

“patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited, think it sufficient to say that in their opinion no sanction under s. 197 of the Code of Criminal Procedure was needed.”

In the present case, it is equally clear that the appellant could not justify the acts in respect of which he was charged, i.e., acts of fraudulently misapplying money entrusted to his care as a public servant, “as acts done by him by virtue of the office that he held.” For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Solicitor for respondent : *Solicitor, High Commissioner for India.*

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RAMGARH STATE

v.

THE PROVINCE OF BIHAR

[SIR HARILAL KANIA C.J., SIR FAZL ALI and  
PATANJALI SASTRI JJ.]

1948  
March 29,  
April 13.

*Government of India Act, 1935 (as adapted by India Provisional Constitution Order, 1947), ss. 6, 204—Federal Court—Original civil jurisdiction—“Acceding State”, meaning of—Suit for declaration that a State is entitled to be an Acceding State—Maintainability—Proviso to s. 204 (1)—Construction.*

No State can properly be described to be an Acceding State within the meaning of s. 204 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, unless the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof. The mere fact that a State has expressed its willingness to be an Acceding State and is prepared to sign an Instrument of Accession at any time it is required to do so is not sufficient to bring it within the definition

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of an Acceding State so as to enable it to invoke the original jurisdiction of the Federal Court under s. 204 of the said Act.

The proviso to sub-s. (1) of s. 204 is designed to restrict the Federal Court's jurisdiction, where a State is a party to a dispute, to the cases enumerated in sub-cl. (i), (ii) and (iii) of cl. (a) of the proviso; and in the context of this restrictive provision, the words "a State" in the proviso can only mean an Acceding State referred to in sub-s. (1) and cannot include a non-Acceding State so as to enlarge the scope of the jurisdiction under s. 204.

ORIGINAL JURISDICTION. Case No. I of 1948.

This was a suit by Ramgarh State for a declaration that it "was entitled to be an Acceding State under s. 204 of the Government of India Act, 1935, as adapted by the Governor-General" and that "the defendant, the Province of Bihar, has no authority to legislate or exercise any powers of Government over the Ramgarh State, its rulers or its subjects", and for other ancillary reliefs. It was alleged in the plaint that Ramgarh was a sovereign State before it was brought under the Bengal Permanent Settlement of 1793, that the engagements with the British Government for payment of land revenue etc. from the time of the Permanent Settlement were merely agreements entered into as a feudatory State and did not involve any loss of sovereignty, that under s. 7 of the Indian Independence Act, 1947, all treaties, engagements and obligations lapsed as from the 15th August, 1947, and that in consequence the original sovereign status of Ramgarh had revived. The suit was set down for an *ex parte* hearing on the preliminary question whether the Court had jurisdiction to entertain the suit.

1948. March 29. *Sanjib Kumar Chaudhuri* (*Samarendra Nath Mukherji* with him) for the plaintiff. This Court has jurisdiction under s. 204 of the Government of India Act to entertain this suit. The words "subject to the provisions of this Act" in s. 204 are very comprehensive. All the relevant sections of the Act have to be considered. The plaint cannot be rejected summarily. The question of jurisdiction cannot be decided in this case until all the necessary facts have been ascertained and found on the evidence adduced at the trial. Where there is no want of jurisdiction on the face of the plaint, the question should be

decided only after trial. The question whether Ramgarh is a State can be decided only after the trial. The words used in the proviso are "extend to" and not "apply to". Again, in sub-cl. (a) the words used are "a State" and not "an Acceding State". Therefore this Court has jurisdiction even in cases where a party is "a State" though not "an Acceding State". The proviso is not controlled by the words "Acceding State" used in sub-s. (1) but extends the jurisdiction to disputes between "States". Ramgarh became "a State" under s. 7 of the Indian Independence Act, 1947. In case of doubt the section must be construed so as not to oust the jurisdiction of this Court. There is no other Court where the plaintiff could get the reliefs prayed for. This is the only Court which can entertain a suit like this.

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*Cur. adv. vult.*

April 13. The judgment of the Court was delivered by PATANJALI SASTRI J.—This is a suit to obtain from this Court a declaration that "Ramgarh is entitled to be an Acceding State under s. 204 of the Government of India Act as adapted by the Governor-General" and that "the defendant, the Province of Bihar, has no authority to legislate or exercise any powers of Government over the Ramgarh State or its Rulers or its subjects."

