

(1888) 06 AHC CK 0005
In the Allahabad High Court

Har Lal

APPELLANT

Vs

Saloni and Another

RESPONDENT

Date of Decision : 23-06-1888

Acts Referred:

Citation : (1888) ILR (All) 517

Hon'ble Judges : Tyrrell, J; John Edge, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Edge, C.J. and Tyrrell, J.—Prior to the cession of the town of Jhansi and the lands ceded therewith to the British Government, the Plaintiff. had obtained a judgment in the Assistant Commissioner's Court of Jhansi, that is, in one of the Courts in British India. That decree was for 3,000 odd rupees. After obtaining that decree and before the cession of the territory, he brought his action against the same defendants in the territory of Gwalior on the decree obtained in British India. *Prima facie* that was a perfectly good action. Whilst the suit in Gwalior was pending and undetermined, the territory, in which was the Gwalior Court before which that suit was pending, was ceded to the British Government. The question is whether the action which was pending in Gwalior can, u/s 8 of the Act XVII of 1886, be continued in what is now part of British India. The first Court thought that Section 13 of the CPC applied. The Commissioner of Jhansi, sitting as a Court of appeal, correctly held that Section 13 did not apply. The cause of action was not the same. The action which is now pending in the Court was, so far as the Court in Gwalior was concerned, brought on the then foreign judgment or decree, and that action was the only course which was left open to the Plaintiff to enforce in Gwalior the judgment which he had obtained in British India. The recital in Part II of the Act shows that it was intended that suits which "were pending in the Courts of His Highness the Maharaja Scindia should be continued in the Courts of the Jhansi district. The only difficulty we have had was to ascertain what was the meaning of the words in Section 8 "but otherwise in

accordance with the law and procedure of British Indian Courts." Although this action, if it had been originally brought in a Court in British India, could not have been maintained, being an action on a judgment of a Court in British India, still it was a good and maintainable action in the Court in which it was instituted and was pending at the time of the cession of the territory. We think it must be deemed to be a properly instituted suit to which in other respects the law of the Courts of British India may now be applied. The distinction which the Commissioner of Jhansi has very properly drawn between the original cause of action in and the cause of action in this suit, is illustrated in the judgment in King v. Hoare 13 MW 504 : SC 14 LJ 29.

2. The appeal is dismissed with costs.