

30 C. 103.

## [103] CIVIL RULE.

1902  
JULY 3 & 4.CIVIL  
RULE

30 C. 103.

SINGER MANUFACTURING CO. v. BAIJNATH.\* [3rd and 4th July, 1902]  
*Foreign Corporation, suit by—Foreign Company not registered under the Indian Companies Act of 1882—Plaint, verification of by the Manager of an unregistered Company—Civil Procedure Code (Act XIV of 1882) ss. 430, 435—Indian Companies Act (VI of 1882) ss. 6, 41, 224.*

A foreign Corporation is entitled to sue in its corporate character in this country, without being registered under the Indian Companies Act of 1882, or an Act of Parliament; and a plaint in such a suit can be verified on behalf of the Corporation by one of its principal officers, under s. 435 of the Code of Civil Procedure.

A Corporation duly created according to the law of one State may sue and be sued in its corporate name in the Courts of other States.

*Campbell v. Jackson* (1), and *Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York* (2), distinguished.

[Fol. 10 I. C. 141 (C. P. C., O. 19, r. 1.—Foreign Company).]

THE petitioners, the Singer Manufacturing Company—duly incorporated by an Act of the Senate and General Assembly of the State of New Jersey in the United States, America, and approved by the Governor of the said State, for the purpose of manufacturing and selling sewing machines and of carrying on business incident thereto, in the said State or elsewhere,—who carried on the business of selling their machines in various parts of British India, instituted two suits in the Court of Small Causes, Cuttack, against the defendants Baijnath and another, cloth-merchants of Cuttack, through M. Krishna Murti, the Company's Manager in Orissa, for the recovery of the balance of the price of certain sewing machines sold, on their hire-purchase system, to the defendants.

The plaints were verified by the Manager of the Company which was not registered under the Companies Act in India.

[104] The defendants pleaded, *inter alia*, that there was no proper description of the plaintiffs, and that the plaints were not signed and verified according to law.

The Subordinate Judge of Cuttack, exercising the powers of a Court of Small Causes, rejected the plaints observing as follows:—

“The suits have been brought by a Company admittedly not registered by a British Sovereign or by any Indian Act. The plaints were not signed by any body, but bear the initials (M. K. M.) which were said to be the initials of the Manager. It was verified by the Manager. As the Company was not registered under the Indian Companies Act or by an Act of Parliament, the Manager could not either sign or initial the plaints [see *Campbell v. Jackson* (1)]. These plaints are therefore bad in law.”

Thereupon the petitioners moved the High Court, and obtained these Rules calling upon the defendants to show cause why the order of the Subordinate Judge rejecting the plaints should not be set aside, and why the Subordinate Judge should not be directed to hear and determine the suits on the merits.

Mr. Dunne and Babu Lalit Mohun Mullick for the petitioners.

Babu Mon Mohun Dutt showed cause.

\* Civil Rules Nos. 1053 and 1054 of 1902.

(1) (1895) I. L. R. 12 Cal. 41.

(2) (1894) I. L. R. 16 All. 420.

1902  
JULY 8 & 4.  
CIVIL  
RULE.  
30 C. 103.

BANERJEE AND PRATT, JJ. These are two Rules calling upon the opposite party to show cause why the order of the Subordinate Judge rejecting the plaints in these two suits should not be set aside, and the Subordinate Judge should not be directed to hear and determine the suits on the merits.

The learned Subordinate Judge rejected the plaints in these two suits, because they were suits brought by a foreign Corporation (the petitioners before us) which was not registered under the Indian Companies Act (VI of 1882), and the plaints therefore could not, in the opinion of the Subordinate Judge, be verified on behalf of the Corporation by one of its principal officers under s. 435 of the Code of Civil Procedure. In support of the view he has taken, the learned Subordinate Judge refers to the case of *Campbell v. Jackson* (1).

[105] The learned Counsel for the petitioners contends that this view of the Court below is wholly erroneous, that a foreign Corporation is entitled to sue in its corporate character in this country without being registered under the Indian Companies Act; that section 435 of the Code of Civil Procedure applies to such suits, and that the case of *Campbell v. Jackson* (1) does not lay down any rule such as the Court below thinks it does.

