APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

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QUEEN-EMPRESS *v.* NATWARAL.*

March 24. *Criminal Procedure Code (Act X of 1882), Section 188—Native Indian subject of Her Majesty—Offence committed by an alien outside British India—Jurisdiction of Courts in British India to try such an offence.*

The accused was Taláti of Kálol in British territory. His family belonged to the village of Bakrol in the Baroda State. His father entered the service of the British Government and lived almost entirely at Kálol, but he does not appear to have given up his intention of returning to his family residence at Bakrol. The accused was born at Dubhai in the Baroda territory. He was educated partly at Kálol and partly at Baroda. He entered the Revenue Survey Department in the Panch Maháls. His services were lent by the British Government to the State of Cambay. He was charged with taking bribes while serving at Cambay. He was tried and convicted by the First Class Magistrate of Ahmedabad within whose jurisdiction he was found and arrested. The Sessions Judge reversed the conviction, on the ground that the Magistrate had no jurisdiction to try the accused.

Held, that the accused was not a "Native Indian subject of Her Majesty," within the meaning of section 188 of the Code of Criminal Procedure; and though as a "servant of the Queen" he was subject to punishment under section 4 of the Indian Penal Code, the Magistrate of Ahmedabad, in whose jurisdiction he was "found," had no jurisdiction under that section to try him for an offence committed in a foreign State.

Per PARSONS, J.:—The expression "Native Indian subject of Her Majesty" in section 188 of the Code of Criminal Procedure (Act X of 1882) must be construed strictly, and cannot be held to include "servants of Her Majesty."

APPEAL by the Local Government from an order of acquittal passed by E. M. H. Fulton, Sessions Judge of Ahmedabad.

The accused was a Taláti at Kálol in the Panch Maháls. His services were lent by the British Government to the Cambay State. He was charged under section 161 of the Indian Penal Code with taking bribes in the State of Cambay. He was convicted by the First Class Magistrate at Ahmedabad, and sentenced to undergo two months' simple imprisonment, and to pay a fine of Rs. 400.

On appeal this conviction and sentence were reversed by the Sessions Judge, on the ground that the Magistrate had no juris-

* Criminal Appeal No. 392 of 1890.

diction to try the case, as the accused was not a subject of Her Majesty, and the offence was alleged to have been committed in a Native State.

The following extract from his judgment gives the reasons for the acquittal:—

"The accused's family originally belonged to Bakrol in Gáikwári territory. His grandfather, who is still alive, took service under a Desái in the Panch Mahál and went to reside at Kálol about fifty years ago, retaining however his house at Bakrol. At present he is said to live partly in Bakrol and partly in Kálol, but the latter place seems more especially his head-quarters. His son, the father of the accused, appears to have lived almost entirely at Kálol. He is a Taláti in British service and brought up his family at Kálol. He married however a wife from Dubhai in Gaikwari territory, who, in accordance with custom, went to her father's house for her first confinement, with the result that *the accused was born outside the British territories.* He was educated partly at Kálol and subsequently at Baroda; and after he had left school obtained employment for a few years in the Post Office, and eventually entered the Revenue Survey Department, of which he is at present a member.

"On these facts it does not appear that the accused is a subject of Her Majesty. His family belongs to Bakrol in Gáikwári territory, and he himself was born under the same allegiance. Even supposing his father to be domiciled at Kálol, the fact does not alter his nationality without naturalization. Mere length of residence does not convert an alien into a subject when outside the jurisdiction (Hall's International Law, p. 219).

"It is not suggested that the accused's father was born in British territory, which could hardly have been the case as the Panch Mahál belonged to Sindia till 1853. But unless he was a natural born subject of Her Majesty, he could not transmit British nationality to a son born abroad under the provisions of 7 Anne, cap. 5 (De Geer. *v.* Stone, L. R. XXII. Ch. D. 243). Possibly the effect of the cession of the Panch Mahál in 1853 was to convert all persons domiciled therein into British subjects, but this seems doubtful unless they were previously subjects of

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Scindia. But even if such was the effect, it would not make Mulrai a 'natural born' subject so as to render 7 Anne, cap. 5, applicable to his son" (Blackstone, II. p. 420).

Against this order of acquittal the Government of Bombay appealed to the High Court.

Shantarám Nárayan, Government Pleader, for the Crown :—I contend that the accused is a native Indian subject of Her Majesty (1) by birth, (2) by naturalization, and (3) by reason of his employment under the British Government. He is therefore amenable to the jurisdiction of the Courts in British India. His grandfather was domiciled at Kálol long before the cession of the Panch Mahâls by Scindia to the British Government. His father must be presumed to have been born in the place of his grandfather's domicile, and thus became a subject of Scindia. The effect of the cession was to make the inhabitants of the ceded territory subjects of the Power to whom it was ceded—1 Phillimore's International Law, p. 345; Wheaton's International Law, Appendix Note on Naturalization; Broom's Constitutional Law, p. 387. These authorities show that naturalization is a consequence of every cession or annexation of territory. The result is that in the present case the accused became by naturalization a subject of Her Majesty. I further contend that taking service under the British Government makes him a British subject, and as such amenable to the jurisdiction of our Courts. Refers to 1 Phillimore's International Law, p. 351; Wheaton's International Law, p. 632; *Empress* v. *Maganlál*[1], *Regina* v. *Elmstone, Whitewell et al*[2], *In re the Stepney Election Petition*[3], Forsyth's cases, p. 32; 3 and 4 Will. IV, c. 85, s. 43.

Goverdhan Madhavrám Tripati, for the accused, was not called upon.

