

In Re: Antonius Raab and anr.

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Court : Mumbai

Decided On : Nov-24-1948

Reported in : AIR1950Bom101

Judge : Bavdekar and ;Jahagirdar, JJ.

Acts : [Foreigners Act, 1946](#) - Sections 3 and 11; Code of Criminal Procedure (CrPC) - Sections 491; [Indian Independence Act, 1947](#) - Sections 7 and 18(3); [Government of India Act, 1935](#) - Sections 8, 107(3) and 128(1); Indian Naturalisation Act, 1926; Foreigners Order, 1939; [Evidence Act, 1872](#) - Sections 11, 40 and 41; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 13

Appeal No. : Criminal Appln. Nos. 1143 and 1144 of 1948

Appellant : In Re: Antonius Raab and anr.

Advocate for Def. : M.P. Amin, Adv. General and ;H.M. Choksi, Government Pleader

Advocate for Pet/Ap. : Purshottam Tricumdas, ;S.S. Kavlekar and ;V.N. Chhatrapati, Advs.

Judgement :

Bavdekar, J.

1. These are two applications under Section 491, Criminal P. C. in respect of two persons against whom orders have been made under the Foreigners Act. The two persons are Mr. and Mrs. Raab, and it is the case of the Crown that out of them Mr. Raab was, before an order was issued by the Maharaja of Baroda conferring upon him the status of a subject of the Baroda State, a naturalized subject of the Republic of Costa Rica and Mrs. Raab was a Czechoslovak. It is not in dispute that on 8th November 1947, His Highness the Maharaja of Baroda passed an order recognising Mr. Raab as a Baroda State subject, and it is not disputed before us that, if this was a valid order in its inception and is still a valid order, then in that case Mr. and Mrs. Raab will be both subjects of the Baroda State, Mr. Raab, because of the order, and Mrs. Raab because of the provision of international law by which a wife attains the status, as far as nationality is concerned, of her husband. It appears from the evidence that there was a deportation order passed in respect of Mr. and Mrs. Raab before 8th November 1947, but nothing had been done in respect of that order at the time when the Maharaja conferred the status of a Baroda State subject upon Mr. Raab. Subsequent to this order, the Foreigners Act was amended by an Act of the Indian Dominion; but it is not in dispute that the amending Act has no bearing upon the question of the validity of the Maharaja's order when it was passed which was prior to the passing of the Act, and so far as the making of this order is concerned, we will be concerned with the Foreigners Act as it stood before its latest amendment. It appears from the evidence next that in March 1948 there was passed an order against Mr. and Mrs. Raab deporting them and also directing their arrest preliminary to their deportation. We have not this order before us, because we are concerned with the question of the validity of the present orders under which Mr. and Mrs. Raab are detained, and those orders were passed on 8th April 1948. They are under Sections 3 and 11, Foreigners Act. Under Clause

(1) of the order, they were to be arrested and taken under police custody to Bombay and detained there. Under Clause

(2) of the order, they were to remove themselves from India by such route and steamship as may be arranged in this behalf by the Government of Bombay and thereafter not to return to India, and by Clause

(3) of the order they were to remain in detention in Bombay till arrangements for their departure were made. The detention is, therefore, under, Clause

(3) of these orders, and the detention will be valid if the orders are valid. If the orders are not valid, both the petitioners are entitled to be set at liberty.

2. Now, the orders in this case are passed under the provisions of the Foreigners Act, Sections 3 and 11 and the sole condition precedent for the validity of the orders, it is not in dispute, is Mr. and Mrs. Raab being foreigners as defined under the Foreigners Act. The Foreigners Act defines a 'foreigner' as a person who does not fall under certain categories and the one category with which we will be concerned in the present case is the category of a subject of an acceding State. Baroda is an acceding State, and consequently the question is as to whether Mr. and Mrs. Raab became subjects of the Baroda State upon 8th November and whether the status, if any, conferred upon them by those orders has subsequently been lost by them on account of anything which happened thereafter.

3. The learned Advocate General, who appears for the Crown contends, in the first instance, that this order which was passed by the Maharaja of Baroda on 8th November 1947, is not a valid order, because it is not an order made by His Highness the Maharaja in exercise of the powers which were vested in him for the purpose of making laws for the Baroda State. One witness whom the petitioners examined on their behalf upon the question of the legislative powers of the Maharaja has deposed that, even though there is a duly constituted Legislature in Baroda, the Maharaja's power of making laws are not affected because of the provisions of Section 4, Baroda Constitution Act. In our view, it is not necessary to go into this question, because, on the face of it, the order which was passed by the Maharaja does not appear to us to be legislative order or a law. It may be that the Maharaja had got vested in him both legislative as well as executive powers: but before it could be said that any order which is passed partook of the nature of a law, one would naturally expect that the order itself would show that it was passed in the exercise of legislative functions vested in the Maharaja. We have come across some orders made by Rulers of acceding States before 15th August 1947. In such cases it has been usual for the order to have something in it to show that

