APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr Justice Shephard.

1890.
July 17, 28.

BANGARUSAMI (PLAINTIFF), APPELLANT,

v.

BALASUBRAMANIAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Judgment of foreign court—Jurisdiction—Notice.

The defendants, who were British subjects, purchased goods from the plaintiff in French territory. The plaintiff sued the defendants in the French Court and obtained judgment against them, but the defendants neither resided nor owned property in French territory, and did not appear at the trial and had no actual notice of the proceedings. In a suit brought in British India on the judgment of the French Court:

Held, that the want of notice to the defendants was fatal to the suit.

Quære, whether the French Court would have had jurisdiction (apart from the question of notice) if it had been proved that it was intended that payment should be made in French territory?

SECOND APPEAL against the decree of S. Gopalachari, Subordinate Judge of Madura (East), in appeal suit No. 55 of 1888, confirming the decree of P. S. Gurumurti Ayyar, District Munsif of Madura, in original suit No. 163 of 1887.

The plaintiff, who was a merchant of Karikal within the French dominions, sold goods to the defendants who were British subjects and resided at Madura. Their dealings extended from 17th August 1878 to 22nd August 1884. For the balance due to the plaintiff in respect of such dealings, viz., Rs. 402-11-2, he sued the defendants in the Karikal Court and obtained a decree *ex parte* on 14th March 1885. The defendants having no property within the French territories, he got a certificate to collect the debt from them in British India. He accordingly brought this suit as above on the judgment of the Karikal Court.

The defendants admitted the dealings from October 1879 to September 1883, but denied being indebted to the plaintiff. They pleaded that they were not aware of the decree or other proceedings in the Karikal Court, that the Karikal Court had no jurisdiction as they neither resided nor owned properties within the French territory, that the decree relied on by the plaintiff was

* Second Appeal No. 1711 of 1888.

obtained fraudulently, that they could not defend the case for want of notice and summons, that the suit was time-barred, &c.

Both the District Munsif and, on appeal, the Subordinate Judge found that the defendant had no notice of the French suit, and that the French Court had no jurisdiction, and accordingly passed decrees for the defendants.

The plaintiff preferred this second appeal.

Mr. *Wedderburn* for appellant.

Mr. *Gantz* for respondents.

Reference was made in the argument to the following cases besides those referred to in the judgment, viz., *Hinde & Co.* v. *Ponnath Brayan*(1) *Parry & Co* v. *Appasami Pillai*(2), *Copin* v. *Adamson*(3).

MUTTUSAMI AYYAR, J.—This second appeal arises from a suit brought by the appellant upon a judgment which he had obtained against respondents in the French Court at Karikal. Both the Courts below held that the foreign tribunal had no jurisdiction, and that respondents had no actual notice of the proceedings. The District Munsif held, also, that the French judgment was at variance with the Act of Limitations in force in British India, but on appeal the Subordinate Judge expressed no opinion on that point. He referred, however, to the appellant's statement that respondents had promised to make payments at Karikal and carried on dealings with him on that footing and to the respondents' denial that such was the case, but he considered that such promise would not, even if true, give jurisdiction, and, therefore, that it was unnecessary for him to come to a distinct finding upon the conflicting evidence on the record. The contention in second appeal is that the French Court had jurisdiction.

The principle upon which actions on foreign judgments rest is that the judgment of a Court of competent jurisdiction imposes a duty on the defendants to pay the sum for which the judgment has been given (*Russell* v. *Smyth*(4) and *Williams* v. *Jones*(5)). The material question, therefore, is whether upon the facts of this case the French Court had jurisdiction.

The question of jurisdiction depends on the consideration whether the defendant owed, at the time the suit was brought,

(1) I.L.R., 4 Mad., 359. (2) I.L.R., 2 Mad., 407. (3) L.R., 9 Ex., 345.
(4) 9 M. & W., 810. (5) 13 M. & W., 628.

