

(1940) 08 CAL CK 0009
In the Calcutta High Court

Nokar Dibyaswari Debi

APPELLANT

Vs

Narayan Lin Kumari Debi

RESPONDENT

Date of Decision : 27-08-1940

Acts Referred:

Contract Act, 1872 — Section 49
Government of India Act, 1935 — Section 205

Citation : AIR 1941 Cal 291

Hon'ble Judges : Lort-Williams, Acting C.J.; Lord-Williams, Acting C.J.

Bench : Division Bench

Judgement

Lort-Williams, Ag. C.J.

1. The plaintiff sues for money paid at the request of the defendant. At the time when the suit was instituted the defendant was living at Dhankuta in the Kingdom of Nepal. The money was paid in Calcutta within the jurisdiction by means of cheques drawn upon the plaintiff's account with the Imperial Bank of India. Particulars are given in the plaint. The defendant contends that this Court has no jurisdiction to try the suit because the defendant is a non-resident foreigner and was not residing within the jurisdiction when the suit was instituted. Further she alleges that no part of the cause of action arose within the jurisdiction, that no money was paid to her and no request was made by her as alleged or at all, that; the money in the said account and Bank was and is the defendant's money, that the account was opened in the name of the plaintiff with a sum of Rs. 25,000 belonging to the defendant, and that the moneys drawn by the plaintiff were drawn under the directions of the defendant. Both plaintiff and defendant were born in Nepal but the plaintiff has not lived there since 1937. And the defendant has lived periodically in British India, both in Darjeeling and Calcutta, owns houses in Darjeeling and Bombay and shares in companies registered in British India and elsewhere. The plaintiff is the daughter of the defendant and of the late General Pratap Shamser Jung Bahadur Rana, who was the son of H. H. Bir Shamser Jung Rana Bahadur, late Prime Minister of Nepal.

2. In March 1934, General Pratap was exiled from Nepal proper and went to live at Darjeeling where he purchased the Rockwood estate. He took out a life insurance policy for Rs. 2,65,000 in the Scottish Union National Insurance Co., and invested large sums in shares in British Indian and other companies which were deposited with the Imperial Bank in Calcutta. He owned also considerable property in Nepal. In August or September 1934, he died at Darjeeling leaving his widow, the defendant, and six children - two sons Madhab and Gobind and four daughters, Madan who is married to Tarak Bahadur Shah, Rup Rajeswari who is married to Man Bahadur Sing, Nil Rajeswari who is married to Jay Bahadur and the plaintiff Nokar Dibyaswari who is married to Bhet Narayan. There was another daughter Durga who died. Before he died General Pratap wrote a letter addressed to H. H. the Maharaja of Nepal of which a copy was produced by the plaintiff (Ex. B) and the translation of it is as follows:

To

Father, Sri (3) Maharaja,

Apprehending that a bad disease has appeared to me, your child, I have to your Highness's feet mentioned this which I have in my mind that, of what I have, let my children receive in this way. Let your Highness be pleased. All will get their shares according to law. Of that, my Rani will get her share and all the income from "tin patan" as long as she lives. She will not be entitled to give land to others. Half the land held with brother Pu. Ka. Ja. be separated. She will be entitled to do, regarding the rest according to her wish. As of the five daughters, three had been married, two be given marriage allowance. I have commenced building the houses for the three. As twenty-five thousand has been the estimate of each, that much be given to each of the five. Out of the income of timber of "tin patan" (it) be given. From the new "Abad" (settled land) there, land yielding income of Rs. 4000 be separated and given with your Highness's seal in each of their names on condition that in case they remain childless, my sons' children were to get-if this be done, your child's mind would be satisfied. Maharaja's hukum.

Ever devoted child to your Highness's feet. Pratap Sham Sher Jang.

