first hours of the opening of the Court and the order on his application was passed so late in the day that he could not make the deposit in the Treasury on that day, and

(b) whether the tenant-defendant had the amount in Court on October 1, 1955, and was immediately ready and willing to deposit the amount had he not been delayed because the Court did not pass an order for the deposit within time,

and having obtained the findings on these matters, the appellate Court will then proceed to dispose of the appeal of the plaintiff in the light of what has been said above. There is no order as to costs in the revision petition.

*K.S.K.*

FULL BENCH

*Before Bishan Narain, Chopra and Gosain, JJ.*

FIRM GAURI LAL GURDEV DAS,—*Appellants*

*versus*

JUGAL KISHORE SHARMA AND ANOTHER,—*Respondents*

**E.S.A. 14-P of 1954.**

1958

Jan., 16th

*Code of Civil Procedurt (V of 1908)—Sections 2(5), 2(6) and 13(a)—Foreign judgments—Judgments rendered by Courts of Part A States after the coming into force of the Constitution and before the applicability of the Indian Code of Civil Procedure to Part B States—Whether foreign judgments—Law applicable thereto—Such judgments—Whether can be enforced in Part B States by execution—Judgment-debtor—Whether entitled to object to execution on ground of lack of jurisdiction in the Court passing the decree—Section 13—Whether applicable to execution proceedings—Constitution of India (1950)—Article 261(1) and (2)—Scope of—Full faith and credit clause—Meaning and*

*Scope of—Whether precludes judgment-debtor from raising objection on ground of lack of jurisdiction—Article 261(3)—"According to law"—Meaning of—Interpretation of Statutes—Object and intention of Statute—Rule for determination of.*

The decree-holder obtained an *ex parte* decree on the 24th January, 1951, from the Court of the Munsif at Asansol, District Burdwan in the State of West Bengal against the judgment-debtors who were residents of Khanna Mandi, District Ludhiana, in the State of Punjab. The decree was sought to be executed in a Court in the district of Kapurthala in Pepsu. The judgment-debtors objected to the execution of the decree on the ground that Asansol Court had no territorial jurisdiction to entertain the suit and pass the decree and that they had not submitted to the jurisdiction of Asansol Court which was in law a foreign Court. The lower Courts held that these objections could not be entertained in execution proceedings. The judgment-debtors appealed to the High Court.

*Held,* by majority (Bishan Narain and Chopra, JJ.).—

(1) That the law applicable in the present case is one that was in force during January, 1951, when the decree in question was passed and whether the decree is the decree of the foreign Court is to be seen with reference to that law.

(2) That according to sections 2(5) and 2(6) of the Code of Civil Procedure in force in the Patiala and East Punjab States Union on its integration in 1948, the judgments of the Courts of Dominion of India were foreign judgments when sought to be enforced in that Union and they could be enforced only as foreign judgments subject to the previsions of section 13 of the said Code. At that time the Patiala and East Punjab States Union was still an independent sovereign State and the Dominion of India could not legislate on any matters relating to the internal administration of the Union and any law, even if it had been enacted, would not have been effective in that territory. This law of the Pepsu State continued to remain in force even after the commencement of the Constitution which recognises the well-known principle that the pre-existing laws of various component States continue to remain in force till a uniform law is enforced by legislation.

(3) That as a result of the Adaptation of Laws Orders 1950, issued by the President on the 26th January, 1950, a decree passed by Courts in Part B States were to be considered as "foreign judgments" in Part A and Part C States and were consequently to be enforced subject to section 13 of the Code. Similarly the decrees passed in Part A and Part C States during January, 1951, must be considered foreign decrees in Pepsu State and under section 43 of the Code could be enforced in Pepsu Courts only in accordance with the statutory provisions in force there, i.e., section 13 of the Code and under those provisions it was open to the judgment-debtors to challenge the competency of the decreeing Court to pass the decree in question. Formerly such decrees could be enforced by suits only but now under the statutory and constitutional provisions this can be done by an application for execution. The provisions of section 13 of the Code are as applicable to suits as to execution proceedings.

(4) *Held,* that the rules of Private International Law are subject to legislative enactments and must yield to them.

(5) *Held,* that the provisions of Article 261(1) and (2) of the Constitution are collectively called "full faith and credit" clause. Article 261(1) merely establishes a rule of evidence and does not deal with jurisdiction. Sub-clause (2) empowers the Parliament to lay down the rule of evidence and also the effect of the acts, records and judicial proceedings by legislation. This clause is not an absolute and unqualified constitutional command but it authorises the Parliament to legislate on the subject. Our Constitution creates legal units with exclusive jurisdiction to legislate on certain matters and this "full faith and credit" clause cannot be so construed as to compel one State to yield its own law and policy concerning its exclusive affairs to the laws and policies of the other States. This clause cannot be used to control the laws of one State by those of another State either directly or through judgments.

(6) *Held,* that there is nothing in our Constitution to compel the Parliament or a State Legislature to refrain from legislating as to how and subject to what conditions a judgment pronounced in one State is to be enforced in another State. In fact under Article 261(2) this power is specifically given to the Parliament and each State enjoys

this power under items 12 and 13 of the concurrent list. The provisions of section 13(a) of the Code of Civil Procedure, which lays down that a foreign judgment shall be conclusive as to any matter directly decided by it, comply with the "full faith and credit" clause. Section 13(a), however, further lays down that such a decision shall not be conclusive if the Court rendering the judgment was not competent to do so. The "full faith and credit" clause is not applicable to an objection of this type which relates to jurisdiction of the Court giving the judgment. A decree though effective according to its tenor within the State where it is passed can be refused complete and absolute recognition in other States on the ground of lack of jurisdiction.

(7) That the statutory provisions contained in Section 13(a) of the Code of Civil Procedure as was in force in the Patiala and East Punjab States Union at the time the decree was passed cannot be said to be in conflict with Article 261(1) and (2) of the Constitution and it is open to the executing Court to examine under section 13(a) of the Code whether the Court decreeing the suit was or was not competent to pronounce the judgment on the date that it did.

*Held*, per Gosain, J.—

(1) That the judgment-debtors cannot be allowed to raise objections against executability of the decree on the ground that it was a nullity because he (the defendant) had not submitted to the jurisdiction of the Court passing the same.

(2) That the definition of "foreign Court" as given in the Civil Procedure Code applicable to Pepsu is subservient to the provisions in the Constitution of India, namely Article 5, which confers on all the persons residing in India the right of citizenship of India, and clause (3) of Article 261 by which final judgments or orders delivered or passed by Civil Courts in any part of the territory of India are made capable of execution anywhere within that territory, i.e., the definition of "foreign Court" must to the extent of its repugnancy to the provisions referred to above be held inoperative and of no effect.

(3) That section 20(c) of the Civil Procedure Code is a special legislation and has empowered the Courts in

British India to entertain the suits against absentee foreigners, where cause of action has accrued in the limits of their territorial jurisdictions. Any judgment pronounced by any such Court is not and cannot be treated as an absolute nullity. The judgment is enforceable at least in the country of the Court where it was passed. It is a nullity only from the point of view of international law and only in particular circumstances. On the 26th of January, 1950, the Indian Constitution came into force and the States which were hitherto only acceding States became part and parcel of the territories of India. The subjects of those States became on this date the citizens of India along with those who were at one time the subjects of British India. The laws in force in those States were allowed to remain in force by virtue of express provisions contained in Articles 372 and 375 of the Constitution of India. The fact that the different laws in force in different States were continued and the Courts in the country administered them cannot possibly militate against the principle of a common sovereignty and there is no scope under these circumstances for applying the principles of international law as between the States in question. The States cannot be deemed *qua* each other, "foreign States" so as to attract the applicability of the rules of International Law having regard to the definition of "Foreign State" in clause 3 of Article 367 of the Constitution. The Constitution does not make the various component parts of the Union as independent States in the international sense of the word and the various features of the Constitution which provide for cohesion and co-ordination of the States and of the supremacy of the Centre suggest that the States are not foreign to each other so as to enable the rules of conflict of laws to be applied to the judgment of one State in the other.

