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based upon general principles of equity to make any such distinction. We must therefore disallow the claim in respect of the whole of item 1.

On the issue of limitation we agree with the learned Subordinate Judge that article 61 has no application but that the correct article is article 120, under which the suit was within time.

The result of our findings is that except as regards item 2, a claim to a sum of Rs. 200 and interest thereon as allowed by the lower Court, the appeal must be allowed and the plaintiff's suit dismissed. The appellant will get her costs throughout.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Reilly.

1930, February 13.

VENKATARAMI REDDI (DEFENDANT), APPELLANT,

v.

SRI MAHARAJA SEETHARAMA BHUPAL RAO (RAJA OF GADWAL) AND TWO OTHERS (PLAINTIFF AND HIS LEGAL REPRESENTATIVES), RESPONDENTS*.

Civil Procedure Code (V of 1908), *sec.* 84—*Gadwal State, whether a foreign State within the meaning of—Promissory note executed in Gadwal without stamp—Enforceability of, in British Indian Court—Note in favour of Ruler of Gadwal represented by his officer—Suit by Ruler, maintainability of.*

On the finding that the Gadwal State, situate within the territories of, and subject to the suzerainty of, His Exalted Highness the Nizam of Hyderabad was wanting in some of the characteristics of a sovereign State, i.e., that it had no independent powers of legislation, that its Judges were appointed

* Appeal No. 192 of 1924.

by the Nizam, and that the decisions of its Courts were subject to the appellate jurisdiction of the Nizam's Courts, their Lordships held (*a*) that the Gadwal State was neither a sovereign State nor a foreign State within the meaning of section 84 of the Civil Procedure Code and (*b*) that a suit by its Ruler for moneys due to him on certain toddy contracts entered into by the defendant, a resident in British India, was maintainable in British India.

A promissory note, executed in the Gadwal State, but unstamped, which is according to the law of that State not void, but only inadmissible in evidence, can be sued upon in British Indian Courts. *Dhondiram Chatrabhuj* v. *Sadasuk Savatram*, (1918) I.L.R., 42 Bom., 522, followed.

A promissory note executed in favour of the Ruler of Gadwal represented by his excise officer for the time being, without describing the payee by name is valid and is enforceable by the Ruler. *Mahanth Damodar Das* v. *Benares Bank, Ltd.*, (1920) 5 Pat. L.J., 536, followed.

APPEAL against the decree of the Court of the Subordinate Judge of Kurnool in O.S. No. 34 of 1922.

The Advocate-General (*A. Krishnaswami Ayyar*) and *W. Kodanduramayya* for appellant.

C. S. Venkatachari and *R. Srinivasa Ayyangar* for respondents.

This appeal coming on for hearing, the Court (DEVADOSS and MACKAY JJ.) made the following

ORDER.

The suit is by the proprietor of Gadwal Samasthanam for an amount due by the defendant. The lower Court decreed the suit and the defendant has preferred this appeal. In his written statement, the defendant pleaded that "the plaintiff being of a foreign State and the subject-matter of the suit being one relating to the State revenue of that State, the plaintiff has no right to institute this suit in this Court." The plaintiff relied on section 84 of the Civil Procedure Code as enabling him to file the suit. Section 84 applies to cases of foreign

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States recognized by His Majesty or by the Governor-General in Council. In order to enable a foreign State to sue in a British Court, two conditions have to be fulfilled: (i) the foreign State must be recognized by His Majesty or by the Governor-General in Council and (ii) the object of the suit must be to enable a private right vested in the head of such State or in any officer of such State in his public capacity. Though the lower Court acted on the representation of the plaintiff that section 84 applied to the case and granted a decree, yet as section 84 casts upon the Court the duty of taking judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor-General in Council, we referred the matter to the Government and the information we have received is that section 84 of the Civil Procedure Code does not apply to Gadwal Samasthanam in Hyderabad State. We hold section 84 has no application to the present case. The defendant's contention that Gadwal Samasthanam is a foreign State is a question of fact and this question of fact has not been tried by the lower Court. It is but fair that the appellant should have an opportunity of adducing evidence to show that Gadwal Samasthanam is a foreign State and we therefore direct the Subordinate Judge of Kurnool to record a finding on the following issue:—

"Is Gadwal Samasthanam a foreign State" and to submit the finding in the course of four weeks. Fresh evidence may be adduced by both the parties. Ten days for objections.

