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in Benares and in the south of India in accordance with the Smruti Chandrica. Against the weight of these authorities we have not found, nor have we been referred to, any text or commentary of the School of Law in force here which places the son of a grand-daughter within the heritable collateral kindred ; and it is further to be observed that the descent in the class of near sapindas does not pass lower than the son of a daughter. We are constrained to come to the conclusion that the law appears to be (as stated in Mr. Strange's Manual, sec. 304 &306) that only descendants of ancestors in the male line within a certain limit are collateral heirs, and that on failure of such heirs the inheritance passes for the first time to collateral kindred through females who are bandhus. The plaintiff and the 4th defendant therefore cannot be declared the heirs of Taik Chand.

The result is that the decree appealed against must be affirmed, but we think without costs, as the defendants did not question the plaintiff's heirship and the parties had no opportunity of being heard upon the point at the trial.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Ex-parte MOONEE RANGAPPEN, *the Appellant in Regular Appeal Suit No.* 78 *of* 1866, *in the Civil Court of Salem.*

In cases where, for the purpose of stamping an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the Registrar a memorandum giving an estimate of the market value and the date on which it has been calculated. If the Registrar consider the estimate clearly insufficient the Court will issue a commission to ascertain the proper market value.

The provisions of Schedule B. of Act 26 of 1867 considered.

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THIS was an application for the admission of a Special Appeal against the decree of C. F. Chamier, the Civil Judge of Salem, in Regular Appeal No. 78 of 1866.

The Acting Advocate General, for the appellant, the first defendant.

(*a*) Present : Scotland, C. J. and Collett, J.

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The Court delivered the following

JUDGMENT :—A petition of appeal by the first defendant against the decree of the Civil Court of Salem in Appeal Suit No. 78 of 1866 has been rejected by the Registrar, and no doubt rightly as it bears a stamp of only 170 Rupees value ; and the suit is to recover from the first defendant, who claims to hold them as lessee, villages which pay a beriz of Rupees 1,069-15-3 and a profit of Rupees 230 : as also Rupees 11,090 the value of varum and cundayem collected.

The application now made on behalf of the first defendant is for an order to enable him to ascertain the proper stamp duty payable according to the computation required by Note (a) Schedule B of Act 26 of 1867. The ground urged is that the villages are part of a large estate which as a whole is included in the permanent settlement, and that it is impracticable to ascertain accurately what portion (if any) of the permanent revenue was assessed on the lands in those villages.

This appears to us at present not to be an obstacle which need prevent the applicant from securing the reception of his petition of Appeal. Note (a) requires stamp duty to be computed according to the market value of the property in suit, and makes the revenue payable to Government the basis of the computation for the purpose of ascertaining such value "*unless and until the contrary shall be proved.*"

We think the applicant should (as in the case of suits for property not paying revenue to the Government) furnish to the Registrar a Memorandum giving an estimate of the market value and the data on which it has been calculated. If the Registrar sees no good reason for believing that the value stated is not ordinarily fair, he will receive the petition with the proper stamp. If he considers the estimate clearly insufficient, the Court will exercise the discretionary power given in the Schedule to issue a commission to ascertain the proper market value : and in the mean time allow the petition to be received bearing the stamp duty computed on the estimated market value.

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On the return to the commission, and should the market value be reported in excess of the estimated amount, the proceedings in the appeal will be stayed until payment of the additional duty calculated on the correct market value.

This we think is the course required by the provisions in Schedule B. The Court cannot allow a petition of appeal to be filed on a stamp of any amount that the fancy of the party appealing may suggest, subject to the result of an investigation by means of a commission.

APPELLATE JURISDICTION (*a*)

The QUEEN *v.* VENCANNA and NARASA.

The Session Court of Bellary has no jurisdiction, under the Penal Code, to try Native subjects of the Jaghirdar, or Rajah, of Sundoor for offences committed in the plateau of Ramandroog upon native inhabitants of the village of Ramandroog.

Ramandroog is a portion of the territory of Sundoor, and the Rajah is in the position of a Native Chief or Ruler.

A Treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation :—

"It being probable that, as European Officer take up their residence on the said Hill, many servants, tradesmen, private persons and others will reside there, I have relinquished to the Company's Government the Police and Magisterial functions of maintaining peace and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, &c. The Collector is to have jurisdiction in such matters."

Held : that this treaty did not give the Session Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely Europeans and their servants, and all other resident persons, not Native subjects of the Rajah, and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons.

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THIS was a case referred by the Magistrate of Bellary under Section 404 of the Code of Criminal Procedure for the opinion of the High Court.