3. After the General's death a dispute about his instructions arose between the defendant and Madhab and Gobind and the letter was sent to the Maharaja for his decision and later in 1936 he returned it with his official sanction of the directions contained in it. The plaintiff and defendant were then living in London Street, Calcutta and Madhab and Gobind signed the document saying that they agreed to it. These signatures are dated the 91st year 15th Kartick, 4 (Wednesday). Subsequently, when the plaintiff and defendant were living at Raghunathpur in Nepal, copies of the documents were made by Sree Ratna a clerk in the employment of the defendant, under her directions and in the presence of the plaintiff and Bhet Narayan and one copy was given to each of the daughters, the defendant keeping the original. According to the plaintiff, this was

done for the protection of the defendant's daughters because friction had arisen between the defendant and Madhab and she had had to file a suit against him in Nepal. General Pratap's property was transferred by the Nepal Government into the name of Madhab in order to avoid heavy transfer fees. The insurance money was obtained by means of a succession certificate issued to Madhab by the Court of the British Legation in Nepal. In order to carry out the instructions contained in the General's letter regarding his daughters, Madhab gave Man Bahadur Singh a cheque drawn in his favour for rupees one lakh, and he opened an account with it and drew cheques on the Imperial Bank of India for Rs. 25,000 in favour of each of the sisters other than his wife Rup Rajeswari. The plaintiff with her Rs. 25,000 opened an account (ex. q) in her own name with the Imperial Bank in Calcutta. This was in March 1937 when she was at Raghunathpur and she sent the cheque to Calcutta by post (ex. k.) She alleges that her mother had nothing to do with the cheque or with the opening of this account and had no personal interest in these transactions. Man Bahadur Singh brought her the form and signature card required when opening an account with the Bank.

4. After the Maharaja's sanction had been obtained but before the plaintiff had received her Rs. 25,000 the defendant at London Street on 29th December 1936 asked the plaintiff, when she received her money, to lend her Rs. 14,600 which she wanted to give to Rup Rajeswari for ornaments for her rice-eating ceremony. They returned to Raghunathpur, Nepal, in January 1937 and on 2nd May 1937 at the defendant's request the plaintiff drew a cheque for Rs. 14,600 in favour of Rup Rajeswari (ex. C). Full particulars of the transaction, why, to whom, and on what account were entered on the counterfoil by Bhet Narayan. The counterfoil is in the possession of the defendant. The defendant gave the plaintiff a letter in her own handwriting dated 3rd May 1937 (Ex. D) the translation of which is as follows:

Raghunathpur, Swastika Bhavan, 94 Baisakh 21st (3rd May 1937) Monday.

Shri.

Kahili Maiya (4th) daughter,

Now because I have, having no money in order to pay cash to our Mahili Maiya (2nd) daughter for top (ear), ornaments of "Pasne" (six month rice eating ceremony) and house at Nepal, taken at today's date a cheque for Rs. 14,600 (fourteen thousand six hundred rupees) out of your money in your Bank, and given it to Mahili Maiya (2nd) daughter, therefore when my assets are available, paying interest calculated at 3 p. c. usual to the Bank rate, as long as that money is not paid back to you together with the principal-I shall take back this paper so stating have I written this document and given it to you.

Yours affectionate mother, Shree Genl. Pratap Rani.

Nokar Dibya Swari Devi.