(4) That the execution in the case was applied for after the 1st of April, 1951, that is, when the Code of Civil Procedure as applicable to India had become applicable also to the erstwhile Pepsu State and the impediment, if any, in the way of execution had thus been removed.

(5) That the various amendments made by the Legislature in sections 43 and 44 of the Code of Civil Procedure from time to time after the enforcement of the Constitution and the ultimate decision of the Legislature to apply the Code of Civil Procedure of India to the entire territories of all the States whether Part A, B or C suggest that

the intention of the Legislature has obviously been to enable the decrees of one State to be executed in other States.

(6) That the plea regarding want of territorial jurisdiction has to be raised in the Court itself and on the principle of section 21 of the Civil Procedure Code, it cannot be allowed to be raised at any subsequent time. It does not amount to a lack of inherent jurisdiction in Court and decree passed by a Court cannot be assailed in executing Court on the ground that the Court passing the same had no territorial jurisdiction to pass it. The point of territorial jurisdiction can only be decided on evidence and the law provides that the objection must be taken in the Court itself which can decide it after recording evidence of the parties.

(7) That the rules of private international law cannot possibly be made applicable to the decrees of Court of one state of India *qua* Courts of another State of India if they have been passed after the 26th of January 1950.

(8) The words "according to law" in Article 261(3) of the Constitution only mean that the execution shall proceed in accordance with law in force in the territory where the execution is sought, that is, the *lex fori* has been made applicable to the matters of execution. The words "according to law" cannot possibly mean that the Courts in the territory in which execution is sought will be entitled to declare the decree a nullity so as to be altogether inexecutable.

(9) That it is a well-known canon of interpretation of Statutes that in determining either the general object of the legislation or the meaning of its language in any particular passage the intention which appears to be most in accord with convenience, reason, justice and legal principles should in all cases of doubtful nature be presumed to be the true one. An interpretation which causes inconvenience and hardship is always to be avoided.

*Case referred by Hon'ble Mr. Justice Mehar Singh, on the 21st December, 1955, to a Full Bench for opinion on the legal point involved in the case and later on decided by the Full Bench consisting of Hon'ble Mr. Justice Bishan Narain, Hon'ble Mr. Justice G. L. Chopra, and Hon'ble Mr. Justice Gosain, on 16th January, 1958.*

*Execution Second Appeal from the order of Shri S. L. Chopra, District Judge, Kapurthala, camp at Fatehgarh Sahib dated the 28th April, 1954, affirming that of Shri Saroop Chand, Sub-Judge, II Class, Amloh dated the 16th November, 1953, holding that the application of decree-holder is competent.*

D. C. GUPTA for Appellants.
D. S. NEHRA, and ATMA RAM for Respondents.

JUDGMENT

Bishan Narain, J.

BISHAN NARAIN, J.—These two appeals (E.S.A. 14 of 1954 and E.S.A. 25 of 1954) involve same questions of law which have been referred to this Full Bench and it will be convenient to decide them by this judgment.

The facts leading to Execution Second Appeal No. 14 of 1954, are these. Jugal Kishore etc., filed a suit for the recovery of Rs. 1,100 against Gauri Shanker, etc., in the Court of the Munsif of Asansol, District Burdwan (State of West Bengal). This suit was for the refund of advance made to the defendants for supply of goods and also for compensation. The plaintiffs on the 24th January, 1951, obtained an *ex parte* decree for the entire amount claimed by them. The decree-holders are residents of Asansol while the judgment-debtors are shown in the decree-sheet as residents of Khanna Mandi, District Ludhiana (State of Punjab). Apparently the judgment-debtors own property within the jurisdiction of Payal Court (Pepsu State). The decree-holders obtained a certificate in 1953, under Order 21 Rule 6, Civil Procedure Code, and the necessary papers were sent to the District Judge, Kapurthala (Pepsu) for execution. The decree-holders then applied to the Payal Court for execution on the 7th October, 1953. The judgment-debtors objected to the execution of the decree *inter alia* on the

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ground that Asansol Court had no territorial jurisdiction to entertain the suit as neither did the defendants reside within its jurisdiction nor did any part of the cause of action accrue there. The judgment-debtors also pleaded in this petition that they had not submitted to the jurisdiction of the Asansol Court which was in law a foreign Court. The executing Court held that these objections could not be entertained in execution proceedings and rejected them without going into the merits. This decision was upheld by the District Judge, Kapurthala. The judgment-debtors' appeal to the erstwhile Pepsu High Court came up for hearing before Mehar Singh J. who in view of the importance of the questions of law involved referred the case to a Full Bench. It has now come up before us for decision.

The facts leading to Execution Second Appeal No. 25 of 1954, are these. In September, 1950, Charanji Lal filed a suit for damages for breach of a contract, dated the 22nd March, 1950, against the appellants (Kunji Lal Brij Lal) in the Court of Sub-Judge, Puri (Orissa State). The plaintiff is a resident of Puri while the defendants are residents of Kot Kapura (Pepsu State). The Sub-Judge passed an *ex parte* decree for Rs. 1,905-10-0 on the 17th January, 1951. The decree-holder then in due course obtained a transfer certificate and on the 3rd October, 1953, applied for execution of the decree in the Court of Sub-Judge, Faridkot (Pepsu State). The judgment-debtors raised objections of the nature filed in the previous case. These objections were also dismissed and ultimately their appeal before the erstwhile Pepsu High Court was also referred to a Full Bench.

Both the decrees in question are post-Constitution decrees, i.e., they were obtained after

the 26th January, 1950. Both the decrees are *ex-parte* decrees and were passed by Courts in Part A States and are being executed in Pepsu State (Part B State). The defendants in both the decrees are shown as residents out of the territorial jurisdiction of Courts that passed these decrees. Both the decrees are *in personam*. The question arises whether the judgments of these Courts (in Part A States) can be considered to be foreign judgments when they are sought to be enforced in the Pepsu State.

To determine this question it is first necessary to find out the law which would be applicable to these decrees and to the execution applications filed to enforce them. The decree-holders' case is that the law in force on the date when the execution applications were made would be applicable while the judgment-debtors' case is that the law in force on the date when these decrees were passed should apply. There is a conflict of decisions on this point but the Full Bench of our High Court in *Messrs Radhe Sham Roshan Lal* v. *Messrs Kundan Lal Mohan Lal* (1), has held that the law in force on the date the decree was passed is to be taken into consideration. It was observed by Khosla, J., in this judgment—

> "In order to determine whether a certain decree is or is not the decree of a foreign Court we have to determine its nature at the time of its birth and not at some subsequent date." * * * *
> The right to execute a decree and the right to raise an objection to a decree are substantive rights. The right of the judgment-debtor to plead that a certain decree is a nullity cannot by

(1) 1956 P.L.R. 270.

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any stretch of meaning be described as a procedural matter. It is a vested right in the judgment-debtor and it cannot be taken away by a provision of law which is not retroactive. On the date the decree was passed the judgment-debtor could have raised the objection that the decree was a nullity because it was a decree of a foreign Court. Any subsequent change in the law could not take away that right. The right which had accrued to the judgment-debtor continued after the law was changed and the old provisions were repealed."