The plaint also seeks certain other ancillary reliefs to which it is not necessary now to make a detailed reference. The plaintiff claims that he is the "legal Ruler of the Ramgarh State" and as such entitled to the declaration of his status as against the defendant who "contemplates further invasion of his rights."

The plaint is a prolix document consisting of 72 paragraphs dealing mostly with the origin and history of the alleged State both before and during the British rule. It is admitted that Ramgarh was brought under the Bengal Permanent Settlement Regulation (XI of 1793) and was regarded and dealt with as a permanently settled zemindari till the 15th August, 1947. It is, however, alleged that for centuries before the Permanent Settlement, Ramgarh was a sovereign State, and that the engagements with the British Government

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for payment of land revenue etc. from the time of the Permanent Settlement were merely agreements entered into by Ramgarh as a feudatory State and involved no loss of sovereignty. It is further alleged that the *de facto* exercise of "what appears to be sovereign powers" by the British Power "must be attributed to an excessive extension of suzerainty due to the sufferance of the lawful Ruler of the State." It is claimed that the effect of s. 7 of the Indian Independence Act, 1947, is that all treaties, engagements, obligations, etc. in respect of States lapsed as from the 15th August, 1947, and that, in consequence, the original sovereign status of Ramgarh has revived, as from the said date, "freed of all clouds in the form of different kinds of control, from all powers of jurisdiction exercised by the British Indian Government by agreement or sufferance or otherwise."

The plaintiff goes on to state that a memorial was submitted to His Majesty the King and the States Department of the Government of India praying for the recognition of the status of Ramgarh as a Native State but that the Provincial Government of Bihar, "without jurisdiction to decide on the subject and without entering into the merits of the case", rejected the same on 1st December, 1947.

The cause of action is alleged to have arisen "when the East India Company first interfered with the administration of the plaintiff State in the year 1772," and on the 15th August, 1947, "when under the Indian Independence Act, 1947, the British suzerainty lapsed and the plaintiff was restored to its original position of absolute independence" and also on the 1st December, 1947, when the Governor of Bihar rejected the plaintiff's claim for recognition as a State.

The plaintiff invokes the original jurisdiction of this Court under s. 204 of the Government of India Act as adapted by the India (Provisional Constitution) Order, 1947, (hereinafter referred to as "the Act"), "inasmuch as there is no other Court in the land to decide such questions and inasmuch as the plaintiff State has expressed its willingness to be an Acceding State as understood by the Government of India Act,

has submitted a memorial to His Majesty the King, the Secretary of State for India, to His Excellency the Governor-General of India, to the States Department of the Government of India, to His Excellency the Governor of Bihar and to the Political Secretary to the Government of Bihar and the plaintiff State is prepared to sign the Instrument of Accession any time such Instrument is forwarded to him for his signature."

As the plaintiff did not even allege in the plaint that Ramgarh is an "Acceding State," the suit was directed to be set down for hearing on the preliminary question whether this Court had jurisdiction to entertain the suit. Mr. Sanjib Kumar Chaudhuri describing himself as the Advocate-General of Ramgarh, argued the point on behalf of the plaintiff.

Before dealing with the arguments based on s. 204 of the Act, we may mention, only to dismiss, the suggestion, somewhat faintly put forward, that this Court is competent to entertain the suit as there is no other Court in the land to decide questions of the kind raised by the plaint. This proceeds on a misapprehension of the true position. This Court is not a Court of ordinary original civil jurisdiction in all matters and between all parties. Its original jurisdiction is derived from and is limited by s. 204 of the Act. That section runs thus:

"204.—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other Court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Dominion, any of the Provinces or any of the Acceding States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to  
(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder before the date of the establishment of the Dominion, or of an order made thereunder on or after that date, or the interpretation of the Indian Independence Act,

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1947, or of any order made thereunder, or the extent of the legislative or executive authority vested in the Dominion by virtue of the Instrument of Accession of that State ; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Dominion Legislature, or otherwise concerns some matter with respect to which the Dominion Legislature has power to make laws for that State ; or

(iii) arises under an agreement between that State and the Dominion or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute, and in the case of an agreement with a Province, has been made with the approval of the Governor-General ;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute."