5. Shamser Mardhan, one of her employees, helped her to draft this letter. This

cheque was paid in Calcutta by transfer to an account with the Imperial Bank in Calcutta which was opened by Rup Rajeswari with the cheque (Ex. s). Subsequently, one Neila filed in Calcutta a criminal cheating case against Gobind and money was wanted for his defence. The defendant asked the plaintiff for a loan of Rs. 2000 and on 21st June 1937 at the request of the defendant the plaintiff drew a cheque (ex. e) on the Imperial Bank, Calcutta, for Rs. 2000 in favour of Shamser Mardhan Shah who was sent down by the defendant to Calcutta where he cashed the cheque. The plaintiff made three similar loans to the defendant when they were living at Burdwan Road in Alipore and drew three similar cheques in favour of Shamser Mardhan Shah, Nilraj Juladhar and Mukhya Grishna Bahadur, respectively, at the defendant's request, on 9th August, 16th August and 23rd August 1937 (Exs. F, 6 and H), all of which were cashed at the Imperial Bank in Calcutta and were required for the defence of Gobind. Nilraj is a head clerk of the family and the name of Mukhya Grishna Bahadur who is another employee is in Nilraj's handwriting. The plaintiff lent also in 1937 Rs. 1900 and in January 1938 Rs. 1000 to the defendant and Gobind respectively, but these sums were repaid, and she received in 1937 Rs. 1400 from Madhab out of her father's estate for her rice-eating ceremony. The sum of Rs. 5000 in the account belonged to Gobind. Some of these matters are confirmed by a letter from Nilraj (ex. I) dated 8th December 1937 in which he refers to Rs. 8000 as a loan to the defendant.

6. In January 1938, the plaintiff and defendant went to reside at Benares. On many occasions the plaintiff had pressed the defendant to repay the loans-in September 1937 when Madan was in a nursing home and the defendant gave her Rs. 2000, and in October 1937 when the plaintiff came to know that the defendant had repaid to Nil Rajeswari Rs. 20,000 which she had borrowed from her. At Benares she made another demand and the defendant sent a telegram to Nilraj to-come to Benares and there gave him directions to pay the plaintiff's money, namely Rs. 22,600, into her account at the Imperial Bank, Calcutta. This is corroborated by a letter from the Benares branch of the Imperial Bank dated 19th February 1938 (Ex. J) to the effect that the sum of Rs. 22,600 had not been received in Calcutta. On 11th March 1938, the plaintiff parted from the defendant and has never since lived with her. The reason given by the plaintiff is that the defendant wanted to marry her against her will to some one from Assam, who was going to pay the defendant Rs. 2,75,000 as the price of the marriage of her daughter to him. The plaintiff refused and ran away with Bhet Narayan Bahadur Shrest and was married to him on 14th March 1938, according to Arya Samaj rites, and the marriage was declared before the District Magistrate at Benares. She left behind her jewellery worth Rs. 50,000 and clothes worth about Rs. 10,000 which the defendant has appropriated. The defendant lodged a false information (Ex. n) against her and others with the Superintendent of Police at Benares alleging that she had been kidnapped, was only 15 years old and had taken away money and jewellery worth Rs. 1,60,000 (Calcutta Police Gazette, 1938, 15th March 1938). The plaintiff was then 24 years old. The District

Magistrate at Benares directed the police to take no action.

7. The defendant had no banking account until 21st May 1937 when she opened an account with the Imperial Bank at Calcutta with Rs. 500 in cash. At the time when the alleged loans were made to her by the plaintiff the defendant had no greater balance to her credit and nothing more was paid into her account until 24th August 1937 (Ex. R) when she received Rs. 20,000 from Madhab for the purpose of repaying Nilrajeswari. All General Pratap's money, including the proceeds of the insurance policy, was in the Imperial Bank in the name of Madhab, and there was friction between him and the defendant. All these facts were proved by the plaintiff and her evidence was corroborated in every detail by Bhet Narayan. He was first employed by General Pratap in Nepal in 1933 to teach his children, but left his service when he was exiled and went to live at Darjeeling early in 1934. In 1936 at Raghunathpur he entered the service of the defendant as her personal clerk because he knew English and he accompanied her to London Street and Burdwan Road, Calcutta and to Darjeeling. He left her service early in March 1938 because of the family quarrels when the defendant was at Benares and came to Calcutta where he received a letter from the plaintiff threatening to commit suicide and begging him to come and save her from the proposed marriage. The defendant did not appear to give evidence at the hearing and no witnesses were called on her behalf. But interrogatories and cross-interrogatories were administered to her in Nepal by means of a letter of request addressed to the competent judicial authority at Raghunathpur in the Kingdom of Nepal. I admitted the interrogatories and cross-interrogatories though there is some doubt whether they have been properly authenticated, because what purports to be the impression of a seal upon them is illegible.