The Magistrate forwarded the proceedings of a case wherein two persons, Native Talaries in the employ of the Rajah of Sundoor, were committed by the Head Assistant Magistrate of Bellary for trial by the Session Judge of Bellary for offences under the Penal Code committed upon the plateau of Ramandroog, and the prisoners were discharged by the Session Judge upon the ground that he had no jurisdiction to dispose of the case.

(*a*) Present : Scotland, C. J., Holloway and Collett, J. J.

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The question for the decision of the Session Judge was whether the plateau of Ramandroog was a portion of British India as defined in the Penal Code.

For the defendant it was contended that Ramandroog was a portion of the territory vested in the Jaghirdar (or Rajah) of Sundoor by virtue of various sunnuds granted by the Madras Government. On the part of the prosecution the contention was that the right of administering Criminal Justice at Ramandroog was ceded to the British Government by the late holder of the Jaghire, and that the transfer of Criminal Jurisdiction over the said tract was duly notified in the *Fort St. George Gazette* of the 24th October 1848.

The following is a translation of the Tahanamah or Treaty by which the cession was made :—

Translation of a treaty tendered by the Rajah of Sundoor, dated 12th Sabhan corresponding to the month Ashoda of the year Plavangah.

To Company Cirkar.

I, Venkatrow, Hindoo Row, Ghorpada Mamalkot Madar, Sanapatti, the Somistanie of Sundoor, do execute this Tahanamah to the following effect:—The table land on Ramgod, situated in my Jaghire, being suitable for the residence of Europeans, some gentlemen have already built their bungalows on it, while others are likely to do so, and moreover the subject of erecting Barracks by Government at the place is under consideration. I have therefore been desired by A. Mellor, Esquire, the Collector of Bellary, to state for the information of Government, on what conditions I would willingly give up the said table land, and I have entered into the following agreement :—

1st.—The ownership of the said land of Ramgod shall at usual remain firm to me. There shall be no objection on my part to the grant on fixed rent of as much of the land as may be required for Government as well as for officers to build their own houses, &c. upon. The area of the land already occupied by the bungalows of the officers as well as that to be built upon hereafter by Government and officers shall be surveyed and assessed according to the local usage. The assessment to be paid every year to me.

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I shall continue to receive whatever income may be derivable from rent of fruit trees, jungle, &c., connected with the said hill.

I have reserved for myself the power of renting out of the sale of country arrack and toddy on the said hill, and of imposing a tax with their own consent on merchants who may open shops for trade there, and of levying the same The Company's Government shall not interfere in the matter.

It being probable that, as European Officers take up their residence on the said hill, many servants, tradesmen, private persons and others will reside there, I have relinquished to the Company's Government the Police and Magisterial functions of maintaining peace and trying and punishing offences committed by such people, such as violence, petty crimes, thefts murder, &c. The Collector is to have jurisdiction in such matters.

Whatever hidden property, such as money or other property and jewels, may be found in erecting bungalows and houses, or in excavating earth for any purpose in the land appertaining to the said hill, shall be delivered over to me ; the Company's Government shall have nothing to do with it. I have thus executed this Tahanamah of my own free will on this 12th day of Sabhan corresponding with the month of Ashoda of the year Plavanga Katatal.

The Notification published in the *Fort St. George Gazette* of the 24th October 1848 announced that the Ramandroog tract, lately appertaining to the Sundoor Jaghire, in the District of Bellary, had been transferred to the Government of Fort St. George and incorporated with the Taluq of Kodlighi in that district, and the jurisdiction of the Criminal Courts and Police authorities of the District of Bellary was thereby declared to extend over the said hill according to the boundaries which were on record in the Collector's office, and the Criminal Courts of the District of Bellary were required to take cognisance of all offences committed within the prescribed limits.

The Session Judge observed that if the Notification had remained intact, and had not been altered and modi-

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fied under an authority similar to that under which it was originally issued, the territory would have become vested in the East India Company, and would have come under the definition laid down in Section 15 of the Penal Code. But he held that the Government, by their subsequent proceedings, virtually cancelled the Notification so far as the transfer of territory was concerned, and merely claimed what was ceded by the Treaty, and that was only the right to exercise criminal jurisdiction within certain limits on the hill. The portion of the Sundoor Rajah's territory, known as Ramandroog, had not been ceded and had not become vested in Her Majesty. It was a foreign territory over which a foreign prince exercised acts of sovereignty, and could not be considered British India as defined by Section 15 of the Penal Code.

The last Sannad granted by the Government of Madras to the Jaghirdar of Sundoor was in the following terms:—

To Siva Shannukha Rau Ghorpaday Jaghirdar of Sundoor.