the order was of the nature of a law. In this case, the order itself does not show that the Maharaja was exercising legislative functions, and as there is no other evidence that the Maharaja was exercising legislative functions, we are not prepared to accept that the Maharaja was enacting a law when he said that he was recognizing Mr. and Mrs. Raab as the subjects in Baroda State. It is not as if there was no other power in the Maharaja under which he could recognise Mr. and Mrs. Raab as Baroda State subjects. As a matter of fact, the learned counsel, who appears on behalf of the petitioners, has pointed out to us that there are powers in the Crown in England owing to which the status of a British national can be conferred upon an erstwhile alien. He has argued that if there are such powers in the Crown in England, there is no reason why there should not be such powers in whosoever was the sovereign authority in the Baroda State. The learned Advocate General has argued that whatever powers the King has in England their exercise does not confer upon the person, in whose favour they are exercised, the status of a British subject. The status is different and a little lower than what would be conferred upon a person who has obtained naturalisation under the provisions of the English Naturalisation Act. That is a different matter which will be dealt with in due course. Suffice it to say at present that counsel who appears on behalf of the petitioners has himself argued that whatever authority is sovereign in Baroda State has got the same powers as the King has got in England to confer upon an alien the status of a subject of the Baroda State. For reasons which will be mentioned below, we think that this contention is correct, and if that is so, then, there being other powers vested in His Highness the Maharaja under which the status of the subject of Baroda State could be conferred upon Mr. and Mrs. Raab, we do not feel called upon to interpret the order of 8th November as if it enacted a law which was valid in the Baroda State.

4. That brings me to the question as to whether, as a matter of fact, there was vested in His Highness the Maharaja of Baroda any power under which the status of a subject of the Baroda State could be conferred upon a person who was till then an alien, in the sense that he was not before 16th August 1947, either a British Indian subject or a British protected person, that means, a subject of a Native State under the suzerainty of the British Crown, and after that date a British subject or a subject of the Indian Dominion.

5. It is necessary to bear in mind in considering the question that we are concerned with the period subsequent to the coming into force of the Indian Independence Act. The Crown which has opposed the application has produced before us an order which was passed by the Crown Representative prior to the coming into force of the Indian Independence Act prohibiting the rulers or Governments of States under the suzerainty of His Majesty, the King, from conferring the status of a subject of the State upon any person who was either not a British subject by birth or a British subject by naturalisation or a British protected person. It has been contended before us that that was a very valid order, and, as a matter of fact, it has been argued before us that notwithstanding the passing of the Indian Independence Act the state of affairs which prevailed after the passing of the order continued even after the passing of the Indian Independence Act, and His Highness the Maharaja or the Baroda Government did not have any power to pass any order conferring upon a person who was not a British subject by birth or naturalisation or a British protected person the status of a subject of the Baroda State. We do not think that there is any force whatsoever in any of these contentions; we do not feel called upon to express any opinion upon the validity of the order which was passed by the Crown Representative before the India Independence Act came into force. The position prior to that Act was that the States were under the suzerainty of the British Crown. This is sometimes referred to as also the paramountcy of the Crown; but immediately the Indian Independence Act came into force, under the provisions of Section 7, Sub-section (1), Clause (b), the suzerainty of His Majesty over the Indian States lapsed, and with it, all treaties and agreements in force at the date of the passing of the Act between His Majesty and the rulers of Indian States. As from the date upon which the Act came into force, which is called the appointed day in the Indian Independence Act, all powers, rights, authority or jurisdiction exercisable by His Majesty on the appointed day in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise, also came to an end. It is obvious that if at all the order which was passed by the Crown Representative and which forbade the Governments of the Native States from conferring the status of a subject by the State upon certain aliens was a valid order, then it must have been justified because there was power in the Crown Representative to direct accordingly either

in virtue of any treaties or agreements which may have been made between the former rulers of the Baroda State and His Majesty, or it must have been justified because of the doctrine of paramountcy. But the position after the Indian Independence Act came into force is that the States became independent, except, in so far as the instrument of accession which was signed by the rulers of the States enabled the Government of the Indian Dominion to exercise certain executive powers in certain fields like external affairs, and except again in so far as because of the provisions of the instrument of accession and the provisions of the Indian Independence Act and the Government of India Act as it was in force at the date when the instrument of accession came into force, the Legislature of the Indian Dominion derived power to legislate in respect of the State on certain matters mentioned in the instrument of accession. We do not think that there could be any other consequence of Section 7, Indian Independence Act than this. It is obvious that both sovereign legislative and sovereign executive powers had to vest in someone, in respect of the Baroda State, after the Indian Independence Act came into force. The only entities in whom sovereign powers which were not legislative could possibly vest would be the Baroda Government or the Government of the Indian Dominion. Now, what powers vested in the Government of the Indian Dominion, or what legislative powers vested in the Legislature of the Indian Dominion is to be ascertained from the provisions of the instrument of accession and the two Acts which are mentioned above. The rest of the powers must necessarily vest either in the Baroda Government which it will be seen below necessarily means the Ruler of Baroda or in the Baroda Legislature. The executive powers would vest in the Baroda Government, and the legislative powers would vest in whatever is the Baroda Legislature. We are concerned in this case only with the question as to in whom certain executive powers vested. Now, that will be found, in our view, from Section 8, [Government of India Act, 1935](#). Sub-section (1) of the section says, subject to certain provisos with which we are not concerned in the present case,

'Subject to the provisions of this Act, the executive authority of the Dominion extends to the matters with respect to which the Dominion Legislature has power to make laws, including the exercise of rights, authority and jurisdiction in and in relation to areas outside the Dominion.'

