1871.
Oct. 13.

HARIVALLABHDAS KALLIANDAS.....*Plaintiff.*

UTAMCHAND MANIKCHAND..... *Defendant.*

In re Gopalrav Myral

Order to comple Property to be delivered to Sequestrators—Persons ordered without Jurisdiction—Residence—Constructive Inhabitancy—Jurisdiction—Service—Write of Sequestration—Order in personam.

An inhabitant of Baroda who carries on the business of a banker at Bombay by a *munim*, and has a place of business there, is constructively an inhabitant of Bombay, and as such is subject to the orders and process of the High Court in the exercise of its Equity jurisdiction, as provided by Sec. 41 of the Charter of the late Supreme Court, and continued to the High Court by the Act under which it was established.

A person appearing to discharge a rule thereby waives all objections to the formality of the service of the rule upon him.

The High Court will assert its jurisdiction for the purpose of preventing a writ of sequestration issued by it from becoming a mere form and under proper circumstances will operate *in personam* where the property sought to be sequestered is outside its jurisdiction.

IN the above cause (the earlier proceedings in which will be found reported in the High Court Reports, Vol. VII., p. 172 O. C. J., and *ante*, p. 135) *Anstey*, on the 30th of September 1871, obtained a rule *nisi*, directed to Rav Sáheb Gopálráv Myrál, calling upon him to show cause why he should not deliver up to the sequestrators appointed in the suit certain jewellery, pearls, and other property in his custody or power belonging to the defendant, Utamchand Mánikchand.

In the affidavit of the plaintiff (which was supported by other affidavits) it was alleged that the defendant, utamchand, shortly before he was delivered up to the Sheriff's officer at the Barodá Railway station, deposited with Ráv Sáheb Gopálráv Myrál (described as a wealthy and highly respected merchant and *savkar* or shroff of Baroda and Bombay) for safe custody, all Utamchand's jewels and pearls, worth several lákhs of rupees, on Utamchand's account; that Gopálráv Myrál was then only a private merchant, but was subsequently appointed *Divan* of H. H. the Gáikvád;—that he carried on business at Bombay by means of a *munim*, Vishnu Pant that after the imprisonment of the defendants, Gopálráv Myrál

directed his *munim* in Bombay to pay over to the defendant Utamchand four and a half lákhs of rupees for the purpose of settling the plaintiff's claim against Utamchand, but that Utamchand had not settled the claim, and that the plaintiff had proceeded to Barodá with Mr. Jefferson (the receiver and one of the sequestators) and requested Gopálráv Myrál to deliver up the jewellery and pearls to Mr. Jefferson; and that Gopálráv Myral had thereupon told him that the jewellery and pearls had been deposited with him as a *savkar*, and that the other *savkars* of Barodá would laugh at him if he delivered them up without the authority of Utamchand, and he refused to part with them.

On the part of Gopálráv Myrál it was not denied that he had possession of the jewellery and pearls of Utamchand, but Vishnu Pant, Gopálráv's Bombay *munim*, gave, in his affidavit made for the purpose of showing cause against the rule, the following account of the manner in which the jewellery and pearls had come into the possession of Gopálráv, and of the way in which he had afterwards dealt with them:—

Shortly after the death of H. H. Khanderáv, the late Gáikvád of Barodá, the present Gáikvád, H. H. Malhárráv, put the defendants, Utamchand, Ghellábhái, and Tulsidás under surveillance.

The said defendants remained under survillance until they were delivered up at the Barodá railway station to the special bailiff of the High Court in February 1871.

H. H. the Gáikvád Malhárráv also attached and seized and otherwise took possession of, the property of the defendants Utamchand and Ghellábhái situate in Barodá, for various causes of a mixed character, and such property consisted, amongst other things, of jewellery, pearls, and other precious articles, as mentioned in the affidavit of the plaintiff. The defendants, Utamchand, Ghellábhai, and Tulsidás shortly before their delivery up at the Barodá railway station, prayed H. H. the Gáikvád Malhárráv for indulgence and assistance, whereupon H. H. delivered and deposited

1871.