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allegiance to the French law, either permanent or temporary, or voluntarily submitted to the foreign jurisdiction. In the case before us, respondents were not French subjects and they were not domiciled in French territory, and, therefore, they owed no permanent allegiance to the French law. Nor did they reside or own property in French territory when the suit was brought or at any other time. Taking the word "domicile" in its widest sense, there is no foundation for saying that they owed at least temporary, if not permanent, allegiance, or had the protection of the French law in respect of their property. So far the decision of the Courts below is right. It is argued by the appellant's counsel that respondents bought goods at Karikal, they were there when they did so, and that that circumstance was sufficient to give jurisdiction to the French Court. To this contention I cannot accede. In *Mathappa Chetti* v. *Chellappa Chetti*(1) the defendant casually resorted to the foreign territory of Puducottah, and, whilst there drew a bill for money due to the plaintiff who resided in that territory, and this Court held, relying on the Civil Law, that a casual passage through, or a momentary presence in, a state was not sufficient to create jurisdiction, but that something much more permanent was necessary, although it might not amount to *domicilium*. Again in *Rousillon* v. *Rousillon*(2) the defendant, a Swiss subject, entered into the agreement sued upon with the plaintiffs, French subjects, residing in France when he was in France on a temporary visit, and Fry, J., held that that circumstance was not sufficient to give jurisdiction to the French Court, and observed that at the time of making the contract there was no intention on his (defendant's) part, or, as far as he can gather, on the part of the plaintiffs that he should take up his residence in France. As to the *dictum* of Blackburn, J., in *Schibsby* v. *Westenholz*(3), on which the appellant's counsel appears to rely, Fry, J., considered that the *dictum* referred to a casual unexpected leaving of the foreign country by a person who was permanently resident there at the time when the contract was entered into. It is an undisputed fact in the case that the respondents did not appear during the trial in the French Court and that judgment was passed against them *ex parte*, consequently no question of voluntary submission to jurisdiction or waiver could arise from their conduct with reference to the trial in

(1) I.L.R., 1 Mad., 196. (2) L.R., 14 Ch. D., 351. (3) L.R., 6 Q.B., 155.

the Court at Karikal. There is, however, one point in regard to which further inquiry might be necessary before adopting the opinion of the Lower Courts as to jurisdiction. The Subordinate Judge considered it unnecessary to decide whether the respondents promised to make payments to the appellant at Karikal, and if so, whether Karikal was not the *locus solutionis.* On this point Fry, J., observed in *Rousillon* v. *Rousillon*(1) that the place where the contract is to be performed is a very material circumstance, adding, however, that in that case the contract was one which might be performed or broken anywhere. The question does not appear to have arisen in *Mathappa Chetti* v. *Chellappa Chetti*(2). The passage on which the Subordinate Judge apparently relies is the one in which Bar is cited as having remarked that Savigny's rule—the place of fulfilment indicates the proper *forum*—although very often giving the true solution, cannot be treated as a principle. The Subordinate Judge has evidently misapprehended the import of this passage. Both Bar and Wharton, while referring to the rule that the debtor's domicile indicates the competent *forum* as embodying the true general principle, they do not deny that the *locus solutionis* is material, but say, on the contrary, that when the obligation definitely fixes the place of performance, it will furnish the true solution. The finding in this case, however, that the respondents had no actual notice of the proceedings in the French Court is decisive. The general rule is that a personal judgment based solely on extra-territorial service, the defendant not being domiciled within the jurisdiction, is internationally invalid, and one state cannot in this way obtain jurisdiction over a person domiciled in another state—See Wharton, 649. Whatever effect, therefore, the service under the *Code Civil* of France may have in French territory, it cannot be treated as sufficient when the defendant is a British subject domiciled in British territory where there is no special contract on his part for service and when the service is internationally invalid.

The case of *Becquet* v. *MacCarthy* (3) is not in point, for the Island of Mauritius at the time of the suit belonged to the Sovereign of Great Britain, though French law was administered there, and the defendant was only absent from the island when the proceedings were instituted there.

