THE STATE OF RAJASTHAN

v.

MST. VIDHYAWATI AND ANOTHER

1962

February 2.

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Tort—Suit for damages—Liability of State for tortious act of its servant acting as such—Constitution of India, Arts. 300 (1), 294, 295—*Government of India, Act 1935* (25 *and* 26 *Geo. V. C.* 42) *s. 176 (1)—Gavernment of India Act,* 1915 (5 & 6 *Geo. V. C.* 61), *s.* 32—*Government of India Act,* 1858 (*21 and* 22 *Victoria Ch. U.V. I*), *s.* 65.

The respondent 1's husband and father of minor respondent 2 was on February 11, 1952, knocked down by a Government jeep car rashly and negligently driven by an employee of the State of Rajasthan, while being taken from the repair shop to the Collector's residence, and subsequently died in hospital. On a suit by the respondents for damages, the trial court decreed the same exparte as against the driver but dismissed it as against the State, holding that as the car was being maintained for the use of the Collector, in discharge of his official duties, even though it was not being used for any purposes of the State at the time of the occurrence, that was sufficient to absolve the State of any vicarious liability as the employer. The High Court on appeal, disagreeing with the trial court, decreed the suit as against the State as well.

Held, that the liability of the State for damages in respect of a tortious act committed by its servant within the scope of his employment and functioning as such was the same as that of any other employer.

The relevant provisions for determining the extent of that liability were not those contained in Arts. 294 and 295 which were primarily concerned with the devolution of rights, assets and liabilities but those of Art. 3o0 (1) of the Constitution, which by using the expression "in like cases" in its second part defined the extent of that liability and referred back to the legal position obtaining before the promulgation of the Constitution.

Article 300 (1), read in the light of s. 176 (1) of the Government of India Act of 1935, s. 32 of the Government of India Act, 1915, and s. 65 of the Government of India Act, 1858, left no manner of doubt that the extent of the liability of a State must be the same as that of the East India Company as decided by the Supreme Court of Calcutta, in the case of *Peninsular and Oriental Steam Navigation Co.* v. *The Secretary of State for India.*

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Peninsular and Oriental Steam Navigation Co. v. The Secretary of State for India, (1868-69) 5 Bom. H. C. R. 1, approved.

Regard being had to the stages by which the State of Rajasthan was ultimately formed, it was not possible in order to judge the liability of that State under Art, 300 (1) to go beyond the last stage of integration leading to the formation of the Rajasthan Union on the eve of the Constitution and that Union would be the corresponding State as contemplated by the Article. In the absence therefore, of any law providing otherwise, the Union of Rajasthan, just as the Dominion of India or any of its constituent providences, would be vicariously liable for the acts of its servant.

Viewed from the stand-point of the first principles, the conclusion could not be otherwise. Ever since the days of the East India Company, the Sovereign was held liable to be sued in tort or in contract and the English Common law immunity as it existed in England before the enactment of Crown Proceedings Act, 1947, never operated in India. With the advent of the Constitution and inauguration of the Republic with a view to establishing a Socialistic State with its varied industrial and other activities engaging large numbers of employees there could be no justification, in principle or public interest, that the State should not be held vicariously liable for the tortious acts of its servants.

State of Bihar v. *Abdul Majid*, [1254] S.C.R. 786, referred to

As neither the Parliament nor any State Legislature had thought fit to enact any law on the matter, a right saved by by Art, 300 of the Constitution, the law must continue to be the same as it had been since the days of the East India Company.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 263 of 1958.

Appeal from the judgment and decree dated March 22, 1957 of the Rajasthan High Court in D. B. Civil First Appeal No. 36 of 1954.

G. C. Kasliwal, Advocate-General, Rajasthan, H.R. Khanna, B.K. Kapur, P.D. Menon, for the appellant.

S. N. Andley, Rameshwar Nath and *P.L. Vohra*, for the respondents.

1962. February 2. The Judgment of the Court was delivered by

SINHA, C. J.—This appeal, on a certificate granted by the High Court of Rajasthan under Art. 133(1)(c) of the Constitution, raises a question of considerable importance, namely, the extent of the vicarious liability of Government for the tortious acts of its employees, acting in the course of their employment as such. The Trial Court dismissed the claim for compensation as against the State of Rajasthan, which was the second defendant in the suit for damages for tortious act of the first defendant. Lokumal, who is not a party to this appeal. On appeal by the plaintiffs against the judgment and decree of the Trial Court, the High Court of Rajasthan passed a decree in favour of the plaintiffs allowing compensation of Rs. 15,000/- against the State of Rajasthan also, which is the appellant in this Court.

