ORIGINAL CIVIL.

Before McNair J.

1936

June 25.

CHANDAN MALL KARNANI

v.

SARDARI LAL THAPAR.*

Contempt—Jurisdiction of the High Court to commit for contempt, its origin and nature—Codes of Civil and *Criminal Procedure, if have affected such jurisdiction—Arrest, Execution of writ of, for contempt—Territorial limits.*

The power to commit for contempt of Court was inherited by the High Court at Fort William from the Supreme Court at Fort William, and has since been retained in the High Court by subsequent legislation. The jurisdiction is quasi-criminal and has in no way been affected by the Codes of Civil and Criminal Procedure.

Martin v. *Lawrence* (1); *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court at Fort William in Bengal* (2) and *Hassonbhoy* v. *Cowasji Jehângir Jassáwallá* (3) relied upon.

Salamchand Kannyram v. *Joogul Kissore Ramdeo* (4) considered and commented upon.

The writ of arrest issued upon committal for contempt can be executed by the High Court sending a special bailiff for the purpose anywhere within the province of Bengal over which it has general jurisdiction. If the person committed be beyond its general jurisdiction, the writ can only be executed through the Court within whose jurisdiction such person happens to be.

Harivallabhdás Kalliándas v. *Utamchand Mánickchand* (5) followed.

APPLICATION by Sampat Lal Karnani, receiver appointed in the suit, to have the defendant committed to gaol for contempt of Court, inasmuch as the defendant had, in violation of his undertaking to the Court, and contrary to the decree of the Court, resisted, obstructed and prevented the receiver from taking possession of certain prints of a cinema film.

*Application in Original Suit, No. 1812 of 1935.

(1) (1879) I. L. R. 4 Cal. 655.
(2) (1883) I. L. R. 10 Cal. 109; L. R. 10 I. A. 171.
(3) (1881) I. L. R. 7 Bom. 1.
(4) (1927) I. L. R. 55 Cal. 777.
(5) (1870) 7 Bom. H. C. R. (O. C. J.) 172.

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The facts material for the purposes of this report are as follows :—

The plaintiff had sold the exploitation rights in a cinema film called "Rashida" to the defendant for five years for Rs. 40,000, of which Rs. 20,000 was paid on delivery of the film and the balance was payable by instalments for which *hundis* were executed. The *hundis* having been dishonoured, the plaintiff brought the suit for possession of the prints of the film and recovery of the money due on the *hundis*. On November 12, 1935, a decree by consent was made, providing for payment of the decretal amount by instalments and appointing one Sampat Lal Karnani, as receiver, who was to take possession of the prints of the film if default was made by the defendant in payment of any one instalment.

After the defendant made default in payment of the instalments, the receiver sent his agent to Lahore, where the defendant carried on his business, to take possession of the prints of the film in terms of the consent decree. The defendant failed to give possession of the prints of the film when requested to do so at Lahore by the receiver's agent. As a result, on February 8, 1936, the receiver took out the present notice of motion which was partly heard on April 23, 1936, in presence of the defendant himself. At this hearing the defendant gave his personal undertaking to make over the prints of the film to the receiver's agent within 15 days, and upon this undertaking the Court adjourned till May 11, 1936, both the application for committal for contempt and the application for personal execution of the consent decree. The defendant left Calcutta on April 24, 1936, but failed to make over the prints of the film to the receiver's agent in terms of his undertaking, nor did he have any explanation to offer to the Court of his failure to do so.

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The arguments of counsel appear sufficiently from the judgment.

S. C. Ray and *N. N. Bose* for applicant.

K. P. Khaitan and *M. N. Banerji* for defendant.

Cur. adv. vult.

[His Lordship after stating the facts proceeded as follows:—]

McNair J. The question arises whether this Court has power to punish for contempt a person who has failed to carry out the orders of the Court and who, in Calcutta, and in *facie curiæ*, has given an undertaking to carry out those orders, and has then removed himself from the territorial jurisdiction and failed to carry out that undertaking or to give any explanation for his failure.

Mr. Khaitan for the defendant contends that so long as the defendant is outside the territorial jurisdiction of this Court the Court has no *seizin* over his person and is powerless to enforce its orders.

In order to decide if this contention is well founded it is necessary to examine the powers of a High Court to punish for contempt.

