

APPEAL FROM ORIGINAL CIVIL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Harington.*

1912

Nov. 27

RODRICKS

v.

SECRETARY OF STATE FOR INDIA.*

*Jurisdiction—Secretary of State for India in Council—“ Dwell or carry on
business or personally work for gain ”—Letters Patent, 1865 s. 12.*

This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council, where the cause of action has arisen wholly outside the ordinary original civil jurisdiction of this Court, on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of Calcutta, the capital of India at the time of the institution of this suit.

Doya Narain Tewary v. The Secretary of State for India in Council (1) followed.

APPEAL by the plaintiff Bertram Eustace Moseley Rodricks from the judgment of Chaudhuri J.

This appeal arose out of a suit for malicious prosecution brought by the plaintiff against the Secretary of State for India in Council. It was alleged by the plaintiff that while employed as a permanent way inspector on the Eastern Bengal State Railway, he was falsely and maliciously and without reasonable or probable cause prosecuted for criminal breach of trust by the defendant, through his servants and agents, certain railway officials, in the district of Rungpur, that the prosecution terminated in an acquittal and that the plaintiff suffered damage, which he estimated at Rs. 10,000. Paragraph 9 of the plaint was

* Appeal from Original Civil No. 50 of 1912.

(1) (1886) I. L. R. 14 Calc. 256.

as follows :—“ That inasmuch as it may be contended that part of the plaintiff’s cause of action herein arose outside Calcutta, the plaintiff craves leave under clause 12 of the Charter to institute this suit.” Leave was granted, but there was nothing in the plaint to justify the grant of leave: and the argument both in the Court of first instance and on appeal proceeded on the basis that the whole of the cause of action in the suit arose outside the local jurisdiction of this Court.

In his written statement, the defendant besides defending the action on its merits took the pleas, that the plaint disclosed no cause of action, and that on the face of the plaint it appeared that the alleged cause of action arose wholly outside the ordinary original civil jurisdiction of this Court, and that this Court had no jurisdiction to entertain this suit.

The suit came on for hearing before Chaudhuri J. Inasmuch as it was conceded by the plaintiff that the cause of action arose entirely outside the local jurisdiction of this Court, the only question was whether the Secretary of State for India in Council could be said to be a person who dwelt or carried on business or personally worked for gain within Calcutta, which at the time of the institution of the suit was the capital of India. There was nothing further in the plaint to indicate that this Court had jurisdiction. Chaudhuri J. considering himself bound by authority dismissed the suit, on the 2nd April 1912, on the ground that the Court had no jurisdiction to entertain it, observing :—

“ The plaintiff in this suit seeks to recover the sum of Rs. 10,000 by way of damages for a false and malicious prosecution, said to have been conducted against him in the district of Rungpur in which he says he was falsely accused of criminal breach of trust in respect of certain articles belonging to the Eastern Bengal State Railway when he was employed as a servant of the Railway. He states that the criminal proceedings terminated in his acquittal, that such proceedings were taken maliciously and without reasonable, or probable cause, and claims to be

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entitled to judgment against the Secretary of State for India in Council for damages. It has not been argued before me, whether or not, such a suit is maintainable against the Secretary of State for India in Council, the only point urged being that this Court has no jurisdiction under the Charter to entertain it. The argument on both sides has also proceeded upon the basis that the whole of the cause of action in this suit arose outside the local jurisdiction of this Court. I find, however, from the 9th paragraph of the plaint that the plaintiff asked for leave under clause 12 of the Letters Patent "to safeguard himself against any contention" that part of the cause of action arose outside Calcutta. I find also from an endorsement on the plaint that such leave was granted by a learned Judge of this Court then sitting on the Original Side. I do not, however, find anything in the plaint upon which such leave could have been granted. It may be there are facts which have not been fully set out in the plaint upon which the plaintiff could have legitimately asked for such leave, but as the matter now stands, I must hold that leave under cl. 12 was not rightly granted and the Secretary of State for India in Council cannot be bound by the leave so given. The order was made in his absence, and he can, undoubtedly, question it. As I have said before, the argument has proceeded on the basis that no part of the cause of action in this suit arose within the local limits of the jurisdiction of this Court. The learned Advocate-General contends that this Court has no jurisdiction to try an action of this character against the Secretary of State for India in Council—the cause of action having arisen wholly outside the local jurisdiction of this Court. He says that unless it can be shown in cases like this that the Secretary of State for India in Council is a person who dwells or carries on business or personally works for gain within the local limits of Calcutta, this Court cannot try a suit instituted against him, and relies upon *Doya Narain Tewary v. The Secretary of State for India* (1). That case was decided by two Judges sitting on the Original Side of this Court composing a Bench constituted by the then Chief Justice on the 10th August 1886. There were three other similar cases which were referred to the same Bench for disposal, in all of which the Secretary of State for India in Council was defendant. The Bench was so constituted, I take it, upon a reference by one of the Judges who was then sitting on the Original Side of this Court under rule 54 (Original Side), although I have not been able to find the order of reference. There is no doubt that the case of *Doya Narain Tewary* (1) is direct authority for the proposition that no such suit is maintainable. The learned Judges there held that the Secretary of State for India in Council does not dwell within the local jurisdiction of this