The facts of this case may shortly be stated as follows. The first defendant Lokumal, was a temporary employee of the appellant State, as a motor driver on probation. In February, 1952, he was employed as the driver of a Government jeep car, registered as No. RUM 49, under the Collector of Udaipur. The car had been sent to a workshop for necessary repairs. After repairs had been carried out, the first defendant, while driving the car back along a public road, in the evening of February 11, 1952, knocked down one Jagdishlal, who was walking on the footpath by the side of the public road in Udaipur city, causing him multiple injuries, including fractures of the skull and backbone, resulting in in his death three days later, in the hospital where he had been removed for treatment. The plaintiffs who are Jagdishlal's widow and a minor daughter, aged three years, through her mother as next friend sued the said Lokumal and the State of Rajasthan for damages for the tort aforesaid. They claimed the compensation of Rs. 25,000/- from both the

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defendants. The first defendant remained *ex-parte*. The suit was contested only by the second defendant on a number of issues. But in view of the fact that both the Courts below have agreed in finding that the first defendant was rash and negligent in driving the jeep car resulting in the accident and the ultimate death of Jagdishlal, it is no more necessary to advert to all the questions raised by way of answer to the suit, except the one on which the appeal has been pressed before us. The second defendant, who was the respondent in the High Court, and is the appellant before us, contested the suit chiefly on the ground that it was not liable for the tortious act of its employee. The Trial Court, after an elaborate discussion of the evidence, decreed the suit against the first defendant *ex-parte*, and dismissed it without costs against the second defendant. On appeal by the plaintiffs, the High Court of Rajasthan (Wanchoo C.J., and D. S. Dave J.) allowed the appeal and decreed the suit against the second defendant also, with costs in both the Courts. The State of Rajasthan applied for and obtained the necessary certificate "that the case fulfils the requirements of Art. 133(1)(c) of the Constitution of India". The High Court rightly observed that an important point of law of general public importance, namely, the extent of the liability of the State, in tort, was involved.

In support of the appeal, counsel for the Appellant raised substantially two questions, namely, (1) that under Art. 300 of the Constitution, the State of Rajasthan was not liable as the corresponding Indian State would not have been liable if the case had arisen before the Constitution came into force; and (2) that the jeep car, the rash and negligent driving of which led to the claim in the suit was being maintained "in exercise of sovereign powers" and not as part of any commercial activity of the State. The second question may shortly be disposed of before we address ourselves to the first question,

which is the more serious of the two raised before us. Can it be said that when the jeep car was being driven back from the repair shop to the Collector's place, when the accident took place, it was doing anything in connection with the exercise of sovereign powers of the State? It has to be remembered that the injuries resulting in the death of Jagdishlal were not caused while the jeep car was being used in connection with sovereign powers of the State. On the findings of the Courts below it is clear that the tortious act complained of had been committed by the first defendant in circumstances wholly dissociated from the exercise of sovereign powers. The Trial Court took the view that as the car was being maintained for the use of the Collector, in the discharge of his official duties, that circumstance alone was sufficient to take the case out of the category of cases where vicarious liability of the employer could arise, even though the car was not being use at the time of the occurrence for any purposes of the State. The Trial Court accepted the contention of the State of Rajasthan, on reaching the conclusion, after a discussion of the legal position, in these words :

> "Therefore it follows that the constitution and control of the Collector's office at the Udaipur is an instance of exercise of sovereign powers."

On appeal, the High Court disagreed with the Trial Court on the legal issue. Its finding on this issue is in these words :

> "In our opinion, the State is in no better position in so far as it supplies cars and keeps drivers for its civil service. It may be clarified that we are not here considering the case of drivers employed by the State for driving vehicles which are utilised for military or public service."

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In the result, the High Court granted a decree to the plaintiffs as against the second defendant also for the sum of Rs. 15,000/-. In our opinion, the High Court has taken the correct view of the legal position, in view of the circumstances in which the occurrence took place.

The more important question raised on this appeal rests upon the true construction and effect of Art. 300(1) of the Constitution, which is in these terms :

> "The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Consitution had not been enacted."

