

1885.

THE LONDON,
BOMBAY AND
MEDITERRA-
NEAN BANK

v.

BURJORJI
SORABJI
LYWALLA,

a contributory of a company registered in England as a foreign judgment; and it is clear that in a suit upon a foreign judgment a defendant cannot be permitted to urge a defence which he had an opportunity of pleading in the foreign Court.

It does, no doubt, appear a hardship upon the defendant that he should be required to go to the trouble and expense of appearing before a Court in England, and putting forward his defence there. That, however, is the result of his having joined an English company subject to the jurisdiction of the English Courts. The local law and the *forum* of the company's head office was accepted by the defendant on becoming a shareholder⁽¹⁾. The apparent hardship is not a matter which can affect the decision of this case.

As to the point raised by Mr. Kirkpatrick with reference to the effect of the order giving the plaintiffs liberty to bring a fresh suit, I am of opinion that the plaintiffs were not precluded from bringing the fresh action in its present form, and that the suit is properly framed.

Judgment for plaintiffs.

Attorneys for the plaintiffs.—Messrs. *Tobin and Roughton.*

Attorneys for the defendant.—Messrs. *Ardesir and Hormasji.*

(1) L. R., 1 Ex. Div., 17.

REVISIONAL CRIMINAL.

Before Mr. Justice Nándbhái Haridás and Sir W. Wedderburn, Justice.

REFERENCE BY THE SESSIONS JUDGE OF SURAT.

1885

February 12.

Joint Judges—Criminal Procedure Code Act X of 1882, Sec. 193, Cl. 2—Applications under Chapter XXXII—Sessions Judge, power of, to direct disposal, by Joint Sessions Judge, of such applications as cases transferred.

Applications under Chapter XXXII of the Code of Criminal Procedure (Act X of 1882) cannot be referred to a Joint Sessions Judge under section 193, clause 2, of the Criminal Procedure Code so as to make it competent for a Joint Sessions Judge to dispose of them—a Joint Sessions Judge being strictly precluded from exercising any of the powers under Chapter XXXII of the Criminal Procedure Code, and section 193, clause 2, contemplating only cases for trial.

THIS was a case stated for the opinion and orders of the High Court by A. H. Unwin, Acting Sessions Judge at Surat.

He stated the case as follows in his letter No. 187 of 27th January, 1885 :—

1885.

REFERENCE
BY THE
SESSIONS
JUDGE OF
SU RAT.

“ 1. With reference to the High Court’s writ No. 1813 of the 22nd December, 1884, I have the honour to submit the following :—

“ 2. Under the ruling of the High Court, referred to in the writ, the Joint Sessions Judge at Broach forwarded to me, for disposal, six applications referring to cases disposed of by Magistrates in the Broach District, and received by him under section 435 of the Criminal Procedure Code (X of 1882). The applications were made to him before the receipt, by him, of the High Court’s ruling⁽¹⁾. On the 17th instant I returned the applications to him, recording the following order :—

“ 3. ‘ The Joint Sessions Judge, according to the recent ruling of the High Court in the case of *In re the petition of Musa Asmal*⁽¹⁾ appears to have no jurisdiction to entertain these and similar applications under Chapter XXXII of the Code of Criminal Procedure, *unless and until* they are referred to him by the Sessions Judge, which is accordingly now done.’

“ 4. Mr. Thákur on the 20th instant retransmitted the applications to me with his letter No. 62, which runs as follows :—

“ 5. ‘ I have the honor to acknowledge receipt of the papers (meaning applications) marginally noted, and to state that I have very grave doubts whether I have the power to dispose of them, as the High Court has clearly ruled that “ the Joint Sessions Judge cannot exercise the powers of the Sessions Judge under Chapter XXXII of the Criminal Procedure Code ”.

“ 6. ‘ The meaning of this ruling is, that I am absolutely precluded from taking action under Chapter XXXII of the Criminal Procedure Code, which relates to reference and revision ; and this is supported by the sentence which follows, in which the High Court evidently wished the Sessions Judge himself to dispose of the application out of which this ruling has arisen. Much less, then, can I interfere, even though you may refer such applications to me.

(1) See *supra*, p. 164.

1885.

REFERENCE
BY THE
SESSIONS
JUDGE OF
SURAT.

"7. 'The notification appointing me a Joint Sessions Judge (No. 1396 of 23rd February, 1884, p. 164 of the *Bombay Government Gazette*)-directs me, I may further observe, "to try such cases, including appeals, as the Sessions Judge of the Surat Division makes over to him for trial"; and in my opinion the word "cases" cannot be understood as embracing applications like those you have returned to me, and even then the word "try" would be inapplicable to them.

"8. 'For these reasons I beg to retransmit the above papers, with a request, in case you disagree with me, to lay the matter before higher authority to have the point definitely fixed once for all.'

"9. Under these circumstances I request that you will favour me with their Lordships' order, as to whether Mr. Thákur is justified in objecting to entertain these and similar applications as cases made over to him for trial by the Sessions Judge of the Division under clause 2 of section 193 of the Criminal Procedure Code (Act X of 1882)."

NA'NA'BHÁI HARIDÁS, J.—If the applications mentioned in paragraph 2 of the Acting Sessions Judge's letter (No. 187) of 27th January, 1885, be applications for the exercise of the Sessions Judge's power under Chapter XXXII of the Criminal Procedure Code (Act X of 1882), we think Mr. Thákur's view of the law to be correct. Section 193, clause 2, refers only to cases which are to be made over to the Joint Sessions Judge for trial.