APPELLATE CIVIL.

Before Mr. Justice Tyabji.

K. NARAYANAN MOOTHAD AND TWO OTHERS (PLAINTIFFS), PETITIONERS,

1913. October 16.

v.

THE COCHIN SIRCAR REPRESENTED BY K. NARAYANA MARAR, DIWAN OF COCHIN NOW REPRESENTED BY A. R. BANERJI, THE PRESENT DIWAN OF COCHIN (FIRST DEFENDANT), RESPONDENT IN ALL.*

Civil Procedure Code (Act V of 1908), sec. 86—Sovereign Prince or Ruling Chief in British India, suit against—Sovereign or private capacity—Suit against him as trustee of certain temples—Rule of international law—Jurisdiction of municipal courts—Waiver.

Under section 86 of the Civil Procedure Code (Act V of 1908), no Sovereign Prince or Ruling Chief can be sued in a court of British India without the previous consent of the Governor-General in Council, whether the suit is brought against him in his sovereign capacity or in his private capacity such as a trustee of a temple in British India.

The Maharaja of Jaipur v. *Lalji Sahai* (1907) I.L.R., 29 All., 379, *Mighell* v. *Sultan of Johore* (1894) 1Q.B., 149, *Statham* v. *Statham and the Gaekwar of Baroda* (1912) L.R. Pr., 92 and *Chandulal* v. *Ahad bin Umar Sultan* (1896) I.L.R., 21 Bom., 351, referred to.

Duke of Brunswick v. *The King of Hanover* (1848) 2 H.L.C., 1, explained.

PETITIONS under section 115 of the Civil Procedure Code (Act V of 1908), to revise the orders of K. IMBICHUNNI NAIR, the Subordinate Judge of South Malabar at Calicut, in Original Suits Nos. 32, 40 and 26 of 1911.

The plaintiff, alleging that he had *saswatom* or perpetual *karaima* right in the plaint mentioned Triprayar Devaswom, situated in British India, instituted this suit in British India against the Cochin Sirkar represented by His Highness the Cochin Rajah's Diwan A. R. Banerji, and six others for a declaration that the defendants have no right to prevent him from discharging his duties in the Triprayar temple and from collecting his emoluments and to suspend him from his office and also to recover damages. The first defendant contended that His Highness the Cochin Rajah is a Sovereign Prince or a

* Civil Revision Petitions Nos. 510 to 512 of 1912.

NARAYANA MOOTHAD v. THE COCHIN SIRCAR.

Ruling Chief and that the suit was not maintainable against him in the face of the fact, that the consent required by section 86 of the Code of Civil Procedure had been refused by the Government. The Subordinate Judge ordered the name of the first defendant in the case, the Cochin Rajah represented by his Diwan, to be struck off from the plaints, and against the said orders the plaintiff preferred civil revision petitions to the High Court.

T. R. Ramachandra Ayyar and *N. A. Krishna Ayyar* for the petitioners.

C. V. Ananthakrishna Ayyar for the respondent.

TYABJI, J.

TYABJI, J.—The question in this case is whether the Subordinate Judge was right in ordering the name of the first defendant as representing the Rajah of Cochin to be struck off from the record. He made this order because he was of opinion that section 86 of the Civil Procedure Code applied, and that the Rajah of Cochin could not accordingly be sued. It is admitted that the consent of the Governor-General in Council for suing the Rajah of Cochin has not been obtained, and that if the section applies, the Subordinate Judge's order is correct.

It was argued before me however that in this case the Rajah of Cochin was sued not as such Rajah, but as trustee of the temples referred to in the plaint, and that section 86 applies only in cases where a Prince or Chief is sued in his capacity as such Prince or Chief. I am unable to accede to this argument. I see nothing in section 86 to warrant a Prince or Chief being brought on the record except on the terms referred to in section 86. The section seems to me to be exhaustive with reference to the question when such a Chief or Prince can be brought on the record against his wish. I see nothing to support the contention that the question whether or not a Chief or Prince can be brought on the record depends upon the relief sought or upon the question whether the acts alleged to constitute the cause of action are of a sovereign or of a private character. It seems to me that section 86 definitely lays down in which cases Municipal Courts have the power to adjudicate upon any matters whatsoever as against such Princes or Chiefs as are referred to in the section. It was held in *The Maharaja of Jaipur* v. *Lalji Sahai*(1) that the

(1) (1907) I.L.R., 29 All., 379.

Governor-General in Council has no power to give his consent to a suit except in the three instances specifically referred to in clauses (*a*), (*b*) and (*c*) of the section and that if leave is granted in cases not falling within any of the three clauses, Courts of Law are required to dismiss the suit as against the Prince or Chief.

As the question is of importance, I think it necessary to refer to the authorities, in order to explain rather than to support the view that I have taken of the construction of section 86, for the section seems to me to be clear in itself.

The general rule of International Law is thus stated in Westlake on Private International Law "Foreign States, and those persons in them who are called sovereigns, whether their title be emperor, king, grand-duke, or any other, and whether their power in their states be absolute or limited, cannot be sued in England on their obligations, whether *ex contractu*, *quasi ex contractu*, or *ex delicto*:" 5th edition (1912), page 271. The apparent exceptions to that general rule, so far as the English Courts are concerned, are stated in the same book, and in *Mighell* v. *Sultan of Johore*(1).