It will be noticed that this Article consists of three parts, namely, (1) the first part provides for the form and the cause-title in a suit and says that a State (omitting any reference to the Government of India) may sue or be sued by the name of the State, and (2) that a State may sue or be sued in relation to its affairs in like cases as the corresponding Provinces or the corresponding Indian State might have sued or been sued if this Constitution had not been enacted; and (3) that the second part is subject to any provisions which may be made by an Act of the Legislature of the State concerned, in due exercise of its legislative functions, in pursuance of powers conferred by the Constitution. The learned Advocate-General for the State of Rajasthan argued that the

second part of the article has reference to the extent of the liability of a State to be sued, and that, therefore, we have to determine the question of the liability of the State in this case in terms of the Article. On the other hand, it has been argued on behalf of the plaintiffs-respondents that chapter III of part XII of the Constitution, which is headed as "Property, Contracts, Rights, Liabilities, Obligations and Suits", contains other Articles in the Chapter dealing with rights and liabilities, namely, Arts. 294 and 295 and that Art. 300 is confined to only the question in whose name suits and proceedings may be commenced, in which the Government of a State may figure as plaintiff or as defendant, and that the Article is not concerned with defining the extent of liability of a State. In other words, it was contended that Art. 300 was irrelevant for determining the vicarious liability of the defendent State in this case, and that there was nothing in this Article definitive of that liability. In our opinion, it is not correct to argue that the provisions of Art. 300 are wholly out of the way for determining the liability of appellant State. It is true that arts. 294 and 295 deal with rights to property, assets, liabilities and obligations of the erstwhile Governers' Provinces or of the Indian States (specified in Part B of the First Schedule). But Arts. 294 and 295 are primarily concerned with the devolution of those rights, assets and liabilities, and generally speaking, provide for the succession of a State in respect of the rights and liabilities of an Indian State. That is to say they do not define those rights and liabilities, but only provide for substitution of one Government in place of the other. It is also true that first part of Art. 300, as already indicated, deals only with the nomenclature of the parties to a suit or proceeding but the second part defines the extent of liability by the use of the words "in the like cases" and refers back for the determination of such cases to the legal position before the enactment of the

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Constitution. That legal position is indicated in the Government of India Act, 1935 (25 & 26 Geo. V c. 42), s. 176(1) which is in these words :

> "The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in council might have sued or been sued if this Act had not been passed."

It will be noticed that the provisions of Art. 300(1) and s. 176(1) are *mutatis mutandis* substantially the same. Section 176(1) refers back to the legal position as it obtained before the enactment of that Act, that is to say, as it emerged on the enactment of s. 32 of the Government of India Act, 1915 (5 & 6 Geo. V c. 61) Sub-ss. (1) and (2), which only are relevant for our present purposes, are in these words :

> "(1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.
>
> (2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed."

As compared to the terms of Art. 300, it will be noticed that part (1) of that Article corresponds to sub-s. (1) of s. 32 above, part (2) roughly, though not exactly, corresponds to sub-s. (2), and part (3) of the Article, as indicated above, does not find a

place in s. 32. Sub-section (2) of s. 32 has specific reference to "remedies", and has provided that the remedies against the Secretary of State in Council shall be the same as against the East India Company, if the Government of India Act of 1858, and the Government of India Act, 1915, had not been passed. We are, thus, referred further back to the Act 21 & 22 Victoria Ch. CVI, entitled "An Act for the better Government of India." As this Act transferred the Government of India to Her Majesty, it had to make provisions for succession of power and authority, rights and liabilities. Section 65 of the Act of 1858 is in these terms:

> "The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies 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."

It will thus be seen that by the chain of enactments, beginning with the Act of 1858 and ending with the Constitution, the word "shall and may have and take the same suits, remedies and proceedings" in s. 65 above, by incorporation, apply the Government of a State to the same extent, as they applied to the East India Company.

