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RÁVJI
RANCHOÐ
NÁIK
v.
VISHNU
RANCHOÐ
NÁIK.

cedure, for grant of probate to the petitioner. The proceeding between the petitioner and the caveator is directed, by section 83 of Act V of 1881, to be in the form of a suit according to the provisions of the Civil Procedure Code. The above section, therefore, of the Code would be applicable under proper circumstances; but it is plain that the discretion which the section confers on the Court is one which, in such a case, would be required to be exercised with more than usual care, and could never justify the Court in dispensing with proof of the will by the petitioner, as was done here. Nor do we think that the question, which the caveator refused to answer, *viz.*, whether he had signed a former will, was such a material one as to forbid our interference on appeal. We must discharge the order, and send the case back for a fresh order to be made on the application. Costs of this appeal to abide the result.

ORIGINAL CIVIL.

Before Mr. Justice Bayley.

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February 5,
March 17.

TRICCAM PA'NA'CHAND (PLAINTIFF), v. THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY COMPANY AND OTHERS (DEFENDANTS).*

Practice—Security for costs—Civil Procedure Code (XIV of 1882), Sec. 380—Cantonment of Wadhwan—British India.

Held, that a plaintiff being a resident in Wadhwan in Kathiawar and possessed of immoveable property in the cantonment there, could not be required to give security for costs under section 380 of the Civil Procedure Code (XIV of 1880), the cantonment of Wadhwan being within the limits of British India.

SUMMONS in chambers, calling on the plaintiff to show cause why he should not deposit a further sum of Rs. 2,000 as security for the defendants' costs in this suit.

The plaintiff was a resident of Wadhwan in Kathiawar, and he brought this suit against the defendants through his constituted attorney.

Soon after the plaint was filed, the plaintiff was called upon by the defendants to give security for the costs, and he thereupon lodged in Court a sum of Rs. 1,000.

* Suit No. 143 of 1884.

Subsequently one of the defendants (Maganlál Parbhudás) took out the present summons to compel the plaintiff to give further security.

The plaintiff objected, alleging that he was possessed of immoveable property situate in the cantonment of Wadhwan within the limits of British India, and that he could not, therefore, be required to furnish security for costs.

The defendant Maganlál Parbhudás contended that the cantonment of Wadhwan was not within British India.

Magistrate for the plaintiff showed cause.

Brown, contra.

Cur. adv. vult.

17th March. BAYLEY, J.—The plaintiff in this case resides at Wadhwan in Kathiawar, and he has filed this suit against the defendants in Bombay through his constituted attorney, Hakamchand Joitha. It appears that he has already lodged Rs. 1,000 as security for the defendants' costs, but one of the defendants (Maganlál Parbhudás), being apprehensive that this sum will not be sufficient, has taken out the present summons under section 380 of the Civil Procedure Code (XIV of 1882) in order to compel the plaintiff to give further security.

Under that section it is necessary for the defendant to show that the plaintiff, who admittedly resides at Wadhwan, is not possessed of any sufficient immoveable property within British India independent of the property in suit. The plaintiff alleges that he is the owner of immoveable property within the cantonment of Wadhwan, that such cantonment is within British India, and that, consequently, the section does not apply. The main question before me has been, whether this cantonment is within British India.

Section 2 of the General Clauses Act I of 1858 declares that "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 and 22 Vic., Chapter 106, other than the settlement of Prince of Wales' Island, Singapore and Malacca, and the first section of the Statute there referred to, which was passed in 1858, vests in Her Majesty all territories

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then in the possession or under the government of the East India Company and all territories which might become vested in Her Majesty by virtue of the rights transferred to Her Majesty from the East India Company.

In 1874 "The Scheduled Districts Act, 1874" (No. XIV of 1874) was passed by the Indian Legislature. It is entitled "An Act to ascertain the enactments in force in various parts of British India and for other purposes". It recites that various parts of British India had never been brought within, or had from time to time been removed from, the operation of the General Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature; that doubts had arisen in some cases as to which Acts or Regulations were in force in such parts, and in other cases as to what were the boundaries of such parts, and that among such parts were the territories specified in the first Schedule of that Act; that it was expedient to provide readier means, than then existed, for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein. In Part II, specified in the first schedule under the heading "Scheduled Districts, Bombay" are the province of Sind, the Panch Maháls, Aden, and some villages belonging to certain Mehvási chiefs. Section 3 enacted that the Local Government with the previous sanction of the Governor General in Council might from time to time by notification in the *Gazette of India* and also in the local *Gazette* declare what enactments were actually in force in any of the Scheduled Districts or in any part of any such district, and on such notification (by section 4) the enactments so notified should be deemed to be in force or not in force according to the tenor of the notification in such district, and every such notification should be binding in all Courts of law.

Then comes Act XV of 1874 ("The Laws Local Extent Act 1874") which received the assent of the Governor General on the same day as the Act I have just referred to. This is entitled "An Act for declaring the local extent of certain enactments, and for other purposes." Section 2 enacts that the expression "Scheduled Districts" means the territories mentioned in the

sixth schedule hereto annexed. The sixth schedule is identical with Schedule I of the "Scheduled Districts Act, 1874." Under the heading "Scheduled Districts, Bombay," we find the province of Sind, the Panch Maháls and Aden.