(1) (1886) I. L. R. 14 Calc. 256.

Court, or carry on business, or personally work for gain. In so deciding the learned Judges discussed the decision of Mr. Justice Pigot in *Bipradas Dey v. Secretary of State for India* (1). Pigot J. had taken a directly opposite view. He held that such a suit was maintainable. He held further that if the Secretary of State for India in Council in this country was a legal person in any sense, he could not possibly hold that he did not carry on business in Calcutta. So far as I am concerned, I am bound by the decision of the two learned Judges Mitter and Trevelyan JJ. who constituted the Bench to whom the matter was referred, but as I am not convinced in my mind that the decision is correct, I state my reasons. However differently the word "business" may have been construed at different times, I do not think there is any question whatever that a "carrying business," is "business" within the meaning of section 12 of the Letters Patent, nor is there any doubt that a Railway Company or other corporate body, or even a body of individuals whether incorporated or not, is a "person" within the meaning of that section: see the definition of the word "person" in the General Clauses Act 1897. It cannot also be doubted that a railroad company, apart from the fact of having a registered office, "carries on business" at its principal office where the directors meet and the general business of the Company is transacted. Jessel M. R. in *Erichsen v. Last* (2), said that where the "Brain Power" is, there a trade or business is carried on. The question therefore is as to whether the Secretary of State for India in Council, is "a person" within the meaning of section 12 of the Letters Patent, and if so, does that "person" carry on business in Calcutta, which at the time of the institution of this suit was the capital of the Government of India.

I shall, therefore, first consider the position of the Secretary of State for India in Council, as a defendant in suits. In order to understand the position of the Government in this country, it is necessary to refer to certain old Acts. At the time that 21 Geo. III C. 70 and 37 Geo. III C. 142 were enacted the Governor-General, the Governors of Bombay and Madras and their councillors were servants of the East India Company, and it was necessary to protect them by special enactments from suits on account of things done by them in the exercise of their quasi-political functions. By Statute 3 and 4 Wm. IV C. 85 the trading capacity of the Company was abolished except as to such trade as was necessary for purposes of the State. By 21 and 22 Vic. C. 106 the Government was transferred from the East India Company to the Crown. Section 65 of that Statute provides as follows—"The Secretary of State in Council shall and may sue, and be sued as well in India, as in England by the name

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(1) (1885) L. L. R. 14 Calc. 262n. (2) (1881) L. R. 8 Q. B. D. 414.

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of the Secretary of State in Council as a Body Corporate ; and all persons and Body Politic shall and may have and take the same suits, remedies and proceedings, legal and equitable against the Secretary of State in Council of India as they could have done against the said Company ; and the Property and Effects hereby vested in Her Majesty for the Purposes of the Government of India or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would while vested in the said Company have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said Company." By the words of the Statute a clear right of suit is given against the Secretary of State for India in Council as a Body Corporate. Mitter and Trevelyan JJ., however, held that this section does not constitute the Secretary of State for India a Body Corporate. Perhaps not so for all purposes, but it is quite clear that he was constituted a Body Corporate for purposes of suits, and as such represents the Government of India in such suits as may be maintained against the Government. Sir Richard Garth in *Judah v. Secretary of State for India*(1) says " It seems to me that since the Statute 21 and 22 Vict. c. 106 the Secretary of State for India in Council represents the Government here to all intents and purposes. He is the officer of the Crown authorised to sue and be sued in respect of all Crown debts and contracts." On page 452, he says " Section 1 of that Act deals only with the manner in which suits are to be brought and has nothing to do with substantive rights. The latter part of the section says nothing as to what rights may be acquired either by the Secretary of State or by the Crown through the Secretary of State, nor as to the nature or character of rights so acquired. It leaves that to be governed by the ordinary principles of law. But with regard to liabilities which may be enforced against the Secretary of State there are express words."