I am, as in that case, in respectful agreement with these observations. This conclusion is in consonance with the principle stated by the Supreme Court in *Kiran Singh and others* v. *Chaman Paswan and others* (1). This principle is stated thus—

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

It, therefore, follows that the law applicable in the present case is one that was in force during

(1) A.I.R. 1954 S.C. 340.

January, 1951, when the decrees in question were passed and it is to be seen if at that time these decrees which are now being sought to be executed were foreign decrees of Faridkot and Kapurthala or they are to be considered as domestic decrees. (In this judgment the words "decree" and "judgment" have been used interchangeably). The leading decision in this matter is a decision of the Privy Council in *Gurdyal Singh* v. *Raja of Faridkot* (1). In this case the Judicial Committee held that as the Faridkot State was autonomous in internal administration and in the establishment of Courts of Justice, its Courts *vis a vis* the then British Indian Courts were foreign Courts and the judgments involved in that case could be enforced only on the principles of Private International Law. In the course of this judgment their Lordships laid down this principle in these terms—

> "Under these circumstances, there was, in their Lordships' opinion, nothing to take this case out of the general rule, that the plaintiff must sue in the Court to which the defendant is subject at the time of the suit (*'Actor sequitur forum rei'*), which is rightly stated by Sir Robert Phillimore, (International law, volume 4 section 891) to 'lie at the root of all international, and or most domestic, jurisprudence on this matter'. All jurisdiction is properly territorial, and "*extra territorium jus dicenti impune non-paretur.* "Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory, while they are within it; * * * * It exists always as to land within the

(1) I.L.R. 22 Cal. 222.

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territory, and it may be exercised over moveables within the territory; and, in questions of *status* or succession governed by domicile, it may exist as to persons domiciled, or who when living were domiciled, within the territory. As between different provinces under one sovereignty (e.g., under the Roman Empire) the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign Court ought to recognize against foreigners who owe no allegiance or obedience to the Power which so legislates. In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced *in absentem* by a Foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by International Law an absolute nullity. He is under no obligation of any kind to obey it, and it must be regarded as a mere nullity by the Courts of every nation, except (when authorised by special local legislation) in the country of the forum by which it was pronounced."

It is to be observed that in this judgment it is laid down that the ordinary rule is that all jurisdiction is purely territorial and that as between different provinces under one sovereignty the legislation of the sovereign may distribute and regulate jurisdiction.

It is common ground between the parties that the decision of the Privy Council in the

above-mentioned case fully applies to the Punjab "Native States", namely, Patiala, Jind, Nabha, Kapurthala, etc., and that all these States must be held to be foreign States *vis-a-vis* the then British India. It is further agreed that this position in these States did not change even after the introduction 1935/1950 Constitution. In 1947, the British Parliament enacted the Indian Independence Act. By this Act Dominions of India and Pakistan were established. Under section 7, the British Government surrendered all responsibility as regards the Government of "British India" and allowed all its functions with respect to Indian States, i.e., paramountcy to lapse. It is to be noted that these functions were not transferred to the Indian Dominion. It follows that these Indian States did not after the Independence Act at least cease to be foreign States *vis-a-vis* the Indian Dominion whatever status they may otherwise have had. All the Punjab States on the Indian side then acceded to India and became part of the Dominion of India. These States when acceding to the Dominion of India maintained their autonomy in internal administration including the establishment of Courts of justice. These Punjab States then by agreement integrated into Patiala and East Punjab States Union. The treaty of integration was signed on 5th May, 1948. The covenanting States agreed between themselves that the laws then in force in the Patiala State would be *mutatis mutandis* in force in the said Union.

At the time when the Privy Council decided the case of Raja of Faridkot a procedure relating to civil matters resembling in principle that of British India was in force in Faridkot State. Similar was the position in the Patiala State where some time after 1908 the Civil Proceedings were

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regulated in practice by the provisions of the Code of Civil Procedure, 1908, of "British India". On the 15th October, 1940, the Maharaja of Patiala issued a notification whereby the Code of Civil Procedure (Act V of 1908, of British India) as subsequently amended from time to time was put in force in that State with the *mutatis mutandis* provision. Thus on the creation of Patiala and East Punjab States Union, the Civil Procedure Code, 1908, with *mutatis mutandis* clause became applicable to the entire Union under the integration covenant and thus it became operative in the territories that once formed part of the Kapurthala and Faridkot States and of course, with necessary modifications. Now in 1948, at the time of Integration of the Punjab Native States the Indian Civil Procedure Code defined foreign judgments,—*vide* section 2(5) and section 2(6); and by section 13 the conditions on which the judgments were to be enforced were laid down. With the necessary changes these provisions had the effect of all judgments of the Courts of the Dominion of India being treated as foreign judgments when sought to be enforced in the Patiala and East Punjab States Union and they could be enforced only as foreign judgments subject to the provisions of section 13, Civil Procedure Code, as in force in the Pepsu State. It must be remembered that at that time the Patiala and East Punjab States Union was still an independent sovereign State and the Dominion of India could not legislate on any matters relating to the internal administration of the Union and any law, even if it had been enacted, would not have been effective in that territory. This conclusion cannot be seriously challenged, and it is in accord with the decision of this Court in *Messrs Radhe Sham Roshan Lal* v. *Messrs Kundan Lal Mohan Lal* (1).

(1) 1956 P.L.R. 270.

Then on the 26th January, 1950, our Constitution came into force. The decree-holders' case is that our Constitution has clearly altered the legal position in this respect and that it is incorrect to consider a judgment of any Court situated in any part of India as a foreign judgment when it is sought to be enforced in any other part of the country. It is contended that the Asansol and the Orissa Courts (Part A State) and Courts in Pepsu area (Part B State) being within the territory of India, their decrees must be considered to be domestic decrees and enforceable as such. It is also argued, that in any case, the Pepsu Courts are under an obligation under the "full faith and credit" provisions of the Constitution (Article 261) to enforce these decrees according to their tenor wherever passed within India and that if there is any statutory provision in force in the Pepsu State which can be said to enable its Courts to investigate into the competency of the Court passing the decree then to that extent it is in conflict with Article 261 of the Constitution and must yield to it. It is not disputed that the provisions of section 13 are as applicable to suits as to execution proceedings. It may be stated here that in the present judgment we are concerned with the applicability of section 13(a) of the Civil Procedure Code only and not with other such clauses of this section.

Before examining these contentions it will be convenient to determine the statutory provisions which were in force during January, 1951, when the decrees in question were passed.

Since the commencement of the Constitution our country is a Union of States. The States and their territories are specified in the First Schedule. Broadly speaking, the previous provinces of British India are specified as Part A and Part C

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States while Pepsu and other integrated States similarly circumstanced are specified as Part B States. All persons who are domiciled in the territories of India are citizens of India (Article 5). The Constitution deals with relations between the Union and the States in Part XI. Article 245 lays down the territorial limits of the Union and the State Legislatures relating to legislative functions. The Parliament can make rules for part or the whole of India while a State Legislature can legislate only for the whole or part of the territory of the State. Article 246 deals with distribution of legislative powers. These powers have been divided and enumerated in three lists given in Schedule VII of the Constitution. Under these lists the Parliament has exclusive powers to legislate on matters enumerated in the Union List (List I) while the State Legislatures have similar exclusive powers on matters enumerated in the State List (List II). Both the Parliament and the State Legislatures can legislate on matters enumerated in the Concurrent List (List III). As far as the Concurrent List is concerned the provisions of law made by the Parliament will prevail over the provisions of a State Law if there is any inconsistency between the two. Now the subject of administration of justice is within the exclusive jurisdiction of the State Legislature (Item 3 of State List). Items 12 and 13 of the Concurrent List read—

> "12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
>
> 13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this constitution, limitation and arbitration."

