Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sirdar Gurdyal Singh v. *The Rajah of Faridkote (two appeals consolidated), from the Chief Court of the Punjaub; delivered 28th July* 1894.

Present:

The Earl of Selborne.
Lord Watson.
Lord Hobhouse.
Lord Macnaghten.
Lord Morris.
Lord Shand.
Sir Richard Couch.

[*Delivered by the Earl of Selborne.*]

The Respondent, the Rajah of Faridkote, obtained in the Civil Court of that Native State, in 1879 and 1880, two *ex parte* judgments, in two suits instituted by him against the Appellant, for sums amounting together to Rs. 76,474. 11. 3, and costs. For all the purposes of the question to be now decided, those two suits may be treated as one; the Appeals to Her Majesty in Council having been consolidated. Two actions, founded on these judgments, were brought by the Rajah against the Appellant in the Court of the Assistant Commissioner of Lahore and were dismissed by that Court, on the ground that the judgments were pronounced by the Faridkote Court, without jurisdiction as against the Appellant. On appeal to the Additional Commissioner of Lahore, the judgments of the first Court were upheld. The Rajah then appealed to the Chief Court of the Punjaub, which differed from both those tribunals,

82404. 125.—7/94.

and upheld the jurisdiction of the Faridkote Court.

Faridkote is a native State, the Rajah of which has been recognized by Her Majesty as having an independent civil, criminal, and fiscal jurisdiction. The judgments of its Courts are, and ought to be, regarded in Her Majesty's Courts of British India as foreign judgments. The Additional Commissioner of Lahore thought that no action could be brought in Her Majesty's Courts upon a judgment of a native State; but in this opinion their Lordships do not concur.

The Appellant was for five years, beginning in 1869, in the service of the late Rajah of Faridkote, as his treasurer; and the causes of action, on which the suits in the Faridkote Court were brought, arose within that State, and out of that employment of the Appellant by the late Rajah. The claim made in each of the suits was merely personal, for money alleged to be due, or recoverable in the nature of damages, from the Appellant. It is immaterial, in their Lordships' view, to the question of jurisdiction (which is the only question to be now decided), whether the case, as stated, ought to be regarded as one of contract, or of tort.

The Appellant left the late Rajah's service, and ceased to reside within his territorial jurisdiction, in 1874. He was, from that time, generally resident in another independent native State, that of Jhind, of which he was a native subject, and in which he was domiciled; and he never returned to Faridkote after he left it in 1874. He was in Jhind when he was served with certain processes of the Faridkote Court, as to which it is unnecessary for their Lordships to determine what the effect would have been, if there had been jurisdiction. He disregarded them, and never appeared in either of the suits instituted by the Rajah, or otherwise submitted himself to that jurisdiction.

He was under no obligation to do so, by reason of the notice of the suits which he thus received or otherwise, unless that Court had lawful jurisdiction over him.

Under these circumstances, there was, in their Lordships' opinion, nothing to take this case 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*"); which is rightly stated by Sir Robert Phillimore (*International Law*, Vol. 4, sec. 891) to "lie at the root of all international, and of "most domestic, jurisprudence on this matter." All jurisdiction is properly territorial, and "*extra territorium jus dicenti, impune non "paretur.*" Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory, 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. It exists always as to land within the territory, and it may be exercised over moveables within the territory; and, in questions of *status* or succession governed by domicile, it may exist as to persons domiciled, or who when living were domiciled, within the territory. As between different provinces under one sovereignty (*e.g.*, under the Roman Empire) the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction, which any foreign court ought to recognize, against foreigners, who owe no allegiance or obedience to the Power which so legislates.

In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced *in absentem* by a foreign court, to the jurisdiction of which the Defendant has not in any way submitted 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 merenullity, by the courts of every nation, except (when authorized by special local legislation) in the country of the *forum* by which it was pronounced.