8. In answer to these interrogatories the defendant stated that she did not reside in British India and was living at Dhankuta in Nepal when the suit was instituted. Her husband's property was divided between her and her two sons in equal shares. In February 1937 she was in a feeble state of health and contemplated making provision for her four daughters. She arranged with the help of her sons to withdraw from the Imperial Bank one lakh of rupees and she paid to her three married daughters Rs. 25,000 each and set apart the balance of Rs. 25,000 for the plaintiff to be paid to her on her lawful marriage according to the rites and customs of her family with due permission of herself and her sons. She opened an account with the Rs. 25,000 in the Imperial Bank, Calcutta, in the name of the plaintiff on 27th February 1937. Subsequently, she required some of the money for family purposes and obtained it by cheques drawn by the plaintiff under her directions. The money belonged to her, and not to the plaintiff. She denied that any marriage had taken place between the plaintiff and Bhet Narayan and said that no sanction had been given for any such marriage. She had never borrowed any money from the plaintiff, had never requested her for any loan and no demands had been made upon her by the plaintiff. She owned shares in several companies in British India and realized dividends through her agents in India, also rents from her house in Bombay. She came to Calcutta in 1938 and

instructed her attorneys to defend this suit. She was told that her husband once wrote a letter to H. H. the Maharaja expressing his intentions with regard to the properties, but there was no will and no bequest and she knew of no provision having been made for a marriage allowance for the plaintiff. She avoided answering questions about the contents of the letter of instructions, the assent given by her sons, and the sanction given by the Maharaja by repeating each time that there was no will.

9. She denied that Madhab paid a lakh of rupees to Man Bahadur Sing for payment of Rs, 25,000 to each of her daughters, or that Man Bahadur paid Rs. 25,000 to each of her daughters, or that an account in the Imperial Bank in plaintiff's name was opened in March 1937 with the plaintiff's share of the lakh of rupees. With regard to the letter (Ex. d) written by her on 3rd May 1937, she admitted that she wrote a letter but that there was no loan nor any acknowledgment of any loan. The letter was written to safeguard the future interest of the plaintiff in case of the defendant's death. She denied that she had borrowed Rupees 1900 from the plaintiff or had repaid it, saying that the cheque was drawn under her orders and that she had put it back in the account to safeguard the future interest of the plaintiff in case of the defendant's death. In comparison with the evidence given by the plaintiff and Bhet Narayan I find these answers very unsatisfactory and I am unable, to accept the defendant's evidence. Not only are they contradicted by the documentary evidence but they are lacking in frankness and obviously given with a desire to prevaricate and to afford as little information as possible to the Court. Effective cross-examination of the witness by means of cross-interrogatories was not possible in the circumstances and I am satisfied that the defendant's answers are unreliable and that she was not a truthful witness. On the other hand the plaintiff and Bhet Narayan were most satisfactory and most convincing witnesses. They gave their evidence frankly, carefully, clearly and accurately without over statement or exaggeration and with transparent honesty. The plaintiff is well educated and most intelligent and was more than a match even for the Advocate-General when under cross-examination. He failed to shake her testimony even in the smallest particular. I had full opportunity to "observe-their demeanour and am quite satisfied that both of them told the truth and I accept their testimony. I find as a fact that the Rs. 25,000 belonged to the plaintiff and that she lent the sums alleged to the defendant at her request.