In compliance with the order contained in the above judgment the Subordinate Judge of Kurnool submitted the following finding:—

"The Gadwal Samasthanam is not a State or a foreign State."

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[His reasons for the above finding were, in the main, as follows:—

(1) Gadwal has no independent military or foreign policy of its own. It is a tributary State.

(2) Gadwal has no independence in its executive (revenue) administration, and that its executive is controlled by the Nizam. It has no power of coinage, no postal or telegraph system, no customs or stamp duties of its own.

(3) Gadwal has no independent judicial administration. Its judicial officers are appointed by the Nizam, and their decisions are subject to appeal to the Nizam's High Court.

(4) Gadwal has no independent legislature but its subjects are subject to the laws of the Nizam's State.]

This appeal coming on for hearing again the Court delivered the following

JUDGMENT.

REILLY J.

REILLY J.—In this suit the Raja of Gadwal sued the defendant, a resident of the Kurnool District, on ten documents, which are called shokhas. The defendant admitted liability on one of them, Exhibit K, and disputed liability on the others. The Subordinate Judge made a decree for the plaintiff for the full amount claimed. The defendant appeals.

Before the Subordinate Judge in his written statement the defendant objected to the suit on the ground that Gadwal was a foreign State and that the plaintiff was suing, not to enforce a private right, but to enforce a State right arising out of a liability to pay revenue due to the State. The learned Subordinate Judge did not consider at the trial the question whether Gadwal was a foreign State. He found that

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the right which the plaintiff was suing to enforce was a private right. When the appeal came on for hearing in this Court, the defendant raised a rather different objection, which was not set out in his appeal memorandum, namely that Gadwal is a foreign State, but not a foreign State recognized by His Majesty the King-Emperor or the Governor-General in Council, and so the plaintiff as the ruler of that State could not sue in British India to enforce a private right, because he did not come within section 84 of the Code of Civil Procedure. At first sight it seems not very likely that within the borders of the Indian Empire there should be a foreign State the establishment of which has not yet been recognized by His Majesty or the Governor-General in Council. But Mr. Kothandaramayya, who appears for the defendant, has urged that the Gadwal Samasthanam is a State, not in direct relations with His Majesty or the Governor-General in Council, but a State under the suzerainty of the Nizam of Hyderabad. It is possible that there might be a State, not itself recognized by His Majesty or the Governor-General in Council, but subject to the suzerainty of some other State within the borders of the Indian Empire, which was so recognized. But it is not disputed that, if Gadwal is to be found to be such a State, we must find that at any rate some degree of sovereignty has been preserved to it. When the case came on first before DEVADOSS and MACKAY JJ. they thought that it was necessary to inquire of the Government whether Gadwal was a State recognized by His Majesty or the Governor-General in Council for the purpose of section 84 of the Code of Civil Procedure; and in reply to an inquiry made by the Registrar on that question a letter was received from the Chief Secretary to Government of Madras saying—

"I am directed to state that the Government of India have intimated that section 84 of the Civil Procedure Code, 1908, does not apply to Gadwal Samasthanam in Hyderabad State."

It will be seen that there are various implications in that letter, but that it does not directly meet the point raised by Mr. Kothandaramayya. If we received through the regular official channel any intimation in regard to the relations of a foreign State with His Majesty or with the Governor-General in Council or any statement that a foreign State had or had not been recognized by His Majesty or the Governor-General in Council, I need hardly say that we should accept that intimation as conclusive. But in this case it happens that the answer to the inquiry made does not conclude the contention raised by the defendant. Having received that answer, DEVADOSS and MACKAY JJ. thought it well to frame an issue, "Is Gadwal Samasthanam a Foreign State?", and send it to the Subordinate Judge for a finding. The Subordinate Judge after taking further evidence has submitted a finding that Gadwal Samasthanam is not a "State" or a "Foreign State". The defendant has raised objections to that finding and has urged before us that Gadwal is a State, a foreign State, but not one recognized by His Majesty or the Governor-General in Council, and that therefore the plaintiff as the ruler of that State could not bring this suit in a Court in British India.