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The question naturally arises: What was the extent of liability of the East India Company for the tortious acts of its servants committed in course of their employment as such? The exact question now before us arose in a case in Calcutta, before the Supreme Court of Calcutta, in the case of *The Peninsular and Oriental Steam Navigation Company* v. *The Secretary of State for India* (1). *The* Calcutta case appears to have been cited before the High Court in Bombay in the case of *Narayan Krishna Land* v. *Gerard Norman, Collector of Bombay*(2). The Bombay case related to an action of trespass, brought by the plaintiff against the Collector of Bombay in respect of certain land, which the Collector believed was Government property. Of immediate importance to us in his case is the report of the Calcutta case, which does not appear to have been reported in any Calcutta legal, journal though, on the face of it, it was judgment of far reaching importance and has always been cited as the leading case on the subject. It was a case decided by a Full Bench, consisting of Peacock, C.J., and Jakson and Wells, JJ., of the Supreme Court of Calcutta. It arose out of a reference by the Small Cause Court Judge under s. 55 of Act IX of 1850. The case, as stated to the Supreme Court, was to the following effect. A servant of the plaintiffs was proceeding on a highway in Calcutta driving a carriage drawn by a pair of horses belonging to the plaintiffs. The accident, which took place on the highway, was caused by the servants of the Government, employed in the Government dockyard at Kidderpore, acting in a negligent rash manner. As a result of the negligent manner in which the Government employees in the dockyard were carrying a piece of iron funnel, one of the horses drawing the plaintiffs

(1) Decided in 1861 and reported in the Newspaper 'Englishman' of October 23, 1861, and republished in Appendix 'A' to the Bombay High Court Reports, Vol. V, of the year 1868-69.

(2) (1868) V Bom. H.C.R. 1.

carriage was injured. The plaintiff company claimed damages against the Secretary of State for India for the damage thus caused. The learned Small Cause Court Judge came to the finding that the defendant's servants were wrongdoers in carrying the iron funnel in the centre of the road, and were, thus, liable for the consequences of what occurred. But he was in doubt as to the liability of the Secretary of State for the tortious acts of the Government servants concerned in the occurrence in which the injury was caused to the plaintiffs' horse. So the question, which was referred to the Court for its answer, was whether the Secretary of State was liable for the damage occasioned by the negligence of the Government servants, assuming them to have been guilty of such negligence as would have rendered an ordinary employer liable. In the course of their judgment, their Lordships began by examining the question whether the proviso to the jurisdiction of the Small Cause Courts to the following effect could be a bar to the suit:

> "Provided always that the Court shall not have jurisdiction in any matter concerning the revenue, or concerning any act ordered or done by the Governor, or Governor-General or any member of the Council of India, or of any Presidency, in his public capacity, or done by any person by order of the Governor-General or Governor in Council, or concerning any act ordered or done by any Judge or Judicial Officer, in the execution of his office, or by any person in pursuance of any judgment or order of any Court, or any such Judge or Judicial Officer, or in any suit for libel or slander." (Proviso to s. 25 of the Small Cause Court Act.).

The Court came to the conclusion that the proviso was not a bar to the suit. Having disposed of the preliminary question, the Court addressed itself to

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the main controversy, which it described as "one of very considerable importance and of some difficulty". Then the Court considered the provisions of s. 65 of the Act of 1858, and pointed out that as the Queen could not be sued in her own courts, as the East India Company could have been, it was necessary to provide by that section the mode for enforcing the liabilities of the Company now devolved upon the Secretary of State. Then the Court addressed itself to the question. Would the East India Company have been liable in the present action if the Act (21 & 22 Vict. ch. 106) had not been passed? With reference to the provisions of 3 & 4 Wm IV, c. 85, it was pointed out that the Company not only exercised powers of government, but also carried on trade as merchants. The Court then examined in great detail the provisions of the Act aforesaid and pointed out that by that Act the Company was directed to close its commercial business and cease to have any interest in the territorial acquisitions in India, which were to be held by the Company until April 30, 1854, in trust for the Crown. Section 10 of the Act, which may be characterised as the ancestor of s. 65 of the Act of 1858, provided as follows:

> "That so long as the possession and government of the said territories shall be continued to the said Company, all persons and bodies politic shall and may have and take the same suits, remedies, and proceedings, legal and equitable, against the said Company, in respect of debts and liabilities as aforesaid; and the property vested in the said Company in trust as aforesaid shall be subject and liable to the same judgments and execution, in the same manner and form respectively as if the said property were hereby continued to the said Company to their own use."

It is noteworthy that the provisions of s. 10, quoted above, are materially similar to the latter part

of s. 65 of the Act of 1858. It was in accordance with the provisions of s. 10, followed up by s.65 aforesaid, that the Court laid it down that the Secretary of State for India was subject to the same liabilites as those which previously attached to the East India Company.