The East India Company was in its origin a trading company which became vested with sovereign powers. There is no question that the Company was liable to suits in respect of acts done in its trading capacity.

In *Gibson v. East India Company* (2) Chief Justice Findal distinctly points out that the power of the East India Company was of a two-fold nature—one political and the other commercial. By 21 and 22 Vict. c. 106 such right of suits as individuals had against the East India Company were continued as against the Secretary of State. This was an exceptional enactment. Colonial Governments have been held not to be liable to such suits. They are not subject to any similar provision : see *Sloman v. Government of New Zealand* (3).

(1) (1886) L. R. 12 Calc. 445, 450. (2) (1839) 5 Bing. N. C. 262, 273.

(3) (1876) L. R. 1 C. P. D. 563.

The East India Company at the time that the Government was transferred from them had power to carry on trade for purposes of the State. After the transfer such trade has been carried on by the Government of India in this country, and as pointed out by Pigot J. in the case of *Bipradas Dey v. Secretary of State for India* (1), the Government is a frequent litigant in the Indian Courts, in respect of matters arising out of such trade.

The Secretary of State for India in Council cannot in this country claim on behalf of the Crown the prerogative of immunity from suits. As is pointed out in *The Secretary of State for India v. Hari Bhanji* (2) two principles regulate the maintenance of proceedings at law by a subject against the Sovereign—the one, having relation to the personal *status* of the defendant—the other, to the character of that in respect of which relief is sought. In England the form of procedure permitted to a subject who considers himself aggrieved by an act of the Crown, is by petition of rights. In this country the Crown has consented to submit some of its acts to the jurisdiction of the municipal Courts. It is not necessary in this case to discuss the nature of the acts for which Government can be sued in our Courts. The defendant concedes for the present, that such a suit as this is maintainable against the Government. I am therefore of opinion that for purposes of such a suit the Secretary of State for India in Council is a “body corporate” and a person within the meaning of clause 12 of the Letters Patent.

Just before the Letters Patent of 1862 the first Civil Procedure Code Act VIII of 1859 had come into operation, so far as the mofussil Courts were concerned. Section 5 of that Act dealt with the jurisdiction of those Courts. In that Act there was no provision as to how the Government might sue or be sued. The Civil Procedure Act of 1877 Chapter 27 section 416 introduced the provision which we now find in section 79 of our present Code. It laid down that suits against the Government were to be instituted in the name of the Secretary of State for India in Council. The Secretary of State for India in Council, therefore, is more than a “mere name.” He is for purposes of suits to be treated as a “person,” and represents the Government. The learned Advocate-General referred me to Ilbert's Government of India (2nd Edition) pages 176-177, which does not help to decide the point. I notice that on page 146 the learned author says this “the office of the Secretary of State is constitutionally a unit, though there are five officers.” Reference was made by the learned Judges in *Doya Narain Tewary's Case* (3) to *Kinlock v. Secretary of State for India in Council* (4) in which the plaintiff sued for an account and distribution of “booty of

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(1) (1885) I. L. R. 14 Calc. 262 n. (3) (1886) I. L. R. 14 Calc. 256.

(2) (1882) I. L. R. 5 Mad. 273. (4) (1880) L. R. 15 Ch. D. 1.