Both of such schedules (Part XIII) include the cantonment of Morár.

In both the Acts I have cited there is a statement that the Panch Maháls are part of British India. The Panch Maháls formerly belonged to Sindia, but were ceded by him to the British Government in 1800. The treaty by which the cession took place will be found in Aitchison's Treaties, Vol. III, p. 314 (ed. 1876). Article 3 of that treaty declares that the Panch Maháls are transferred to the British Government "in full sovereignty".

In the *Bombay Government Gazette* of the 12th February, 1885, is a notification by the Governor General in Council, dated the 4th February, 1885, giving to the Governor of Bombay the right to exercise within the cantonment of Deesa the same executive powers as he may lawfully exercise in the Presidency of Bombay, and a schedule to that notification contains the enactments which with some modifications are extended to that cantonment. That notification is stated to be issued in exercise of the powers conferred on the Governor General by sections 4 and 5 of Act XXI of 1879, ("The Foreign Jurisdiction and Extradition Act, 1879") which authorize him to delegate any power or jurisdiction which he has in any country or any place beyond the limits of British India to any servant of the British Indian Government. This notification, therefore, assumes that the cantonment of Deesa was not previously a part of British India. Thinking that it might be possible to obtain some information with regard to Deesa, which would guide me in deciding the present question with respect to Wadhwan, the Prothonotary at my request communicated with the Secretariat, and received the following reply:—"The final intimation regarding the taking of land required for the Deesa Cantonment was received from the Political Agent, Palanpur, on the 4th June, 1827, and the general order fixing the limits of the cantonment was issued on the 4th Sep-

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tember 1827. The grant by which the land was made over to Government cannot be traced on the records of the Secretariat."

Having, therefore, no information with reference to the circumstances under which, or the terms on which, the cantonment of Deesa passed to the British Government, I do not think the notification, to which I have alluded, affords any assistance in ascertaining the position of the cantonment of Wadhwán.

The cantonment of Wadhwán was ceded to the British Government by the Thákor by an agreement dated the 7th January, 1864, which will be found in Aitchison's Treaties, Vol. IV, p. 169 (ed. 1876). That agreement states that the Thákor "assigns to the officers of the Government of Bombay, *in perpetuity*, a spot of land on the left bank of the river Bhogowa for the purpose of establishing a British station." The cantonment or station, with regard to which the present question arises, is now established in that "spot of land" which was then given "*in perpetuity*" to the Government of Bombay. I am unable to see any difference between the position of Wadhwán and that of the Panch Maháls or the cantonment of Morár. The station of Wadhwán was given to the British authorities *in perpetuity*. The Panch Maháls were ceded *in full sovereignty*. The cantonment of Morár, which is close to Gwálior, the capital of H. H. the Mahárájá Sindia, and is surrounded by territories belonging to that prince, was by treaty dated the 2nd December, 1871, between the British Government and the Mahárájá Sindia (Aitchison's Treaties, Vol. III, p. 321), ceded in these words: "Article 1.—H. H. the Mahárájá of Gwálior cedes in full sovereignty to the British Government the lands now included within the limits of the British cantonment at Morár, with all his rights and interests therein." The Panch Maháls and the cantonment of Morár, as I have already pointed out, are recognized by the Legislature as part of British India in Acts XIV and XV of 1874, and I must hold that the cantonment or station of Wadhwán, not less than the Panch Maháls and the cantonment of Morár, is included in the term "British India" as defined and explained by the Indian Legislature.

True, it is only an isolated "spot of land". If the law, however, can regard an English man-of-war, no matter in what seas

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she may be, as part of British territory, and subject to the laws of England, the isolation of the cantonment of Wadhwan, any more than the isolation of the cantonment of Morar, cannot be an argument against holding the former to be a part of British India.

I remember a case in which I was counsel before Sir C. Sargent where the question arose as to whether the Berars were included in British India, and he decided the point in the negative. I think, however, that the Berars stand in a different position from the cantonment of Wadhwan. The Berars are held under a treaty with the Nizam dated the 21st May, 1853: see Aitchison's Treaties, Vol. V, p. 212 (ed. 1876), article 6 of which states that the assignment of such territories is made for the purpose of providing funds for certain specified purposes. It would appear, therefore, that the Berars are held under a sort of mortgage as a security for the fulfilment of certain engagements, which is, I think, a tenure distinguishable from that on which the Queen-Empress holds the cantonment of Wadhwan.

By the Acts XIV and XV of 1874 not only Aden but the Laccadive Islands in the Indian Ocean, the Andaman and Nicobar Islands, and Ajmere and Mairwara in the centre of Rajputana are declared to be "parts of British India", which shows that the Indian Legislature has given to the words "British India" a much more extended meaning than at first sight they would appear to indicate.

The summons requiring the plaintiff to give further security for costs must be discharged. The costs, however, will be costs in the cause.

Attorneys for the plaintiff.—Messrs. *Macfarlane and Edgelow*.

Attorneys for the defendants.—Messrs. *Hore, Conroy and Brown*.