Now, it is common ground that the Indian Legislature has, in virtue of the instrument of accession, which has been signed by His Highness, the Maharaja of Baroda, and which has been accepted by His Excellency the Governor General of India, after the Indian Independence Act came into force, power to legislate on the subject of naturalisation. The executive authority of the Dominion, which means, the Government of India, has got, therefore, power to pass orders in regard to naturalisation; but that does not mean that the Baroda Ruler or the Baroda Government has got no power upon the subject. That would be quite clear from Sub-section (2) of the section, which says:

'The executive authority of the Ruler of an Acceding State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Dominion Legislature has power to make laws for that State except in so far as the executive authority of the Dominion becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Dominion law.'

That means that where a Dominion Legislature has got power to make laws, the Government of India as well as the Ruler of an Acceding State have both power to pass executive orders. To that there is one exception; that is, where the executive authority of the Dominion becomes exercisable in the state to the exclusion of the executive authority of the Ruler by virtue of a Dominion law. That means that if there is any Dominion law owing to which the Ruler of an Acceding State is prevented from exercising executive authority in respect of a matter upon which the Dominion Legislature may legislate, then the power of the Ruler is gone, but not otherwise.

6. Now, our attention has not been drawn to any Dominion law which excludes the executive authority of the Ruler of Baroda in respect of naturalisation. The learned Advocate General, who appears for the Crown, contends, in the first instance, that because of the provisions of Section 18 (3), Indian Independence Act and because of the provisions of Section 107(3), Government of India Act 1935, the Indian Naturalization Act 1926, is law which prevails in the State of Baroda, and he says secondly that because of the provisions of that Act the Dominion Government has

got executive authority in the State of Baroda to the exclusion of the Ruler of the Baroda State,

7. Taking up first Section 107, Sub-section (3), it may be disposed of very briefly. All that the subsection says is that:

'If any provision of a law of an Acceding State is repugnant to a Dominion law which extends to that State, the Dominion law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void.'

The provision is a provision as to what is to happen in case of a repugnancy between a State law and a Dominion law, and the Dominion law which it is alleged is repugnant must be a Dominion law which extends to the State. The section does not say as to what Dominion laws are to extend to an Acceding State, and consequently the section can throw no light upon the question as to whether Indian Naturalization Act, 1926, applies or does not apply to the State of Baroda. We, therefore, go now to Section 18 (3) Indian Independence Act. That section has got a heading 'Provision as to existing laws, etc.,' and Sub-section (3) of the section says:

'Save as otherwise expressly provided in this Act the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.'

If we look at the heading of the section 'Provisions as to existing laws,' it is obvious that the legislature has by this section made provision as to what is to happen to the existing laws after the coming into force of the India Independence Act. One argument which might have been fancied and is met with by the provision is that after the coming into force of the India Independence Act the Acts which were valid in the Dominion before the appointed day would cease to be valid, and Sub-section (3) says that unless there was an express provision made in India

Independence Act, the law of British India and of the several parts thereof existing immediately before the appointed day, that is, 15th August 1947, shall continue as the law of each of the new Dominions and the several parts thereof. No doubt, the laws are liable to be changed; they are liable to be changed by the laws of the Legislature of the Dominion in question, or by any other Legislature or other authority having power to legislate: but till such legislation is passed the laws of British India and of the several parts thereof are to continue as the law of each of the new Dominions and the several parts thereof. Now, we have no doubt that, inasmuch as the Indian Naturalization Act, 1926, was a law of British India immediately before the appointed day, it continued as the law of the new Dominion after the appointed day; but that does not necessarily mean that it applies to the Acceding States. Formerly, the laws of British India did not always apply to the whole of it; they were still the laws of British India, portions of which were however excluded from the operation of the law by the enactment itself; that did not lead to the conclusion that the law was the law not of British India but of British India minus the area in which the law was not to operate. When, therefore, the Legislature enacted that the laws of British India would be the laws of the new Dominion, it did not enact that what subsequently became the law of the new Dominion would apply to the whole Dominion; it merely became a law of the Dominion, and to what areas it applied would have to be decided after looking at the Act itself. There are Acts of the former Indian Legislature which applied only to certain areas. Because that Act became, after the appointed day, a law of the Indian Dominion, it did not follow that the law became applicable throughout the whole Dominion, even over those parts of British India in which it had no operation before the appointed day. What was the area in which the law was to operate had therefore to be decided by looking at the Indian Naturalization Act, and the Act states that it extends to the whole of British India, including British Baluchistan and the Sonthal Parganas. Now, for 'British India,' one has to read after the coming into force of the Indian Independence Act the words 'the Provinces of the Indian Dominion', and we are not concerned in this case with British Baluchistan and the Sonthal Parganas; with the result that after the appointed day the Indian Naturalization Act, 1926, extended to the Provinces of the Indian Dominion; and the State of Baroda is not a Province of the Indian Dominion. So, if we read the

