within the decisions of this Court in the earlier cases referred to above.

In the light of the above discussion it follows, therefore, that the answer to the referred question should by in the negative. The result, therefore, is that this appeal is allowed, the answer given by the High Court to the question is set aside and the question is answered in the negative. The appellant must get the costs of the reference in the High Court and in this Court.

Appeal allowed.

THE STATE OF SAURASHTRA

v.

MEMON HAJI ISMAIL HAJI

(S. R. DAS, C.J., N. H. BHAGWATI and M. HIDAYATULLAH, JJ.)

Act of State—Taking over of administration of Junagadh State by Dominion of India—Resumption of property by Administrator before completion of such act—If an act of State not justiciable in municipal Courts.

The suit, out of which the present appeal arose, was one originally brought by the respondent against the State of Junagadh, later on substituted by the State of Saurashtra, for a declaration that the Administrator's order dated October 1, 1948, resuming the immoveable property in suit was illegal, unjust and against all canons of natural justice. The suit was decreed by the Civil Judge and the decree was affirmed by the High Court in appeal. The only point for determination in this appeal was whether the act of resumption by the Administrator was an act of State performed on behalf of the Government of India and involved an alien outside the State and was not, therefore, justiciable in the municipal Courts. With the passing of the Indian Independence Act 1947, and lapse of paramountcy by reason of s. 7 thereof, the Nawab of Junagadh became sovereign, but instead of acceding to the new Dominion he left for Pakistan. It appeared from the White Paper on Indian States that the Government of India took over the administration of the State on November 9, 1947, at the request of the Nawab's Council, but did not formally annex it till January 20, 1949, and during that period the Administrator maintained law and order and carried on the administration.

Held, that there could be no doubt that the act of the Dominion of India in assuming the administration of Junagadh State was an act of State pure and simple and the resumption in

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question having been made by the Administrator before that act was completed and at a time when the people of Junagadh, including the respondent, were aliens outside the State, the act of resumption, however arbitrary, was an act of State on behalf of the Government of India and was not, therefore, justiciable in the municipal Courts.

The test in such cases must be whether the State or its agents purported to act "catastrophically" or subject to the ordinary course of law.

Salaman v. *Secretary of State for India*, (1906) 1 K.B. 613, *Johnstone* v. *Pedlar*, (1921) 2 A.C. 262, *Secretary of State in Council for India* v. *Kamachee Boye Sahaba*, (1859) 13 Moore P.C. 22, *Vaje Singh Ji Joravar Singh & Ors.* v. *Secretary of State for India*, (1924) L.R. 51 I.A. 357, *Dalmia Dadri Cement Co.* v. *Commissioner of Income-tax*, [1959] S.C.R. 729, relied on.

Forester and Others v. *Secretary of State for India*, 18 W.R. 349 P.C., considered.

The essence of an act of State was the arbitrary exercise of sovereign power, on principles other than or paramount to the municipal law. Although the sovereign might allow the inhabitants to retain their old laws and customs, it could not itself be bound by them until it purported to act within them, thus bringing to an end the act of State.

Campbell v. *Hall*, 1 Comp. 204; 98 E.R. 1045, *Ruding* v. *Smith*, 2 Hag. Con. 384; 161 E.R. 774 and *E.I. Co.* v. *Syed Ali*, 7 M.I.A. 555, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 185 of 1955.

Appeal from the judgment and decree dated the February 19, 1953, of the former Saurashtra High Court in Civil First Appeal No. 16 of 1952, arising out of the judgment and decree dated December 15, 1951, of the Civil Judge, Senior Division, Junagadh in Civil Suit No. 470 of 1950.

G. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer and *D. Gupta* for the appellant.

I. N. Shroff, for the respondent.

H. J. Umrigar and *K. L. Hathi*, for the Interveners.

1959. August 4. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH J.—This appeal with a certificate from the former High Court of Saurashtra under Art.133 of the Constitution read with Ss. 109 and 110 of

the Code of Civil Procedure, has been brought against the judgment of that Court dated February 19, 1953, in Civil First Appeal No. 16 of 1952.