In Belchambers' Practice of the Civil Courts, 1884 Ed., at p. 241, I find the following:—

> Every superior Court of Record, whether in the United Kingdom, or in the colonial possessions or dependencies of the Crown, has inherent power to punish contempts, without its precincts, as well as in *facie curiæ*, and is the sole and exclusive Judge of what amounts to a contempt. This power, so necessary for the purpose of securing the better and more secure administration of justice, results from the first principles of judicial establishments, and must be an inseparable attendant upon every superior tribunal.

In *Ambard* v. *Attorney-General for Trinidad and Tobago* (1), Lord Atkin in delivering the judgment of the Privy Council says:—

> Everyone will recognise the importance of maintaining the authority of the Courts in restraining and punishing interferences with the administration of justice, whether they be interferences in particular civil or criminal cases, or take the form of attempts to depreciate the authority of the Courts themselves.

(1) [1936] A. C. 322, 329.

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"The object of the discipline enforced by the Court "in case of contempt of Court," says Bowen L.J. in *Helmore* v. *Smith* (1), "is not to vindicate the dignity "of the Court or the person of the Judge, but to pre- "vent undue interference with the administration of "justice."

The statement in Belchambers' Practice that the High Court as a Court of Record is inherently empowered to punish for contempt is based on a number of decisions including a decision of the Privy Council on appeal from this Court.

In *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court at Fort William in Bengal* (2) where the application was to commit the respondent for contempt for publishing a libel, Sir Barnes Peacock in delivering the judgment of the Board says:

> It is an offence which by the common law of England is punishable by the High Court in a summary manner by fine or imprisonment, or both. That part of the common law of England was introduced into the Presidency towns when the late Supreme Courts were respectively established by the Charters of Justice. The High Courts in the Presidencies are Superior Courts of Record, and the offence of contempt, and the powers of the High Court for punishing it, are the same there as in this country, not by virtue of the Penal Code for British India and the Code of Criminal Procedure, 1882, but by virtue of the common law of England.

As the learned Judge says, that part of the common law was introduced into the Supreme Court by the Charters.

The Charter establishing the Supreme Court in Bengal in 1774 provided by cl. 4 that the Judges should have the same jurisdiction and authority as the Judges of the Court of King's Bench in England, and by cl. 21 expressly provided that the Court is empowered to punish for contempt.

The High Courts Act of 1861, which abolished the Supreme Court and set up the High Court, provided by s. 9 that the High Court shall have and exercise all

(1) (1886) 35 Ch. D. 449, 455.
(2) (1833) I. L. R. 10 Cal. 109 (151-2); L. R. 10 I. A. 171 (179).

jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same presidency abolished under this Act at the time of the abolition of such last-mentioned Courts, and s. 11 provided that the existing provisions applicable to the Supreme Courts should apply to the High Court.

The Letters Patent of 1865 provided in cl. 2 that the High Court should continue a Court of Record, and defined in cl. 11 the local limits of its ordinary original civil jurisdiction.

Finally, the Government of India Act, s. 106, continued to the High Courts "all such jurisdictions, "powers, and authority as are vested in those Courts "respectively at the commencement of this Act."

We find then that the power to commit for contempt was conferred on this Court by its Charter and has been retained in the Court by subsequent legislation.

In *Martin* v. *Lawrence* (1) the defendant in an administration suit was ordered to pay to her attorney a sum of money admittedly in her hands. She refused to obey the order and was imprisoned. The Court held that the order for imprisonment was made in contempt proceedings and not in execution of the decree and that the defendant who had suffered imprisonment for six months was not entitled to be discharged until she had purged her contempt.

The process issued was described by White J. as the—

> peculiar process which the Court employs to vindicate its authority, and ensure that suitors and others, who are amenable to the process, do not by their contumacy make its order nugatory.

The learned Judge again says:—

> The jurisdiction of the Court, under which this process issued, is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the process and authority of the then Court of

(1) (1879) I. L. R. 4 Cal. 655, 658, 659.

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King's Bench and of the High Court of Chancery in Great Britain. I am unable to see that this jurisdiction, in the particular instance in which it has been exercised in the case before us, has been removed or affected or was intended to be removed or affected, by the new Code of Civil Procedure. If Mr. Hill's contention were right, the High Court would in a measure be disarmed. It would be deprived of the best and most effectual, and, in some cases, the only effectual, means of securing obedience to its orders.

This takes me directly to Mr. Khaitan's contention that this jurisdiction of the Court if existing has been curtailed by the Codes of Civil and Criminal Procedure.