10. On the question of jurisdiction I find it difficult to understand the defendant's case, which was somewhat half-heartedly advanced on her behalf by her counsel. Under Clause 12 of the Letters Patent this Court has jurisdiction over all suits if - inter alia-the cause of action shall have arisen either wholly, or with leave in part, within the ordinary original civil jurisdiction of the Court. Such leave was granted. Subject to certain exceptions which are irrelevant no class of persons is, as such, excluded or exempt from the jurisdiction of the Court, i. e., any person may be party to a suit or other legal proceeding in the Court and the Court has jurisdiction in a suit over any person who has by her conduct precluded herself

from objecting to the jurisdiction of the Court (C.P. Dicey's "Conflict of Laws," Edn. 5, pp. 219-221). In Clause 12 no distinction is made between resident and non-resident parties. It is not and cannot be denied that part of the cause of action in this suit arose in Calcutta within the jurisdiction. In the first place, payment of all the money lent to the defendant was made by the plaintiff's agents, the Imperial Bank of India, and received by the defendant and her agents in Calcutta within the jurisdiction by means of cheques drawn upon the plaintiff's account. Secondly, therefore by implication, in the absence of any provision of law or term of the contract, the place for payment was Calcutta. Thirdly, there was an express direction given by the defendant to Nilraj to pay the Rs. 22,600 into the plaintiff's account at Calcutta. Section 49, Contract Act, obviously has no application and even if it had, the defendant did not apply to the (plaintiff to appoint any reasonable place for payment. Therefore, fourthly, the common law rule applied and it was the debtor's duty to seek out her creditor and pay her. At all material times since 1938 and at the time of the institution of the suit the plaintiff resided in Calcutta within the jurisdiction. Counsel for the defendant contended that this Court has no jurisdiction over a non-resident foreigner and relied for this proposition upon the case in *Gurdial Sing v. Raja of Faridkote* ('94) 21 I A 171. The headnote is as follows:

No territorial legislation can give jurisdiction which any foreign Court ought to recognize against absent foreigners who owe no allegiance or obedience to the power which so legislates. In all personal actions the Courts of the country in which the defendant resides, not the Courts of the country where the cause of action arose, should be resorted to. Where a Faridkote Court passed *ex parte* money decrees against the defendant, who had been treasurer of Faridkote, but at the date of suit had ceased to be such, and was resident in Jhind, of which State he was a domiciled subject:

Held, that such decrees were a nullity by international law.

11. The facts shortly stated were that the Raja of Faridkote obtained in the civil Court of that independent native state two *ex parte* judgments against the applicant for money due. Two actions were brought in British India to enforce those foreign judgments. The causes of action arose in Faridkote, the debts being contracted when the applicant was employed there. He had left Faridkote and was residing in Jhind, another independent native State of which he was a native subject and domiciled there when he was served with certain processes of the Faridkote Court. He disregarded them and did not appear in the suit or submit himself to that jurisdiction. Their Lordships held that there was nothing to take the ease out of the general rule that the plaintiff must sue in the Court to which the defendant is subject at the time of suit (*actor sequitur forum rei*). All jurisdiction is properly territorial and *extra territorium jus-decenti, impune non paretur*. Territorial jurisdiction attaches upon all persons either permanently or temporarily resident within the territories while they are within it, but it does not follow them after they have withdrawn from it and when they are living in

another independent country. No territorial jurisdiction can give jurisdiction which any foreign Court ought to recognize against foreigners who owe no allegiance or obedience to the power which so legislates.

12. In a personal action to which none of these causes of jurisdiction apply, a decree pronounced in absentum by a foreign Court to the jurisdiction of which the defendant has not in any way submitted to himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it and it must be regarded as a mere nullity by the Courts of every nation except (when authorized by special local legislation) in the country of the forum by which it was pronounced. I have quoted this judgment at length in order to show that it does not affect the issues raised in the present suit. We are not concerned here with any question about the enforcement of a foreign judgment, nor the extra-territorial effect of the judgment of a British Indian Court compare the remarks of Sargent C. J. in *Girdhar Damodar v. Kassigar Hiragar* ('93) at pp. 665 to 668 which decision was approved by the Privy Council, the judgment of Candy J. in *Rambhat v. Shankar Baswant* 25 Bom 528, of White C. J. in *Srinivasa Moorthy v. Venkata Varada Ayyangar* ('02) 29 Mad 239 and of the Court in *V.E. Smith Vs. Indian Textile Company*, -and as I shall show hereafter the defendant did not disregard the writ issued by this Court, but entered appearance without protest and submitted herself in the most complete way to the jurisdiction of this Court. A somewhat similar case relied upon by counsel for the plaintiff is *Harris v. Taylor* (1915) 2 K B 580. The headnote is as follows:

The plaintiff brought an action against the defendant in the High Court of the Isle of Man claiming damages for criminal conversation with the plaintiff's wife. The defendant was at no material time domiciled or resident in the Isle of Man. The plaintiff obtained leave to serve the defendant with a writ of summons out of the jurisdiction and the defendant was duly served with a writ in England. The defendant subsequently appeared "conditionally" and applied to the Court to set aside the order for service out of the jurisdiction and the writ on the ground, inter alia, that the defendant was domiciled in England. The Court dismissed the application. The defendant took no further part in the proceedings and the plaintiff eventually recovered judgment in the action for damages and costs. The plaintiff then brought this action against the defendant to enforce the judgment:

Held, affirming the judgment of Bray J., that the defendant by reason of his application to the Isle of Man Court had voluntarily submitted to the jurisdiction of that Court and that judgment was therefore enforceable against him in England.

13. The defendant had given notice of motion to set aside the order for service out of the jurisdiction and the writ issued thereunder, on the following grounds:

(1) That the rules of the Isle of Man High Court of Justice, 1884, do not contemplate or authorize service out of the jurisdiction; (2) that no cause of action arose or exists within the jurisdiction of these Courts; (3) the defendant is

domiciled in England and has never had a domicile in the Isle of Man.

14. Buckley L.J. at p. 587 said as follows:

When the defendant was served with the process he had the alternative of doing nothing. He was not subject to the jurisdiction of the Court, and if he had done nothing, although the Court might have given judgment against him, the judgment could not have been enforced against him unless he had some property within the jurisdiction of the Court. But the defendant was not content to do nothing; he did something which he was not obliged to do, but which, I take it, he thought it was in his interest to do. He went to the Court and contended that the Court had no jurisdiction over him. The Court however decided against this contention and held that the defendant was amenable to its jurisdiction. In my opinion, there was a voluntary appearance by the defendant in the Isle of Man Court and a submission by him to the jurisdiction of that Court. If the decision of the Court on that occasion had been in his favour he would have taken advantage of it, as the decision was against him, he was bound by it and it became his duty to appear in the action and as he chose not to appear and to defend the action he must abide by the consequences which follow from his not having done so. The course adopted by the defendant's advocate on 17th March was either a qualified appearance or an unqualified appearance. If it can be regarded as a qualified appearance, it was. an appearance for the purpose of getting a decision of the Court on the question whether the defendant was bound by the jurisdiction of the Court. The decision was against him and thereafter it was not open to the defendant to say that he was not bound. The doctrine applicable to these cases is that if the defendant has placed himself in such a position that it has become his duty to obey the judgment of the foreign Court, then the judgment is enforceable against him in this country : see *Schibsby v. Westenholz* (1871) 6 Q B 155. I think that in this case the defendant did submit himself to the jurisdiction of the Court of the Isle of Man, and therefore it was his duty to obey the judgment.

and Banks L.J. at p. 592 said as follows:

The fact that the defendant has sought the protection of the Court imposes upon him an obligation to obey the judgment of the Court if it should happen that it is given against him. It is in my opinion an entire misconception of the principle" applicable to these cases to say that there is a voluntary submission to the jurisdiction of a foreign Court only when the defendant by appearing in the action in the technical sense has consented to the jurisdiction.