The position is rather curious because the defendant is trying to thrust upon the plaintiff an honour which the plaintiff does not claim. The plaintiff maintains that the Raja of Gadwal is a subject of the Nizam of Hyderabad, a subject indeed with a long and very distinguished history behind him, a subject in a very special position, a subject with special rights and privileges and exercising some of the powers usually

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exercised by ruling sovereigns, such as the rights of escheat and wardship, and the right to hold judicial Courts, but nevertheless a subject, not a sovereign. We must remember that in many parts of the world such powers as I have just mentioned have been exercised by subjects in feudal or quasi-feudal relations with their sovereigns; but nevertheless their legal position has been that of a subject. In the circumstances of this case it does not appear necessary to me to enter into any elaborate discussion of the character and essence of sovereignty. But I think it cannot be denied that any State which has preserved any degree of sovereignty—and various attributes of sovereignty may have been ceded to their suzerains by different States—must have at least three characteristics. First, the people of the territory concerned must owe allegiance to the ruler of the supposed State, and in the term "ruler" I include any person in whom, or body in which, the sovereign power resides. Secondly, the laws enforced in the State must be the ruler's laws, either made or recognized by him, not laws imposed by any outside authority, nor laws made by him in virtue only of a delegated authority. And thirdly, those laws must be enforced by his Courts, that is, Courts deriving their authority from him and not subject to the judicial control of any outside authority. Mr. Kothandaramayya in the course of his argument referred to federated States. What I have said in regard to the power of law-making does not relate directly to federated States; but I do not think it is in any way in conflict with the position of a body of federated States. A group of co-ordinate sovereign States can agree together that the whole body shall make laws which are to run in the territory of each member; but those laws are made, not by any external authority,

but by virtue of authority derived from the sovereign members themselves.

If we look at the evidence regarding the laws which run in Gadwal and the judicial Courts which are established there, we shall find, I think, no difficulty in deciding the question before us. Diwan Bahadur Aravamudu Ayyangar, an Advocate of this Court, whose father was a judicial officer of the Gadwal Samasthanam and who himself has been legal adviser of the Samasthanam for nearly thirty years, has given evidence as P.W. 5. He states that the Raja of Gadwal has no legislative power; and he has also given evidence to the effect that the Nizam's laws run in the Gadwal territory, instancing the Nizam's Criminal Procedure Code and the Nizam's Land Revenue Act. D.W. 3, a Vakil called by the defendant, has stated that Gadwal is governed by the laws prevailing in the Nizam's State and that there is no independent power in the Gadwal Samasthanam to frame laws. In regard to Courts, Mr. Aravamudu Ayyangar has stated that judicial officers in Gadwal are nominated by the Raja but not appointed by him: they are appointed by the authorities of the Nizam's State. He has also stated that for more than thirty years there has been a right of appeal from the Courts of Gadwal to the Nizam's Courts—it must be noticed, not to the Nizam as suzerain in any political or executive capacity, but the Nizam's Courts. The defendant himself as D.W. 2 has made a similar statement regarding the position of the Gadwal Courts. I think that evidence is quite conclusive to show that the Gadwal Samasthanam is in no sense a sovereign State or a foreign State for the purpose of section 84 of the Code of Civil Procedure.

Besides this objection to the maintainability of the suit, the defendant has urged a number of points in

regard to the shokhas before us. The learned Subordinate Judge has treated all the nine shokhas in dispute as promissory notes. But I think it is quite clear, when they are examined, that all except three of them are not promissory notes. Exhibits A, B and H do contain unconditional promises to pay for a certain consideration named, that is trees assigned. But the other shokhas except Exhibit K are offers for date trees. I think it will be convenient to deal first with the shokhas which are promissory notes, Exhibits A, B and H. The defendant maintains that there was no consideration for these notes. But consideration is recited in them. In the ordinary way it is for him to prove want of consideration. He is a witness whose evidence does not read in a very convincing way, and the attitude he has taken up in this suit has shifted from time to time. The learned Subordinate Judge has not believed him on this point. I can see no sufficient reason why we should differ from the Subordinate Judge as regards that.

But apart from the question of consideration Mr. Kothandaramayya has urged other points. One is that the defendant executed these notes only as the agent of another man called Rangayya. [His Lordship then discussed the evidence on this point and held as follows:—] In these circumstances I think that the contention that Exhibits A, B and H were executed only as agent for Rangayya clearly fails.