Now at the commencement of our Constitution the Civil Procedure Code, contained the definition of "foreign judgments" and "foreign courts" and section 13 of the Code laid down the manner in which "foreign judgments" are to be enforced. It follows that it is open to a State Legislature to define "foreign judgments" and how they are to be enforced within its State subject to any legislation by the Parliament.

Now, I have already found that in the Pepsu State just before the Constitution, judgment passed in territories now forming Part A States would be considered to be foreign judgments which could be enforced subject to section 13 of the Code of Civil Procedure as in force there. Article 372(1) lays down that all existing laws shall continue in force until altered or repealed. It may be mentioned here that this Article merely recognises the well-known principle that the pre-existing laws of various component States continue to remain in force till a uniform law is enforced by legislation (*vide Shiv Bahadur Singh* v. *State of Vindhya Pradesh* (1). Thus this law of the Pepsu State continued to remain in force even after the commencement of the Constitution. Article 372(2) empowers the President to adapt all laws to bring them in accordance with the Constitution. Accordingly, the President issued Adaptation Order on the 26th January, 1950, adapting various laws, but in this Order no adaptation has been made of any laws then in existence in Pepsu State. On the other hand, the Civil Procedure Code, 1908 (Central Act) was so adapted as to exclude its application to Part B States by amending its section 1(3). The Adaptation Order also altered the definition of "foreign

(1) A.I.R. 1953 S.C. 394.

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Courts [section 2(5)] and, therefore, introduced a new clause in section 2(21) defining "State". The new clause numbered as 21 reads—

> "'State' means a Part A State or a Part C State, and 'States' means all the territories for the time being comprised within Part A States and Part C States."

Section 2(5) defines a "foreign Court" as meaning a Court situate beyond the limits of a State which has no authority in the States and is not established or continued by the Central Government. The result of these adaptations was that a decree passed by Courts in Part B States were to be considered as "foreign judgments" in Part A and Part C States and were consequently to be enforced subject to section 13 of the Code. Section 43 of the Code of Civil Procedure was also adapted by the Adaptation of Laws (Amendment) order, 1950, but with retrospective effect from the 26th January, 1950. The adapted section 43 reads—

> "Any decree passed by—
>
> (a) a civil Court in a Part B State, or
>
> (b) a civil Court in any area within Part A State or within Part C State to which the provisions relating to execution do not extend, or
>
> (c) * * * * *
>
> may, if it cannot be executed within the jurisdiction of the Court by which it was passed be executed in manner herein provided within the jurisdiction of any Court in the States."

If all the adaptations are applied with *mutatis mutandis* clause to the Pepsu Code of Civil Procedure, then it follows that decrees passed in Part

A and Part C States, would be considered foreign decrees in Pepsu State and under section 43 they would be executed in Pepsu State subject to section 13 of the Code. The result is that any decree passed in Part A and Part C States, during January, 1951, can be enforced in Pepsu Courts only in accordance with statutory provisions in force there and under those provisions it is open to the judgment-debtors concerned to challenge the competency of decreeing Court to pass the decrees in question. Formerly such decrees could be enfocred by suits only but now under the statutory and constitutional provisions this can be done by an application for execution.

I may mention here that the Parliament passed Acts I, II and III of 1951, by which the Criminal Procedure Code, Civil Procedure Code and some other Central Acts were extended to Part B States. By Act II of 1951, the Civil Procedure Code (Central Act) was extended to Part B States. Section 1(3) was so amended as to make it applicable to Part B States. Clause 2(21) was deleted and section 43 was so amended as to make any decree passed in any part of India executable in any other part of the country. We are, however, not concerned with these amendments brought about by Act III of 1951, as this Act came into force in April, 1951, and after the passing of the decrees now under consideration. Act II of 1951, is prospective and not retrospective (*vide* section 20 of the Act) in effect. The question that now requires consideration is whether this legal position is affected by any provision in the Constitution as contended by the learned counsel for the decree-holders.

There can be no doubt that under Article 1(3) of the Constitution the Courts which passed the

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decrees in question as well as the Courts where they are sought to be enforced are within the territories of India. In my opinion, this fact by itself is not sufficient to lead to the conclusion that a decree passed in one State within India cannot be considered to be a foreign decree in another State of India. Under our Constitution, India as a Union of States is a federation though, with a strong bias in favour of a unitary Government. The Constitution, however, does not treat all the States on equal footing but treats them as separate legal units and in particular special provisions have been made for Part B States. Even in a unitary Government frequently laws throughout its territory are not identical and much less in a federation like ours where separate legislative bodies have been created in each State. The Constitution has created various legal units with specified territories to enable each unit to have exclusive legislative powers within its territories on certain subjects. It enables each State *inter alia* to legislate on matters relating to "foreign judgment" and their enforcement (*vide* items 12 and 13 of the Concurrent List). It is, therefore, open to each State to legislate that the decree passed by a Court in an area within the State should be considered to be a foreign decree in another portion of the same State and should be executed as such. This may be unusual but in some special cases such a legislation may be considered necessary and proper. Similarly, it is open to a State Legislature to enact that a decree passed by another State though within the territory of India should be treated as a "foreign decree" within its State. If the Constitution-makers did not intend to give this power to its component States, then this matter should have found place in the Union List and not in the Concurrent List. It follows that under the Constitution it is possible

for a component State to define "foreign judgments" and lay down how they are to be enforced. Article 261(2) empowers only the Parliament to determine the manner in which judicial proceedings whether of the Union or of a State are to be proved and are to be made effective while items 12 and 13 of the Concurrent List give similar power to the States. Whatever be the constitutional position, in the present case both the Central Act as well as the Pepsu Laws on this matter are consistent as discussed above and during January, 1951, judgments of Part A and Part C States must be considered to be foreign judgments when sought to be enforced in Pepsu Courts. In this view of the statutory provisions it is not necessary to discuss the common law rules of Private International Law as it is well-established that these rules are subject to legislative enactments and must yield to them (*Gurdyal Singh* v. *Raja of Faridkot* (1)].

This brings me to the other contention raised on behalf of the decree-holders. It is urged that the judgments under consideration were given between the citizens of India who as citizens of India cannot question their validity. Dicey in his well-known Treatise on "Conflict of Laws" has observed that the English Courts consider the defendant bound when he is a subject of the foreign country in which judgment against him has been obtained. This view, however, has not been considered to be correct by Cheshire in his equally well-known book on the subject. He has stated at page 788 (3rd Edition).

> "It is submitted with some confidence that nationality *per se* is not a reason which, on any principle recognised by Private

(1) I.L.R. 22 Cal. 222.

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> International Law, can justify the exercise of jurisdiction. The argument * * * * is surely out of touch with the known facts of modern life. Allegiance is all important in Public International Law, but in itself has not been a contributing element to the formation of Private International Law. * * * *
>
> Moreover, to make allegiance the basis of jurisdiction is scarcely practicable in the case of the British Empire. A British subject resident in New Zealand owes allegiance to the Crown, but that fact alone cannot render him liable on a judgment given against him in England."

Cheshire at page 780 has stated the legal position in these words—

> "If the defendant is absent from a country and has no place of business there, then whether he be a citizen or an alien, he would appear to be immune from the jurisdiction, unless he has voluntarily submitted to the decision of the Court. * * * * * Jurisdiction depends, either upon presence in a country at the time of the suit or upon submission."