These are doctrines laid down by all the leading authorities on international law; among others, by Story (*Conflict of Laws*, 2nd. ed., sections 546, 549, 553, 554, 556, 586), and by Chancellor Kent (*Commentaries*, Vol. 1, p. 284, note *c*, 10th edition), and no exception is made to them, in favour of the exercise of jurisdiction against a defendant not otherwise subject to it, by the Courts of the country in which the cause of action arose, or (in cases of contract) by the Courts of the *locus solutionis*. In those cases, as well as all others, when the action is personal, the Courts of the country in which a defendant resides have power, and they ought to be resorted to, to do justice.

The conclusion of the learned Judges in the Chief Court of the Punjaub is expressed in the following sentence of the judgment delivered by Sir Meredyth Plowden, in the first of the two actions (Record 2, p. 164) :—

" On the whole, I think it may be said, that a " State assuming to exercise jurisdiction over " an absent foreigner, in respect of an obligation " arising out of a contract made by the foreigner " while resident in the state and to be fulfilled " there, is not acting in contravention of the " general practice or the principles of inter- " national law, so that its judgment should " not be binding merely on the ground of the " absence of the Defendant."

If this doctrine were accepted, its operation, in the enlargement of territorial jurisdiction, would be very important. No authority, of any relevancy, was cited at their Lordships' bar to support it, except *Becquet* v. *Macarthy* (2 Barn. and Ad. 951), and a passage from the

judgment delivered by Blackburn J., in *Schibsby* v. *Westenholz* (L. R. 6, Q. B. 155).

Of *Becquet* v. *Macarthy*, it was said by great authority in *Don* v. *Lippman* (5 Clark and Finnelly 1), that it "had been supposed to go to "the verge of the law"; and it was explained, (as their Lordships think, correctly,) on the ground that "the Defendant held a public office in the "very colony in which he was originally sued." He still held that office at the time when he was sued; the cause of action arose out of, or was connected with it; and, though he was, in fact, temporarily absent, he might. as the holder of such an office, be regarded as constructively present in the place where his duties required his presence, and therefore amenable to the colonial jurisdiction. If the case could not be distinguished, on that ground, from that of any absent foreigner who, at some previous time, might have been in the employment of a colonial Government, it would, in their Lordships' opinion, have been wrongly decided; and it is evident that Lord Justice Fry, in *Rousillon* v. *Rousillon* (L. R. 14 Ch. Div. 351) took that view.

The words of Lord Blackburn's judgment, in *Schibsby* v. *Westenholz* (L. R. 6 Q. B. 161) which were relied upon, are these:—

"If, at the time when the obligation was "contracted, the Defendants were within the "foreign country, but left it before the suit was "instituted, we should be inclined to think the "laws of that country bound them; though, "before finally deciding this, we should like to "hear the question argued."

Upon this sentence it is to be observed, that beyond doubt in such a case, the laws of the country in which an obligation was contracted might bind the parties, so far as the interpretation and effect of the obligation was concerned, in whatever *forum* the remedy might be sought.

The learned Judge had not to consider, whether it was a legitimate consequence from this, that they would be bound to submit, on the footing of contract or otherwise, to any assumption of jurisdiction over them, in respect of such a contract, by the tribunals of the country in which the contract was made, at any subsequent time, although they might be foreigners resident abroad. That question was not argued, and did not arise, in the case then before the Court; and, if this was what Mr. Justice Blackburn meant, their Lordships could not regard any mere inclination of opinion, on a question of such large and general importance, on which the Judges themselves would have desired to hear argument if it had required decision, as entitled to the same weight, which might be due to a considered judgment of the same authority. Upon the question itself, which was determined in *Schibsby* v. *Westenholz*, Mr. Justice Blackburn had at the trial, formed a different opinion from that at which he ultimately arrived; and their Lordships do not doubt, that, if he had heard argument upon the question, whether an obligation to accept the *forum loci contractus*, as having, by reason of the contract, a conventional jurisdiction against the parties in a suit founded upon that contract for all future time, wherever they might be domiciled or resident, was generally to be implied, he would have come (as their Lordships do) to the conclusion, that such obligation, unless expressed, could not be implied.

Their Lordships will therefore humbly advise Her Majesty to reverse the decrees of the Chief Court of the Punjaub, and to restore those of the Additional Commissioner of Lahore. The Respondent will pay the costs of the appeals to the Courts below, and of these appeals.