

1931
 EMPEROR
 v.
 LAKSHMAN
 Murphy J.

Judge, or even on the conditions set out in section 269, to provide that this particular trial shall be held with the aid of assessors at Thana.

Though I do so with regret, and much hesitation and diffidence, I feel I cannot concur in the order proposed by my learned brethren. In my opinion, the application should be dismissed.

Rule made absolute.

B. G. R.

ORIGINAL CIVIL.

Before Mr. Justice Wadia.

KEDARNATH SHERSINGDAS v. NOMANBHAI KOORBAN HOOSAIN.*

RAMDAYAL SOMANI & Co. v. KANAYALAL NANDLAL.†

Civil Procedure Code (Act V of 1908), section 135—Exemption from arrest—Party coming from mofussil to Bombay for attending to his case—Exemption continues till party reaches his ordinary place of residence.

The privilege of exemption from arrest granted under the provisions of section 135 of the Civil Procedure Code enures for the benefit of a party while he is going to or attending a Court and lasts till he returns from the Court to his ordinary place of residence.

In order to obtain such exemption, the party must satisfy the Court, by statements ordinarily made on affidavit (1) that his attendance in the Court or tribunal is *bona-fide* in relation to a matter pending before that Court or tribunal, (2) that the Court or tribunal which he attends has jurisdiction in the matter pending before it or that the party believes in good faith that it has such jurisdiction; (3) that the party should be exempt from arrest during such period as is reasonably required in going to the tribunal from his ordinary place of residence, in attending that tribunal, and in returning from it to the ordinary place of residence whence he came. What period is reasonable is a question of fact to be determined by the Court in each case, and no hard and fast rule can be laid down as to the extent or duration of the privilege. The exemption would be forfeited if in going to or in returning from the Court there is an unnecessary or excessive deviation sufficient, in the opinion of the Court, to forfeit the privilege. No party or witness can claim to return to his ordinary place of residence by any route he likes.

Persse v. Persse⁽¹⁾; *Appasamy Pattar v. P. E. Govinen Nambiar*⁽²⁾; *In re Siva Bux Savuntharam*⁽³⁾; *In the matter of Soorendro Nath Roy Chowdhry*⁽⁴⁾ and *Emperor v. Bihari Singh*,⁽⁵⁾ followed.

* Arbitration No. 119 of 1930.

† Arbitration No. 44 of 1930.

⁽¹⁾ (1856) 5 H. L. C. 671.

⁽²⁾ (1881) 4 Mad. 317.

⁽³⁾ (1868) 4 Mad. H. C. 145.

⁽⁴⁾ (1879) 5 Cal. 106.

⁽⁵⁾ (1924) 46 All. 668.

1930
 August 5.

WARRANTS of arrest and applications for discharge from arrest under section 135 of the Civil Procedure Code.

1930

KEDARNATH
SHERSINGDAS
v.
NOMANBHAI
KOORBAN.

In the first matter, Arbitration No. 119 of 1930, an award was made on June 25, 1930, by the East India Cotton Association, directing the respondent to pay to the petitioners a sum of Rs. 9,003-14-6 with interest. That award was filed in Court and notice thereof was served on the respondent. On failure of the respondent to pay the amount of the award, the petitioners applied to Wadia J. in Chambers in execution of the said award to dispense with the notice under Order XXI, rule 37, of the Civil Procedure Code, and to issue a warrant of arrest against the respondent who was a resident of Khamgaon. Wadia J. granted the said application on July 30, 1930. Pursuant to the warrant, the respondent was arrested in Bombay on the same day. The respondent had come down to Bombay to defend a suit in the Small Causes Court at Bombay. That was a suit filed by the petitioners against the respondent, and it was fixed for hearing on July 30, 1930. The suit was adjourned to August 2, and it was again adjourned till September 24, 1930. The respondent applied to Wadia J. in Chambers for being released from arrest on the ground that under the provisions of section 135 of the Civil Procedure Code he was exempt from arrest as he had come down to Bombay from Khamgaon for the purpose of defending the suit against him in the Small Causes Court at Bombay.

