

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Thomas
Cook and James Charles Cook v. Sir James
Gordon Sprigg, from the Supreme Court of
the Cape of Good Hope; delivered the 1st
August 1899.*

Present at the Hearing :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

[*Delivered by The Lord Chancellor.*]

This is an Appeal from the Supreme Court of the Cape of Good Hope wherein judgment was given for the Defendant.

The action is brought against the Prime Minister of the Colony in his official capacity under the powers of an Act of the Parliament of the Cape of Good Hope intituled the "Crown Liabilities Act 1888," which permits such an action to be brought in terms hereafter to be referred to.

The case made on behalf of the Plaintiffs was that certain agreements or concessions were made by a Native Chief described as "Paramount Chief of Pondoland" granting certain privileges and rights to the Appellants.

It appears to be established by proof that the Appellants never in fact obtained possession of the lands or exercised the rights which these documents purported to convey, but it is argued that some effort was made to search for "graphite" in pursuance of these documents.

A considerable amount of evidence appears to have been given with the object of showing that the rights purported to be granted were contrary to the native laws and customs prevailing in Pondoland at the time when they purported to be granted; that Sigcau was a lawless despot; and that any rights purporting to be granted by him were subject to his arbitrary power to recall them at any moment. And further that Sigcau did not understand the meaning or object of the documents which he was supposed to execute.

Their Lordships do not differ with the finding in fact by the Chief Justice that at the time that Sigcau executed the instruments in question he was the Paramount Chief of the Pondos, and that Sigcau understood perfectly well that he was purporting to grant such rights as the instruments which he executed professed to convey.

Their Lordships do not think it material to enter into such questions inasmuch as they are of opinion that the Statute which gives a power to sue the Prime Minister does not involve the power of making any declaration of right in such a case. And as mere matter of form it does not contain any clause empowering the Court to make a declaration of right as against the Crown; but there is a more complete answer to any claim arising from these instruments. The taking possession by Her Majesty whether by cession or by any other means by which sovereignty can be acquired was an act of State and treating Sigcau as an independent Sovereign—which the Appellants are compelled to do in deriving title from him—it is a well established principle of law that the transactions of independent States between each other are governed by other laws than those which municipal courts administer.

It is no answer to say that by the ordinary principles of International Law private property

is respected by the Sovereign which accepts the cession and assumes the duties and legal obligations of the former Sovereign with respect to such private property within the ceded territory. All that can be properly meant by such a proposition is that according to the well-understood rules of International Law a change of sovereignty by cession *ought* not to affect private property but no municipal tribunal has authority to enforce such an obligation. And if there is either an express or a well-understood bargain between the ceding Potentate and the Government to which the cession is made that private property shall be respected that is only a bargain which can be enforced by Sovereign against Sovereign in the ordinary course of diplomatic pressure.

In this case it certainly cannot be said that there was any bargain by the British Government that Sigcau's supposed concessions should be recognised. Indeed the only intelligible sense in which the allegations in the declaration can be understood is that the breach of duty complained of consists in the refusal of the Cape Government to recognise the Plaintiff's concessions.

To quote the language of this Board used by Lord Kingsdown in the case of *The Secretary of State for India in Council v. Kamachee Boye Sahaba*, 13 Moore's Privy Council Cases 22 at p. 86, and cited in *Doss v. The Secretary of State for India in Council* L.R. 19 Equity Cases, at p. 534 :—

“Of the propriety or justice of that act” (here the refusal to recognise) “neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing if they had formed, any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are con-

“siderations into which their Lordships cannot
“enter. It is sufficient to say that, even if a
“wrong has been done, it is a wrong for which
“no Municipal Court of Justice can afford a
“remedy.”

At the same time their Lordships are by no means prepared to differ from the observations of the Chief Justice that the Appellants “have strong claims to the favourable consideration of the Government and Parliament of the country.”

Their Lordships will therefore humbly advise Her Majesty that this Appeal should be dismissed, the parties on each side to pay their own costs.