Another objection taken for the defendant is that these three promissory notes are made in favour of the "Mohathameem Sahib Garu of Gadwal Samasthanam," that is the officer holding that post, and not in favour of any person by name. It is contended that to make a note in favour of a person described by his office is not to make it in favour of a certain person as required by section 4 of the Negotiable Instruments Act. But in

Mahanth Damodar Das v. *Benares Bank Ltd.*(1) it was decided that a promissory note made in favour of "the manager or acting manager of the Benares Bank, Limited" was properly made and the person who was certainly indicated was the Benares Bank. Following that I am quite prepared to find that these promissory notes were executed in favour of the Raja of Gadwal, sufficiently described through his officer by the name of the office. It must be remembered that in this country we have the last part of section 5 of the Negotiable Instruments Act to help us in this matter, which provides that, if it is clear to whom payment is to be made, he may be a "certain person" within the meaning of section 4 of the Act although he is mis-named or only designated by description. In *Ramanadhan Chetty* v. *Katha Velan*(2) it was held that a note drawn in favour of a trustee of a temple by name and office was really in favour of the trust and could be sued on by a successor of the trustee. In my opinion this objection also fails.

Another objection to these notes is that none of them is stamped, though they were all executed in the Nizam's Dominions where promissory notes must be stamped in a manner similar to the way in which they have to be stamped in British India. The result of this is that none of these three notes could have been admitted in evidence according to the Negotiable Instruments Act in force in the Nizam's territories to prove the plaintiff's claim. It appears that there is a provision in the Negotiable Instruments Act of the Nizam's Dominions that, although other documents which have not been stamped at the time of execution may be made admissible in evidence by paying a fee or penalty, the defect of want of stamp cannot be cured in that way in

(1) (1920) 5 Pat. L.J., 536. (2) (1917) I.L.R., 41 Mad., 353.

the case of promissory notes. Mr. Kothandaramayya suggests that the result of that is that these notes were void in the Nizam's territories. But that is not what the Act says. It merely makes them inadmissible in evidence. If they were void in the Nizam's Dominions, the place where they were made, certainly they could not be used as the basis of a suit instituted in British India. But if they are merely inadmissible in evidence in Courts in the Nizam's Dominions because they are not stamped, it does not follow that they are inadmissible in Courts in British India. A note made in British India and unstamped would be inadmissible in our Courts; but we cannot stretch the provisions of our Negotiable Instruments Act to exclude on that basis a promissory note executed in foreign territory. This particular point came before the Bombay High Court in *Dhondiram Chatrabhuj* v. *Sadasuk Savatram*(1), and it was there decided that a promissory note made in the Nizam's Dominions, but unstamped and so inadmissible in evidence in any of the Nizam's Courts, could be proved in a Court in British India. That is the principle which has been adopted in England, as may be seen from *Bristow* v. *Sequeville*(2). I cannot agree with Mr. Kothandaramayya's contention that, because these promissory notes being unstamped could never have been admissible in any of the Nizam's Courts and so were practically unenforceable in his territory, they must be regarded as void. That is not, so far as I can see, the effect of the penalty imposed in the Nizam's territory for failure to stamp them.

So far in regard to Exhibits A, B and H. There remain the other six shokhas. [His Lordship then discussed the evidence and held that four of these

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(1) (1918) I.L.R., 42 Bom., 522. (2) (1850) 5 Exch. Rep., 275; 155 E.R., 118.

shokhas were offers in respect of which there was acceptance by performance to the defendant's knowledge, but that in respect of Exhibits C and J that was not proved and proceeded as follows.]

In my opinion therefore this appeal should be allowed in respect of the amounts concerned in Exhibits C and J but in other respects should be dismissed, and in the circumstances the parties should pay and receive proportionate costs throughout.

KUMARASWAMI SASTRI J.—I agree.

N.R.

ORIGINAL JURISDICTION.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

1929, December 20.

PENUGONDA VENKATARATNAM AND ANOTHER, PETITIONERS,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS, RESPONDENTS.*

Writ of certiorari—*Jurisdiction of High Court to issue—Application for the writ against the Minister, Public Health, Government of Madras—Proper form of application—Exemption of Governor acting with Ministers in a transferred subject—Government of India Act* (5 *and* 6 *Geo. V, c.* 61), *ss.* 106 (1) and 110—*Construction of Original Jurisdiction in sec.*110, *if includes jurisdiction in* certiorari—*"Governor and Council", in Act of Parliament, if includes "Governor acting with Ministers"—General Clauses Act* (*X of* 1897), *as amended by Act XXXI of* 1920, *sec.* 31, *if applicable to Act of Parliament.*

Subject to a statutory exception in respect of the acts or orders of the Governor-General and Council and of the Governor

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* Civil Miscellaneous Petition No. 2447 of 1929.