On the other hand, the learned vakil for the opposite party, in showing cause, contends that, although a foreign Corporation may maintain a suit in this country, yet before it can claim the benefit of section 435 of the Code of Civil Procedure, it must be registered under the Indian Companies Act, and in support of his contention he refers to sections 4, 41, and 224 of Act VI of 1882 and to the case of *Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York* (2), besides the case of *Campbell v. Jackson* (1) relied upon by the Court below.

We are of opinion that the contention on behalf of the petitioners is correct, and that the Court below was wrong in holding that the plaintiff Corporation was bound to be registered under the Indian Companies Act, or under an Act of Parliament before the benefit of section 435 of the Code of Civil Procedure could be claimed.

It is an established rule of private international law that a Corporation duly created according to the law of one State may sue and be sued in its corporate name in the Courts of other States. See Lindley on Companies, 5th edition, p. 909, and Story's Conflict of Laws, paragraph 565. Our Code of Civil Procedure, section 430 also expressly enacts that alien friends may sue in the Courts of British India, as if they were subjects of our Sovereign. Section 435 of the Code says that "in suits by a Corporation or by a Company authorised to sue and be sued in the name of an officer or by a trustee the plaint may be subscribed and verified on behalf of the Corporation or Company by any director or other principal officer of the Corporation or Company, who is able to depose to the facts of the case." There is nothing in this section to exclude from its operation a foreign Corporation or a foreign Company, and there [106], is nothing in the Code of Civil Procedure or in the Indian Companies Act requiring such Corporation or Company to be registered under the Indian Companies Act before it can claim the benefit of section 435. The sections of the India Companies Act VI of

(1) (1885) I. L. R. 12 Cal. 41.

(2) (1894) I. L. R. 16 All. 420.

1882 to which reference has been made in the course of the argument by the learned vakil for the opposite party do not bear out his contention. 1902  
JULY 3 & 4.

As for the two cases relied upon, on behalf of the opposite party, it is enough to say that the question now before us did not arise in either of them. It is true in the case of *Campbell v. Jackson* (1), Mr. Justice Field, in delivering the judgment of the Court, says, after referring to section 435,—“ Now there is no suggestion in this case that this Company is a Company authorised to sue or be sued in the name of an officer or trustee. Such authority can only be conferred by Act of Parliament or by an Act of the Indian Legislature.” But these words must be taken in connection with the facts of the case. The facts of the case go to show that the Company there being a Company in British India, the only authority from which it could derive its powers would be an Act of the Indian Legislature or of Parliament. And with reference to *Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York* (2), upon which reliance was placed, it appears from the judgment that it was not shown that the party claiming the benefit of section 435 was a duly constituted Corporation at all.

CIVIL  
RULE.  
30 C. 103.

That being so, we think the view taken by the Court below is erroneous, and its order rejecting the plaints must be set aside, and the Court below must be directed to entertain the plaint and to deal with the cases according to law.

The Rules are made absolute with costs.

*Rules made absolute.*

30 C. 107 (=6 C. W. N. 885).

[107] CRIMINAL REVISION.

SHAMSUDDIN SIKAR v. EMPEROR.\* [21st May, 1902].

*Bail-bond—Guarantee by surety for appearance of accused before a certain Magistrate—Non-appearance of accused before different Magistrate—Bond, forfeiture of—Criminal Procedure Code (Act V of 1898) s. 514.*

Where a surety executed a bail-bond guaranteeing that the person, for whom he stood surety, would appear at the Court of a Deputy Magistrate before whom the case was pending, and the accused failed to appear before the District Magistrate, to whose file the case had been transferred.

*Held*, that there had been no breach of the conditions of the bail-bond, and that the order forfeiting it under s. 514 of the Criminal Procedure Code should be set aside.

THE petitioners, Shamsuddin Sirkar and others, obtained a Rule calling upon the District Magistrate to show cause why the proceedings taken under s. 514 of the Code of Criminal Procedure forfeiting the bond of the surety for the appearance of the person, against whom proceedings had been taken under s. 110 of the Code of Criminal Procedure, should not be set aside on the ground that it was not within the terms of his bond to produce the principal in the Court of the District Magistrate.

One Sahebulla was accused of bad livelihood. He appeared before a Deputy Magistrate on the 2nd December 1901. The case was then

\* Criminal Revision No. 137 of 1902, against the order passed by Ramendra Krishna, Esquire, District Magistrate of Bogra, dated 13th December 1901.

(1) (1885) I. L. R. 12 Cal. 41.

(2) (1894) I. L. R. 16 All. 420.