In the second matter, Arbitration No. 44 of 1930, there was an award of the East India Cotton Association, under which the respondents were directed to pay a sum of Rs. 2,857-3-3 to the petitioners. That award was filed in Court and on an application by the petitioners to Wadia J. in Chambers to dispense with the

1930

KEDARNATH
SHERSINGDAS
v.
NOMANBHAI
KOORBAN

notice under Order XXI, rule 37, in execution of the said award, the notice was ordered to be dispensed with, and a warrant of arrest was directed to be issued against Nandlal Bhawaniram, the sole proprietor of the respondent firm. In April 1930 the respondent had filed a suit being Suit No. 888 of 1930 in the Bombay High Court against the petitioners for setting aside the said award. That suit appeared on the daily board of Blackwell J. on July 21, 1930, and it was also there on July 25, 1930. The respondent, who was at Barwaha in Indore State, on getting a telegram from his attorneys about his suit, started on July 25, and arrived in Bombay on July 26, 1930. On Monday, July 28, 1930, Mr. Justice Blackwell did not sit in Court on account of his illness. The respondent remained in Bombay expecting his suit to reach hearing every day as the Prothonotary and Senior Master of the High Court had not issued any notice that the learned Judge would not sit in Court for any particular number of days. The respondent was arrested on July 31, 1930, in Bombay and he applied that he should be released as under the provisions of section 135 of the Civil Procedure Code he was exempted from arrest inasmuch as he had come down to Bombay from Barwaha for the purpose of the suit filed by him in Bombay.

The two applications were heard together.

M. P. Amin, for Kedarnath and Ramdayal.

C. K. Daphtary, for Nomanbhai.

Thakordas Gandhi (of Messrs. Thakordas & Co.), for Kanayalal.

WADIA, J. :—These are two matters which have come up before me in Chambers for the purpose of determining whether the respondent in each case can claim exemption from arrest under section 135 of the Civil Procedure Code in execution of an award filed in this

Court in each of the two matters respectively. Both the matters were ordered by me to be heard together on Counsel's Chamber day, as there was a common question of law in either of them, and counsel wished to argue it before me.

In the first matter, Arbitration No. 119 of 1930, it appears that there was a dispute between the petitioners and the firm of Messrs. Koorban Hoosein Heptoola regarding certain transactions in cotton entered into subject to the by-laws of the East India Cotton Association, and by an award of the said Association made on June 25, 1930, in the arbitration proceedings between the petitioners on the one hand, and the said firm and Nomanbhai Koorban Hussein, the respondent, who was joined as a partner in the said firm and as the heir and legal representative of his deceased father on the other, the said firm and the respondent were "collectively or individually" directed to pay to the petitioners the sum of Rs. 9,003-14-6 with interest. The award was duly filed in Court, and no payment having been made, the petitioners applied to me in Chambers in execution of the said award, which had become executable as a decree of the Court, to dispense with the usual notice required under Order XXI, rule 37, of the Civil Procedure Code, and to issue a warrant for the arrest of the respondent, Nomanbhai, who is ordinarily a resident of Khamgaon. The order was made by me in Chambers, dispensing with the notice, on July 29, 1930, the warrant of arrest was accordingly ordered to be issued on the same day, and the respondent was arrested in Bombay on July 30, 1930. The respondent had come down to Bombay, as stated in his affidavit dated July 31, 1930, to defend a suit in the Small Cause Court of Bombay, being Suit No. 400/12647 of 1930, in which the petitioners are the plaintiffs and the respondent is the defendant. The date of hearing of the suit was fixed as July 30, 1930,

1930

KEDARNATH
SHERSINGHv.
NOMANBHAI
KOORBA

Wadia J.

1930
 Kl. EDARNATH
 SH. HERSINGDAS
 No. 2.
 K. KOMANBHAI
 KOORBAN.
 Wadia J.

as appears from the writ of summons sent to the respondent, and shown by the respondent in Court. The suit was adjourned to August 2, and since then it has been adjourned to September 24, 1930. But on July 30, 1930, the petitioners got the respondent arrested at his temporary place of residence at Sarang Street, Bombay. It is the respondent's contention that he had come down to Bombay from Khamgaon for the purposes of defending the said suit in the Small Cause Court, and he, therefore, claims exemption from arrest under section 135 of the Code.