The learned Judge states definitely, in the passage to which I have referred, that in his opinion it was in no way affected by the Code of Civil Procedure. It has also been held that the jurisdiction is not a criminal but a quasi-criminal jurisdiction and in my opinion it is no way affected by the Code of Criminal Procedure.

This is the view taken by Belchambers (see Belchambers' Practice of the Civil Courts, p. 246), and it is supported by the words of Sir Barnes Peacock in *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court at Fort William in Bengal* (1), where the learned Judge expressly states that the powers of the High Court to punish for contempt do not arise by virtue of the Civil or Criminal Procedure Code and I can find nothing in those Codes which purports to limit those powers.

In *Ambard* v. *Attorney-General for Trinidad and Tobago* (2) Lord Atkin referred to such interferences with the administration of justice as amount to contempt of Court as being "quasi-criminal acts," and held that leave to appeal to the Privy Council from orders punishing them should be granted on the same principles as leave in criminal cases is given. And in *Martin* v. *Lawrence* (3) Garth C. J. lays stress

(1) (1883) I. L. R. 10 Cal. 109 (131-32); L. R. 10 I.A. 171 (179).

(2) [1936] A. C. 322.

(3) (1879) I. L. R. 4 Cal. 655.

on the difference between the powers of the Court where parties have been imprisoned under process of execution in satisfaction of a decree which are governed by the Code of Civil Procedure, and the powers of the Court when imprisoning for contempt where the provisions of the Code do not apply.

The effect of the Codes on the powers of the High Courts to commit for contempt is discussed by West J. in *Hassonbhoy* v. *Cowasji Jehángir Jassáwallá* (1). An application was made in that case to commit the respondent for contempt for disobeying an order to give inspection. It was argued on the respondent's behalf that the former jurisdiction of the High Court to punish for contempt had, since the passing of the Code of Civil Procedure, become restricted to the powers provided under s. 136 of the Civil Procedure Code of 1877 (corresponding with O. XI, r. 21 of the Code of 1908), which in effect deprived the High Court of its former jurisdiction. West J. rejected this contention. He pointed out that s. 136 was embodied in the Code from the English Judicature Act. The English Act expressly confers the power of committal for contempt, and it is contained in O. 31, r. 21 of the Rules of the Supreme Court of England, but that power is not incorporated in the Indian Act. The learned Judge held that this omission was deliberate, because the Code of Civil Procedure was to apply not only to High Courts but to all the Courts of the *mofussil* where it was undesirable that the wider powers allotted to the High Courts should be exercised. The High Courts already had the power to commit for contempt and that power could not be presumed to have been withdrawn without the explicit expression of such an intention. The authority of the inferior Courts is derived from the Codes, but a different conclusion must prevail in the case of the Chief Courts of Record already armed with powers to vindicate their authority.

(1) (1881) I. L. R. 7 Bom. 1.

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The learned Judge then makes the following quotation from 4 Stephen's Blackstone 428 :—

> The process of attachments for contempts must necessarily be as ancient as the laws themselves. For laws without a competent authority to secure their administration from disobedience and contempt would be vain and nugatory. A power, therefore, in the Supreme Courts of Justice to suppress such contempts by an immediate attachment of the offender, results from the first principles of judicial establishments and must be an inseparable attendant upon every superior tribunal,

and concludes :—

> As regards the High Courts, therefore, the remedies provided by s. 136 (of the Code) may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience.

In *Navivahoo* v. *Narotamdás Cándás* (1) there was a similar application for committal for failure to obey an order to give inspection, and a Division Bench of the Bombay High Court adopted the reasoning of West J. in the previous case and arrived at the same conclusion.

The respondent contends that the order for committal for contempt is made in the ordinary original civil jurisdiction, but the above cases show conclusively that this contention is erroneous. The difference is stressed in *Rajah of Ramnad* v. *Seetharam Chetty* (2), on which the respondent relies. There it was held that an order directing a warrant to issue against the person of a judgment-debtor and appointing a special bailiff to arrest him wherever he might be found in the presidency of Madras was without jurisdiction. That order was made in execution of a decree, and was undoubtedly an order made in the exercise of the ordinary original civil jurisdiction. The appellate Court in setting it aside was at pains to distinguish it from the orders passed in the Bombay cases to which I have referred, and to point out that the High Court in making an order for attachment for contempt is not acting in exercise of its civil jurisdiction.