Sub-section (2) is not material here.

It will be noticed that the section imposes two limitations on the exercise of its original jurisdiction by this Court: (1) as to the parties, and (2) as to the subject matter. Assuming (without deciding) that the subject matter of the suit is of the kind described in the section, the question remains whether the plaintiff comes within one or the other of the classes of parties mentioned therein, *viz.*, the Dominion, the Provinces and the Acceding States. The only class within which the plaintiff seeks to bring himself is that of "Acceding States." It follows that if Ramgarh is not an Acceding State within the meaning of the Act, this Court would have no jurisdiction to entertain the suit under s. 204 of the Act.

Elaborate considerations both of law and fact are put forward in the plaint in support of the claim that Ramgarh is a State. As we are dealing with the question of jurisdiction *in limine* for the present discussion we must assume that Ramgarh is a State. The question, however, remains whether it is an "Acceding State."

Now, s. 6 of the Act, which provides for the accession of Indian States, lays down that an Indian State

shall be deemed to have acceded to the Dominion, "if the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof" [sub-section (1)]. A State which has acceded to the Dominion is referred to in the Act as an Acceding State and the Instrument by virtue of which a State has so acceded is referred to as the Instrument of Accession of that State [sub-section (5)]. These provisions make it clear that no Indian State could be properly described to be an Acceding State within the Act unless the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof. It is nowhere even suggested in the plaint that the plaintiff has executed an Instrument of Accession to the Dominion and that the Governor-General has signified his acceptance thereof. On the contrary, it is admitted that the plaintiff's memorial to the various authorities concerned in the matter praying for the recognition of Ramgarh as a Native State has been rejected, and all that is alleged is that "the plaintiff State has expressed its willingness to be an Acceding State and is prepared to sign the Instrument of Accession at any time such Instrument is forwarded for plaintiff's signature." This obviously is insufficient to bring Ramgarh within the definition of an Acceding State.

Learned Counsel for the plaintiff however stressed the opening words of s.204 ("Subject to the provisions of this Act") as supporting a wider construction of the section. He was, however, unable to refer us to any other provision of the Act showing that the Federal Court is empowered to exercise original jurisdiction in respect of matters, or as between parties, other than those specified in s. 204. He suggested that the reference to "a State" in clause (a) of the proviso to sub-s. (1) had the effect of extending the jurisdiction to cases where *any* State was a party to a dispute, provided only the dispute concerned matters, or arose under agreements, specified in sub-cl. (i), (ii) and (iii) of the proviso. We are unable to accept this contention as it is unsound. The proviso is designed only to restrict the jurisdiction, where a State is a party to a dispute, to the cases enumerated in the said sub-clauses,

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and in the context of this restrictive provision, the words "a State" can only mean an Acceding State referred to in sub-s. (1) and cannot include a non-Acceding State so as to enlarge the scope of the jurisdiction. For the reasons mentioned above, we think the plaintiff is not an Acceding State within the meaning of the Act and we therefore declare that this Court has no jurisdiction to entertain the suit.

Agent for the plaintiff: *Ganpat Rai.*

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 March 30, 31;  
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 (CRIMINAL APPEAL NO. VIII OF 1947.)

JIBAN KRISHNA BOSE *v.* THE KING  
 GOVERNOR-GENERAL OF INDIA : Intervener  
 (CRIMINAL APPEAL NO. IX OF 1947.)

PROBODH CHANDRA GHOSH *v.* THE KING  
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 (CRIMINAL APPEAL NO. X OF 1947.)

[SIR HARILAL KANIA C.J., SIR FAZL ALI and  
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*Criminal Procedure Code (Act V of 1898), ss. 68, 69, 257—Criminal trial—Duty of Court to issue summonses to witnesses cited by defence—Improper refusal—Power of appellate Court to review discretion of trial Court—Service of summons—Serving by ordinary post—Serious irregularity.*

The language of s. 257 of the Criminal Procedure Code is imperative and the trial Court has no discretion under it to refuse to issue process to compel the attendance of any witness cited by the accused after he has entered upon his defence, unless it is of the opinion that the application should be refused for any of the reasons which are specified in the section and which it is bound to record.

The discretion exercised by a trial Court under s. 257 of the Criminal Procedure Code to refuse to summon a witness is subject review by the Court of appeal.