In the second matter, Arbitration No. 44 of 1930, the award of the arbitrators under the by-laws of the East India Cotton Association was made on January 17, 1930, in respect of certain disputes between the petitioners and the firm of Kanayalal Nandlal of Barwaha in the Indore State. There was an appeal from the award to the Board of Directors of the said Association, but the appeal was dismissed on February 24, 1930. The said firm was directed under the award to pay to the petitioners a sum of Rs. 2,857-3-3 with interest. The award and the decision of the Board have been duly filed in Court, and the firm of Kanayalal Nandlal having failed to pay the amount, the petitioners applied to me in Chambers to dispense with the usual notice required by Order XXI, rule 37, of the Civil Procedure Code, and to issue a warrant for the arrest of Nandlal Bhawani-ram, the respondent, who is the sole proprietor of the firm. The respondent had in the month of April last filed a suit against the petitioners in this Court, being Suit No. 888 of 1930, challenging the said award. The suit was filed as a commercial cause, and appeared on the daily board of Mr. Justice Blackwell on July 21 last. It was also on the daily board of the learned Judge on July 25 last. It appears from the affidavit made by the respondent that a telegram was sent to him by his

solicitors on July 24, and he started from Barwaha on July 25, and arrived in Bombay on Saturday, July 26, 1930. On Monday July 28, 1930, Mr. Justice Blackwell did not sit in Court on account of his illness; but the respondent continued to stay in Bombay expecting his case to reach every day, as no particular notice was issued by the Prothonotary and Senior Master of this Court, that the learned Judge would not sit in Court for any particular number of days. As a matter of fact, the case did not reach hearing, and has not yet reached hearing on account of the prolonged illness of the learned Judge. The respondent was arrested on July 31, in Bombay, and his attorneys appeared before me the same evening and contended that he was entitled to exemption from arrest under section 135, on the ground that the respondent had come to Bombay from Barwaha for the purposes of the said suit filed by him in Bombay.

Section 135 of the Civil Procedure Code provides *inter alia* that when a matter is pending before a competent Court or tribunal, a party to that matter is exempt from arrest while going to or attending the tribunal for the purpose of such matter, and while returning from such Court or tribunal. The principle on which that provision is based has been stated to be that freedom from fear of arrest encourages willing attendance on the part of the party in Court where his matter is pending, and thereby tends to the advancement of justice. It has also been held that the rule confers no personal privilege, for the privilege is not given by law for the personal benefit of the party claiming exemption, but is solely given in the interests and for the better administration of justice. It was, however, argued on behalf of the petitioners, that if a party comes from up-country to Bombay for the purpose of the matter which is pending before a competent Court and puts up at a temporary place of residence in Bombay, he is only privileged

1930

KEDARNATH
SHERSINGH

v.

NOMANBHAI
KOORBAN

Wadia J

1980

VEDARNATH
HERSINGDAS
v.
JOMANBHAI
KORBAN

Wadia J.

from arrest during the time he goes to Court from that temporary place of residence, attends and returns from the Court to the same place. In my opinion the provision laid down in section 135 is much wider, or rather has a wider application than what is sought to be made out by the learned counsel for the petitioners. The word 'while' implies that there is a period of time occupied in going to, attending and returning from the tribunal, which period, of course, must be variable according to each case. The section, however, does not particularise any place from which a party goes to the tribunal, or to which he returns. In the case of *Persse v. Persse*⁽¹⁾ the Lord Chancellor observed that if the Court was satisfied that the attendance in Court of the party, who is arrested and claims exemption, was *bona fide*, some latitude should be allowed in a case where that party was not resident in the city in which his case was heard. If the Court is so satisfied, such a party would be privileged from arrest. In that case the appellant had come from Ireland to London for the purpose of his appeal against a decree made by the Lord Chancellor of Ireland. He came to London in the month of January, though the hearing of the appeal was not expected till the month of March, and was, as a matter of fact, adjourned and notified for May 22. He was staying in London in his chambers on May 9 when he was arrested on a writ of attachment issued for non-payment of costs pursuant to an order of the Court. The Lord Chancellor held that if the party had been arrested in the month of January or February, he could not have claimed the exemption, because that would not be considered a reasonable time to go to the tribunal in London, when the hearing in the first place was notified for the month of March. If, therefore, some latitude, which I think

⁽¹⁾ (1856) 5 H. L. C. 671.

must be reasonable, is shown to a party coming from an outside place to attend a Court before which his matter is pending, I see no reason why an equally reasonable latitude should not be shown to the party returning to the outside place whence he came.

