APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1886. *August* 31.

EDULJI BURJORJI, (ORIGINAL DEFENDANT), APPELLANT, *v.* MA'NEKJI SORAB'JI PA'TEL, ASSIGNEE OF THE LONDON, BOMBAY AND MEDITERRANEAN BANK, (ORIGINAL PLAINTIFF), RESPONDENT.*

Company—Winding up—Suit against contributory—Service of notice and orders—Contributory in India to English company—Foreign judgment.

The defendant was sued as a contributory on the B list of shareholders liable in the winding up of the London, Bombay and Mediterranean Bank. The bank was an English joint stock company registered under the English Companies Act, 1862, and the winding-up order was made by the Court of Chancery in England on the 20th July, 1866. By a subsequent order made on the winding up it was ordered by the said Court that service of notices, &c., of the various proceedings might be effected on contributories, being past members, by posting the same either in England or in Bombay duly addressed to the last known address or place of abode of such contributories. The Court of Chancery on the 16th December, 1878, made an order for a call of £10 per share upon the contributories, and on the 5th June, 1879, the final balance order was made by the Court. This suit was brought to recover the sum of Rs. 754-7-0 alleged to be due by the defendant as a contributory in the B list under the said balance order. The plaintiff was an assignee of the bank. The defendant, who resided at Sumári, in the Surat District, denied that he was a shareholder in the bank, and alleged that he had had no notice of the various proceedings in the winding up. At the hearing it was proved that one of the notices which had been posted in Bombay addressed to the defendant at Sumári, in the Surat District, *viz.*, a notice of the intended application for a call of £10 a share, dated the 27th August, 1878, had been returned undelivered to the Dead Letter Office, having been carelessly addressed. No further steps were taken to serve it on the defendant.

Held, that the defendant, not having received any summons or notice to attend the hearing of the application for a call of £10 per share, was not liable to the call made in his absence.

Courts in British India, when called upon to give effect to a foreign judgment, should insist upon a strict proof of the validity and service of summonses and other processes alleged to have emanated from a foreign Court, and made a foundation for a liability to be enforced here by Courts that have no cognizance of the case on its merits.

Rousillon v. *Rousillon*(1) followed.

SECOND appeal from the decree of E. M. H. Fulton, Acting District Judge of Surat, reversing the decision of Ráv Sáheb H. M. Mehta, Second Class Subordinate Judge of Olpád.

* Second Appeal, No. 525 of 1884.

(1) L. R., 14 Ch. Div., 351-371.

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This was a suit by an assignee of the Official Liquidator of the London, Bombay and Mediterranean Bank to recover from the defendant, as a past member of the bank, the sum of Rs. 754-7-0 due under a balance order of the High Court of Chancery in England of the 5th June, 1879.

The balance order recited that it was made upon the application of James Cooper, the Official Liquidator of the above named bank, and upon hearing the solicitors of the applicant and for William Hare Middleton and *no person appearing on behalf of the remaining contributories, being past members of the said bank*, although duly summoned, &c., &c.; and it directed that the several persons named in the schedule, being contributories as past members of the said bank, should "within four days after service of this order upon them respectively pay to the said James Cooper at his office No. 3, Coleman Street Buildings, in the city of London, the sums set opposite to their respective names, such sums being the amounts due from the said several persons, respectively, in respect of the call made by the order dated the 16th December, 1878, together with interest on the said several sums respectively from the 15th day of March, 1879, until the date of payment thereof."

The defendant's name appeared in the schedule as a debtor to the bank in the sum of £66-16-4.

The London, Bombay and Mediterranean Bank (Limited) was a joint stock company registered under the English Companies' Act of 1862, and had an office in London and a branch office in Bombay. On the 20th July, 1866, an order was made in the Court of Chancery for the winding up of the company by the Court.

By a subsequent order of the said Court, dated, 4th August 1877, it was directed that service of any notice, summons, order, or other proceeding in these matters might be effected by putting such notices, &c., into any post office either in England or at Bombay, duly addressed to such contributories, being past members, according to their respective last known addresses or places of abode.

In his written statement the defendant contended that he never had been a shareholder or member of the bank; that he had not signed the memorandum and articles of association; that the balance order of the 5th June, 1879, had not been served on him; that he had not received any notice of the proceedings taken in England to place him on the list of contributories, or of the order for call referred to in the balance order.

Mr. Stead, the Agent in Bombay of the Official Liquidator of the bank, gave evidence at the hearing, and stated that the defendant had been a shareholder, and that the following notices and orders had been duly addressed to him and posted in Bombay:—

1. Notice to settle list of past members, dated 7th August 1877.

2. Notice of an intended application for a call of £10 per share, dated 27th August 1878.

3. Order for call of £10 per share dated 16th December 1878.

4. Balance order dated 5th June, 1879.

All the above processes were posted to the following address:—"Edulji Burjorji, Sumári, in zilla of Surat, formerly care of Dr. Manekji Adarji, No. 26, Dhobi Taláv Road, Bombay."

Of these, No. 2, the notice of the intended application for a call, was returned through the Dead Letter Office,—the post mark showing that it had been sent to various places in the town of Bombay. This was due to the careless way in which the address was written.

All the other processes appeared to have been delivered at the defendant's family residence at Sumári.

The Court of first instance found that the evidence did not satisfactorily establish that the defendant was the person who had applied for and obtained shares in the bank. The Court, therefore, held that the balance order of the 5th June, 1879, could not be enforced against him. On this ground the suit was dismissed.