It seems to me that section 86 of the Civil Procedure Code lays down the same general rule with certain exceptions specified and clearly defined in the section itself,—which exceptions are a legislative extension of the jurisdiction ordinarily exercised by Municipal Courts, and are made to depend upon the consent of the Governor-General in Council being previously obtained.

The general rule of International Law just referred to by me was lately re-stated in *Statham* v. *Statham and the Gaekwar of Baroda*(2). In that case the question was whether His Highness the Maharaja Gaekwar of Baroda could be made a party to proceedings in the Courts of England against his will; and it was laid down in the clearest terms that that course could not be adopted. It was not alleged that the question whether or not the Gaekwar could be sued in England depended upon the nature of the cause of action, or upon whether he was purported to be sued in his private or in his sovereign capacity, and yet these contentions could have been raised on the facts in that case if they could have furnished any answer to the objection.

(1) (1894) 1 Q.B., 149 at p. 156.

(2) (1912) L.R. Pr., 92.

NARAYANAN MOOTHAD v. THE COCHIN SIRCAR.

TYABJI, J.

The cases relied upon by the learned pleader who appeared for the petitioner seem to me to furnish very little assistance for the decision of the point with which I have now to deal. The first case relied upon by him was that of *Chandulal* v. *Awad bin Umar Sultan*(1) in which, STRACHEY, J., expressed the view that it is in the power of the Prince or Chief to waive the provisions of section 86 and submit himself to the jurisdiction of the Courts of British India.

It is not alleged that there was any waiver in the present case. But it is argued that if waiver can give jurisdiction to the Court, then it is implied that the exceptions [contained in clauses (*a*), (*b*) and (*c*) to the general rule] in section 86 are not exhaustive—in other words that the sole exceptions to the general rule are not those specifically mentioned in section 86 itself; and that just as waiver may be added to the exceptional cases in which the Courts have jurisdiction over independent sovereigns, so also another exception may be made; and that one such other exception is the case when the sovereign is sued in his private capacity and not as sovereign. As I understand, however, STRACHEY, J.'s decision, it is to the effect that, though section 86 provides certain exceptions to the general law that sovereigns may not be sued, that general law is in itself subject to the proviso that the sovereign may himself waive his right of questioning the jurisdiction of Municipal Courts. Therefore assuming that this argument for the petitioner can have any force in the construction of the section, it can certainly have no force unless it is shown that the alleged exception is recognised in International Law as restricting the scope of the general rule just in the same way as the exception about waiver is recognised. But in the first place I do not think that the ruling in *Chandulal* v. *Awad bin Umar Sultan*(1) establishes another exception to section 86 so as to derogate from the section being construed as exhaustive in itself. Secondly the alleged exception is not recognised by general International Law. It was contended before me that certain dicta in *Duke of Brunswick* v. *The King of Hanover*(2) show that sovereigns may be sued in their private capacity. But the actual decision in that case was that the Court had no jurisdiction, and I do not think that the cautious dicta on which

(1) (1896) I.L.R., 21 Bom., 351 at p. 373. (2) (1848) 2 H.L.C., 1.

reliance was placed can be of any assistance in view of the law as laid down in such cases as *Mighell* v. *Sultan of Johore*(1) and *Statham* v. *Statham and the Gaekwar of Baroda*(2). The point was expressly considered by WILLS, J., in *Mighell* v. *Sultan of Johore* (1) where the effect of *Duke of Brunswick* v. *The King of Hanover*(3), explained.

For these reasons I think that this petition must be dismissed.

The judgments in Civil Revision Petitions Nos. 511 and 512 of 1912 will follow.

I do not wish to interfere with the order of the Lower Court as to costs; but here the petitioner in each case will pay one-third of the respondent's costs.

[Letters Patent Appeals Nos. 133 to 135 of 1913 filed against this decision were dismissed by OLDFIELD and SADASIVA AYYAR, JJ.]

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Hannay.

Re RAMBILAS AND THREE OTHERS (ACCUSED), PETITIONERS.*

1914. October 12 and 21.

Indian Penal Code (Act XLV of 1860), sec. 405—Criminal Procedure Code (Act V of 1898), ss. 179 and 182—Criminal breach of trust—Hundis sent from Dharapuram—Cashed in Bombay—Jurisdiction.

The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly. It is only the *intention* which is essential; whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it.

Where, therefore, the accused, brokers in Bombay, were charged in the Court of the Sub-Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis entrusted to them by the complainants, merchants at Dharapuram, for encashment at Bombay,

Held, that the hundis having been cashed and the proceeds misappropriated by the accused in Bombay, the Erode Court had no jurisdiction to try the case.

Ganeshi Lal v. *Nand Kishore* (1912) I.L.R., 34 All., 487, approved.

Assistant Sessions Judge of North Arcot v. *Ramaswami Asari* (1914) 26 M.L.J., 235, distinguished.

(1) (1894) 1 Q.B., 149 at pp. 154, 155. (2) (1912) L.R. Pr., 92.
(3) (1848) 2 H.L.C., 1.

* Criminal Revision Case No. 326 of 1914 (Criminal Revision Petition No. 279 of 1914).