"His Excellency the Governer in Council of Fort Saint George has been pleased to renew in your name the Sannad granted to Vencat Rán Ghorpaday, under date the 12th January 1841, conferring on him and his heirs for ever in Jaghir the lands of Sundoor, free of peshkash and pecuniary demand.

"You shall have the entire management of the Revenue and Police of your Jaghir, and also the duty of administering civil justice, subject to the undermentioned conditions:—

"You shall at all times maintain faith and allegiance to Her Majesty's Government, their enemies shall be your enemies, their friends shall be your friends. You shall assist Her Majesty's Government to the utmost of your power against foreign and domestic foes. You shall maintain a strict watch over the public peace in your Jaghir. You shall not afford asylum to offenders from the Districts of the Government of India, but shall either deliver them up or assist the Officer of Her Majesty's Government who may be sent in pursuit of them. you shall cause justice to be ren-

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dered to inhabitants of the Districts of the Government of India and others who may have pecuniary claims on any of the inhabitants of Sundoor.

"In the administration of criminal justice within your Jaghir you shall abstain from the punishment of mutilating criminals, and shall not sentence capitally, or execute persons capitally convicted without the sanction of Government previously obtained, but shall refer all cases appearing to you to call for such punishment for the consideration and order of the Governor in Council. You shall be answerable to Her Majesty's Government for the good government of your Jaghir, and if ever it should happen that in consequence of mis-government, the interposition of Her Majesty's Government should become necessary, the Governor in Council of Fort Saint George will in such case take such measures as may appear just and proper for restoring order and providing for the security of the people.

"Given under the seal of Her Majesty's Government, and signature of the Governor in Council in Fort Saint, George, this thirteenth day of October, one thousand eight hundred and sixty-three."

The question proposed by the Magistrate of Bellary for the opinion of the High Court:—1. Whether the plateau of Ramandroog is a part of British India within the meaning of Sec. 15 of the Indian Penal Code.—2. If it is not, whether the judicial authorities in Bellary have jurisdiction over any and what classes of persons who may appear to have committed offences on that plateau.—3. whether such persons should be tried under the provisions of the Penal Code, or, if it should be inapplicable, then under what law should they be tried ?

The *Acting Advocate General* appeared for the prosecution.

O'Sullivan for the defendants.

JUDGMENT:—This is a case referred for the consideration of the Court under Section 404 of the Criminal Procedure Code, and the question raised is, whether the Session

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Judge of Bellary has rightly decided that he is without jurisdiction to try certain persons charged with having committed the offences under the Penal Code of wrongful restraint and kidnapping on the plateau of Ramandroog. But the case involves also the broad question whether or not the administration of criminal law over the plateau rests entirely with the Jaghirdar, or Rajah (as he is commonly styled) of Sundoor, at the Chief or Ruler of a Native State, or with Her Majesty's Indian Government.

The persons charged with the offences were, it appears, Native Wallakars or Talaries in the employ of the Rajah, and the persons alleged to have been wrongfully restrained and kidnapped were natives, inhabitants of the village of Ramandroog. The solution, therefore, of the point of the Session Court's jurisdiction depends solely upon the place of the alleged offences being or not being part of the territories vested in Her Majesty by the Statute 21 and 22 Victoria, Cap : CVI. Now, unquestionably, by the Notification published in the Gazette of the 24th of October 1848, the then Government declared the place to be incorporated with the Talook of Kodlighi in the District of Bellary and extended to all offences there committed the jurisdiction of the Criminal Courts and Police authorities of that District, and if the fact had been that Her Majesty's Government insisted on the enforcement of that Notification against the Rajah in the interests of the State, whether rightfully or wrongfully, this and every Court of Justice sitting within the Queen's Dominions would be bound to treat that act of incorporation as conclusive, and at once uphold the jurisdiction of the Session Court. But the Acting Advocate General, representing the Government, has altogether disclaimed any reliance on the Notification as an independent act of State, and rested the claim of jurisdiction on the Rajah's subordinate position under his Sannad, and on the Tahanamah of the 25th July 1847, which appears, from the Government order of the 2nd October 1865, to have been avowedly the basis of the Notification.

We have, then, in the first place to consider whether there is any support for the contention that the Rajah is not in the position of the Chief or Ruler of a State. The his-

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tory of Sundoor appears to be this:—It was, until the conquest of Hyder Ally, part of the dominions of the Mahratta Ruler of Gooty, and in 1790 it was re-taken from Tippoo Sultan's Killadar and passed into the possession of Sheeva Ráu, who held it during the Second Mahratta War in 1817. He had maintained his independence against the Peishwa, but in that year surrendered to General Munro, whose stipulations for the grant of a Jaghir in exchange for his territory were confirmed by the Government but not acted upon. In the succeeding year his former territory was restored to Sheeva Ráu by the Governor-General, and eight years after he received a Sannad from the Government, the form of which is given in Aitchison's Collection of Treaties, &c., Volume 5, page 340. From that time to the present each successor to the territory has received a Sannad in the like form, excepting the restriction that the Rajah should not mutilate criminals, nor inflict capital punishment without the sanction of the Government, which was introduced into the Sannad granted in 1841 to the late Rajah. (See the form at page 341 of the same volume.)