Before the Supreme Court of Calcutta, it was contended by the learned Advocate-General, on behalf of the defendant, that the State cannot be liable for damages occasioned by the negligence of its officers or of persons in its employment. It was pointed out, "it is true that it is an attribute of sovereignty that a State cannot be sued in its own courts without its consent." "In England, the Crown", it was further pointed out, "cannot be made liable for damages for the tortious acts of its servants either by petition of right or in any other manner, as laid down by Lord Lyndhurst in the case of *Viscount Canterbury* v. *The Attorney-General*" (1). That decision was based upon the principle that the King cannot be guilty of personal negligence or misconduct, and consequently cannot be responsible for the negligence or misconduct of his servants. The Court further pointed out that it was in view of these difficulties in the way of getting redress that the liability of the Secretary of State, in place of that of the East India Company, was specifically provided for by s. 10, aforesaid. The East India Company itself could not have claimed any such immunity as was available to the sovereign. This view was based on the opinion expressed by Grey, C.J., in the case of the *Bank of Bengal* v. *The East India Company* (2), that "the fact of the Company's having been invested with powers usually called sovereign powers did not constitute them sovereigns". This dictum was also founded upon the recital in 53 Geo.III c.155, by which the territories in the possession and under the government of the East India Company were vested in them without prejudice to the undoubted

(1) (1843) 1 Philips 306: 41 E.R. 648.
(2) Bignell Rep. p. 120.

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sovereignty of the Crown. The Court also pointed out that the liability of the Secretary of State was in no sense a personal liability, but had to be satisfied out of the revenues of India.

This case also meets the second branch of the argument that the State cannot be liable for the tortious acts of its servants, when such servants are engaged on an activity connected with the affairs of the State. In this connection it has to be remembered that under the Constitution we have established a welfare state, whose functions are not confined only to maintaining law and order, but extend to engaging in all activities including industry, public transport, state trading, to name only a few of them. In so far as the State activities have such wide ramifications involving not only the use of sovereign powers but also its powers as employers in so many public sectors, it is too much to claim that the State should be immune from the consequences of tortious acts of its employees committed in the course of their employment as such. In this respect, the present set up of the Government is analogous to the position of the East India Company, which functioned not only as a Government with sovereign powers, as a delegate of the British Government, but also carried on trade and commerce, as also public transport like railways, posts and telegraphs and road transport business. It was in the context of those facts that the Supreme Court of Calcutta repelled the argument advanced on behalf of the Secretary of State in these terms :

> "It was contended in argument that the Secretary of State in Council, as regards his liability to be sued, must be considered as the State, or as a public officer employed by the State. But, in our opinion his liability to be sued depends upon an express enactment in the 21st & 22nd Vict. c. 106, by weich he is constitututed a mere nomial defendant for the purpose of enforcing payment, out of the

revenues of India, of the debts and liabilities which had been contracted or incurred by the East India Company, or debts or liabilities of a similar nature, which might afterwards be contracted or incurred by the Government of India. We are further of opinion that the East India Company were not sovereigns, and therefore, could not claim all the exemption of a sovereign ; and that they were not the public servants of Government, and, therefore, did not fall under the principle of the cases with regard to the liabilities of persons; but they were a company to whom sovereign powers were delegated, and who traded on their own account and for their own account and for their own benefit, and were engaged in transactions partly for the purposes of government, and partly on their own account, which without any delegation of sovereign rights, might be carried on by private individuals. There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them : *Moodaley* v. *The East India Company and The Same* v. *Morton* (*1 Bro. C. C. 469*)".

It was also argued before that Court that the East India Company having the two-fold character of a sovereign power and of a trading company, it would be very difficult to determine whether a particular act had been done in the exercise of sovereign powers or of its activity in relation to business. In answer to this contention, it was pointed out by the Court that the Company would not have been liable for any act done by its officers or soldiers in carrying on hostility or in seizing property as prize property or while engaged in

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military or naval action. In such cases no action would have lain even against the officers themselves. But the Company would have been liable for the negligence of their servants or officers in navigating a river steamer or in repairing the same or in doing any act in connection with such repairs.

The argument that a distinction had to be drawn between the liability under a contract and that arising out of a wrongful act, and that the latter category of liability would not be within the mischief of the words of the section (s. 65) was rightly repelled with reference to the words of the Statute, which said "debts lawfully contracted and expenses or liabilities incurred". The latter expression 'liabilities incurred' would include a liability arising out of a tortious act. The Court, after an elaborate consideration of all possible argument in favour of the Secretary of State, came to the following conclusion, which is rightly summed up in the head-note in these words :

> "The Secretary of State in Council of India is liable for the damages occasioned by the negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable."