The appellant is the State of Saurashtra, which stood substituted for the State of Junagadh, against which the suit was originally filed. The respondent, Memon Haji Ismail Haji Valimahomed of Junagadh, (hereinafter referred to as the respondent), brought this suit originally against two defendants, the State of Junagadh and one Jamadar Abu Umar Bin Abdulla Abu Panch (hereafter referred to as Abu Panch), for a declaration that the Secretariat Order No. 2/3289 dated October 1, 1948, was "illegal, unjust and against all canons of natural justice". He also asked for an alternative relief that the second defendant do return to him a sum of Rs. 30,000 plus Rs. 541-2-0, being the consideration and expenses of a transfer of immovable property resumed under the said Order. The suit was decreed by the Civil Judge, to whom after integration the case was transferred, and the decree was confirmed by the High Court by the judgment under appeal. It may be pointed out that during the course of this suit, a third defendant, namely, the Mamlatdar, Viswadar was also impleaded, because the property of Abu Panch had passed into the management of the Saurashtra Government under what is described in the case as the Gharkhod Ordinance. It may further be pointed out that the two defendants other than the State of Saurashtra were discharged from the suit, and it proceeded only against the State of Saurashtra for the relief of declaration above described.

The facts of the case are as follows: One Ameer Ismail Khokhar Kayam Khokhar purchased a plot of land in Junagadh town from the State of Junagadh, and built a house on it. A *Rukka* was issued to him on December 2, 1939, which is plaintiff's Exhibit No. 34. In the year 1941, the Nawab of Junagadh purchased the property from Khokhar, though the document by which this purchase took place has not been produced in the case. On November 17, 1941, the Nawab gave this property by gift to Abu Panch. Abu

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Panch in his turn sold on November 24, 1943 the property to the respondent for Rs. 30,000. In the original gift deed (described in plaintiff's Exhibit dated May 18, 1942) there does not appear to have been any mention of a power to transfer the property. Indeed, in the said document of May 18, 1942, it was stated that the house was given for the "use and enjoyment" of Abu Panch. Subsequently, on February 12, 1944, the Nawab ordered certain amendments in the Palace Order by making it possible for Abu Panch to sell the house. It was stated as follows:

> "... you are hereby granted from the date of gift i.e. 17-11-41 the title to sell the house as defined in this Rukka and as per directions received."

It appears that this additional *Shera* was issued to validate the sale which had been effected by Abu Panch earlier. However, the matters stood thus when after Independence the affairs of Junagadh State fell into a chaos, and at the invitation of the State Council the the Government of India ordered the Regional Commissioner, Western India and Gujerat States Region to assume charge of the administration of the State on behalf of the Government of India. The Regional Commissioner on November 9, 1947, issued a Proclamation which was published in the Destural Amal Sarkar Junagadh of November 10, 1947, stating that he had assumed charge of the administration of the Junagadh State at 18·00 hours under the orders of the Government of India. The Proclamation which is brief, may be quoted here:

> "I, N. M. Buch, Barrister-at-law O.B.E., I.C.S., Regional Commissioner, Western India & Gujarat States Region, have this day assumed charge of the administration of the Junagadh State at 18·00 Hours under the orders of the Government of India, at the request of the Junagadh State Council supported by the people of Junagadh in view of the complete breakdown of administration resulting in chaotic condition in the State. The first task of myself and my officers will be to ensure complete peace and order throughout Junagadh State territory, and to give even justice to all communities. The majority

community of the State has a special responsibility for the protection of the minorities. All the Junagadh State Officials and subjects are, therefore, invited to offer unconditional and loyal support and cooperation to the new Administration. Any act of non-cooperation and disloyalty must in the interest of the people and for the preservation of "peace and order" be dealt with and shall be dealt with firmly.

Junagadh,
9th November, 1947.

N. M. Buch,
Regional Commissioner,
Western India & Gujarat
States Region."

On November 14, 1947, the Regional Commissioner by a Notification (No. 6 of 1947), appointed Shri S. W. Shiveshwarkar as Administrator of Junagadh State. That Notification was as follows:

"Mr. S. W. Shiveshwarkar M.B.E., I.C.S. on being relieved as Secretary to the Regional Commissioner, Western India and Gujarat States Region, is appointed Administrator of the Junagadh State vice Rao Saheb T. L. Shah, B.A. Under my general guidance and supervision the Administrator will have full authority to pass all orders and to take all action necessary to carry on the affairs of the Junagadh State.

* * *

Junagadh,
14th November, 1947.