In the case of *Appasamy Pattar v. P. E. Govinen Nambiar*⁽¹⁾ the defendant was summoned by the plaintiff and examined by him as a witness on his behalf. A decree was passed in favour of the plaintiff, and on the plaintiff's application the defendant was immediately arrested. It was held that he was exempt from arrest, because he was entitled to a reasonable time to return to his home. The statement, however, of law has been laid down in these words (p. 145):—

“ [It is] the well established rule of English Law that a witness or party to a civil suit, whose attendance is required on a trial before a Judicial tribunal, is protected from arrest on civil process during the time reasonably occupied in going to, attending at, and returning from the place of trial.”

In the case of *In re Siva Bux Savuntharam*⁽²⁾ the plaintiff, who was a resident of Patna, and who had instituted a suit in the High Court of Madras, left Patna on hearing from his solicitors, and arrived in Madras on October 24. The suit came on for hearing on October 27 and adjourned to a very late day in the month of December. He was arrested in Madras in execution of a decree against him on November 10. Mr. Justice Kernan held that he was exempt from arrest. This case was, however, commented upon and not followed in the case of *Ardeshirji Framji v. Kalyan Das*.⁽³⁾ In that case an *ex parte* decree was passed in Benares against two defendants, who were residents of Bombay. They went to Benares to have the decree set aside, and put up at a dak bungalow. On the day on which their application was heard, they attended Court; but their application was dismissed, and they returned to the dak

⁽¹⁾ (1868) 4 Mad. H.C. 145.

⁽²⁾ (1881) 4 Mad. 317.

⁽³⁾ (1909) 32 All. 3.

1930

KEDARNATH
SHERSINGDAS

v.

NOMANBHAI
KORBAN

Wadia J.

bungalow, whence they proceeded to the railway station; and when arrested, were actually seated in their compartment in a train at a standstill on the platform. On evidence it was found out that they had on their person tickets for Allahabad. The appeal Court held that being on their way to a place "which is not their home," they cannot be said to have been "returning from a tribunal within the meaning of section 135." It was stated by counsel appearing for the arrested persons that they were proceeding to Bombay via Allahabad "for the sake of convenience." No mention is made of that statement in the judgment, nor does it appear from the record of the case that it was in evidence. As I read the judgment of the Appeal Court, it appears to me that the defendants would have been exempt from arrest, if they had proceeded straight to Bombay without deviation from the direct route from Benares to Bombay. The appeal Court discussed the case of *In re Siva Bux Savuntharam*,⁽¹⁾ mentioned above, and were of opinion that in that case the plaintiff could not be said to have been going to, attending or returning from any tribunal at the time of his arrest. On October 27 he knew that his case was adjourned to a very late day in December, and yet he tarried in Madras till he was arrested. Under the circumstances the Appeal Court held, and in my opinion rightly held, that it was too great an extension of the scope of the privilege given by section 135. There are two or three other cases to which I wish to refer in passing. There is a case, *In the matter of Soorendro Nath Roy Chowdhry*,⁽²⁾ where this privilege was extended to a defendant in a summary suit, who had not even obtained leave to defend at the time when he was arrested. In the case of *Childerston v. Barrett*⁽³⁾ the plaintiff in a suit attended from day to day in

⁽¹⁾ (1881) 4 Mad. 317.⁽²⁾ (1879) 5 Cal. 106.⁽³⁾ (1809) 11 East. 439.

expectation of his case reaching. He was waiting in an adjoining coffee-house on the day before the date of the trial when he was arrested, and it was yet held that he was privileged from arrest. Reliance was placed by counsel for the petitioners on the case of *Wooma Churn Dhole v. Teil*.⁽¹⁾ In that case a person summoned as a witness reached Calcutta before the case came on for hearing, and was arrested in execution of a decree whilst returning by a round-about way to his temporary place of residence in order to pick up his daughter. It was held that he had gone unnecessarily to the Court to find out about the case in which he was to give evidence when he knew that the case would not be called on on that day. In that case the witness did not *bona fide* believe that his attendance was required in Court for giving evidence in the case in which he was subpoenaed, and it was held that he was not exempt from arrest. This case has been commented upon by Mr. Justice Wilson in the case of *In the matter of Soorendro Nath Roy*,⁽²⁾ mentioned above, at page 109, where he says that the ground of decision was that though the witness had come to Court, he had not come actually to Court as a witness for the case, but for a different purpose of his own.