But it was further argued that Art. 300 speaks of 'like cases' with reference to the liability of the corresponding Indian States. In this connection, it was further argued that the plaintiff, in order to succeed in his action against the State of Rajasthan, must prove that the State of Udaipur which would be deemed to be the corresponding State, would have been liable in similar circumstances before the Constitution was enacted. The history of events leading up to the formation of the State of Rajasthan has to be adverted to in this connection. It is clear, on a reference to the Government publication called "The White Paper on Indian States" paragraphs 134 to 138, at pages

(53—55) that the integration of the Rajasthan States into one single state was effected in several stages. The Rajasthan Union was originally formed by the smaller States, which later united and formed the United State of Rajasthan, inaugurated on March 25, 1948. Subsequently, bigger States joined and the second Rajasthan Union was inaugurated on April 18, 1948. By a further process of integration of some bigger States, new United State of Rajasthan was inaugurated on March 30, 1949. There was a further accession of territory by the agreement contained in Appendix XLI, on May 10, 1949, with the result that the initial United State of Rajasthan with an area of 16, 807 sq. miles developed into one of the biggest units in India, as the Rajasthan Union, before the Constitution, with an area of 1,28,424 sq. miles, and finally, on the inauguration of the Constitution emerged the State of Rajasthan as one of the Part B States. It is clear that we cannot go beyond the last stage of the integration, as aforsaid, which brought into existence the State just before the coming into effect of the Constitution. As already pointed out, the provisions of the second part of Art. 300 have to be traced backwards until we reach the Government of India Act 1858 (s.65), which itself was based upon s. 10 of the Act (3 & 4 Wm. IV c. 85) of which the relevant portions have been set out above.

From the resume of the formation of the State of Rajasthan given above, it is clear that we need not travel beyond the stage when the Rajasthan Union was formed on the eve of the Constitution. It has not been shown that the Rajasthan Union would not have been liable for the tortious act of its employee, in the circumstances disclosed in the present case. The issue framed at the trial, on this part of the controversy, was issue No. 9, in these terms :

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"Whether the State of Rajasthan is not liable for the act of Defendant No. 1 ?"

The State of Rajasthan has not shown that the Rajasthan Union, its predecessor, was not liable by any rule of positive enactment or by common Law. It is clear from what has been said above that the Dominion of India, or any constituent Province of the Dominion, would have been liable in view of the provisions aforesaid of the Government of India Act, 1858. We have not been shown any provision of law, statutory or otherwise, which would exonerate the Rajasthan Union from vicarious liability for the acts of its servant, analogous to the Common Law of England. It was impossible, by reason of the maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant. But it was realised in the United Kingdom that that rule had become outmoded in the context of modern developments in statecraft, and Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force on January 1, 1948. Hence the very citadel of the absolute rule of immunity of the sovereign has now been blown up. Section 2 (1) of the Act provides that the Crown shall be subject to all those liabilities, in tort, to which it would be subject if it were a private person of full age and capacity, in respect of torts committed by its servants or agents, subject to the other provisions of the Act. As already pointed out, the law applicable to India in respect of torts committed by a servant of the Government was very much in advance of the Common law, before the enactment of the Crown Proceedings Act, 1947, which has revolutionised the law in the United Kingdom also. It has not been claimed before us that the common law of the United Kingdom before it was altered by the said Act with effect from 1948, applied to the Rajasthan Union in 1949, or even earlier. It must, therefore,

be held that the State of Rajasthan has failed to discharge the burden of establishing the case raised in Issue No. 9, set out above.

Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom, was based on the old feudalistic notions of Justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common Law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. The Court has deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. In the case of *State of Bihar* v. *Abdul Majid* (1), this Court has recognised the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown based on common Law in the United Kingdom has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution in, our opinion, it would be only recognising the old established rule, going back to more than 100

(1) [1954] S.R.C. 786.

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years at least, if we uphold the vicarious liability of the State. Art. 300 of the Constitution itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of the East India Company.

In view of these considerations, it must be held that there is no merit in this appeal, and it is accordingly dismissed with costs.

Appeal dismissed.