A somewhat similar point arose in *Gavin Gibson and Co., Limited* v. *Gibson* (1). Atkin, J., relied on *Gurdial Singh* v. *Raja of Faridkot* (2), and observed that the Calcutta case when dealing affirmatively with the conditions under which jurisdiction is recognised says nothing of the nationality of the defendant. In that case the learned

(1) 1913 (3) K.B. 379.
(2) I.L.R. 22 Cal. 222.

Judge refused to enforce the judgment of Victoria (Australia) in England although both parties in that case were British subjects. In any case, whatever be the position in the Private International Law, we are in the present case concerned with the statutory provisions binding on the executing Court. As stated above, Rules of Private International Law must yield to statutory provisions of the Pepsu State. The executing Court must follow the provisions of section 13(a) when executing the decree passed by a State outside Pepsu State.

Finally, the learned counsel for the decree-holders argued that if the statutory provisions are so construed as to enable the Pepsu Courts to apply section 13(a) of its Civil Procedure Code to a decree passed in Part A State, then to that extent the statutory provisions must be considered to be inconsistent with the "full faith and credit" provision of the Constitution, and, therefore, must be ignored. Now Article 261 reads—

> "261(1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
>
> (2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.
>
> (3) Final judgments or orders delivered or passed by civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

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Article 261(3) need not detain us as section 43, Civil Procedure Code, has already been so adapted as to make it consistent with this subclause and the present objections have been raised in execution proceedings.

The provisions of Article 261(1) and (2) are collectively called "full faith and credit" clause. Article 261(1) merely establishes a rule of evidence and does not deal with jurisdiction. Subclause (2) empowers the Parliament to lay down the rule of evidence and also the effect of the acts, records and judicial proceedings by legislation. It appears to me that this clause is not an absolute and unqualified constitutional command. It authorises the Parliament to legislate on the subject. It is argued that under this clause it is the bounden duty of every Court situated within the territory of India to execute every decree according to its tenor passed by any Court in India. If this were so then every legislative enactment of any particular State would also be equally enforceable in every State within India and such a conclusion to my mind renders the provisions of Article 245 wholly inoperative. Our Constitution creates legal units with exclusive jurisdiction to legislate on certain matters and this full faith and credit clause cannot be so construed as to compel one State to yield its own law and policy concerning its exclusive affairs to the laws and policies of the other States. This clause in other words cannot be used to control the laws of one State by those of another State either directly or through judgments. There is nothing in our Constitution to compel the Parliament or a State Legislature to refrain from legislating as to how and subject to what conditions a judgment pronounced in one State is to be enforced in another component State. In fact under Article 261(2) this power is specifically given to the Parliament and each State enjoys

this power under items 12 and 13 of Concurrent List. Section 13(a), Civil Procedure Code, lays down that a foreign judgment shall be conclusive as to any matter directly decided by it. This provision to my mind amply complies with the full faith and credit clause. Section 13(a), however, further lays down that such a decision shall not be conclusive if the Court rendering the judgment was not competent to do so. To my mind full faith and credit clause is not applicable to an objection of this type which relates to jurisdiction of the Court giving the judgment. A decree though effective according to its tenor within the State where it is passed can be refused complete and absolute recognition in other States on the ground of lack of jurisdiction.

Moreover, this clause has been adopted from Article 4 of the American Constitution and substantially in the same language. It is well recognised general rules that the adoption of a statute of another State or country carries with it the construction or interpretation placed upon such statutes by highest Courts of jurisdiction from which the statute was adopted. It has been observed in Crawford on Statutory Constructions that there is a presumption that the legislature in adopting a statute also adopts the construction which has been placed upon it in the absence of some indication of a contrary intent. There is no reason why this rule should not be applicable to constitutional provisions. Therefore, assistance should be sought from the way full faith and credit clause has been construed in America particularly when no Indian decision has been brought to our notice in which this clause has been discussed. The law in America on this subject is well settled. Willis on Constitutional law

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(1936 Edition) at page 454 and onwards has discussed this matter. The learned counsel for the decree-holders has relied on the following passage in support of his contention—

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> "'The full faith and credit' clause has the effect of putting a sister State judgment or statute on a different basis from that of foreign judgments. In such cases the States are not left free to apply the rule of conflict of laws. The full faith and credit clause does not extend to foreign judgments. * * * * * * * * * * *
>
> Judgments recovered in the Courts of a State differ from foreign judgments in that they are not re-examinable on the merits according to the rules of conflicts of law, but must be given the same credit, validity, and effect in the Courts of the State which would be given in the Courts of the State where rendered.
>
> The full faith and credit clause merely establishes a rule of evidence, not a rule of jurisdiction. The judgment of one State is conclusive "evidence in another State. A sister State is bound to entertain action thereon but it is not a domestic judgment in the latter State. However, no greater effect will be given to a judgment or a statute of another State than is given in such State."

The matter of jurisdiction is discussed at pages 455-56 and the legal point is stated in these words—

> "A judgment rendered without jurisdiction over the person or the subject-matter

> is not entitled to the protection of the full faith and credit clause. * * * * * * Such a judgment is entitled to no respect in the State where rendered, and therefore, it is not entitled to respect in other States * * * Jurisdiction over the person in a proceeding in *personam* can be acquired either by the service of process or by domicil, or by consent, or by doing acts in the State, * * * * * If a State has no jurisdiction, there is nothing to which full faith and credit can be given. * * * * * There is a presumption that a State has jurisdiction * * * * * * When such a judgment is sued on in a sister State, lack of jurisdiction may be pleaded as a defence.

Similarly the law is summarised in Volume 31 of the American Jurisprudence in these words—

> "The Courts of one State are not required to give full faith and credit to, or regard as valid or conclusive, any judgment of a Court of another state which had no jurisdiction of the subject-matter, or of the parties, in actions *in personam* . . . The jurisdiction of a Court rendering a judgment is open to inquiry when questioned in another State. The party against whom the judgment is rendered is not forced to go to the State of the rendition of judgment for relief * * * * * It is well established that mere recitals of jurisdiction are not conclusive and do not bar inquiry as to jurisdiction or jurisdictional facts and that judgment

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of a sister State may be impeached for want of jurisdiction notwithstanding its recitals." (Section 549.)

Similarly Wharton in his treatise on the Conflict of Laws (1905 Edition) has stated the position in these words—

"* * * * *
* * * * *

This provision does not preclude an attack upon the judgment of a sister State for lack of jurisdiction or within certain limits for fraud but it does undoubtedly preclude an attack upon other grounds which might be available against a judgment rendered in a foreign country (section 654). It is competent for the defendant to an action on a judgment of the sister State to set up as a defence want of jurisdiction of a Court rendering that judgment * * * * A personal judgment is without any validity if it be rendered by a State Court in a personal suit against a non-resident on whom there was no personal service within the State and who did not appear, though the State might attach any property he has within the State merely on service by publication (section 660).

Willoughby also in his Constitution of the United States has stated the legal position in these words—

"The faith and credit to be accorded does not preclude an inquiry into the jurisdiction of the Court which pronounced the judgment, or its right to bind persons against whom the judgment is

sought to be enforced. Whether or not the Court in which the judgment was originally obtained, had obtained jurisdiction is to be determined by the Court in which enforcement of the judgment is sought according to generally accepted principles of jurisprudence."