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On appeal, the District Judge was of opinion that the defendant was a shareholder of the bank; that, with the exception of the notice of the application for a call, all the other notices from the Court of Chancery had been duly served upon the defendant, from which he must have learnt that proceedings were pending for the issue of a call on the shareholders, and that his name was likely to appear on the B list of contributories; and that as the defendant had taken no steps to defend himself, he was bound by the balance order of the Court of Chancery, dated 5th June, 1879. The decree of the Subordinate Judge was, therefore, reversed, and the claim awarded.

Against this decision the defendant preferred a second appeal to the High Court.

Inverarity (with him *Máneksha Jehángirshá*), for the appellant, relied upon *The London, Bombay and Mediterranean Bank* v. *Govind Rámchandra*(1) and *The London, Bombay and Mediterranean Bank (Ld.)* v. *Hormasji P. Frámji*(2).

Pándurang Balibhadra and *Ganpat Sadáshiv Ráv*, for the respondent, referred to *The London, Bombay and Mediterranean Bank* v. *Burjorji Sorábji Lywalla*(3).

WEST, J.:—The facts of this case differ from those of both the cases of *The London, Bombay and Mediterranean Bank* v. *Govind Rámchandra*(4) and *The London, Bombay and Mediterranean Bank* v. *Burjorji Sorábji Lywalla*(5). In the former, none of the notices to the defendant had been properly served; they had been sent to a place which was not his last known address, and had been returned through the Dead Letter Office. In the latter case the requisite notices had been duly served on the defendant. A reference to the notes of the learned Judge, (Scott, J.,) who tried the case, has made it clear that, in particular, proof was given of service of notice of an intended application for a call on the former shareholders included in the B list of contributories. Thus the requisites of liability indicated by Westropp, C. J., in the case of *The London, Bombay and Medi-*

(1) I. L. R. 5, Bom., 223.

(2) 8 Bom. H. C. Rep., O. C. J., 200.

(3) I. L. R., 9 Bom., 346

(4) I. L. R., 5 Bom., 223.

(5) I. L. R., 9 Bom., 346.

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terranean Bank (Ld.) v. *Hormasji P. Frámji*[1] were fully satisfied, and a decree was accordingly given against the defendant, which in the earlier of the two cases had been refused on the ground of an entire failure of these requisites.

In the present instance the District Judge has found that the notices of the settlement of the B list of contributories, of the order made for a call of £10 a share from the contributories in that list, and of the subsequent balance order supplemental to the call were served on the defendant. We do not think it necessary to express any dissent from his conclusion on these points; we observe only that the evidence of service is far from being of the exact and closely-knit character which might not unreasonably be expected in a case in which service by post is admitted of summonses said to have emanated from a foreign Court and made a foundation for a liability to be enforced here by Courts that have had no cognizance of the case in its merits. In such circumstances, strict proof may properly be exacted both of the source whence the notices come and the authority under which they are sent, and also of the precise correspondence of the exemplar actually posted or otherwise served with the order actually made or duly authorised. The English Courts rely on this severeness of scrutiny when they allow a looseness of practice in serving notices on defendants resident abroad which they would regard as fatal to claims brought within their own jurisdiction on decrees obtained in foreign Courts against residents in England: see *Rousillon* v. *Rousillon*[2]. We, therefore, only carry out their principle and purpose when we insist on the validity of notices and the service of notices said to come from an English Court being proved at least as strictly as if they originated in this country.

Tried by such a test the alleged service, in the present case, of notice of the intended application for a call cannot be deemed a service at all. The envelope containing the notice, though it described the addressee as of "Sumári, in the Surat District" was not addressed to him there; it was addressed in a vague misleading way to Bombay. So the direction was understood by

(1) 8 Bom. H. C. Rep., O. C. J., 200. (2) L. R., 14 Ch. Div., 351, 371.

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the Post Office officials; and, looking at the envelope, one cannot say the officials were wrong. They returned the packet. There was thus no actual service, nor was there constructive service without a direction to the defendant's last known address, which was admittedly at Sumári. The packet was returned to the liquidator's agent in time to have been sent to the defendant so as to leave him an opportunity of appearing at the hearing of the application for the call of £10 a share, but no step was taken to repair the blunder that had made the attempt at service abortive.

The question, then, is, whether, without a summons or notice to attend the hearing of the application, the defendant is liable to the call made in his absence. We think he is not. An ex-shareholder is as much concerned in the amount of the calls as he is in the settlement of the list of contributories. Neither is of practical significance to him without the complement of the other. He might have as good reasons to show against a large call or any call as against being placed in the B list of contributories. The District Judge has thought that the other notices served on the defendant made him so acquainted with the proceedings that he could have sought to get himself exonerated if he was not really liable; but the mere quiescence of an alleged debtor cannot make him answerable for a decree obtained without due notice to him. The process is *in invitum,* he is understood to be opposed to every step detrimental to him, so that every step must be taken as the law directs. In this instance the defendant, when once the order for the call had been made, could not possibly hear of it and appeal within the three weeks allowed by the Court of Chancery. The allowance of an appeal after that time would be a matter merely of indulgence. It was thus essential that he should receive notice of the intended application in time to resist it, if he thought fit. No such notice was given to him, and in its absence no liability on his part has arisen which the Court of his domicile or residence can properly be called out to enforce.

We, therefore, reverse the decree of the District Court, and reject the claim, with costs throughout on the respondent.

Decree reversed.