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relief against the defendant personally, and would decree also that portion of the relief asked with costs.

MUTTUSÁMI ÁYYAR, J.—I concur. Although in Referred Case 2 of 1878 I adopted the narrower construction, I am satisfied, on further consideration, that the true construction to be placed on Section 2, Act XV of 1877, is that which is suggested by my Lord the Chief Justice.

APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muttusámi Áyyar.

1879. December 8.

NALLATAMBI MUDALIAR (PLAINTIFF), APPELLANT, *v.* PONNUSA'MI PILLAI (DEFENDANT), RESPONDENT.*

Foreign judgment, Suit on—Objection to jurisdiction, Estoppel—Not examinable for irregular procedure, or because remedy was barred by Law of Limitation of proper forum.

Where a defendant sued in a foreign tribunal takes no exception to the jurisdiction, he cannot question the jurisdiction afterwards, inasmuch as he has led the plaintiff to believe that the proceedings are allowed by him to be effectual and encouraged the plaintiff to proceed in them instead of withdrawing from them and instituting proceedings elsewhere.

Irregularity of procedure on the part of a foreign tribunal which ordinarily proceeds in accordance with recognised principles of judicial investigation is not a sufficient ground for refusing to give effect to its judgment.

Where limitation bars the remedy, but does not destroy the right, the judgment of a foreign tribunal is not open to the objection that the suit (on a contract) was barred by the Law of Limitation applicable in the country where the contract was made.

THE facts and arguments in this case sufficiently appear in the Judgment of the Court (TURNER, C.J., and MUTTUSA'MI ÁYYAR, J.).

T. Ráma Ráu for Appellant.

Mr. *N. Subramániam* for Respondent.

JUDGMENT:—The Respondent and his father, who were British subjects, residing and domiciled in British India, executed, in favor of the Appellant, a bond covenanting to repay a loan of Rs. 4,000. The bond hypothecated immovable property in British India and was not registered.

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*Second Appeal No. 407 of 1878 against the decree of O. B. Irvine, District Judge of South Arcot, reversing the decree of the Small Cause Court, dated March 16th, 1878.

In December 1870 the Appellant brought a suit on the covenant in the bond in the Court of First Instance at Pondicherry, and, on the 24th April 1871, obtained a decree *ex parte*.

He then sued the Respondent in the Subordinate Judge's Court at Cuddalore on the foreign judgment, but, on the 14th December 1872, this suit was dismissed on the ground that the Respondent had had no notice of the proceedings in the French Court.

On the 14th December 1872 the Respondent applied to the French Court to declare its judgment ineffectual on the grounds that no execution had been obtained within six months from the date of the decree, that the bond was null and void under the law of British India for want of registration, and that a suit thereon was by the same law barred, in that more than three years had elapsed from the date of the bond before suit was brought.

The Respondent subsequently withdrew his demand that the decree should be declared ineffectual for default of execution, and, on the 19th March 1874, the Court of First Instance at Pondicherry, having allowed the Respondent to argue the other objections he had taken to the *ex parte* decree, held that the bond having been, as it appeared to the Court, executed in French territory, the registration law of British India did not apply, and that the suit in the French Court was governed by the French and not by the British Indian law of limitation. It therefore affirmed on the merits the *ex parte* judgment it had previously passed.

The Respondent carried the decree on appeal to the French Court of Appeal. He urged that the bond was made in British territory, and prayed that an inquiry might be directed as to this allegation; and he contended that having been executed in British territory by a British subject on a British Indian stamp and in conformity with the law of British India, and hypothecating immovable property in British India, it was governed by the law of that country.

The French Court of Appeal on November 10th, 1874, apparently, without admitting further evidence, found that the bond was made in French territory, and affirmed the decree of the Court of First Instance.

On the 9th November 1876 the Appellant instituted in the Subordinate Judge's Court at Cuddalore the suit now before us

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on appeal claiming to recover the amount decreed by the French Courts.

The Subordinate Judge held that evidence could not be admitted to show that the French Court had come to a wrong conclusion as to the place where the contract was made, and that on the plea of limitation the French Court was right in applying its own *lex fori*. He therefore decreed the claim.