Indian Naturalization Act, 1926, then the effect of Section 18(3), Indian Independence Act is to make the Indian Naturalization Act indeed a law of the new Dominion, but a law which was valid only throughout the Provinces of the Indian Dominion and not in any of the Acceding States. The Act had no application by itself in the Baroda State. It is conceded before us that there is no other Act passed by the Indian Legislature whether before the appointed day or thereafter which had any bearing upon the subject of naturalization, one of the subjects in regard to which the Ruler of the Baroda State has agreed by the instrument of accession that the Dominion Legislature may make laws.

8. But even if this is not correct and the Indian Naturalization Act, 1926, has application in the Baroda State, that does not necessarily mean that the Ruler of the Baroda State, has got no executive authority as regards naturalization in that State. Before that result could be said to have been achieved, it would be necessary to show that because of the provisions of the Indian Naturalization Act, 1926, the authority of the Dominion became exercisable in the Baroda State to the exclusion of the executive authority of the Ruler, and there is no provision in the Indian Naturalization Act, 1926, upon the subject of the exclusion of the executive authority of the Ruler. As a matter of fact, considering that the Act was passed in 1926, when the Legislature had not at all in view any of the Native States, nor power to legislate for them, one would not expect to find in the Act any provision which would exclude the executive authority of the Ruler in any area to which the Act had application. That being so, it is obvious that the Ruler of the Baroda State had still got power, if at all it could be shown that such a power could be exercised by the Ruler of the Baroda State to confer upon an alien the status of a Baroda subject.

9. Now, I have already mentioned what would be the executive powers of the Ruler of the Baroda State or the Baroda Government. It would save repetition of those alternatives hereafter, if I were to mention that under the Baroda Constitution Act, even though certain executive powers have been conferred upon authorities in the Baroda State, nothing in the Act takes away from His Highness the Maharaja of Baroda the executive powers in relation to the State and its Government. Section 8, Government of Baroda Act specifically reserves all

executive powers to him notwithstanding anything contained in that or in any other Act. Therefore, it could not possibly be successfully contended that assuming that there was any authority in Baroda State which had got power to confer upon anybody the status of a Baroda State subject, that authority was not the Maharaja; if any one has got the authority in the Baroda State, then the Ruler has got the authority. The only question which remains to be determined, therefore, is as to whether any one in the State had or had not got the authority.

10. I have already mentioned that after the coming into force of the Indian Independence Act, the sovereign executive powers must be in somebody, and they must be in the supreme executive authority in the Baroda State, unless they were exercisable by the Dominion Government to the exclusion of the executive authority of the Baroda State, and if it could not be shown that those powers vested in the Government of the Indian Dominion to the exclusion of the executive authority of the Baroda State, then those powers must necessarily vest in the supreme executive authority in Baroda, and as long as they vested in some authority in Baroda, they were exercisable by the Ruler. Powers exercised by the Crown in England would naturally vest in the Ruler who after 15th August 1947, held an analogous position in respect of the State subject to the instrument of accession and the Government of India and Indian Independence Acts.

11. Now, we go to the question of the conferment of the status of a subject by an executive authority, even the King, when no certificate of naturalization under an Act which permits such a certificate to be issued has been issued. The learned Advocate General, who appears for the Crown, contends that the learned counsel, who addressed us on behalf of the petitioners, has based his argument as to the powers of His Highness the Maharaja upon an analogy with the powers of the Crown in England to grant certificates by letters of denization. He does not indeed dispute that there is a right to create denizens by Letters Patent in the Crown, which, though it has fallen into desuetude, is expressly reserved by the English statute on naturalization; but he contends that that does not confer upon the person in whose favour the Crown has issued the Letters Patent of denization the status of a British subject. He says that the grant does indeed create in the person in whose favour Letters Patent of denization are issued certain rights, for example,