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war" come to the hands of the Secretary of State under a royal warrant. It was argued that the defendant thus became "trustee" and the "booty" was "trust fund." James L. J. held it was not a trust, and that the Secretary of State for India in Council (the name by which the Government can be sued) was not a person capable of being trustee, because according to that learned Judge the Government of India was not capable of being trustee of such fund. The property in that case had vested in the Crown, and was to be distributed by the servants of the Crown, according to the Crown's directions and that therefore no municipal Court had jurisdiction to entertain the suit. The observations made in the course of the judgment refer to the matter which was before the Court of Appeal and cannot be considered of general application. To hold that where suits are actually maintainable against the Secretary of State for India in Council that he is a "mere name," I consider erroneous. He is a "body corporate" in such a suit, according to the express words of the Statute. If, however, the Secretary of State for India in Council is a "mere name" it is quite clear that a name can never be said to "dwell" anywhere or "carry on business." It is also clear that a "mere name" can do nothing. The name cannot sue or be sued, nor can there ever be a cause of action against a "mere name," but as I hold it is not, I shall consider whether the Secretary of State for India in Council who is a "legal person" in such suits, can be said to dwell in Calcutta or carry on business there. It seems to me difficult to say that the Government does not dwell in its own capital and that a Government engaged in trades, though it may be for purposes of the State, does not "carry on business." If Sir George Jessel is right that where the "Brain Power" is, there a trade or business is carried on, the assumption that the Brain Power of the Government of India is at its seat of Government, is not an unjustifiable assumption. I would have had, therefore, no hesitation in holding that the Secretary of State for India in Council, namely the Government dwells at its capital and carries on business there, and is thus amenable to the jurisdiction of this Court, in cases where a suit can be maintained against the Government.

I have gone through the cases referred to by Mr. Justice Pigot in his judgment, and I may say I generally agree with the view expressed by him. In the case of *P. & O. S. N. Co. v. Secretary of State for India* (1), the question has been elaborately discussed. The learned Judge points out that there are several cases decided in our Courts against the Secretary of State in spite of the ruling in *Rundle v. Secretary of State in Council* (2). The observations in that case were made for the guidance of the profession and are *obiter*. About the same time the Madras Court in the case of

(1) (1861) 5 Bom. H. C. App. 1.

(2) 1 Hyde 37.

Subbaraya Mudali v. The Government (1), took a different view. After which came the cases of *Brito v. The Secretary of State for India in Council* (2), in which the question of jurisdiction does not appear to have been raised, and *Hari Bhamji v. The Secretary of State for India* (3). *Rundle's Case* (4) was cited during argument but was not commented upon in the judgment. It appears that in spite of the decision in *Rundle's Case* (4) the other High Courts continued to exercise jurisdiction over the Secretary of State. This Court also did the same in the case of *Ross Johnson v. Secretary of State* (5) although how it came to do so in direct conflict of the decision in *Rundle's Case* (4) is not clear. See also Hukumchand's Civil Procedure Code page 319, where the references are collected. I may also refer to *Doss v. Secretary of State for India in Council* (6), in which Sir R. Malins V. C. allowed the demurrer, one of the grounds being that the plaintiff was a resident of India and the Secretary of State "was also in India." Reference was made during argument in that case to *Re Holmes* (7) in which a demurrer was allowed on the ground that the Queen was as much "resident" in Canada as in England.

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Having regard to what I have said before and with great respect to the learned Judges who decided the Case of *Doya Narain Tewary* (8), I venture to dissent from the views therein expressed, but as I hold that I am bound by the decision of a Bench so constituted, I must hold that this Court has no jurisdiction. The suit will accordingly be dismissed with costs."

From this judgment the plaintiff appealed.

Mr. S. K. Chakravarti, for the appellant. The learned Judge in the Court of first instance, although holding a different view, felt himself bound by the authority of *Doya Narain Tewary v. The Secretary of State for India in Council* (8), to dismiss the suit. His view, however, has the support of Pigot J. in *Bipradas Dey v. Secretary of State for India* (9). *Doya Narain Tewary v. The Secretary of State for India in Council* (8) is not binding on the Court of Appeal: the Bench which decided that case was not even an Appellate Court but a Special Bench on a reference. This Court

(1) (1863) 1 Mad. H. C. 286.

(5) 2 Hyde 153.

(2) (1881) I. L. R. 6 Bom. 251.

(6) (1875) L. R. 19 Eq. 509, 535.

(3) (1879) I. L. R. 4 Mad. 344.

(7) (1861) 2 J. & H. 527.

(4) 1 Hyde 37.

(8) (1886) I. L. R. 14 Calc. 256.

(9) (1885) I. L. R. 14 Calc. 262a.