It is, therefore, clear from these extracts that in America it is always open to a Court enforcing a judgment of another State to examine the competency of the Court rendering it in spite of the full faith and credit clause. It will be noticed that Willis in his discussion on this subject at pages 456 and 457 has referred to the American doctrine of due process of law and also to conflict of laws. In our country conflict of laws on this subject has no relevancy in view of the statutory provisions. The American doctrine of due process of law has not been adopted by our Constitution-makers and therefore, it cannot be imported into Indian Law. Consequently, the opinion of Willis expressed on the basis of these two principles cannot be adopted in this country. There is no reason why the position adopted in America on the full faith and credit clause be not adopted in this country, particularly when the statutory provisions enforced in various States of India under the Central as well as under the State laws on the relevant date are in consonance with that position. The expression "law" used in Article 261(2) and (3) signifies statutory laws and has no reference to the American doctrine of "due process of law" as that doctrine has not been imported into Indian law by our Constitution-makers, *Gopalan* v. *State of Madras* (1). It, therefore, follows that the statutory provisions contained in section 13(a) of the Code of

(1) A.I.R. 1950 S.C. 27.

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Civil Procedure as then inforce in Pepsu State cannot be said to be in conflict with Article 261(1) and (2) of the Constitution. Accordingly, I am of the opinion that it is open to the executing Court to examine under section 13(a) of the Code of Civil Procedure in the present cases whether the Courts decreeing the suits were or were not competent to pronounce the judgments on the dates that they did. I may make it clear that in the present case I have not discussed the other sub-clauses of section 13 and their possible validity or otherwise in view of the full faith and credit clause as these sub-clauses are not being invoked by the judgment-debtors.

For these reasons I am of the opinion that the executing Court was in error in not going into the merits of the pleas raised by the judgment-debtors in the present case. Accordingly, I would accept both these appeals and remand the cases to the executing Court for decision of these objections in accordance with law.

Chopra, J.

CHOPRA, J.—I agree with my learned brother Bishan Narain Judge.

K. L. Gosain, J.

GOSAIN, J.—These two appeals [Execution Second Appeal No. 14(P) of 1954 and Execution Second Appeal No. 25(P) of 1954] originally came up for hearing before Mehar Singh, J., on the 21st of December, 1955, and as they involved some important questions of law he decided to refer them to a hearing by Full Bench.

In the first of these cases Jugal Kishore and others, decree-holder-respondents, obtained a money decree against Gauri Lal and others, defendant-appellants, on the 24th of January, 1951, that is after the 26th of January, 1950, the date of enforcement of the Constitution of India, but

before the 1st of April, 1951, the date on which the Civil Procedure Code, came into force in Part B States. The decree-holders are the residents of Asansol, District Burdwan, while the judgment-debtors are stated in the decree sheet to be the residents of Khanna Mandi, District Ludhiana. The decree was passed *ex parte*. As the judgment-debtors owned some property at Payal (situate in the erstwhile Pepsu State), the decree-holders obtained a certificate from Asansol Court for executing the decree in the erstwhile Pepsu State and applied for execution in the said State on the 7th of October, 1953, and prayed for attachment and sale of the property of the judgment-debtors. The judgment-debtors raised objections against the executability of the decree and *inter alia* pleaded—

(1) that they never submitted to the jurisdiction of the Court of Asansol and therefore the *ex parte* decree passed by the said Court was without jurisdiction and a nullity; and

(2) that the Court passing the decree had no territorial jurisdiction to pass the same.

In the second case Chiranji Lal obtained a decree against Messrs Kunj Lal-Brij Lal from the Court of Sub-Judge at Puri (Orissa State). The plaintiffs were the residents of Puri and the defendants were the residents of Kotkapura in the erstwhile Pepsu State. The decree passed was *ex parte* and was for an amount of Rs 2,194-2-0 This decree was passed on the 17th of January, 1951, i.e., after the 26th of January, 1950, the date of enforcement of the Constitution, but before the 1st of April, 1951, the date on which the Code of Civil Procedure was applied to the erstwhile Pepsu State. The decree-holder obtained a transfer certificate and started proceedings in Faridkot

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State in Pepsu. Practically the same type of objections were raised by the judgment-debtors in that Court. In both the cases the executing Courts over-ruled the objections mainly on the ground that the decrees were executable under Article 261(3) of the Constitution of India. Appeals in both the cases were filed before the lower appellate Courts and were dismissed by them. Feeling aggrieved against the decisions of the Courts below the judgment-debtors in both the cases came up to this Court in execution second appeals which, as I have said above, have been referred by Mehar Singh, J., to a hearing by the Full Bench.

Mr. Dalip Chand Gupta, learned counsel for the judgment-debtors, relies on *Malorji Rai Narsingh Rao* v. *Sankar Saran* (1), *Premchand* v. *Danmal* (2), *Firm Shah Kantilal* v. *Dominion of India* (3), *Ramkishan* v. *Harmukharai* (4), and *Subbaraya Setty and Sons* v. *Palani Chetty and Sons* (5), and contends that the decrees in question must be treated as decrees of foreign Courts *qua* the Pepsu Courts in which they were sought to be executed and as they had been obtained *ex parte* without the defendants having submitted to the jurisdiction of the respective Courts passing the decrees, the decrees must be treated as absolute nullities and were inexecutable. Mr. D. S. Nehra, learned counsel appearing for the decree-holders, relies on *Bhagwan Shankar* v. *Raja Ram* (6), *Chunilal Kasturchand* v. *Dundappa Damappa* (7), *Firm Lunaji* v. *Purshotam* (8), *Meherunnissa*

(1) A.I.R. 1955 All. 490.
(2) A.I.R. 1954 Raj. 4.
(3) A.I.R. 1954 Cal. 67.
(4) A.I.R. 1955 Nag. 103.
(5) A.I.R. 1952 Mys 69.
(6) A.I.R. 1951 Bom. 125 (F.B.).
(7) A.I.R. 1951 Bom. 190.
(8) A.I.R. 1953 M.B. 225.

v. *Venkat Murli* (1), *D.C. Machine Co.* v. *Syed Jahangir* (2), *Radhey-Shiam* v. *Firm Swami Modi Basdev Prasad* (3) and *Murari Lal* v. *Firm Bhagwandas Gurdyal* (4) and urges that the decrees passed in these cases could not be treated as nullities and could be executed by Court in Pepsu. It is obvious that all the rulings quoted by the learned counsel for the parties excepting *Murari Lal* v. *Firm Bhagwands Gurdyal* (4), relate to execution of decrees obtained before the enforcement of the Constitution of India. The main *ratio decidendi* in the rulings quoted by Mr. Dalip Chand Gupta is that the Constitution is not retrospective and, therefore, Article 261 of the Constitution of India cannot be made applicable for the purpose of enabling the pre-Constitution decrees to be executed. The view taken in the cases quoted by Mr. Nehra is that the situation as on the date of execution is to be seen and if on the date of execution the impediment in its way caused by the foreign element of the States has been removed the rule of International Law cannot stand in the way of execution of the decrees. In *Murari Lal* v. *Firm Bhagwandas Gurdyal* (4), the view taken by the Full Bench of the Jammu and Kashmir High Court is that Article 261 over-rides the provisions of the Civil Procedue Code and the decrees passed by Part A States in India are liable to be executed in Jammu and Kashmir as domestic decrees and that the rules of International Law have become altogether foreign *qua* them. There is not a single case decided by any High Court so far in which a decree obtained after the date of Constitution in any State in India has been refused execution in any other State on the ground

(1) A.I.R. 1955 Hyd. 184.
(2) A.I.R. 1953 Hyd. 19.
(3) A.I.R. 1953 Raj. 204.
(4) A.I.R. 1955 J. and K. 5 (F.B.).