to reside, to buy or acquire property; but that still does not make him a British subject, because there are certain rights which are withheld even from a person to whom the Crown has granted Letters Patent of denization by law; for example, as would be found mentioned in Halsbury, vol. I, 2nd Edn., para. 782, note (t) the Act of Settlement, 1700 (12 & 13 Will. III, c. 2), Section 3. The argument is that the letters of denization which are granted by the Crown not being under the provisions of the Naturalization Act are limited to certain rights and not all the rights which when taken together confer upon any one the status of a British subject. It appears to us, however, that so far as the question is concerned, any difference that may be between the rights of a person in whose favour the Crown has issued Letters Patent of denization and a full fledged British subject has no bearing. Even in England we notice that Halsbury puts letters of denization in Section 2 of a chapter of Part IV of which the heading is 'Acquisition of British Nationality.' That would show that what is acquired by letters of denization is British nationality. It is true that such a person has not got all the rights of a natural-born British subject, for example, certain rights which are excluded by the provisions of any law which has force in England like the Act of Settlement; but that need not necessarily come into the way of holding that a person in whose favour such letters are issued is a British national. He has not got the rights of a natural, born British subject; but a natural-born British subject is not the same as a British national. The term British national, or British subject can, for example, be applied to the person who has been granted naturalization. Even naturalization would however not make a man a natural-born British subject, though it may or may not be that he has got all the rights of one. In the second instance, so far as the State of Baroda is concerned, it is not contended before us that there is any provision of law which prevents a person in whose favour an order corresponding to the grant of Letters Patent of denization is made by the Maharaja from acquiring all the rights of a natural-born Baroda State subject. There is, therefore, in reality no difference between the rights of natural-born Baroda State subject and a subject upon whom the status of a Baroda State subject is conferred by an order passed by the Maharaja. It is not possible, therefore, to maintain that even though His Highness the Maharaja could pass some order by which certain rights of a Baroda State subject are conferred upon an erstwhile alien, he has no power to

create anybody a Baroda State subject.

12. In that case the order of 8th November passed by His Highness the Maharaja would be a valid order. It was within the powers of the Maharaja on the date upon which he passed the order. The question as to whether the order has ceased to be valid because of anything that happened thereafter is a different question.

13. Before proceeding to the latter question, however, it would be necessary to refer to one or two arguments which were made as to whether the order would not be invalid for certain other reasons, It was said, in the first instance, that prior to 15th August 1917, there was passed by some authority in India an order deporting Mr. and Mrs. Raab. It was said that the order which was passed on 8th November 1947, came into the way of the execution of the order of Mr. and Mrs. Raab's deportation, and to the extent to which the order came into the way of the execution of the order of deportation, the order was ultra vires because of the provisions of Section 128, Government of India Act. Now, Section 128, Sub-section (1), says;

'The executive authority of every Acceding State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Dominion so far as it is exercisable in the State by virtue of a law of the Dominion Legislature which applies therein.'

That means that no Ruler and no authority who has got any executive authority in an Acceding State will pass an order which would impede or prejudice the execution of an order of the Dominion Government which is exercisable in the State under a Dominion law. Before it could be said that the order of 8th November was ultra vires of the Maharaja, because of the provisions of Section 128, it must be shown that the order would impede or prejudice the exercise of the executive authority of the Dominion in so far as it was exercisable in the State by virtue of a Dominion law. The learned Advocate General, who appears for the Crown, says that this order which conferred the status of a Baroda State subject upon Mr. Raab came into the way of the deportation of Mr. and Mrs. Raab. He says that the order for deportation of Mr. and Mrs. Raab was and could be passed by the Dominion Government by virtue of a law of the Dominion, namely, either the

Indian Naturalization Act, or the Foreigners Act. Consequently, the order impeded the exercise of the authority of the Dominion which was exercisable in the State by virtue of those two Acts. It was, therefore, a bad order.

14. Now, I have already mentioned the difficulties in the way of the Crown in contending that Dominion Government could exercise any powers in the Baroda State because of the provisions of the Indian Naturalization Act. In the second instance, it is obvious that the order which was passed deporting Mr. and Mrs. Raab was not an order which was passed in the exercise of the executive authority of the Dominion, assuming it had any in virtue of the Naturalization Act. That Act does not empower the Government of the Indian Dominion to pass any order of deportation. The order of deportation is passed under the Foreigners Act. Consequently, if at all the exercise of the executive authority of the Dominion in the Baroda State is impeded, it is impeded in regard to the authority exercisable under the Foreigners Act and not the Naturalization Act. Therefore, before Section 128 can help the Crown, it must be shown that the Foreigners Act had application to the Baroda State and that the order with regard to deportation was passed by the Dominion Government in exercise of an authority given by the Foreigners Act.

15. Now, here the Crown is met with the same difficulty as in the case of the Indian Naturalization Act. On 8th November 1947, the Foreigners Act had, for the same reason which I have mentioned in regard to the Indian Naturalization Act, no application to the State of Baroda. That this was so would be quite clear from the fact that subsequently the Foreigners Act was amended and it was made applicable by specific legislation to the Acceding States; but if it became applicable to the Acceding States including Baroda later on, that would not mean that the Government of the Indian Dominion had any authority in the Baroda State under the Act before it was made applicable by Act No. XXXVIII [38] of 1947 to the Acceding States, and if consequently the Government of the Indian Dominion could not exercise any executive authority in Baroda State on 8th November 1947 under the Foreigners Act, then it would be futile to argue that the order passed by His Highness the Maharaja of Baroda impeded the exercise of the executive authority of the Dominion in so far as it was exercisable in Baroda State by virtue of the Foreigners Act.