(1) (1882) I. L. R. 7 Bom. 5. (2) (1902) I. L. R. 26 Mad. 120.

The case on which the respondent relies most strongly for his contention that a warrant for committal cannot be transmitted outside the local limits of the Court is *Salamchand Kannyram* v. *Joogul Kissore Ramdeo* (1). The respondent was directed to make over certain books to the receiver. He failed to carry out the order and an order was made for his committal for contempt. On that the respondent left Calcutta and the plaintiff applied for an order for transmitting the writ of warrant to the District Court. The Judge of first instance dismissed the application and the Court of appeal affirmed his decision.

At first sight it would appear that this decision is conclusive of the present question, but on reading the judgment certain facts emerge. First, the order in that case was *ex hypothesi* made under the Code. "Mr. S. N. Banerjee," says the learned Chief Justice at p. 780 of the report, "has argued upon this appeal "that ss. 36 and 136 (of the Civil Procedure Code) "must between them cover this case". It appears from the report of the argument that the learned counsel had referred to the inherent powers of the Court, but that that was not the basis of the Court's decision is clear from the following words in the judgment:—

> The questions of the Court's power derived from the old Supreme Court to arrest for contempt of Court a person in the *mofussil* have not been argued before us, and I make no pronouncement with regard to them.

Again the learned Chief Justice says:—

> Any *mofussil* Court may appoint a receiver, and if a person residing outside its jurisdiction interferes with the receiver then the same problem arises as arises here.

With the greatest deference I suggest that the problem would not be the same, for, as pointed out

(1) (1927) I.L.R. 55 Cal. 777.

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by West J. in *Hassonbhoy* v. *Cowasji Jehángir Jassáwallá* (1) the power to commit for contempt is retained by High Courts but is not conferred on subordinate Courts in the *mofussil* as it is expressly excluded from O. XI, r. 21 of the Code of Civil Procedure.

It must be remembered that the Civil Procedure Code has restricted the territorial limits of the Courts, and has also refrained from including in O. XI, r. 21 the liability to personal attachment which is contained in O. 31, r. 21 of the Rules of the Supreme Court in England to which I have referred earlier in this judgment.

The learned judges in the decisions in *Hassonbhoy* v. *Cowasji Jehángir Jassáwallá* (1) and *Navivahoo* v. *Narotamdás Cándás* (2) lay stress on the wider powers of the High Court which were not entrusted to the *mofussil* Courts.

I can find nothing in the judgment in *Salamchand Kannyram* v. *Joogul Kissore Ramdeo* (3) to suggest that the inherent powers which the Court is now called on to exercise are non-existent, and I hold that the Court has an inherent power to punish for contempt and that that power is in no way restricted or diminished by the Code of Civil or Criminal Procedure.

Assuming that I am right in this conclusion, the question remains how far this jurisdiction extends and what machinery survives for carrying it into effect.

Mr. Ray argues that no bounds are set to this jurisdiction and that it extends throughout British India. In Belchambers' Practice at p. 247 we find the following :—

> The High Court may send a special bailiff, beyond the local limits of its jurisdiction, to any place within its general jurisdiction, but not to any place outside British territory, to arrest a person for contempt of Court.

(1) (1881) I. L. R. 7 Bom. 1. (2) (1882) I. L. R. 7 Bom. 5.
(3) (1927) I. L. R. 55 Cal. 777.

The authorities on which this proposition is based are for the most part unreported cases of this Court, but there are two cases decided by the Bombay High Court which suggest that the territorial boundary should be that of the presidency.

In the first case, *Harivallabhdás Kalliándas* v. *Utamchand Mànickchand* (1), a Rule was issued for attachment against the defendants for contempt in not obeying an order to make over to a receiver partnership assets in their hands.

The Rule was served on the defendants in Baroda with the Gaekwar's consent. On a motion to set aside the Rule on the ground that service was effected in foreign territory, the Court (Westropp C. J. and Melvill J.) held that service in the Gaekwar's territories with the consent of the Gaekwar was valid service. It is noteworthy that, although the application was for attachment for contempt, the Court did not suggest executing the attachment in the Gaekwar's territory; it was only the validity of the service of the Rule for attachment which was called in question. The Court upheld the validity of the service and ordered an attachment but intimated that in making the order it did not direct its execution beyond British territory.

