

CIVIL REFERENCE.

Before D. Chatterjee and Beachcroft JJ.

1916

 April 11.

ABDUL QUADER

v.

FRITZ KAPP.*

*Alien Enemy, suit against—If maintainable during the continuance of war—
 Internment, its object.*

It does not matter whether the cause of action arose before or after the war, an alien enemy can be sued in our Courts and has every right to present his case before the Courts in accordance with the laws of procedure.

Halsey v. Lowenfeld (1) followed.

The fact that the defendant has been interned does not make any difference, as the object of internment is to prevent him from doing mischief and not to cut down his liabilities.

THIS was a reference made by Babu Sarat Chandra Ghose, Munsif of Dacca. The facts are simple. The plaintiff is a British Indian subject, a tailor by profession. He sued an interned German for his remuneration for work done. The contract was entered into after the declaration of war and completed before the internment of the defendant.

The defendant entered appearance at first, but subsequently the pleader received no further instruction.

The learned Munsif, before whom the case came on for hearing, referred the following points for the decision of this Court:—

(i) Whether the suit for work done by a British

* Civil Reference No. 1 of 1916, by Sarat Chandra Ghose, Munsif of Dacca, dated Sep. 30, 1915.

(1) [1916] 1 K. B. 140.

subject during the war is at present maintainable against an alien enemy under orders of internment—the contract having been made and the breach thereof having taken place during the war.

1916
 ———
 ABDUL
 QUADER
 v.
 FRITZ KAPP.

(ii) Whether the trial should be suspended until restoration of peace.

No one appeared in support of the Reference.

The Senior Government Pleader (Babu Ram Charan Mitra) opposed the reference. The main question for consideration is whether the suit is maintainable? The latest decision on the point is in the case of *Robinson & Co. v. Mannheim Insurance Co.* (1). Section 83 of the Code of Civil Procedure contemplates the case of an alien enemy as plaintiff and not as defendant. Here the defendant, and not the plaintiff, is an alien enemy. Here, there can be no bar to the suit. The provisions of the Code are not exhaustive in the matter. The present suit is maintainable. Is the contract valid? The contract, being for the necessaries of life, is undoubtedly a valid one. The plaintiff, who is a British subject, should not, indeed, suffer. The contract is enforceable as contracts by infants and other disqualified persons for the necessaries of life, are enforceable.

Reading section 9 along with section 83 of the Code of Civil Procedure and taking into account the fact that there is no prohibition, express or implied, in the Code against the maintainability of suits against alien enemies, I submit, that this suit should be allowed.

Cur. adv. vult.

D. CHATTERJEE AND BEACHCROFT JJ. The plaintiff is a British Indian subject, a tailor, in the town of

(1) (1914) 20 Com. Cas. 125 ; 19 C. W. N. viii.

1916
 ———
 ABDUL
 QUADER
 v.
 FRITZ KAPP.

Dacca. The defendant, who is a subject of the German Emperor, was a photographer in that town. In November 1914, *i.e.*, after the declaration of war with Germany, the plaintiff did some tailoring work for the defendant and the present suit was brought for the recovery of wages, etc., due on that account. The question referred is whether such a suit would lie during the pendency of the war. We think the suit would lie, and there is nothing in law to prevent its being tried before the restoration of peace.

Section 9 of the Civil Procedure Code provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits the cognizance of which is expressly or impliedly barred. Section 83 provides that alien enemies, residing in British India with the permission of the Governor-General in Council, may sue in the Courts of British India, but an alien enemy residing in British India without such permission shall not sue in such Courts. There is no provision in the Code barring suits against alien enemies and we see no reason why such suits should not be heard and decided during the continuance of the war. No matter whether the cause of action arose before or after the war, an alien enemy can be sued in our Courts and would have every right to present his case before the Courts in accordance with the laws of procedure. The latest case in England is that of *Halsey v. Lowenfeld* (1). In that case Mr. Justice Ridley held, after discussing previous cases, that a suit for rent accrued due after the declaration of the war was maintainable in the British Courts against an alien enemy. We see nothing in our own Code of Procedure to prevent us from taking the same view. The fact that the defendant has been interned does not make

(1) [1916] 1 K. B. 140.

any difference as the object of internment is to prevent him from doing mischief and not to cut down his liabilities. The case, therefore, must be tried in due course of law.

S. K. B.

1916
 ABDUL
 QUADER
 v.
 FRITZ KAPP.

CRIMINAL REFERENCE.

Before Mookerjee and Sheepshanks JJ.

AKSHOY SINGH

v.

RAMESWAR BAGDI.*

1916
 May 29.

Criminal Trespass—High Court, power of, to allow composition of an offence on revision—Criminal Procedure Code (Act V of 1898), ss. 345 (5), 423 (1) (d), 432—Necessity of criminal intent—Entry on land under bonâ fide claim of right—Penal Code (Act XLV of 1860), ss. 441, 447.

The High Court has no power, as a Court of Revision, under s. 439 read with s. 423 (1) (d), to sanction the composition of an offence when entered into after the conviction of the accused.

Adhar Chandra Dey v. Subodh Chandra Ghosh (1), *Sankar Rangayya v. Sankar Ramayya* (2) and *Emperor v. Ram Chandra* (3) followed.

Emperor v. Ram Piyari (4), *Naqi Ahmad v. King-Emperor* (5), *Nidhan Singh v. King-Emperor* (6), *Ram Sarup v. Emperor* (7) and *Lall v. Emperor* (8) dissented from.

Abadi Bagum v. Ali Husen (9) distinguished.

To sustain a conviction under s. 447 of the Penal Code, it is necessary to prove not only entry on land in the possession of the complainant but

* Criminal Reference No. 77 of 1916 by G. N. Ray, Sessions Judge of Burdwan, dated May 17, 1916.

(1) (1914) 18 C. W. N. 1212.

(2) (1915) 16 Cr. L. J. 750 ;
 29 Mad. L. J. 521.

(3) (1914) I. L. R. 37 All. 127.

(4) (1909) I. L. R. 32 All. 153.

(5) (1912) 11 All. L. J. 13.

(6) (1904) 1 Cr. L. J. 509,

5 Punj. L. R. 252.

(7) (1910) 11 Cr. L. J. 496 ;

13 O. C. 161.

(8) (1913) 15 Cr. L. J. 567 ;

17 O. C. 92.

(9) (1897) All. W. N. 26.