Each case must necessarily be decided on its own facts and circumstances, but there are certain principles which can be deduced from the cases which I have discussed above. In order to obtain exemption under section 135 of the Civil Procedure Code the party must first satisfy the Court, ordinarily by statements made on affidavit, that his attendance in the Court or tribunal is *bona fide* in relation to the matter pending before that Court or tribunal; secondly, that the Court or tribunal which he attends has jurisdiction in the matter pending before it,

1930

KEDARNATH
SHERSINGDASv.
NOMANBHAI
KOORBAN

Wadia J.

⁽¹⁾ (1875) 14 Beng. L. R. (App.) 13.⁽²⁾ (1879) 5 Cal. 106.

1930

KEDARNATH
SHERSINGDAS

v.

NOMANBHAI
KOORBAN

Wadia J.

or the party believes in good faith that it has such jurisdiction; and thirdly, that he should be exempt from arrest during such period as is reasonably required in going to the tribunal from his ordinary place of residence, in attending that tribunal, and in returning from it to the ordinary place of residence whence he came. Such place of residence may be within the jurisdiction of the Court before which the matter is pending, or outside the jurisdiction. What period is reasonable is a question of fact to be determined by the Court in each case, and no hard and fast rule can be laid down as to the extent or duration of the privilege. Further, the exemption is forfeited if in going to or in returning from the Court there is an unnecessary or excessive deviation sufficient in the opinion of the Court to forfeit the privilege. No party or witness can claim to return to his ordinary place of residence by any route he likes. See *Emperor v. Bihari Singh*.⁽¹⁾

Applying these principles to the facts in the two matters before me, I am of opinion that the respondent who came from Khamgaon in the first matter, and the respondent who came from Barwaha in the second matter, had come to Bombay *bona fide*, in the first case for the purpose of defending a suit filed against him in the Small Cause Court of Bombay, and in the second case for the purpose of prosecuting his own case as a plaintiff in this Court. It makes no difference, in my opinion, that in the one case he had to come compulsorily as a defendant, and that in the other case he came voluntarily as a plaintiff for his own case. Whether he came as a defendant or as a plaintiff, the Court has got to consider whether his appearance was *bona fide* for the purpose for which he actually came. I am satisfied on the affidavits that have been placed

⁽¹⁾ (1924) 46 All, 663.

before me that in either case the respondent is entitled to the privilege under section 135 of the Civil Procedure Code, and I, therefore, hold that they are exempt from arrest. I direct that in either case, the warrant of arrest must be discharged with costs, including costs reserved, if any. Counsel certified in the first matter.

Attorneys for Kedarnath & Ramdayal : Messrs. *Kanga & Co.*

Attorneys for Nomanbhai : Messrs. *Harilal Thakur & Co.*

Attorneys for Kanayalal : Messrs. *Thakordas & Co.*

Warrants discharged.

B. K. D.

ORIGINAL CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and
Mr. Justice Blackwell.*

THE OFFICIAL ASSIGNEE OF BOMBAY (ORIGINAL PLAINTIFF), APPELLANT
v. K. R. P. SHROFF AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1930
September 30.

Native Share and Stock Brokers' Association—Card of Membership—Insolvency of member—Whether the card and its incidental benefits vest in Official Assignee of insolvent member—Native Share and Stockbrokers' Association. Rules 18, 56, 57, 62.

A member of the Bombay Native Share and Stock Brokers' Association was adjudicated an insolvent. The Official Assignee of his estate claimed a declaration that the membership card of that insolvent and all the rights and benefits annexed to it were vested in him. He also claimed that the directors of the Association should be ordered to sell the card of membership and that they should be ordered to pay the sale proceeds thereof to him. The directors denied the rights claimed by the Official Assignee. On a suit being brought by the said Official Assignee against the directors of the Association :

Held, that according to the rules of the Native Share and Stockbrokers' Association, a member of the Association has got the personal privilege of carrying on dealings on the Exchange, but he has no power to sell that right. If a member commits default the directors of the Association can cancel his