendant to establish that the Calcutta Court had no jurisdiction to entertain the action referred to, and that summons in that action had not been served upon him. He has, in my opinion, failed to discharge that onus, and the plaintiffs are entitled to succeed.

Let judgment be entered in favour of plaintiffs as prayed with costs.

The defendant appealed.

Hayley (with him *Talaivasingham*), for the defendant, appellant.—The appellant was resident in Ceylon; the contract was made in Colombo; there is nothing to support the finding of the District Judge that the contract was entered into in Calcutta. The cause of action arose in Colombo; the cause of action was the refusal to accept delivery in Colombo. The Calcutta Court had, therefore, no jurisdiction to entertain this action. See section 20 of the Indian Civil Procedure Code. Even if it had jurisdiction, summons was not served on the defendant. The production of the cover of the registered letter forwarding the summons to defendant is not sufficient proof of service; the defendant denied the service of summons on oath.

The judgment of the Calcutta Court, which was a foreign Court, is not binding on the defendant as he was not resident or domiciled in Calcutta, and as he did not appear in the case or submit himself to the jurisdiction of the Court. A foreign Court is defined in the Civil Procedure Code as a Court situate beyond the limits of, and not having authority in, Ceylon (see section 5).

Counsel cited 4 *Nathan's Common Law of South Africa 2080*, *Sirdar Gurdyan Singh v. The Rajah of Faridkote*,¹ *Emanuel v. Symon*,² 6 *Halsbury's Laws of England 284*, *Williams v. Richards*.³

1912.
—
*Worman
& Co. v.
Noorbhai*

Seneviratne, for the plaintiffs, respondents.—The Indian Court had jurisdiction to try the case, as the place where the contract was made is the place where the cause of action arises. See section 17 of the old Indian Code, where the term "cause of action" is defined. The term "cause of action" has a wider meaning in India than in Ceylon.

A foreign judgment *in personam* is conclusive, and cannot be impeached on the ground of want of jurisdiction. See *Laws of England*, vol. VI., p. 289.

Counsel also cited *King v. van Langenberg*.⁴

Cur. adv. vult.

July 11, 1912. LASCELLES C.J.—

This is an appeal from a judgment of the District Judge of Colombo giving judgment against the defendant on a judgment of the Court of Small Causes of Calcutta. The argument on appeal principally turned on a point which does not appear to have been urged before the learned District Judge. But as the consideration of that argument involves no further finding of fact, I think we cannot refuse to entertain that argument. Now it is urged by Mr. Hayley that, accepting the findings of the District Judge on the two points in issue, namely, the competence of the Court in India and the service of the summons in Colombo, the present action is still one that is not maintainable on general principles of international law. It is argued that, inasmuch as the defendant was not domiciled within the jurisdiction of the Indian Courts, and was not resident there at the time of the action against him, and did not appear to the process or agree to submit to the jurisdiction of the Court of Small Causes he is not bound by the judgment of that Court. The authorities which Mr. Hayley has cited to us are explicit on the point, and being authorities on questions of international law they are binding on us. In the case of *Emanuel v. Symon*² the facts were on all fours with the facts of the present case. The defendant had been in Western Australia and had carried on business there. He then left Australia and went to live in England. His former partners then obtained a judgment against him in the Australian Court. The defendant was served with the writ in England, but he entered no appearance, and did not defend the action. The Australian Court gave judgment against him, and an action was brought in England against the defendant to enforce the Australian decree; and it was held on the grounds that I have

¹ (1894) A. C. 670.

³ (1870) 6 Q. B. 155.

² (1908) 1 K. B. 302.

⁴ (1889) 9 S. C. C. 13.

1912.
LASCCELLES
C.J.
Worman
& Co. v.
Noorbhai

mentioned, that the defendant was not bound by the decree of the Australian Court. In an Indian case, *Sirdar Gurdyan Singh v. The Rajah of Faridkote*,¹ the same principles were enunciated. I regard these judgments as binding on us, and I would set aside the judgment of the District Court and dismiss the action against the defendant. I think the defendant is entitled to have the costs of the appeal. As the case has proceeded on the ground that was not urged in the Court below, I think each side ought to pay their own costs in the District Court.

DE SAMPAYO A.J.—I entirely agree.

Appeal allowed.