N. M. Buch,
Regional Commissioner,
Western India & Gujarat
States Region."

On October 13, 1948, Shri Shiveshwarkar passed Secretariat Order No. R/3289 of 1948, which was impugned in the suit. It reads:

"Land measuring Sq. Yds. 1,846-9-12 with the building thereon, situated outside Majevdi Gate opposite workshop was given as a gift by way of Inam to Abu Umar Bin Abdulla Abu Panch of Junagadh under Private Secretary's Office No. P158 dated 17th November, 1941. The donee had no right to sell the said land and building under Rukka No. 32/98 and the vendor Sheth Haji Ismail Haji

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Valimahomed had purchased the same with the full knowledge of the contents hereof.

The grant being a wanton and unauthorised gift of Public property the above-said order is hereby cancelled and as the subsequent purchaser does not get any right, title or interest higher than that possessed by the donee, Mr. Abu Panch, it is ordered that the said land with the superstructures thereon should be resumed forthwith by the State as State property.

Sd. S. W. Shiveshwarkar
Administrator
President's Executive
Council, Junagadh State."

It appears that immediately afterwards the Administrator took this property in his possession, and the plaintiff-respondent after serving a notice under s. 423 of the Junagadh State Civil Procedure Code (corresponding to s. 80 of the Civil Procedure Code, 1908) filed the suit for the above declaration in the High Court of the State. As pointed out above, the suit was transferred subsequently to the Civil Judge, Senior Division, Junagadh, who decreed it granting the declaration on December 15, 1951. He held that the Administrator's order was illegal and inoperative and also against "all canons of natural justice." An appeal was filed by the State of Saurashtra pleading, as was done in the suit itself, that the action of Shri Shiveshwarkar who was a delegate of the Government of India appointed under s. 3(2) of the Extra-Provincial Jurisdiction Act, was not justiciable being an act of State, that the Civil Court's jurisdiction was barred under s. 5 of the Extra-Provincial Jurisdiction Act and s. 4(2) of Ordinance No. 72 of 1949 and that the grant was always resumable by the Ruler and Shri Shiveshwarkar as the successor could also resume the same.

The High Court of Saurashtra referred in detail to a minute prepared by Sir Raymond West in Col. Webb's Political Practice, wherein the author had stated what the rights of Rulers were to resume grants made by them and stated that such resumption was not possible by the Rulers. The High Court also

stated that this action could not be regarded as an act of State and further that the jurisdiction of the Courts was neither barred by s. 5 of the Extra-Provincial Jurisdiction Act nor by s. 4(2) of Ordinance No. 72 of 1949.

In this appeal, the learned Solicitor-General on behalf of the State of Saurashtra abandoned three of the contentions which were raised in the Courts below. He said that the State was not relying upon the power of Shri Shiveshwarkar as successor to the Ruler of Junagadh to resume this property, and no reference to Sir Raymond West's minute was therefore necessary. He also said that the State Government did not seek to justify the resumption nor question the jurisdiction of the Court under the Extra-Provincial Jurisdiction Act and the above-mentioned Ordinance. He pleaded that the action of Shri Shiveshwarkar was an act of State performed on behalf of the Government of India, and was therefore not justiciable in Municipal Courts.

The term 'act of State' has many uses and meanings. In France and some Continental countries the acts of the State and its officers acting in their official capacity are not cognizable by the ordinary courts nor are they subject to the ordinary law of the land. The reason of the rule is stated to be that the State as the fount of all law cannot be subordinate to it. In our system of law which is inherited from English Jurisprudence this is not accepted and save some acts of a special kind, all other official acts must be justified as having a legal foundation. In this sense 'act of State' means not all governmental acts as it does in the French and Continental Systems but only some of them. The term is next used to designate immunities and prohibitions sometimes created by statutes. The term is also extended to include certain prerogatives and special immunities enjoyed by the sovereign and its agents in the business of internal government. The term is even used to indicate all acts into which, by reason that they are official in character, the Courts may not inquire, or in respect of which an official declaration is binding on the Courts.