(1) L.R., 14 Ch. D., 351. (2) I.L.R., 1 Mad., 196. (3) 2 B. & Ad., 951.

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On this ground, I am of opinion that the second appeal cannot be supported and must be dismissed with costs.

SHEPHARD, J.—The appellant's suit, based on a judgment of the French Court at Karikal, has been dismissed on the ground that that Court had no jurisdiction and that the defendants had no notice of the proceedings against them. The defendants reside in Madura and are British subjects, and it is not suggested that they even have property in Karikal. But it is argued that the French Court, nevertheless, had jurisdiction, because it was at Karikal that the goods were purchased in respect of which a balance was claimed by the appellant, and there is evidence, with regard to which the Subordinate Judge has recorded no decided finding, that a promise was made by the defendants to pay at that place. It is further contended that sufficient notice of the proceedings was conveyed to the defendants.

The exact circumstances under which the dealings between the plaintiff, who resides in Karikal, and the defendants took place are not stated, and it does not appear that the defendants personally visited Karikal, but it is said that whether he did go there or not, he must be taken to have promised to pay at that place and that, therefore, Karikal was the proper *forum*. Reliance is placed on a passage in Blackburn, J.'s, judgment in *Schibsby* v. *Westenholz*(1) where that learned Judge says:—"Now on this we think some "things are quite clear on principle. If the defendants had been "at the time of the judgment subjects of the country whose judg-"ment is sought to be enforced against them, we think that its "laws would have bound them. Again, if the defendants had "been at the time when the suit was commenced resident in the "country, so as to have the benefit of its laws protecting them, or, "as it is sometimes expressed, owing temporary allegiance to that "country, we think that its laws would have bound them. If "at the time when the obligation was contracted the defendants "were within the foreign country, but left it before the suit was "instituted, we should be inclined to think the laws of that coun-"try bound them; though before finally deciding this we should "like to hear the question argued."

It is said that this *dictum* justifies us in holding that a traveller casually passing through a foreign country and incurring a debt

(1) L.R. 6 Q.B., 155.

thereby, becomes subject to the jurisdiction of the Courts of that country and therefore under an obligation to obey their judgment.

The decision in *Mathappa Chetti* v. *Chellappa Chetti*(1) is a distinct authority against this contention, and I can find no support for it in the later case of *Rousillon* v. *Rousillon*(2), which was also cited. In the course of the argument in that case Fry, J., asks whether in the passage above cited Blackburn, J., did not refer to a casual unexpected leaving of the foreign country by a person who was permanently resident there at the time when the contract was entered into, and the decision was that as the defendant's stay in France, where the contract was made, was only temporary and casual, and it did not appear that either party contemplated performance in France, the judgment of the French Court imposed no duty upon him. Although not an authority for the main contention of the appellant's counsel, this judgment would tend to support the proposition that the French Court might have had jurisdiction if it had been proved that it was intended that payment should be made at Karikal; and the decision in *Mathappa Chetti* v. *Chellappa Chetti*(1) is in no wise inconsistent with that proposition. (See also Wharton's Conflict of Laws, first edition, § 793.) It is not, however, necessary to express any opinion on this point, because I think that the finding that no notice was given to the defendant is fatal to the plaintiff's suit—See Wharton, second edition, § 654. On this latter point, the case of *Becquet* v. *MacCarthy*(3) was cited by Mr. Wedderburn. But that case is an entirely different one from the present, for it appeared there that the testator, whose executrix was defendant, had been possessed of real estate in the Island of Mauritius, and that in the case of a person formerly resident in the island absenting himself and not leaving any attorney, it was the duty of the Procurator-General to take care of his interests. No such circumstances were proved in the present case. The service of notice may have been sufficient for the purpose of the French Court; but in reality there was no service at all.

The appeal must be dismissed with costs.

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(1) I.L.R., 1 Mad., 196. (2) L.R., 14 Ch. D., 351. (3) 2 B. & Ad., 951.