15. In the present case the writ and plaint were served by leave of this Court by registered post upon the defendant at Dhankuta in Nepal, early in August 1938. Thereupon she came to Calcutta and on 6th September 1938 deputed in her place Messrs. K. K. Dutt & Co. to be her attorney " to defend" the above suit" and they entered appearance-on her behalf unconditionally and without protest. On 9th September 1938, the defendant appointed her son-in-law, Jaya Bahadur

Singh as her constituted attorney by a power of attorney executed on that date empowering him inter alia to sign, verify, affirm and file all necessary petitions, statements and written statements in the suit on her behalf. On 5th November 1938, the defendant through her attorneys took out a summons for an application for extension of time for filing her written statement. On 16th November 1938, the plaintiff made an application for final judgment. Jaya Bahadur Singh on behalf of the defendant filed an affidavit alleging that the suit was misconceived and based upon false allegations, that the Court had no jurisdiction, and that no part of the cause of action arose within the jurisdiction, and he set out with particularity the reasons why he alleged that no money was due to the plaintiff from the defendant. As a result of these contentions, on 6th December 1938 leave was given to the defendant to defend the suit and to file her written statement, the time for doing so was extended, and orders were made for discovery and inspection. By implication therefore, the learned Judge decided against the defendant's contention that the Court had no jurisdiction, nevertheless on 30th January 1939 defendant filed her affidavit of documents.

16. On 18th May 1938, application having been made by the plaintiff for leave to amend her plaint, and counsel for the defendant having been heard in opposition, leave was given and the plaintiff was ordered to pay to the defendant her costs. On 8th January 1939, the defendant filed her written statement and raised contentions upon the merits of the plaintiff's claim in addition to the question of jurisdiction. On 29th June she filed an additional written statement. On 24th July 1939 she filed a petition again contesting the suit on the merits as a false and frivolous claim, alleging that she was a purdanashin Hindu lady of very high rank belonging to the Royal family of Nepal, and in a poor state of health and asking that a letter of request be issued to examine her viva-voce in Nepal. On 27th July, in spite of strenuous opposition on behalf of the plaintiff, I made an order accordingly for examination of the defendant upon interrogatories and cross-interrogatories. Having regard to the facts which have been disclosed in this case to the ineffectiveness of this method of examination and to the delay thereby caused in the hearing of the suit, I regret that I allowed myself to be persuaded to make the order. Various applications for adjournments were made on behalf of the defendant and finally the learned Advocate-General and Mr. Boy appeared for her throughout a hearing which lasted several days, strenuously contested the suit and cross-examined the plaintiff and her witnesses on the merits of her claim, in addition to raising objection on the question of jurisdiction. Having regard to these facts, one can hardly imagine a case in which a defendant has submitted herself more fully and completely to the jurisdiction of the Court. If authority were necessary for the proposition, the following cases establish that in such circumstances this Court has jurisdiction : Harchand Panaji v. Gulabchand Kanji AIR 1914 Bom 111 Rama Ayyar v. Krishna Patter ('17) 4 AIR 1917 Mad 780 Boissiere & Co. v. Brookner & Co (1889) 6 T L R 85 and Voinet v. Barrett (1886) 55 L J Q B 39. Finally, in an Engagement under the Red Seal in the form of a letter from the Maharaja of Nepal to the Resident dated 6th

November 1893 (a Collection of Treaties Engagements and Sanads relating to India and neighbouring countries, Vol. 2, Edn. 4, 1909, page 116, No. 28), the following items inter alia were fixed:

4th. It is agreed to as a rule for the guidance of both Sircars that in judicial matters where civil causes arise, there they shall be heard and decided; and the Nepal Government engages that for the future British subjects shall not be compelled to plead in the Courts of Nepal to civil actions, having exclusive reference to their dealings in the plains.

5th. The Nepal Government engages that British subjects shall hereafter be regarded as her own subjects in regard to access to the Courts of law and that the causes of the former shall be heard and decided without denial or delay according to the usages of Nepal.

17. In my opinion, the first part of item 4 is not restricted to British subjects. The provisions of the Engagements are intended to be reciprocal and the present suit is covered by them. For all these reasons, I hold that this Court has jurisdiction to try this suit and there must be judgment for the plaintiff against the defendant for the sum of Rs. 23,120-6-8 with interest on Rs. 14,600" at 3 per cent, and further interest and costs. A certificate u/s 205, Government of India Act, 1935, is withheld.