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We are not concerned with these and such other meanings. The defence is founded on an act of State involving an alien outside the State. Such an act of State was described in elegant phrase by Fletcher-Moulton, L. J., in *Salaman* v. *Secretary of State for India* (1) as 'a catastrophic change constituting a new departure.' It is a sovereign act which is neither grounded in law nor does it pretend to be so. Examples of such 'catastrophic changes' are to be found in declarations of war, treaties, dealings with foreign countries and aliens outside the State. On the desirability or the justice of such actions the Municipal Courts cannot form any judgment. In Civil commotion, or even in war or peace, the State cannot act 'catastrophically' outside the ordinary law and there is legal remedy for its wrongful acts against its own subjects or even a friendly alien within the State. See *Johnstone* v. *Pedlar* (2). But there is immunity from courts' interference in respect of acts done by the State against an alien outside the State.

The question thus is always: Did the State or its agents purport to act 'catastrophically' or subject to the ordinary course of the law? This question was posed in *Secretary of State in Council for India* v. *Kamachee Boye Sahaba* (3) by Lord Kingsdown in these words:—

> "What was the real character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain, of the dominions and property of a neighbouring State, an act not affecting to justify itself on grounds of Municipal Law? Or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Raja of Tanjore, in trust for those who, by law, might be entitled to it on the death of the last possessor? If it were the latter, the defence set up, of course, has no foundation."

In that case the Supreme Court of Madras was moved by a bill to claim certain properties seized on the death of Raja Sivaji of Tanjore without heirs. The

(1) (1906) 1 K.B. 613 at 640. (2) (1921) 2 A.C. 262.
(3) (1859) 13 Moore P.C. 22.

claim was accepted by the Supreme Court of Madras but was rejected by the Privy Council. Lord Kingsdown observed in the case:—

> "The general principle of law could not, with any colour of reason, be disputed. The transactions of independent States between each other are governed by other laws than those which Municipal Courts administer. Such Courts have neither the means of deciding what is right nor the power of enforcing any decision which they make."

After deciding that there was an act of State, Lord Kingsdown further observed:

> "of the propriety or justice of that act, neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing if they had formed, any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their Lordships cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no Municipal Court of justice can afford a remedy."

Similar view was expressed also in *Raja of Coorg* v. *East India Company* (1), *Raja Saligram* v. *Secretary of State for India in Council* (2); and *Sardar Bhagwan Singh* v. *Secretary of State* (3), and *Secretary of State* v. *Sardar Rustam Khan* (4). The principle of these cases has been extended to all new territories whether acquired by conquest, or annexation or cession or otherwise and also to rights, contracts, concessions, immunities and privileges erected by the previous paramount power. These are held to be not binding on the succeeding power even though before annexation it was agreed between the two powers, that they would be respected. Lord Dunedin in *Vaje Singh Ji Joravar Singh & Others* v. *Secretary of State for India* (5) summed up the law in these words:—

> "When a territory is acquired by a sovereign State for the first time that is an act of State. It

(1) (1860) 29 Beav. 300.
(2) (1872) L.R. Ind. App. Suppl. Vol. 119.
(3) (1874) L.R. 2 A.I. Cas. 38.
(4) (1941) L.R. 68 I.A. 109.
(5) (1924) L.R. 51 I.A. 357, 360.

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matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in municipal courts established by the new sovereign any such rights, as that sovereign has, through his officers, recognized. Such rights as he had under the rule of predecessors avail him nothing. May more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enfore these stipulations in the municipal Courts. The right to enforce remains only with the high contracting parties."

These cases and others like *Cook* v. *Sprigg* (1), *Hoani Te Heuheu Tukino* v. *Aotea District Maori Land Board* (2) were approved and applied by this Court in *Dalmia Dadri Cement Co.* v. *Commissioner of Income-tax* (3) in which an agreement with the ex-Ruler of Jhind for tax concessions was held not binding upon the Income-tax authorities after the merger of the State with the Union of India and the defence of an act of State was upheld. Venkatarama Aiyar, J., then observed:—

"When the sovereign of a State—meaning by that expression, the authority in which the sovereignty of the State is vested, enacts a law which creates, declares or recognizes rights in the subjects, any infraction of those rights would be actionable in the courts of that State even when the infraction is by the State acting through its officers. It would be no defence to that action that the act complained of is an act of State, because as between the sovereign and his subjects there is no such thing as an act of State, and it is incumbent on his officers to show that their action which is under challenge is within the authority conferred on them by law. Altogether different considerations arise when the act of the sovereign has reference not to the rights