16. It is contended next that the order at its inception was invalid, because prior to 15th August 1947, there was arrived at between the Baroda State and the Government of India what; is called a Standstill Agreement. This Agreement is not before us. As a matter of fact, when the learned counsel who appeared on behalf of the petitioners called upon the learned Advocate General to produce it, he expressed his inability to produce it on the ground that it was not with him. All that we were referred to was the form of the Standstill Agreement, which would be found in the Constitution of Dominion of India, by Messrs. Murthy and Padmanabhan at page-316. It would appear from that Agreement that the Acceding States have generally agreed that till other arrangements were made, the existing agreements and arrangements between the State on the one hand and the Government of India on the other will continue. We are concerned in this case with the Standstill Agreement arrived at between an Acceding State and the Dominion. What would be the position in case such an Agreement was arrived by the Government of India and the State which has not acceded has not to be determined by us. So far as the Acceding States are concerned, it is obvious that the purpose of the Standstill Agreement was to preserve the status quo in regard to matters which did not fall within the purview of the subjects or matters in regard to which the States were acceding. In regard to those matters, the Dominion Legislature has power to make laws, and the Dominion Government would have executive authority in the State if a Dominion law so provided. It was unnecessary, therefore, to have any arrangement between the State on the one hand and the Dominion Government on the other in regard to those matters. The learned Advocate General, who appears for the Crown, has contended that because of the Standstill Agreement the former treaties between the Baroda Government and either the East India Company or the Crown continued, and because of the agreement the foreign affairs of the Baroda Government were to be carried on by the Government of India. We think that the foreign affairs of the Baroda Government were indeed to be carried on by the Dominion of India, but that was because of the accession and not because of any previous arrangements. But even if that is not so, and the treaties between the Baroda Government and the Government of India remained in force because of the Standstill Agreement after 15th August 1947, our attention has not been drawn to any treaty which provides

in terms that the State or the Ruler would not have any authority to confer the status of the Baroda State subject upon any person. This is not a question merely of carrying on the foreign affairs of the State. The question has obviously got a bearing upon the internal administration of the State because the conferment of the status of a State subject will confer upon the person concerned certain rights in the State. The learned Advocate General points in this connection to the order issued by the Crown Representative which I have referred to above. But that order, in so far as it was issued because of the doctrine of paramountcy, lapsed upon the cessation of the paramountcy. The learned Advocate General contends that paramountcy, as a matter of fact, did not lapse on 15th August, because of the Standstill Agreement. In our view, this contention is not maintainable, because of the last clause of the Agreement itself, which provides that nothing in this Agreement includes the exercise of any paramountcy functions. That would also appear to be the case from the term of the instrument of accession, which provided that nothing in the instrument shall affect the continuance of the Ruler's Sovereignty in and over the State. It is contended, however, that the order of the Crown Representative must have been obeyed, and if it was obeyed, then in that case, it could be said that an arrangement between the State on the one hand and the Dominion of India on the other was arrived at which was continued by the Standstill Agreement. We are not prepared to take the order which lapsed and the obedience of which was compulsory upon the Ruler, because it was an order of a representative of a suzerain power to be an arrangement which was continued by the Stand-still Agreement.

17. No term of a treaty was pointed out to us which would justify the order which was issued by the Crown Representative. We must, therefore, take that the order was passed in exercise of the paramountcy function, and when paramountcy lapsed, the order also lapsed.

18. I shall now go to the question as to whether Mr. and Mrs. Raab have ceased to be Baroda State subjects because of what happened thereafter. What happened apparently after the date of the order is that the Government of India appeared to have insisted that the Baroda State should hand over Mr. and Mrs. Raab whose deportation they were contemplating. It appears from Ex. E, the note of the

Dewan, which was agreed to by His Highness the Maharaja, that the Baroda Government thought it inadvisable to raise a dispute with the Government of India over the matter of Mr. Raab in view of far more important questions which were then pending between the two Governments. They, therefore, appear to have passed an order under some law which was applicable in the Baroda State arresting Mr. Raab, and after he was arrested, they handed him over to the police who went to Baroda to take charge of him. That presumably also happened in the case of Mrs. Raab. Now, the learned Advocate-General contends that this order had the effect of taking away from Mr. and Mrs. Raab the status of the subjects of the Baroda State which was conferred upon him by the Maharaja. There is no argument addressed to us as to whether a status which was once conferred could be taken away, even though it was conferred by an executive authority; and we do not think it necessary to go into that question, because, in our view, the document which is relied upon on behalf of the Crown does not show that His Highness, the Maharaja, cancelled the previous order or did anything which had the effect of cancelling the order. That neither the order nor the subsequent action expressly took away from Mr. and Mrs. Raab what was given to them is not in dispute. What is contended is that this order agreeing with the note of the Dewan together with the conduct of the Baroda Government subsequently in arresting and handing over Mr. and Mrs. Raab to the Indian police showed by necessary implication that the order of 8th November was cancelled. Now, if we were but satisfied that the order could not have been passed, or Mr. and Mrs. Raab could not have been handed over, unless the previous order was cancelled, then it may be open to us to say that they have lost the status which they obtained; but we do not understand how, in the face of the note which is relied upon on behalf of the Crown itself, we can possibly say that the necessary implication of the note and the subsequent action in arresting and handing over Mr. and Mrs. Raab was taking away the status of a Baroda State subject from them. The note sup-gests that the Baroda Government's view was different. They were not bound to hand over Mr. and Mrs. Raab. But then it says in effect that in view of the fact that there were several other considerations which the Baroda Government considered so important, it was futile to raise a dispute over what the Dewan thought was an insignificant matter of the handing over of Mr. Raab. The action was guided by