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has always power to refer a matter to a Full Bench, in case it takes a different view to that of another Court of co-ordinate jurisdiction. There is a conflict of opinion in the older cases: *Rundle v. Secretary of State in Council* (1), and *Johnson v. Secretary of State* (2). The decision in *Doya Narain Tewary v. The Secretary of State for India* (3), treats the Secretary of State for India in Council as a "mere name." From the English statutes concerning the Government of India, and section 79 and Order XXVII of the Code of Civil Procedure, it is clear the Secretary of State for India in Council is a "body corporate," an entity and not a "mere name." The principal seat of the Government of India was at Calcutta, the capital. The railway was a Government enterprise.

[*Mr. Kenrick K. C.* The principal place of business of this railway was at Sealdah, which is outside the ordinary original civil jurisdiction of this Court.]

The Railway Board, governing the railway, is a department of Government and was in Calcutta.

The Advocate-General (Mr. Kenrick K. C.) (with him *Mr. B. C. Mitter, Standing Counsel*), for the defendant, was not called upon.

JENKINS C.J. This appeal arises out of a suit brought against the Secretary of State for India in Council, and the alleged cause of action is malicious prosecution. The suit has been dismissed by Mr. Justice Chaudhuri on the ground that the Court had no jurisdiction to entertain it. The plaintiff has appealed from this judgment maintaining that there is this jurisdiction. Under Order VII rule 1 of the Code of Civil Procedure the plaintiff is required, among other things, to show the facts constituting the cause

(1) 1 Hyde 37.

(2) 2 Hyde 153.

(3) (1886) I. L. R. 14 Calc. 256.

of action and when it arose, and also the facts showing that the Court has jurisdiction. There is no allegation in the plaint that satisfies this requirement, and the written statement takes the objection that "on the face of the plaint it appears that the alleged cause of action arose wholly out of the ordinary original civil jurisdiction of this Court, and the Court has no jurisdiction to entertain this suit." Now, it is admitted that no part of the cause of action arose within the local jurisdiction of this Court: but it is contended that the Secretary of State for India in Council is a person who dwells or carries on business or personally works for gain within the local limits of Calcutta; and it is on that ground and on that ground alone that we are asked to hold that there is jurisdiction. No doubt, this argument met with some favour in the Court of first instance, and the appellant suggests before us that he was encouraged by the view of the learned Judge to prefer this appeal. But in fact this is a point which was decided adversely to him as far back as 1886, and it has not been suggested that from that date to this, the decision to which I refer has ever been questioned or doubted: *Doya Narain Tewary v. The Secretary of State for India in Council* (1). It was the decision not of a single Judge but of a Bench of two Judges, and I think it would be wrong for us not to follow that decision. I regard it as important that matters of this kind should have all the certainty possible and that the Court should not lightly disregard a decision definitely settling a question of jurisdiction such as that which arises in this case. If the decision is wrong then it must be for a higher tribunal to correct it. For my own part, I prefer to follow it as being a decision of a Bench of two Judges which has long been accepted as a governing authority.

(1) (1886) I. L. R. 14 Calc. 256.

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We, therefore, hold that there is no jurisdiction and we dismiss this appeal with costs.

HARINGTON J. I agree.

J. C.

Appeal dismissed.

Attorneys for the appellants : *B. N. Basu & Co.*

Attorney for the respondent : *Kesteven.*

ORIGINAL CRIMINAL.

Before Mr. Justice Carnduff.

EMPEROR

v.

JIBAN KRISTO BAGCHI.*

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 Dec. 9.

Charge—Misjoinder of charges—Joint trial on charges of criminal breach of trust and falsification of accounts committed in separate transactions—Criminal Procedure Code (Act V of 1898), ss. 233, 234 and 235—Penal Code (Act XLV of 1860), ss. 408 and 477A.

A charge of criminal breach of trust of a sum of money can be tried under s. 235(1) of the Criminal Procedure Code, at the same time, with one of falsification of accounts made to conceal the act of misappropriation as part of the same transaction; and two unconnected charges of falsification may be tried at one trial under s. 234; but a charge of criminal breach of trust cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate transaction.

Kasi Viswanathan v. Emperor (1) and Subrahmania Ayyar v. King Emperor (2) followed.

THE prisoner was tried at the Fifth Criminal Sessions of the High Court under ss. 408 and 477A of

* Original Criminal Case No. 8 of 1912 (5th Sessions).

(1) (1907) I. L. R. 30 Mad. 328. (2) (1901) I. L. R. 25 Mad. 61 ;
 L. R. 28 I. A. 257.