The Lower Appellate Court agreed with the Court of First Instance that the British Indian Courts could not refuse effect to the foreign judgment merely on the ground that the foreign Court had determined the place at which the contract was made upon a consideration of probabilities and not upon direct evidence, but it held that, whether the contract was made in British Indian territory or not, the French Courts had no jurisdiction, the bond having been made by a British subject, domiciled in British India, on a stamp of British India and hypothecating property in British India.

The Appellant preferred a Second Appeal to this Court. It was represented on the part of the Respondent, and the representation was apparently borne out by the judgment of the Court of First Instance that the Respondent had pleaded in the French Courts want of jurisdiction. An issue was therefore directed to try whether the bond was executed in French or in British territory; and it has been found that the bond was executed in British India.

Since the return of the finding, a careful translation has been made of the proceedings in the French Courts, and it is apparent that the Respondent did not object to the competency of the French Courts to entertain a suit brought on the bond, but pleaded that, inasmuch as the bond was executed in British India, the French Courts were bound to apply the law of British India in respect of registration and limitation.

The Respondent contests the right of the Appellant to maintain suit on the judgments of the French Courts on the ground, among others, that he was, at the time the contract was made and at the time suit was brought in the French Court, a subject of British India and residing in British India, and was therefore not subject to the jurisdiction of the French Courts, nor did he owe permanent or temporary allegiance to France.

The 14th article of the *Code Civil* permits a French citizen to cite before a French Court a foreigner, even though not resident in French territory, to enforce a contract whether made in French or in foreign territory.

The Municipal Law of France has force only within its own territory. A judgment passed under that law can be enforced in British Courts only in virtue of principles of international law which have extra-territorial operation.

British Courts then are not bound to enforce in all cases judgments passed by French tribunals against foreigners on contracts made out of French territory.

The principles on which foreign judgments are enforced in English Courts as stated by Parke B. in *Russell* v. *Smyth*(1) and repeated by him in *Williams* v. *Jones*(2) are declared by Blackburn, J., in *Schibsby* v. *Westenholz*(3) as follows: "the judgment of a Court of competent jurisdiction over the defendant imposes on him a duty or obligation to pay the sum for which the judgment is given which the Courts in this country are bound to enforce," but "anything which negatives that duty or forms a legal excuse for not performing it is a defence to the action."

The same principles have been adopted by the Courts of British India, and have been substantially recognised by the Legislature.

It will be noticed that it is an indispensable condition that the foreign Court should have jurisdiction over the defendant.

It has jurisdiction over the defendant if he was, at the time suit was commenced, a subject of the foreign country, or if he was at that time domiciled or temporarily resident therein; and in respect of an obligation contracted in a foreign country, it would possibly be held that the Courts of that country have jurisdiction over a foreigner though he may not be domiciled and may have left the country before suit brought; and in respect of the transactions of a Joint Stock Company formed for the purpose of carrying on business in a foreign country, the Courts of that country may, under certain circumstances, have jurisdiction over a member of the Company, though he may never have resided therein nor owe

(1) 9 M. & W., 810.
(2) 13 M. & W., 633; S.C. 14 L.J. Ex., 145.
(3) L.R. 6, Q.B., 159.

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allegiance thereto. We can find no principle for holding that the mere possession of property in the foreign country would, by reason of the protection enjoyed, confer on the Courts of that country jurisdiction over a foreigner, neither domiciled nor resident therein, in respect of matters unconnected with the property. But a foreigner, although he may not owe allegiance to a country or be under the jurisdiction of its Courts, may nevertheless equitably estop himself from pleading that the Courts of that country had not jurisdiction over him.

In suing as a plaintiff in the Court of a country to which he owes no allegiance, he has voluntarily submitted to its jurisdiction, and he cannot afterwards object to the validity of the judgment of the Court on the ground that it had no jurisdiction over him.

In *Schibsby* v. *Westenholz* the Court refrained from expressing an opinion as to the effect of the appearance of a defendant where it is so far voluntary that he appears only for the purpose of endeavouring to save some property which may be in the hands of the foreign tribunal.