BIRDWOOD, J.:—We see no sufficient reason for questioning the correctness of the Sessions Judge's finding that the accused in this case is not a native Indian subject of Her Majesty. He is certainly not a natural born subject of Her Majesty, as he was born at Bakrol in the Baroda State. Nor is it shown

(1) I. L. R., 6 Bom., 622. (2) 7 Bom. H. C. 89, Cr. C.
(3) 17 Q. B. D., 54.

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that his father was a subject of the Gwalior State before the cession of the Panch Mahâls to the British Government in 1853. Had that been so, he would no doubt have become a British subject after that date; and the nationality of the son would follow that of the father. It is not shown where the father was born; but he had a house at Bakrol, and though he took service in the Panch Mahâls under the Gwalior State, it does not appear that he ever gave up the intention of returning to Bakrol. He still retains his house at Bakrol. Nor is it shown that the son, who, at the time that he was convicted by the Magistrate, held office as Taláti of Kálol in the Panch Mahâls, has formed the intention of taking up his permanent abode in that village. In these circumstances, we must hold that he is a natural born subject of the Baroda State and that he has not altered his nationality. No doubt, under section 4 of the Indian Penal Code (XLV of 1860) he is subject, as a "servant of the Queen," to punishment under the Indian Penal Code for any offence committed "within the dominions of any State in alliance with the Queen." But it does not follow that the Magistrate of Ahmedabad, in whose District he was "found," has jurisdiction under section 188 of the Criminal Procedure Code (Act X of 1882) to try him for the offence alleged to have been committed by him in the Cambay State. As the accused is not a "native Indian subject of Her Majesty," that section has no application to him. We must, therefore, dismiss the appeal.

PARSONS, J.:—The accused is not by birth a native Indian subject of Her Majesty. His father would presumably be a subject of His Highness the Gáikwár, since he was a resident in the Baroda State, and is not shown to have been born outside that State. The accused himself was born in the Baroda State. He is therefore a subject of His Highness the Gáikwár. It is true that both his father and he have occasionally lived in British territory, but mere residence confers upon the resident no more than a temporary *status*, lasting only so long as the residence lasts. It is however argued that because the accused is a servant of Her Majesty he is become by virtue of that service a native Indian subject. No authority has been

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shown for such a proposition, and I am unable to accept it. I admit that a State may make laws for, and exercise jurisdiction over, its servants. Section 4 of the Indian Penal Code (Act XLV of 1860) declares that offences committed by a servant of the Queen within a foreign allied State shall be punished under the Code; but the question before us is not as to whether the offence which the accused is alleged to have committed in a foreign State is punishable or not, but as to whether there is any law in force by which the accused can be tried for that offence at Ahmedabad, where he was found; in other words, we have to determine whether by the only law which deals with the subject—namely, section 188 of the Code of Criminal Procedure (Act X of 1882)—jurisdiction has been conferred on a Magistrate at Ahmedabad to try the accused for an offence committed in a foreign State. In order to allow of the operation of the section, it is necessary that the accused should come within the definition "native Indian subject of Her Majesty," for it is only these persons that are mentioned therein. The term—"native Indian subject of Her Majesty,"—must, I consider, be construed strictly, and cannot be held to include "servants of Her Majesty." This seems clear from the words used in the section, and from the legislation on the subject. Act I of 1849, section 2, gave jurisdiction to the Courts in India over all subjects of the British Government, and all persons in the civil and military service of the same Government while actually in such service and for six months afterwards, and all persons who may have dwelt for six months within the British Indian territories. That Act was repealed by Act XI of 1872, which again was repealed by Act XXI of 1879. The provisions of both these later Acts were the same. They conferred upon the Courts in British India jurisdiction only over European British subjects and native Indian subjects of Her Majesty, and they omitted to include within their jurisdiction the two other classes—the one of Government servants and the other of residents—which had been included in the former Act. This omission could not but have been intentional, and it has been continued in section 188 of the Criminal Procedure Code (Act X of 1882), which has now taken the place of Chapter III of Act XXI of 1879 and governs the

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present case. Since, therefore, the accused is not a subject of Her Majesty, and has not by taking service under the British Government become a native subject of Her Majesty, it follows that section 188 of the Code of Criminal Procedure can have no application to the case, and does not confer jurisdiction upon a Court to try him, at any place in British India at which he may be found, for an offence he may have committed at any place beyond the limits of British India. I must hold, therefore, that the Magistrate at Ahmedabad had no jurisdiction to try the accused. I need not go into the further question as to whether the fact, that the services of the accused had been placed by the British Government at the disposal of the Native State in which the offence was committed, and that he was serving that State and not the British Government at the time of the commission of the alleged offence, would affect the jurisdiction. I concur in dismissing the appeal.

Their Lordships accordingly ordered the appeal lodged by Government to be dismissed.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Telang and Mr. Justice Candy.

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April 1.

SAKHARA'M (ORIGINAL DEFENDANT No. 3), APPELLANT, *v.* SHRIPATI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Mortgage—Redemption Suit—Possession of a defendant not as a mortgagee—Suit in ejectment—the Dekkhan Agriculturists' Relief Act (XVII of 1879), Section 3, Clause (z)—Appeal—Jurisdiction of the District Court.

In a redemption suit governed by the provisions of Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879), one of the defendants being sued merely as a person in possession,

Held, that the suit as against that defendant was one in ejectment.

A suit in ejectment is not governed by clause (z), section 3, o the Dekkhan Agriculturists' Relief Act, and an appeal against the decree in such su lies to the Distric Court

* Second Appeal, No. 8 o 1890.