(1) (1899) A.C. 572. (2) (1941) A.C. 308.
(3) [1959] S.C.R. 729, 740-41.

of his subjects but to acquisition of territories belonging to another sovereign. That is a matter between independent sovereigns, and any dispute arising therefrom must be settled by recourse not to municipal law of either State but to diplomatic action, and that failing, to force. That is an act of State pure and simple, and that is its character until the process of acquisition is completed by conquest or cession. Now, the status of the residents of the territories which are thus acquired is that until acquisition is completed as aforesaid they are the subjects of the ex-sovereign of those territories and thereafter they become the subjects of the new sovereign. It is also well established that in the new set up these residents do not carry with them the rights which they possessed as subjects of the ex-sovereign, and that as subjects of the new sovereign, they have only such rights as are granted or recognized by him; vide *Secretary of State for India* v. *Bai Rajbai* (1), *Vajesingji Joravar Singhji and Others* v. *Secretary of State* (2), *Secretary of State v. Sardar Rustam Khan* (3) and *Asrar Ahmed* v. *Durgah Committee, Ajmer* (4). In law, therefore, the process of acquisition of new territories is one continuous act of State terminating on the assumption of sovereign powers *de jure* over them by the new sovereign and it is only thereafter that rights accrue to the residents of those territories as subjects of that sovereign. In other words, as regards the residents of territories which come under the dominion of a new sovereign, the right of citizenship commences when the act of State terminates and the two, therefore, cannot co-exist.

It follows from this that no act done or declaration made by the new sovereign prior to his assumption of sovereign powers over acquired territories can quoad the residents of those territories be regarded as having the character of a law conferring on them rights such as could be agitated in his courts."

(1) L.R. 42 I.A. 229.
(2) (1924) L.R. 51 I.A. 357, 360.
(3) (1941) L.R 68 I.A. 109.
(4) (1947) A.I.R. 1947 P.C. 1.

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It is, however, otherwise if the act of the new sovereign is meant to be within the law and is not a concomitant of an act of State. One such case was *Forester and Others* v. *Secretary of State for India* (1). In that case one of the questions was whether there was an act of State at all,—a question which the Courts can legitimately consider. It was held that the Begum, whose estate was seized by the East India Company after her death, was not a sovereign princess but a mere *Jaidadar* and the resumption of her jagir upon her death was not an act of State but an act done under a legal title. It was observed :—

> "The act of Government in this case was not the seizure by arbitrary power of territories which upto that time had belonged to another sovereign State; it was the resumption of lands previously held from the government under a particular tenure, upon the alleged determination of that tenure. The possession was taken under colour of legal title, that title being the undoubted right of the sovereign power to resume, and retain or assess to the public revenue, all lands within its territories upon the determination of the tenure, under which they may have been exceptionally held rent free. If by means of the continuance of the tenure or for other cause, a right be claimed in derogation of this title of the government, that claim, like any other arising between the government and its subjects would *prima facie* be cognizable by the Municipal Courts of India."

From these cases it is manifest that an act of State is an exercise of sovereign power against an alien and neither intended nor purporting to be legally founded. A defence of this kind does not seek to justify the action with reference to the law but questions the very jurisdiction of the Courts to pronounce upon the legality or justice of the action.

We have now to consider whether the necessary facts to support the plea in defence existed in this case. We must determine what was the status of the respondent on the date the impugned Order was passed against him. The position of the ex-Rulers of the former Indian States has, on more than one occasion,

(1) 18 W.R. 349 P.C.

been analysed by this Court and need not detain us for long. After the lapse of paramountcy by reason of s. 7 of the Indian Independence Act 1947, the Nawab of Junagadh became a sovereign but he did not accede to the new Dominion by executing an Instrument of Accession as did the other Rulers in Saurashtra. He left the country. The position of Junagadh was thus unique and what subsequently happened is described in the White Paper on Indian States which it has become customary to rely upon as a constitutional document, without proof.