Reference was at the same time made to *De Cosse Brissac* v. *Rathbone*(1) as an authority that, where the defendant voluntarily appears and takes the chance of a judgment in his favor, he is bound. We have referred to the judgment in that case, and it appears that the defendants had property within the jurisdiction of the foreign Court, and alleged they appeared solely to save it from seizure. Nevertheless the Court held, as settled by authority, that they could not be allowed to show the judgment of the foreign Court was erroneous in fact and in law on the merits, nor that they had discovered fresh evidence, nor that the foreign Court had admitted evidence which would not have been received in the Courts of England.

In *Kandoth Mammi* v. *Neelancherayil Abdu Kalandan*(2) the plaintiff had obtained a decree against the defendants in a French Court and sought to enforce it by a suit on the judgment in the Court of North Malabar.

It was found that the defendants were, and had always been, residents in British territory, that the bond was made in British

(1) 30 L.J. Ex., 238; S.C. 6 H. & N., 301.
(2) 8 M.H.C.R., 14.

territory, that the obligee, though described in the bond as residing in French territory, had a residence in British as well as in French territory, and that the bond stipulated the defendants should take the money to the obligee and pay him; that the defendants appeared in the French Court and defended the suit and raised no objection to the jurisdiction. It was held that, having taken the chance of obtaining a judgment in their favor which would, if obtained, have relieved them from all liability, they were afterwards equitably estopped from denying the jurisdiction.

In the case before us the Respondent took no objection to the jurisdiction of the French Court, and, therefore, on the point we are now considering, we must hold his objection unsustainable unless we are prepared to dissent fron the ruling last cited. In our judgment that ruling is based on sound principles of equity. By appearing in the foreign Court and taking no exception to its jurisdiction, the defendant, for the time, puts himself under the jurisdiction of the Court; he has led the plaintiff to believe that the proceedings are allowed by him to be effectual, and encouraged the plaintiff to proceed in them instead of withdrawing from them and instituting proceedings elsewhere.

It is, therefore, in our opinion, a legitimate application of the principles recognised in our Courts to hold that a defendant who has, under the circumstances, submitted to the jurisdiction, cannot afterwards question it.

Assuming, however, that the French Courts had jurisdiction over the parties, it is next objected that they had not jurisdiction over the subject-matter; but, in this case, the subject-matter is a personal obligation. The Appellant sought to enforce the covenant and asked no relief against the hypothecated property. Inasmuch as we hold that the Respondent cannot plead the French Courts had no jurisdiction over him when he appeared to the proceedings in those Courts, it follows that the plea, that they had not jurisdiction over the subject-matter because the contract was made in foreign territory, cannot be allowed.

Again it is urged that the French judgments cannot be enforced because the Courts did not admit evidence to show where the contract was made, and came to a wrong decision on this question of fact.

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It is true the French Court of First Instance considered the issue immaterial, and that although the French Appellate Court held it material, its judgment appears to proceed rather on inference than on direct evidence; it is also true the Respondent applied for an enquiry and offered to produce such evidence, but there is nothing to show whether his request was granted, or refused, or withdrawn.

It is not, in our judgment, a sufficient ground for impugning the judgment of a foreign Court, which ordinarily proceeds in accordance with the recognised principles of judicial investigation to show that in the particular instance its procedure may have been irregular. The Respondent, had he considered he was aggrieved by that procedure, might have applied to the French Appellate Court for review on that ground. We may assume that the procedure was regular, but, if there was irregularity, we could not hold it a sufficient ground for refusing respect to the judgment.

Lastly, it is urged that the right to sue on the obligation on which the French judgment proceeded had become barred in British India by the law of limitation before proceedings were taken in the French Court.

It is no doubt a highly equitable doctrine that a contract should, in all its incidents, be governed by the law of the country where it is made; but, where limitation is merely prohibitive of the remedy and not destructive of the right, the judgment of a foreign Court is not open to objection on the ground that a suit on the contract would be barred by the law of limitation applicable in the country in which the contract was made. It is unnecessary for us to consider whether the judgment of a foreign Court would be enforced if it was based on a right which had become extinct under a law of limitation in the country in which the contract was made and the party sought to be charged therewith had remained subject to that law.

We must, therefore, allow the appeal, and, reversing the decree of the Lower Appellate Court, restore the decree of the Court of First Instance with costs.