political considerations and no consideration of whether there were any reasons made out why that status should be taken away. In our view, therefore, it could not possibly be held that the note or the subsequent action of the Baroda authorities in handing over Mr. and Mrs. Raab to the Indian police had the effect of cancelling the previous order or the taking away of the status of the subject of the Baroda State.

19. I shall now revert to certain arguments which are addressed to us upon the question of certain Baroda judgments which were tendered into evidence at the time when evidence was being first led. At that moment we called upon the learned Advocate-General who tendered these judgments to show to us how they were relevant under the provisions of the Evidence Act. Sections 41 and 11, Evidence Act and Section 13, Civil P. C. were mentioned to us. Section 41 has obviously got no application; nor has Section 13, Civil P. C., because the judgment is not inter partes. Section 11, Evidence Act which was mentioned was also not, in our view, applicable, because if we were to concede that a judgment renders highly probable or improbable what was found by it, no judgment would ever be rendered irrelevant provided the subject-matter of the judgment was relevant to the matter in issue. Today, however, the learned Advocate-General has addressed to us certain arguments both in order to show that the judgments of the Baroda State are relevant, and, secondly, to show that they are binding upon us. We have heard him upon those contentions, and we have come to the conclusion that those judgments are neither binding nor as a matter of fact they are relevant, and it would be convenient to state our reasons for so holding. We have not seen these judgments; but we understand that they decided that Mr. and Mrs. Raab were no longer Baroda subjects. We are also given to understand that these judgments were delivered by the Baroda Court upon an application under the provisions corresponding to Section 491, Criminal P. C. and in appeal or revision from the orders passed upon that application. Any way it is conceded that the orders were not passed by the Courts in the exercise of the jurisdiction which has been mentioned in Section 41, Evidence Act. Section 41, Evidence Act, has therefore, no application, and the judgments are not relevant under the provisions of Section 41. It has been argued before us, however, that even though Section 41 may not have any application, Section 40 applies, and it is said that Section 40 applies,

because if there is in existence a judgment of the Baroda State of which Mr. and Mrs. Raab, the petitioners, claim that they are the subjects, then, in that case, the existence of such a judgment or judgments is a relevant fact, because if such a judgment exists, we will be precluded by international law from holding a trial on the question as to whether they are or they are not Baroda subjects. Now, if we assume that there is any international law owing to which the existence of such a Baroda judgment will preclude us from holding a trial on the question as to whether Mr. and Mrs. Raab are Baroda subjects, then, in our view, Section 40 would have application, and the existence of the judgment would be a relevant fact. The learned Advocate-General, who appears for the Crown, then contends that the existence of such a judgment would preclude us from trying the question as to whether Mr. and Mr. Raab are Baroda subjects and in support of this contention, he relies, in the first instance, upon a judgment of this Court which was subsequently followed in Madras which is to be found in *Menahem Mesha v. Moses Messa* I. L. R. (1938) Bom. 529 : A.I.R. 1938 Bom. 394. Then, he relies upon a passage from *Westlake's Private International Law*, Edn. 7, 1925, p. 391, and finally he relies upon *Dicey's Conflict of Laws*, Edn. 4, 1927, p. 450, footnote (g). Now, in the case of this Court relied upon, Sir John Beaumont, who delivered the principal judgment, observed at p. 627 that where the Court of a State gives a judgment affecting the status of a person domiciled within its territory, such judgment is treated by the comity of nations as analogous to a judgment in rem, and as binding all the world over. The learned Advocate-General contends that in this case if a Court of the Baroda State has given a judgment which says that he is not a Baroda State subject then such judgment affects the status of a person and such judgment must be treated by the comity of nations as analogous to a judgment in rem and binding all the world over. Now, if this is to be taken as a correct statement of the law, before the judgment could be held to be binding, and, therefore, relevant, it must be shown that this is a judgment regarding the status of a person who was domiciled within the territory of the State to which the Court belonged; that means, it must be shown that Mr. and Mrs. Raab were domiciled in the Baroda State. That is not a question upon which there would be any difficulty because the petitioners led evidence that Mr. Raab had expressed his intention of residing permanently in Baroda : but even though Sir John Beaumont laid down

