

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Shephard.*

FAZAL SHAU KHAN (DEFENDANT), APPELLANT,

*v.*

GAFAR KHAN (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code, s. 14—Foreign judgment, suit on—Procedure—Waiver of  
objection to jurisdiction.*

In a suit upon the judgment of a Court at Bastar, it appeared that in the suit in which the judgment was pronounced, the defendant took no objection as to the jurisdiction of the Court, and that he carried on business by his agent in the Bastar territory, and that a decree was passed for the plaintiff after evidence adduced on both sides in the ordinary way :

*Held*, (1) that the defendant was not entitled to have the case re-heard ;

(2) that the defendant was not entitled to take objection to the jurisdiction of the Bastar Court.

APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in original suit No. 9 of 1888.

Suit upon a judgment of the Court of the Chief of Bastar in the Central Provinces. The plaintiff sued the defendant for the price of timber sold, and obtained a decree for Rs. 2,935-2-0 which had been satisfied in part. He now sued as above to recover the balance of the decree amount, viz., Rs. 2,545-10-6.

The District Judge passed a decree as prayed.

The defendant preferred this appeal.

*Pattabhirama Ayyar* for appellant.

*Venkataramayya Chetti* for respondent.

JUDGMENT.—The first point taken is that there was no judgment of a foreign Court on which an action would lie. This point is clearly not maintainable. From the record it is apparent that there is a Court in the Bastar territory, and that by that Court the plaintiff's claim was heard and determined after consideration of evidence adduced on both sides in the usual way.

It is then argued that the Bastar Court had no jurisdiction, because the defendant did not reside or possess property, and the cause of action did not arise within the Bastar territory.

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\* Appeal No. 146 of 1889.

It appears, however, from the evidence that the appellant carried on business by his agent within the limits of the territory. More-over the defendant did not protest that the Court had no jurisdiction, but appeared by an agent and defended the suit. Having done so, and having taken the chance of a judgment in his favour, he cannot now, when an action is brought against him on the judgment, take exception to the jurisdiction—see *Schibsky v. Westenholz*(1) followed in *Kandoth Mammi v. Abdu Kalandan*(2). On this point, therefore, the appellant's contention fails. Finally, it is argued that notwithstanding the judgment, the District Judge ought to have taken the evidence afresh and re-heard the case *de novo*, and that upon the facts the judgment of the Bastar Court was wrong. We are clearly of opinion that it was not intended by the Legislature when amending section 14 of the Code that parties to an action on a foreign judgment should have the right to have the case re-heard.

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All that the section says is that the Judge is not to be precluded from inquiry into the merits. In the present case he has so inquired having had before him ample materials in the judgment of the Bastar Court and the evidence then taken, and he then found that the judgment was well founded.

We see no reason to differ from him. The appeal is dismissed with costs.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Shephard and Mr. Justice Handley.*

QUEEN-EMPRESS

v.

ERUGADU.\*

1891.  
June 10.  
July 13.

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*Criminal Procedure Code, s. 260—Summary procedure—Bias of Magistrate.*

A Deputy Magistrate, being also the Chairman of a Municipality, without issuing process, or making a record of the proceedings, or dismounting from a pony on which he was riding, convicted and fined an inhabitant of the town, who admitted that he had raised the level of a road within the limits of the Municipality which was considered by the Magistrate to amount to the offence of causing an obstruction in a public way:

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

(2) 8 M.H.C.R., 14.

\* Criminal Revision Cases Nos. 174 to 178 of 1891.