Harivallabhdas Kalliandas v. Utamchand Manikchandl

the jewellery and precious articles with Gopálráv Myrál, who was then only acting as a banker to His Highness, and desired Gopálráv to lend and advance to Utamchand, Ghellábhai, and Tulsidás, and to assist them, to the extent of not more than Rs. 4,50,000, on the security of the jewels, and H. H. then instructed Gopálráv Myrál not to part with the jewels, &c. to any of the defendants, or to their order, without his express permission, to which Gopalráv Myrál agreed.

In pursuance of this arrangement, and under the express order of H. H. the Gáikvád Gopalráv Myrál gave Utamchand, Ghellàbhái, and Tulsidás a letter of credit for Rs. 4,50,000 on his Bombay firm.

In pursuance of this order, Vishnu Pant, acting as the Bombay, *munim* of Gopálráv Myrál, paid to Jagjivandás Vandrávandás, the *munim* of Utamchand, on certain dates that he specified, various sums amounting in all to the sum of Rs. 4,49,423-13-1, and that sum, with interest at the rate of six per cent. per annum and premium, was due, at the time of rule, from Utamchand, Ghellábhái, and Tulsidás, to Gopálráv Myrál, upon the security of the jewellery, &c. that had been deposited with him by H. H. the Gáikvád, and Gopálráv claimed to retain the jewels, &c. until his claim should be paid, and an order should be given by H. H. the Gáikvád for the delivery up of the property. About Rs. 47,000 were in addition to the aforesaid sum, alleged to be due to Gopalrav Myrál from Utamchand.

The rule came on for argument before SARGENT, J., on the 13th of October 1871.

Badrudin Tyabji showed cause on behalf of Gopálráv Myrál, and contended that the service of the rule was insufficient and improper; that the court had no jurisdiction to grant the rule, as Gopálráv was not personally subject to the jurisdiction of this court and the property was at Baroda so that if the court made the order it would have no power to execute it; that Gopálráv had received the jewels not from Utamchand, but from H. H. the Gaikvad and that the court would not make an order commanding

Gopalráv to do that which he could not do without disobeying his own sovereign prince; and that as Gopalráv had advanced money upon the jewels *bona fide* as a banker, he had a lien upon them until his claim was satisfied He cited *Harivallabhdas Kalliandas* v. *Utamchand Manikchand* (*a*); *Cassim Azim* v. *Cassim Mahomed* (*b*); *Sagore* v. *Ramchunder* (*c*); *In re Abraham* (*d*); *Haji Jiva Nur Muhammad* v. *A'bubakar Ibrahim* (*e*); *The Carron Iron Compauy* v. *Maclaren* (*f*); Kerr on Injunction, pp. 8, 9. As to bailment and lien, Colebrooke's Digest, Bk. I., Ch. I., Sec. 2; and Ch. VI.; and *Chase* v. *Westmore*, and the notes thereto, in Tudor's Leading Cases on Mercantile Law. p. 679 (2nd edn.).

Anstey, in support of the rule, relied upon *Francklyn* v *Colhoun*, and cases referred to in the notes to that case in 3 Swanston's Reports 277, and referred to *McCarthy* v. *Gould* (*g*) *Wilson* v. *Metcalfe* (*h*), *Simmonds* v. *Kinnaird* (*i*) and *Crinton* v. *Crinton* (*j*). As to service, *M'Gusty* v. *Frazer* (*k*), *Ex parte Crawford*.

Cur. adv. vult.

SARGENT, J., :—In this case a rule *nisi* was granted on the application of the plaintiff in the suit of *Harivallabhdas Kallianās* v. *Utamchand Manikchand* and others, calling on Ráv Sáheb Gopálráv Myrál to show cause why he should not give up and deliver over to the sequestrators, named in a writ os sequestration issued in the said suit. the jewellery, pearls, and other property in his custody or power belonging to the said defendant Utamchand Manikchand. Ráv Sáheb Gopálráv Myrál appeared by counsel on the day for showing cause. Three preliminary objections were taken on his behalf :-first that Gopálráv was not within the jurisdiction; second, that

(*a*) 7 Bom H. C. Rep. O. C. *J.* 172.
(*b*) 10 Calc. W. Rep., Civ. R. 349. (*c*) 1 Hyde, 136.
(*d*) 6 Bom. H. C. Rep., A. C. *J.* 170. (*e*) 8 *Ibid.*, O. C. *J.* 29.
(*f*) 5 Ho. Lo. Ca. 416, 441. (*g*) 1 Ball & B. 387.
(*h*) 1 Beav. 263, 269. (*i*) 4 Ves. 735
(*j*) Law. Rep. 1 P. & D. 215. (*k*) 12 Ir. Eq. 395.
(*l*) 2 Ir. Ch. 573.