this proposition as one which would justify the decision of the case before him, that case was not a case of nationality. He relied in support of that principle on the cases of *Doglioni v. Crisping* (1866) L. R. 1 H. L. 301 : 35 L. J. p. 129 ; *Shaw v. Gould* (1868) L. R. 3 H. L. 55: 37 L. J. Ch. 433; *Castrique v. Imrie* (1869) L. R. 4 H. L. 414 : 39 L. J. C. P. 360. In *re Trufort: Trafford v. Blanc* (1887) 36 Ch. D. 600; *Ewing v. Orr Ewing* (1885) 10 A. c. 453 : 53 L. T. 826 and *Concha v. Concha* (1886) 11 A. C. 541 : 56 L. J. Ch. 257, Now, we have read all these cases except one, i.e., *Castrique v. Imrie* (1869) L. R. 4 H. L. 414 : 39 L. J. C. P. 350, which has not been available to us, and the learned Advocate General has conceded that as far as the question before us is concerned, they themselves do not state anything which is of authority. It is undoubtedly true that a principle analogous to that which Sir John Beaumont stated at p. 627 of the case mentioned above has been applied in these cases, but they were concerned with orders of a probate or matrimonial Court, or to the effects of a deceased person or, where cases in which the title of a person who was domiciled within a particular territory was pronounced upon by a Court in that territory, It does not appear to us, therefore, that those cases afford any particular guidance which would be of value to us in deciding the question before us. But the one case upon which he relies, though we have not been able to secure its report and which supports him is the case of *Schlesinger v. The Administrator of Hungarian Property* (1923) L. J. News 254, Russell. It is quoted at p. 395 of *Westlake's Private International Law*, 7th Edition. The case is quoted as an authority for the proposition which Westlake mentions in these terms:

'The English Court will recognise the decision as to the nationality of a foreign person given by the Court of which he was a national. It is a judgment in rem which cannot be questioned in another jurisdiction.'

Now, in the absence of the original report, we assume for the purpose of argument that the judgment decides what Westlake states in para. 313A of his book at p. 395; but before that principle could be applied and before it could be said that the judgment of the Baroda Court is relevant under Section 40, it must be shown that the decision was as to the nationality of a foreign person given by the Court of which he was a national. Now, it is not disputed that Mr. and Mrs. Raab, upon their own admission, were nationals of the Baroda State, the Court of which has given

judgments stating that they are not Baroda State subjects ; but before it could be said that this is a judgment in rem, which cannot be questioned in another jurisdiction, it must be shown that the judgment, was as to the nationality of a foreign person. We do not understand a foreign person when it is referred to in this connection as the equivalent of a foreigner as defined in the Foreigners Act. We understand the words 'Foreign person' in its dictionary sense. The question as to whether a person is a foreigner or not has got to be determined with reference to the Court which it is said is bound by the judgment relied upon. It must be shown before we say that the judgment is binding and therefore admissible under Section 40. Evidence Act, that so far as this Court is concerned, Mr. and Mrs. Raab are foreign persons. Now, our findings so far have been that they are the subjects of the Baroda State. That is upon the evidence which is before us, and it is obvious that the question as to whether a person. is a foreign person being a condition precedent of the judgment being binding and the judgment being relevant, we must first decide upon the question as to whether Mr. and Mrs. Raab are or are not foreign persons. Now, if Mr. and Mrs. Raab are the subjects of Baroda State, then it cannot possibly be said that they are foreign persons so far as this Court is concerned. Baroda is now an Acceding State. It is a part of the Indian Dominion. Every person who is a subject of the Baroda State is, therefore, now a subject of the Indian Dominion, and this Court could not possibly say that the subject of the Indian Dominion is a foreign person for the purpose of the principle which is relied upon on behalf of the Crown. In that case, the judgment is not binding, and consequently it will not prevent the trial of the issue of the question as to whether Mr. and Mrs. Raab are not foreigners within the meaning of that term as defined in the Foreigners Act. As they are Baroda State subjects and therefore not foreigners within the dictionary meaning of the term, the judgment is not relevant under Section 40.

20. It is said, however, that the Evidence Act is not exhaustive, and a document or evidence may be relevant even though it cannot be brought within the four corners of any of the sections of the Evidence Act. That may be; but in that case it is necessary to show that the document which is relied upon is relevant upon some principle which this Court will accept. We called upon the learned Advocate-General to show to us that even if this document is not relevant under the

provisions of the Evidence Act, it will be considered relevant by the law of evidence in England, and he has not been able to show to us any authority for saying that under the law of evidence as it applies in England this judgment would be relevant upon the evidence of the status of Mr. and Mrs. Raab. We must, therefore, hold that the judgments of the Baroda Court are not relevant. We have already said that they are not binding.

21. That being so, the rule must be made absolute, and the bail bonds which have been given by Mr. and Mrs. Raab should be cancelled. Crown will pay the costs of Mr. and Mrs. Raab, Certificate to appeal to the Federal Court granted.

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