

ORIGINAL CIVIL.

*Before U Bo Gyi, J.*H.C.
1948

July 14.

U KYAW DIN (PLAINTIFF)

v.

HIS BRITANNIC MAJESTY'S GOVERNMENT
OF THE UNITED KINGDOM AND ANOTHER
(DEFENDANTS).**Denial scheme—Suit for value of goods destroyed against His Britannic Majesty's jurisdiction—Ss. 9 and 86, Code of Civil Procedure—International Law.*

The plaintiff filed a suit for Rs. 15,000 value of goods said to have been destroyed under the denial scheme. The 1st defendant was His Britannic Majesty. Written intimation was sent to the British Ambassador, who declined to accept it on the ground that no suit lies in Burma court against His Britannic Majesty. The plaintiff contended that a suit lay under ss. 9 and 86 of the Code of Civil Procedure.

Held: That there is no provision in the Code which permits institution of a suit against a foreign State. S. 86 provides that in certain circumstances and subject to the consent of the authorities concerned suits may be instituted against a Sovereign. As a rule foreign States cannot be sued here unless they voluntarily submit to the jurisdiction. This flows from the fact that all States are equal before International Law and no State can consequently claim jurisdiction over another. Such a State need not come forward and assert its right. The court itself should take notice of the fact that it has no jurisdiction.

Oppenheim's International Law, 6th Edn., Vol. I, p. 239, cited.

Mitchell v. Sultan of Johore, L.R. (1894) 1 Q.B. 149 at p. 162, applied.

Case against the 1st defendant dismissed.

Tun Aung for the plaintiff.

Chan Htoon (Attorney-General of the Union of Burma) for defendant No. 2.

U BO GYI, J.—This action has been brought by U Kyaw Din, an advocate of this Court, against His Britannic Majesty's Government of the United Kingdom and the Union of Burma for recovery of Rs. 15,000 being the value of his goods said to have been

* Civil Regular No. 41 of 1948, High Court, Rangoon.

destroyed under the denial scheme on the eve of the evacuation of Rangoon in 1942. When the matter came up before me on the 10th May 1948, I accepted the plaint subject to objections, if any, by the defendants. Thereafter the Registrar (Original Side) sent in lieu of a summons a written intimation of the suit to His Britannic Majesty's Ambassador to the Union of Burma, and the Foreign Office has replied that His Excellency the Ambassador has declined to accept the letter substituted for a summons on the ground that no suit lies in the Burmese Courts against His Britannic Majesty's Government in the United Kingdom.

The case has therefore been placed before me again for argument as to whether this Court has jurisdiction to entertain the suit against the 1st defendant. U Tun Aung, learned advocate for the plaintiff, questions the right of the learned Attorney-General who appears for the Union of Burma to address the Court on behalf of the 1st defendant. But, since objection has been raised to the jurisdiction of the Court, the matter is now taken up by the Court on its own motion.

Plaintiff's learned advocate contends that in view of the provisions of sections 9 and 86 of the Civil Procedure Code the present suit lies against the 1st defendant. But section 9 of the Code merely mentions the nature of suits that may be instituted, and section 86 provides that in certain circumstances and subject to the consent of the authorities concerned suits may be instituted against a Sovereign Prince or Ruling Chief, or against an ambassador or envoy of a foreign State, but makes no mention of a foreign State as being amenable to the jurisdiction of the Burmese Courts. It is significant that while under section 84 of the Civil Procedure Code a foreign State may sue in any Court in the Union of Burma, there is no provision

H.C.
1948

U KYAW DIN
v.
HIS
BRITANNIC
MAJESTY'S
GOVERN-
MENT
OF THE
UNITED
KINGDOM
AND
ANOTHER.

U Bo Gyi, J.

H.C.
1948

U KYAW DIN

v.
HIS

BRITANNIC
MAJESTY'S
GOVERNMENT
OF THE
UNITED
KINGDOM
AND
ANOTHER.

U BO GYL, J.

in the Code which permits the institution of a suit against a foreign State.

It would seem therefore that the authors of the Code of Civil Procedure followed the general law. There is a considerable body of weighty and unanimous authority for the view that "although States can sue in foreign courts, they cannot as a rule be sued there, unless they voluntarily submit to the jurisdiction of the court concerned" (1). This, as the learned author observes, flows from the fact that all member-States of the Family of Nations are equal before International Law and consequently no State can claim jurisdiction over another.

Since the 1st defendant has refused to submit to the jurisdiction of this Court, the question that now arises is as to the course to be adopted with regard to this defendant. In this connection, the observations of Kay L.J. in *Mighell v. Sultan of Johore* (2) are pertinent. There his Lordship observed :

"It is said that an independent sovereign may waive his right to immunity, and may treat himself as subject to the jurisdiction. I agree ; but how is that to be done ? This seems to me, in the first place, quite clear. Supposing, by way of illustration, that some well-known potentate, such as one of the great European emperors, were to be sued in a Court of this country, and took no kind of notice of the proceeding ; it would be the duty of the Court to recognize his position, and to say at once that the person cited was an independent foreign sovereign over whom it had no jurisdiction. Therefore it is not right to say that such a sovereign must come forward and assert his right. I do not think that he need. I think the Court itself would be bound to take notice of the fact that it had no jurisdiction."

I accordingly dismiss the suit as against the 1st defendant.

(1) International Law by L. Oppenheim,
6th Edn., Vol. I, p. 239.

(2) L.R. (1894) 1 Q.B. 149
at p. 162.