1871.
Harivallabhdás Kalliandas v. Utamchand Manikchand.

he had not been regularly served; and third, that the court had not jurisdiction to make the order asked for. Now, it was admitted that Gopálráv Myrál resides at Baroda, but that he carries on the business of a banker both here and at Barodá-at the former place by means of his *munim*, Vishnu Trimbak, under the name of Gopálráv Myrál. There can be no doubt, therefore, that he would be liable to be made a defendant to a suit in this court under Sec. 12 of the Letters Patent of the High Court. This section is, however, in terms confined to suits and actions, and would not, I apprehend, be applicable to a motion of this nature, Gopálráv Myrál not being even a parti to the suits in which the writ of sequestration was issued by this court. The question of jurisdiction has, therefore, to be determined by Sec. 9 of Act 24 & 25 Vict., c. 104, under which the High Courts of Judicature in India were established. By that section (9) it is provided that each of the High Courts to be established under the Act shall have and exercise all such civil jurisdiction, and all such powers and authority for and in relation to the administration of justice in the Presidency in which it is established, as Her Majesty may by Letters Patent grant and direct; and, save as by such Letters Patent may be otherwise directed, the High Court may exercise all jurisdiction and every power and authority whatsoever, in any manner vested in any of the courts of the same Presidency abolished under that Act, at the time of the abolition of such court. Now, by the Charter of the Supreme Court of Bombay at the time of its abolition, it was provided, by Sec. 41, that the Supreme Court should be a Court of Equity, and have equitable jurisdiction over the person or persons therein before described and specified or limited for its ordinary jurisdiction, and should and might have full power and authority to administer justice in a summary manner according, or as near as may be, to the rules of the High Court of Chancery in Great Britain, and to compel obedience to its decrees and orders in such manner and form, and to such effect, as the Lord High Chancellor of Great Britain doth or lawfully may, or as near the same as the circumstances and condition of the places and persons under their jurisdiction, and the laws

1871,
Harivallabhdas Kalliandas v. Utamchand Manikchand.

manners, customs, and usages of the native inhabitants, will admit. The question is, therefore, whether Gopálráv Myrál is one of those persons described and specified for the ordinary jurisdiction of the late Supreme Court; in other words, is he an inhabitant of Bombay as contemplated by Sec. 29 of the Charter of the Supreme Court? The same discription is found in Stat. 21 of Geo. III., c. 70, where jurisdiction is given to the Supreme Court at Calcutta over inhabitants of Calcutta; and there are numerous decisions of that court that persons carrying on business at Calcutta, although residing out of the local limits of the court's jurisdiction, are constructively inhabitants of Calcutta. It will suffice to refer to the case of *Baboo Jonokey Doss* v. *bindabun Doss* (*m*). nor does not it matter that the cause of action be quite independent of the business carries on in Calcuatta. In the case cited, the object of the suit was to take the account of a banking business at Nágpur in which the father of the defendants had been a partner whilst carrying on a separate business at Calcutta,—thus showing, as was urged by Buller, J., in the case of *Dabeypersaud* v. *Benepersaud*, referred to at page 373 of Vol. I. of Morley's Digest of Indian Cases, that if a person be held to be an inhabitant of Calcutta on account of his carrying on trade, he becomes subject to the jurisdiction of the Supreme Court in all cases. It is plain then that Gopálráv Myrál, who carries on the business of banker in his own name at Bombay by his *munim*, and having a place of business there for the purpose, is constructively an inhabitant of Bombay, and subject to the orders and process of this court in the exercise of its Equity jurisdiction, as provided by Sec. 41 of the Charter of the late Supreme Court, and reserved to this court by the Act under which it was established.