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that the rules of Private International Law make such a decree a nullity. It is significant to note that there are very clear observations in almost all the cases quoted not merely by the learned counsel for the respondents but also in the cases quoted by the learned counsel for the appellants which support the view that the decrees passed by Courts in any State of India after the date of enforcement of the Constitution, that is, the 26th of January, 1950, are executable in Courts of all other States. The observations made at page 281 of the report of the Full Bench case of our own High Court in *Radhesham-Roshanlal* v. *Kundan-lal-Mohanlal* (1), are also to the same effect.

In my judgment the rules of Private International Law cannot possibly be made applicable to the decrees of Courts of one State of India *qua* Courts of another State of India if they have been passed after the 26th of January, 1950. The Constitution which the people of India gave to themselves on the 26th of January, 1950, provides in Article 1—

> "(1) India, that is Bharat, shall be a Union of States.
>
> (2) The States and the territories thereof shall be the States and their territories specified in Parts A, B and C of the First Schedule.
>
> (3) * * * * * *

Article 5 provides as under:—

> "At the commencement of this Constitution, every person who has his domicile in the territory of India and—
>
> (a) who was born in the territory of India; or

(1) 1956 P.L.R. 270 (F.B.).

(b) * * * * * * ; or

(c) * * * * * *,

shall be a citizen of India."

These two Articles read together make it quite clear that the parties to the present appeals in both the cases were citizens of India both at the time the decrees were passed and at the time they were sought to be executed in the territories which were the territories of India. It is, therefore, wholly besides the point to apply rules of International Law to the decrees in question.

In the first of the cases, i.e., Execution Second Appeal No. 14(P) of 1954, both the parties were residents of Part A States and both were governed by the same Code of Civil Procedure even at the time when the decree was passed. The mere fact that the property of the judgment-debtors, which is now sought to be attached, was on the relevant date situate in the territory comprised in the erstwhile Pepsu State would not possibly attract the rules of International Law and the decree merely for the reason would not be treated as a nullity. In the second case covered by Execution Second Appeal No. 25(P) of 1954, the defendants at the time of the passing of the decree were no doubt residing in a territory where a different Civil Procedure Code was applicable. That fact by itself, however, was not enough to attract the rules of private international law, more especially when the defendants even residing in that territory were the citizens of India by virtue of Article 5 of the Constitution and the territory itself was a part of India as defined in Article 1 of the Constitution. The defendants in both the cases cannot be treated as foreigners so as to be able to treat the decrees in question as nullities simply on the ground of the

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rules of International Law. It cannot be denied that the Constitution makes India a Union of States and although it may be an aggregate of several political units, such units cannot be deemed to be independent units for international purposes. Article 261 of the Constitution provides for full faith and credit to be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State and it provides for the manner in which the said acts, records and judicial proceedings have to be proved. Clause (3) of Article 261 expressly lays down—

"Final judgments or orders delivered or passed by civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law."

Clauses (1) and (2) of Article 261 of the Constitution of India seem to have been borrowed from the Constitution of America where full faith and credit clause is to be found in Article IV, Section 1 and reads as under:—

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Court may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

A similar provision also exists in the Constitution of Australia where it is provided in section 118 which reads as under:—

"Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public acts and records, and the judicial proceedings of every State."

In America and Australia the Constitution only provided for full faith and credit to be given to the public acts, records and judicial proceedings. In some of the cases decided there, it was held that the clause did not make the final judgments or orders delivered or passed by one State capable of execution in another State. The framers of the Constitution of India, presumably with the knowledge of those cases, made an express provision for this in the Constitution and enacted clause (3) of Article 261 to provide for executability of the final judgments or orders delivered or passed by Civil Courts in any part of the territory of India in any other part of it. Even if it is held (as was the view taken in cases quoted by Mr. Dalip Chand Gupta) that the clause operates only prospectively and not retrospectively, it will follow that the decrees passed after the enforcement of the Constitution by Courts of any part of the territory of India are executable anywhere within that territory. Mr. Gupta had nothing else to say against this clause and only stressed that the words "according to law" in this clause enable his clients to raise the objection that the decrees in question were nullities and were not executable. In my opinion, the words "according to law" only mean that the execution shall proceed in accordance with the law in force in the territory where the execution is sought. In other words the *lex fori* has been made applicable to the matters of execution. The words "according to law" cannot possibly mean that the Courts in the territory in which execution is sought will be entitled to declare the decree a nullity so as to be altogether inexecutable. In *Radhasham Roshanlal* v. *Kundan Lal-Mohan Lal* (1), a Full Bench of

(1) 1956 P.L.R. 270.

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this Court had an occasion to consider the executability of a decree passed by a Court in the erstwhile Indore State which was sought to be executed at Ludhiana. The decree in that case had been passed on the 17th of February, 1948, that is before the date of the Constitution, but was sought to be executed on the 10th of January, 1951, that is, after the enforcement of the Constitution. Khosla, J., who delivered the majority judgment and with whom Bishan Narain, J., agreed, held that the decree was not executable. At page 281 of the report, however, it was observed as under:—

> "The learned counsel for the appellant relied upon a number of cases of which only one or two are really relevant. The others are clearly distinguishable. *Bhagwan Shankar* v. *Rajaram Bapu Vithal* (1), is not a case in point because there a decree was passed by a Court at Sholapur *ex parte* against a resident of Akalkot. Execution at Akalkot was sought after the Constitution came into force when Akalkot had become merged in India. The distinguishing feature was that the decree was passed by a Court in India or in British India or in the Provinces of India, which ever definition of section 43 be taken. This decree was, therefore, capable of execution in the Provinces or the States. After the merger Akalkot became a part of the territory of India and, therefore, the decree was clearly capable of execution at Akalkot. The Full Bench decision of the Madhya Bharat High Court in *Brijmohan Bose Benimadhay*

(1) A.I.R. 1951 Bom. 125.

v. *Kishorilal Kishanalal* (1), which approved of the earlier decision *Firm Lunaji Narayan* v. *Purshottam Charan* (2), was a case of a similar type. There too the decree was passed by a Court situate in British India and execution was sought in Gwalior State after the Constitution. Indeed, all the cases cited in support of the decree-holders' claim were cases in which the decrees had been passed by Courts which were situated in what was originally British India and was subsequently Part A States. Execution of these decrees was sought in the area which was foreign territory before 1947 and which became Part B States after the Constitution. There is in my view an essential difference in the nature of the reverse case which is under consideration before us. I have stated above what the distinguishing feature is. A decree passed by a Court where the Civil Procedure Code applied could be executed throughout the territory of British India or Provinces as defined in section 3(45) of the General Clauses Act (X of 1897) or Part A States as defined in the Constitution. This decree was therefore executable anywhere in India. The territory of India was extended by the merger of the native States and those States became subject to the law which "prevailed in India. *In course of time the provisions of the Civil Procedure Code were extended to them and therefore, a decree which was*

(1) A.I.R. 1955 M.B. 1.
(2) A.I.R. 1953 M.B. 225.

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*a good decree in India became a good decree in the area of native States also, whereas the opposite case was quite different.*"

Dulat, J., however, was of the view that if at the tim of execution the Constitution of India had come into force, the decree should be held to be executable in spite of the fact that at the time when it was passed it was not executable. Although there is sharp divergence of views taken on this point by different High Courts, I feel that the weight of authority is still in favour of this view.

Article 261(3) of the Constitution of India was quoted before the aforesaid Full Bench, but it was held in the majority judgment that the Constitution was not retrospective in operation and that the decree in question having been passed before the date of Constitution was not liable to be executed because of Article 261(3) of the Constitution which came into force after the date of the decree. A reading of the majority judgment makes it quite clear that the Bench was then of the view that if the decree in that case had been passed in a Part A State after the enforcement of the Constitution, it would have been executable in all other States to which the Code of Civil Procedure may have become applicable and which may have become part of the territories of India at the relevant time of filing execution application.