"The railway station at Baroda," says Westropp C. J. (1)—

> being in British territory annexed to and forming part of the Presidency of Bombay, I see no objection to the Sheriff sending a special bailiff or bailiffs if necessary to Baroda station to take these persons into custody. The special bailiff must be cautious not to act as such outside British territory. I only authorise him to take these persons into custody if he find them within British territory forming part of this Presidency; I make no direction as to how they are to be brought to the Baroda station.

The second case, *H. H. Chimnabai Saheb Maharani Gaekwar of Baroda* v. *Kasturbhai Manibhai Nagarsheth* (2), was a decision of the majority of a Special Bench of the Bombay High Court which held

(1) (1870) 7 Bom. H. C. R. (O. C. J.) 172, 178.
(2) (1934) I. L. R. 58 Bom. 729.

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(Beaumont C. J. and Rangnekar J., Mirza J. dissenting) that the High Court on its Original Side had itself the power to execute a decree passed in its ordinary original civil jurisdiction against a person residing outside the limits of that jurisdiction provided he was within the presidency. The application was not in a contempt matter and the decision was based largely on the rules of the Bombay High Court, which enabled the Court to appoint a special bailiff to arrest the judgment-debtor wherever he might be found in the Bombay presidency. These rules, however, were held not to be *ultra vires* of the Letters Patent, and by implication the jurisdiction to execute decrees throughout the presidency is implied—unless curtailed by legislation.

The form of commitment order made by Broughton J. on April 4, 1879, referred to in Belchambers' Practice at p. 247, has been produced before me. It orders the Sheriff to forward the writ to the District Judge of Burdwan who is to cause the defendant to be arrested and delivered over to the Sheriff to be brought before this Court to be dealt with according to law. No case has been quoted before me, and I can find no case where an order has been made for the arrest of a person outside the boundaries of the presidency. In a case of contempt I am of opinion that this Court may, acting under its inherent powers, send a special bailiff to arrest a person at a place within its general jurisdiction, which would appear to be within the confines of the Bengal presidency.

In coming to this conclusion I do not wish to be considered in any way to detract from the force of the remarks made by many learned Judges both in England and in India that the powers of the Court in such matters should be jealously and carefully watched and exercised. Such an order ought only to be made in the rarest cases; but where, as in the case before me, the respondent has failed to comply with the orders of the Court, has refused to honour his

undertaking and has treated with scant courtesy the persons who have been sent to Lahore to receive the films under the orders of the Court and in terms of the decree to which he was a consenting party, it is the duty of the Court to exercise the powers with which it has been invested for the enforcement of its orders. It does not appear to me to be necessary, even if it is within the powers of the Court, which I doubt, to send a special bailiff to Lahore to arrest the defendant and convey him to the jail in Calcutta. As was said by Lort-Williams J. in *A. Milton & Co.* v. *Ojha Automobile Engineering Co.* (1), in discussing the right of one Indian Court to issue an injunction against a person within the jurisdiction of another Indian Court,—

> the spirit of co-operation existing between the Courts in India will often be sufficient alone to make such orders effectual, where otherwise they might not be apart altogether from reciprocatory rules, such as those relating to the transfer of decrees for execution.

I have little doubt in this matter that the learned Judge at Lahore will assist in making the order of this Court effectual when it is brought to his notice.

In *Harivallabhdás Kalliándas* v. *Utamchand Mánickchand* (2) the learned Judges considered it doubtful whether the respondent could be arrested in the territories of the Gaekwar. Those territories were not, as is Lahore, a part of British India, but I cannot accept Mr. Ray's contention that this Court can order the arrest for contempt of a person in any part of British India.

The jurisdiction must in any event be confined so far as this Court is concerned to the Province of

(1) (1930) I. L. R. 57 Cal. 1280, 1284.
(2) (1870) 7 Bom. H. C. R. (O. C. J.) 172.

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Bengal. There will be an order in terms of prayer 4* in the notice of motion.

The respondent will pay the costs of this application as of a hearing.

Application allowed.

Attorneys for applicant: *H. C Banerjee & Co.*

Attorneys for defendant: *Khaitan & Co.*

*Prayer 4 is as follows: It may be ordered that the Sheriff of Calcutta do under provisions of s. 136 of the Civil Procedure Code send the writ of arrest together with the probable amount of costs of execution thereof and a copy of the order to be made herein to the Court of the District Judge of Lahore for execution.

P. K. D.