With respect to the service of the rule *nisi*, it is sufficient for the purpose of this application, to say that Gopálráv Myrál had notice of the rule, and has appeared by counsel to obtain its discharge. Such was the answer given to similar objections by V. C. Wigram in *Green* v. *Pledger* (*n*) and by Lord

(*m*) 3 Moo land. App. 175. (*n*) 3 Hare, 169.

1871.
Harivallabdas Kalliandas v. Utamchand Manikchandl

St. Leonards in *The Carron Iron Company* v. *Maclaren* (*o*) referring to *Davidson* v. *Lady Hastings* (*p*.)

If, then, Gopálráv Myrál is within the jurisdiction, and is to be treated as properly served, it remains to consider whether the court has the jurisdiction to make the order asked for; and if so, whether, under the circumstances, it should be made. With respect to the jurisdiction, it is quite plain, from the case of *Francklyn* v. *Colhoun* (*q*) and the authorities cited in the notes, and from the more recent decision of V. C. Wigram in *Empringham* v. *Short* (*r*), that this court will assert its jurisdiction to prevent the writ of sequestration from becoming a mere from, in such manner as the circumstances of the case may justify and render most expedient; and acting upon the analogy by which the Court of Equity grants injunctions to obtain indirectly a control over property which is beyond the jurisdiction, the Court, I cannot doubt, would under proper circumstances, operate *in personam* with a view to prevent its own writ of sequestration from being frustrated.

Now, Gopálráv Myrál has not himself made any counter-affidavit in answer to those upon which the rule *nisi* was granted but his *munim*, Vishnu Trimbak, has sworn as to his belief in, and the truth, of a statement made to him by his master at Baroda after the issuing of the rule as to the grounds upon which he has hitherto refused to deliver up the jewellery and pearls to the sequestrators. Now the statement of Ráv Sáh. Gopálráv through the medium of his *munim* is this. (His Lordship read the affidavit, and continued).

The grounds, then, as they appear from this statement, upon which Gopálráv refuses to deliver over the jewels, are—1*st*, that they were deposited with him by His Highness the Gáikvád until further orders, with permission to make advances to the defendants to the extent of 4½ lákhs; 2nd that he has a lien upon them in respect to his advances made both before and after they were deposited with him

(*o*) 5 Ho. Lo. Ca. 451. (*p*) 2 Keen, 509.
(*q*) 3 Swan 277. (*r*) 3 Hare, 461

1871.

Harivallabhdás Kalliandas v. Utamchand Manikchand.

In the view which I take of this case, it will not be necessary for me, at least at present, to express any opinion on the latter of these objections. With respect to the first objection, it was not contended that this court could make the order in question, if, as a matter of fact, these jewels were taken by His Highness the Gáikvád and deposited with Gopálráv. Such an order, although not in terms, would be virtually an interference with the rights of a sovereign independent prince in a matter which, both as regards the persons concerned at the time and the subject-matter itself, was entirely within his sovereign jurisdiction. To say the least, it would provoke a most inconvenient conflict of authority. But it was said that this statement was incredible, and should be disregarded by the court; that it was not the statement of Gopálráv made by him on solemn affirmation in his own affidavit, and was inconsistent with his never having alluded to the interference of the Gáikvád in his interview with Mr. Jefferson and the plaintiff at the Residency at Baroda so recently as September last. It is impossible not to feel the force of these observations. On the other hand, the history of this case is a peculiar one. The order of attachment issued by this court against the defendants was itself executed by the assistance of the Gáikvád, who handed the defendants over to the British authorities at the Barodá railway station. It is plain, therefore, that he, had interfered actively in the matter, and may, therefore, have made the order attributed to him by Gopálráv. The evidence as to the part said to have been taken by the Gáikvád in the deposit with Gopálráv may not be satisfactory. But it was incumbent on the plaintiff to present such a case to the court as would leave no doubt either as to jurisdiction or even conflict of authority. The application being one the ground, if not the object of which is to compel obedience to an order of this court is one peculiarly within its discretion. It may be that the plaintiff may be able to remove the difficulties which attend his present application, but under the present circumstances I must discharge the rule.

Rule discharged without costs.