Mr. Dalip Chand Gupta further contended that according to the definitions of the words "foreign Court" and "foreign judgment" as given in the Code of Civil Procedure, the Courts in Part A States must be deemed to be foreign Courts *qua* Pepsu State and *vice versa*. There

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is no doubt that "foreign Court" was defined by the Adaptation of Laws Order, 1950, as under:—

> "'Foreign Court' means a Court situate beyond the limits of the States which has no authority in the States and is not established or continued by the Central Government."

The words "State" and "States" were defined by the said Order as under:—

> "State means Part A State or a Part C State, and States means all the territories for the time being comprised within Part A States and Part C States."

On the basis of the definitions of "foreign Court" and "States" introduced in the Civil Procedure Code by Adaptation of Laws Order, 1950, Mr. Gupta contends that the *ex parte* decrees passed in the state against persons residing in Part B States when they had not submitted to the jurisdiction of the Courts in the States must be deemed to be absolute nullities and must not be held to be executable. This contention cannot, in my opinion, prevail for the following reasons:—

(1) The definition of "foreign Court" as given in the Civil Procedure Code applicable to India and in the Civil Procedure Code applicable to Pepsu must be held subservient to the provisions in the Constitution of India, namely Article 5, which confers on all the persons residing in India the right of citizenship of India, and clause (3) of Article 261 by which final judgments or orders delivered or passed by Civil Courts in

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any part of the territory of India are made capable of execution anywhere within that territory, i.e., the definition of "foreign Court" must to the extent of its repugnancy to the provisions referred to above be held inoperative and of no effect.

(2) It must be noted that section 20(c) of the Civil Procedure Code is a special legislation and has empowered the Courts in British India to entertain the suits against absentee foreigners, where cause of action has accrued in the limits of their territorial jurisdictions. Any judgment pronounced by any such Court is not and cannot be treated as an absolute nullity. The judgment is enforceable at least in the country of the Court where it was passed. It is a nullity only from the point of view of International Law and only in particular circumstances. On the 26th of January, 1950, the Indian Constitution came into force and the States which were hitherto only acceding States became part and parcel of the territories of India. The subjects of those States became on this date the citizens of India along with those who were at one time the subjects of British India. The laws in force in those States were allowed to remain in force by virtue of express provisions contained in Articles 372 and 375 of the Constitution of India. The fact that the different laws in force in different States were continued and the Courts in the country administered them cannot possibly militate against the principle

of a common sovereignty and there is no scope under these circumstances for applying the principles of International Law as between the States in question. The States cannot be deemed *qua* each other, "foreign States" so as to attract the applicability of the rules of International Law. "Foreign State" is defined in clause (3) of Article 367 of the Constitution as under:—

" 'Foreign State' means any State other than India."

The Constitution of India does not make the various component parts of the Union as independent States in the international sense of the word and the various features of the Constitution which provide for cohesion and co-ordination of the State and of the supremacy of the Centre suggest that the States are not foreign to each other so as to enable the rules of conflict of laws to be applied to the judgment of one State in the other. As stated above, Article 261 expressly provides to the contrary.

(3) The execution in both the cases was applied for after the 1st of April, 1951, that is when the Civil Procedure Code, as applicable to India had become applicable also to the erstwhile Pepsu State and the impediment, if any, in the way of execution had thus been removed.

(4) Rule 68 in Chapter 12 in Dicey's Conflict of Laws expressly lays down—

"In an action *in personam* in respect of any cause of action, the Courts of a foreign

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country have jurisdiction in the following cases:—

*First Case.*— * * * * *

*Second Case.*—Where the defendant is, at the time of the judgment in the action, a subject or citizen of such country.

*Third Case.*— * * * * *"

Cheshire in his treatise on Private International Law does not seem to agree with Dicey in this matter, but Wastlake at page 400 of his book and Schmitthoff at page 422 of his book are of the same view as Dicey.

(5) The various amendments made by the Legislature in sections 43 and 44 of the Civil Procedure Code from time to time after the enforcement of the Constitution and the ultimate decision of the Legislature to apply the Code of Civil Procedure of India to the entire territories of all the States whether Part A, B or C suggest that the intention of the Legislature has obviously been to enable the decrees of one State to be executed in other States. It is a well-known canon of interpretation of statutes that in determining either the general object of the legislation or the meaning of its language in any particular passage the intention which appears to be most in accord with convenience, reason, justice and legal principles should in all cases of doubtful nature be presumed to be true one.

An interpretation which causes inconvenience and hardship has always to be avoided. If the interpretation shought to be placed by Mr. Gupta is adopted, the obvious result will be that a decree passed by any Court in Pepsu on the 31st of March, 1951, before the amendment of the Code of Civil Procedure on the 1st of April, 1951, will be inexecutable even by the Court passing the decree on any day after the 1st of April, 1951. This interpretation must be rejected on the ground that it leads to absurd results and causes inconvenience.

In my judgment, therefore, there is no scope at all for the applicability of the rules of Private International Law to the facts of the present cases and the judgment-debtors cannot be allowed to raise objections against executability of the decrees on the ground that they were nullities because they (the defendants) had not submitted to the jurisdiction of the Courts passing the same.

The only other objection taken by the judgment-debtors is that the Courts passing the decrees had not the territorial jurisdiction to pass them and, therefore, the decrees cannot be executed. Once it is held that the rules of Private International Law do not apply to the cases, there can be no difficulty in brushing aside this objection. The plea regarding want of territorial jurisdiction has to be raised in the Court itself and on the principle of section 21 of the Civil Procedure Code it cannot be allowed to be raised at any subsequent time. It does not amount to a lack of inherent

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jurisdiction in Court and a decree passed by a Court cannot be assailed in executing Court on the ground that the Court passing the same had no territorial jurisdiction to pass it. The point of territorial jurisdiction can only be decided on evidence and the law provides that the objection must be taken in the Court itself which can decide it after recording evidence of the parties. The authorities of the various High Courts on this point are almost unanimous. (See in this connection *Zamindar of Ettiyapuram* v. *Chidambaram Chetty* (1), *Jagannath* v. *Shivnarayan* (2), *Nathan* v. *Samson* (3), *Sheo Behari Lal* v. *Makrand Singh* (4), and *Musa Ji Lukman Ji* v. *Durga Dass* (5).

As a result of the above I find that the two objections raised by the judgment-debtors are not open to them and that no enquiry at all is needed on the same. Both the appeals are liable to be dismissed with costs.

*B.R.T.*

APPELLATE CIVIL

*Before G. D. Khosla, J.*

MST. DASSI,—*Defendant-Appellant*

*versus*

MST. KAPURO,—*Plaintiff-Respondent*

**Regular Second Appeal No. 495 of 1957.**

1958

Jan., 28th

*Hindu Succession Act (XXX of 1956)—Section 14—Applicability and scope of—Hindu widow—Gift by, in favour of a Hindu female—Donor dying before the commencement of the Act—Whether the donee becomes the full owner after such commencement—Explanation to section 14—"Gift"—Meaning of—Whether includes any gift.*

(1) I.L.R. 43 Mad. 675 (F.B.).
(2) A.I.R. 1937 Bom. 19.
(3) A.I.R. 1931 Rang. 252 (F.B.).
(4) A.I.R. 1935 Oudh. 358 (F.B.).
(5) A.I.R. 1946 Lah. 57 (F.B.).