From these facts it clearly appears that, on the restoration, the territory of Sundoor became as it had been before, the State of a native Chief or Ruler, and that it has so continued to the present time. The Sannads do no doubt grant the lands in Jaghir and establish a relation of Subordination to the paramouns British Government. But the powers recognized and the obligations enjoined by the stipulations in the Sannads are wholly incompatible with the position of an ordinary Jaghirdar, and consistent only with that of the Ruler of a State. A strong confirmation of the territory being the state of a ruling Prince, or Chief (if confirmation was wanted) is afforded by the Sannad addressed to the Rajah by Earl Canning in 1862 to the effect that the British Government would recognize the adoption of a successor made by himself of any future Chief of his State; and by the order of the present Viceroy in Council published in February 1867, declaring, under the Stat. 27 and 28 Victoria, Cap. 14, the original Criminal Jurisdiction of the High Court to extend to European British subjects, being Christians, resident in the Native States and chiefships

named therein, of which Sundoor is one. The Tahanamah too and the correspondence which led to it are fatal to the argument that it has become British territory. 1867. October 23.

It is hardly necessary in this case to cite authority to shew that international law recognizes semi-sovereign States, that is States which are placed in subordination to another protecting State inregard to the exercise of some sovereign powers of Government. The public law of Europe and America is clearly so. See Wheaton's International Law, 59-70 and 1 Phil., 91-94. And India furnishes numerous instances of the recognition of such States, the Rulers holding Sannads from the Government.

Having arrived at the conclusion that Sundoor is the State of a Native Ruler, though subordinate to the British Power, we have next to consider what is the meaning of the Tahanamah given by the Rajah in 1847. It sets forth that European gentlemen had built bungalows on the plateau and others were likely to do the same ; that the erection of Barracks by the Government was underconsideration, and that the Collector desired to know on what conditions the plateau would willingly be given up. It then stipulates that the ownership of the land should remain with the Rajah, but that he would grant as much of it as might be required, at a fixed annual rent to be ascertained by survey and assessment according to the local usage, and reserves to him the right to certain revenue imposts and to any hidden property found on digging the land. And in the 4th clause it proceeds as follows :—

" It being probable that, as European Officers take up their residence on the said hill, many servants, tradesmen, private persons and other will reside there, I have relinquished to the Company's Government the Police and Magisterial functions of maintaining peace and trying and punishing offences committed by such people—such as violence, petty crimes, thefts, murders, &c. The Collector is to have jurisdiction in such matters."

Now there is plainly no cession of the plateau contained in these stipulations. They import, we think, quite the reverse, and it is difficult to understand how the Taha-

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namah could be made the basis of the territorial incorporation declared by the Notification and made one object of the Proceedings of the Government and the Board of Revenue in the same year. The Tahanamah therefore in its operation is of no avail to give the Session Court of Bellary jurisdiction, and we need say no more to dispose of the present case.

But, for the guidance of the Judicial Officers and the Police authorities of the District, we think our opinion should be expressed as to what is conceded by the 4th clause and the effect. We consider that it surrenders exclusive Criminal jurisdiction over a limited class of persons, namely, Europeans and their servants and all other resident persons, not Native subjects of the Rajah, and leaves the Government unfettered to provide in the way they deem right for the preservation of the peace and the trial and punishment of offences committed by such persons. Now in the state of the law existing in the date of the Tahanamah, and until the passing of Act I of 1849, the Criminal Courts and Magistracy of the District might probably have exercised that jurisdiction to its fullest extent over all resident persons, other than subjects of the Rajah. But, under the present law, their jurisdiction to deal with offences committed within the territory of a Prince or State extends only to subjects and servants of the Queen and persons resident for a certain time within Her Indian Territories.

Under the concession, then, we are of opinion that persons, not Native subjects of the Rajah, committing offences on the plateau, for which they are amenable to our Criminal law, are protected from the Rajah's power over offenders; and they alone can be apprehended, committed and tried by the Magistrates or Justices of the Peace and the Courts within Her Majesty's Indian Territories, or by a Judicial Officer empowered to exercise jurisdiction on the plateau. Offences committed by the subjects of another Prince or State not made amenable to our Criminal law must be dealt with, if at all, by the Government, under the Tahanamah, as an international question.