"After the Nawab of Junagadh had left the State for Pakistan, the administration of this State was taken over by the Government of India on November 9, 1947 at the request of the Nawab's Council. Obviously, the action taken by the Government of India had the fullest approval of the people of Junagadh in that the results of the referendum held in Junagadh and the adjoining smaller States in February 1948, showed that voting in favour of accession to India was virtually unanimous. During the period the Government of India held charge of the State, an Administrator appointed by the Government of India assisted by three popular representatives conducted the administration of the State. In December 1948, the elected representatives of the people of Junagadh resolved that the administration of the State be made over to the Government of Saurashtra and that the representatives of Junagadh be enabled to participate in the Constituent Assembly of Saurashtra State with a view to framing a common Constitution for Saurashtra and the Junagadh State. Similar resolutions were adopted by the representatives of Manavadar, Mangrol, Bantwa, Babariawad and Sardargarh. Accordingly, a Supplementary Covenant (Appendix XXXVI) was executed by the Rulers of Kathiawar States with a view to giving effect to the aforementioned resolutions. The administration of Junagadh was taken over by the Saurashtra Government on January 20, 1949,..... Accordingly the Constitution treats Junagadh and these States as part of Saurashtra."

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It would appear from this that between November 9, 1947 and January 20, 1949, there was no formal annexation of the State by the Dominion of India, though the Central Government through its Regional Commissioner, Western India and Gujrat States Region was maintaining law and order and carrying on the administration. On November 16, 1947, the following Notification was issued by the Administrator:—

"NOTIFICATION
No. 9 of 1947.

It is hereby ordered that the Junagadh State Order No. 568 of 1944 is cancelled. The State Council created by the said order is hereby dissolved.

Any reference required by any Enactment, Rules, Orders, Convention, Usage etc. to be made to the Council shall henceforth be made to the Administrator, Junagadh State, in whom all the powers so far exercised by the Council and its Members shall henceforth vest.

Junagadh,
16th November, 1947

S. W. Shiveshwarkar,
Administrator, Junagadh State."

From that date the administration of the Junagadh State was centered in the Administrator as the agent of the Dominion of India. The people of Junagadh did not, strictly speaking, become the citizens of the Dominion till much later. During the interval they were aliens even though they desired union with India and had expressed themselves almost unanimously in the Referendum.

The act of the Dominion in thus assuming the administration of the Junagadh State was an act of State pure and simple and the action of the Administrator was taken before the act of State was over.

The respondent contended before us that the theory of an act of State did not apply to this case. According to him the State Council was in existence and had invited the Dominion of India to step in and all the local laws were still applicable. He pointed out that the Saurashtra Civil Procedure Code was amended by a notification on 7th July, 1948, and that also proved

that the local laws were in force and the Administrator was subject to them in his dealings with private property, under the general superintendence of the Regional Commissioner. All this is beside the point and does not truly interpret the act of State which had taken place. The essence of an act of State is the exercise of sovereign power and that is done arbitrarily, on principles either outside or paramount to the municipal law. The fact that the sovereign allows the inhabitants to retain their old laws and customs does not make the sovereign subject to them and all rights under those laws are held at the pleasure of the sovereign. It is only when the sovereign can be said to have purported to act within the laws that the act of State ceases to afford a plea in defence. Before that stage is reached, government may be influenced by the existing laws and rights and obligations but is not governed or bound by them. See *Campbell* v. *Hall* (1), *Ruding* v. *Smith* (2) two cases of conquest and *E. I. Co.* v. *Syed Ali* (3). See also Mayne Criminal Law of India (4th Edition) II pp. 119, 120 where the law is summarised. There is nothing to prove that the Dominion had expressly or even tacitly recognized the old rights, the burden of proving which lay upon the respondent *Secretary of State for India* v. *Bai Rajbai* (4) and *Vajesingh's case* (5) (*op. cit.*).

In this view of the matter it is not necessary to determine whether the Nawab could or did confer title on the donee in respect of this property. Equally fruitless will be an inquiry into the powers of the Nawab to resume or derogate from, his grants and whether similar or identical powers were inherited by the Dominion Government or its agents. The action of the Dominion Government being an act of State, the act of the Administrator, however arbitrary, was not justiciable in the municipal courts and the suit was not well founded.

The appeal is, therefore, allowed. The respondent's suit shall be dismissed with costs. throughout.

Appeal allowed.

(1) 1 Comp. 204; 98 E.R. 1045.
(2) 2 Hag. Con. 384; 161 E.R. 774.
(3) 7 M.I.A. 555 at 578.
(4) L.R. 42 I.A. 229.
(5) (1924) L.R. 51 J.A. 357, 360.