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April 6.

STATE OF SERAIKELLA

v.

UNION OF INDIA AND ANOTHER

(Suit No. 1 of 1950)

STATE OF DHENKANAL

v.

UNION OF INDIA AND ANOTHER

(Suit No. 2 of 1950)

STATE OF BAUDH

v.

UNION OF INDIA AND ANOTHER

(Suit No. 3 of 1950)

STATE OF TIGIRIA

v.

UNION OF INDIA AND ANOTHER

(Suit No. 4 of 1950)

STATE OF ATHGARH

v.

UNION OF INDIA AND ANOTHER

(Suit No. 5 of 1950)

STATE OF BARAMBA

v.

UNION OF INDIA AND ANOTHER

(Suit No. 6 of 1950)

STATE OF NARSINGPUR

v.

UNION OF INDIA AND ANOTHER

(Suit No. 7 of 1950)

[SHRI HARILAL KANIA C. J., PATANJALI SASTRI, MEHR CHAND MAHAJAN, S. R. DAS and VIVIAN BOSE JJ.]

Constitution of India, Arts. 363 (1), 374 (2)—*Indian States—Accession to India under Instruments of Accession—Orders treating States as having merged in India—Suit to declare orders* ultra

vires *and enforce rights under Instrument of Accession—Suits filed in Federal Court before 26th January* 1950*—Jurisdiction of Supreme Court to try such suits—Scope of Arts.* 363 (1) *and* 374 (2).

Article 374 (2) of the Constitution of India provides that all suits, appeals and proceedings pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court and the Supreme Court shall have jurisdiction to hear and determine the same. Article 363 (1) provides that notwithstanding anything in this Constitution, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement or similar instrument entered into or executed before the commencement of this Constitution by any Ruler of an Indian State.

Certain States had acceded to the Dominion of India under Instruments of Accession in August 1947. They were treated as having merged in the Province of Bihar and were administered as a part of that Province under Orders issued under the Extra Provincial Jurisdiction Act, 1947, and s. 290-A of the Government of India Act, 1935 (as amended by the Constituent Assembly Act of 1949). The States instituted suits in the Federal Court of India before the 26th January, 1950, for a declaration that the various Orders under which the States came to be administered as a part of Bihar and the laws under which those Orders were made were *ultra vires* and void and the Province of Bihar had accordingly no authority to carry on the administration of the States. The suits stood transferred to the Supreme Court of India under Art. 374 (2) of the new Constitution :

Held, per KANIA C. J., PATANJALI SASTRI J. and BOSE J. (MAHAJAN J. dissenting).—That even though the suits were instituted before the new Constitution came into force and under Art. 374 (2) they stood removed to the Supreme Court, nevertheless the jurisdiction of the Supreme Court under Art. 374 (2) was controlled by Art. 363 (1) of the Constitution in view of the opening words of the latter namely, "notwithstanding anything in this Constitution". As the suits were really to enforce the plaintiff's rights under their Instruments of Accession and the dispute between the parties really arose out of those instruments, under Art. 363 (1) the Supreme Court had no jurisdiction to hear the suits. This view did not involve giving any retrospective effect to Art. 361 (3). MAHAJAN J. (*contra.*)—Art. 363 takes away the jurisdiction of the Supreme Court on the subjects mentioned therein if suits about them were instituted after the 26th January, 1950, or disputes concerning them arise after that date, while Art. 374 (12) empowers the Supreme Court to hear and determine suits which were pending in the Federal Court on the 26th January, 1950, and which that court was competent to hear and determine. There is no conflict between

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these articles, and the Supreme Court had jurisdiction to hear the suit.

DAS J.—As the plaintiff States, by virtue of the States Merger (Governor's Provinces) Order, 1949, were immediately before the commencement of the new Constitution being administered as if they formed part of the Provinces of Bihar or Orissa the territories of Bihar and Orissa included the territories of the plaintiff States under Art. 1 of the Constitution read with the third paragraph of Part A of the First Schedule. These States consequently ceased to be States so far as the new Constitution is concerned, they had no legal existence as acceding States, and could not therefore be recognised as such States by Courts, as Courts are bound by the Constitution and cannot question the validity of any of its provisions. The suits must therefore be regarded as having abated.

ORIGINAL JURISDICTION. Suits Nos. 1 to 7 of 1950.

The facts are stated in detail in the judgment of KANIA C. J.

N. C. Chatterjee (*A. N. Roy Choudhry*, with him) for the plaintiffs in suits Nos. 1, 3, and 6.

Dr. N. C. Sen Gupta (*A. N. Roy Choudhry*, with him) for the plaintiffs in suits Nos. 2, 4, 5, and 7.

M. C. Setalvad Attorney-General for India (*G. N. Joshi* with him) for the defendants in all the suits.

1951. April 6. The following judgments were delivered :—

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KANIA C. J.—This is a suit filed on the 15th of January, 1950, under the Original Jurisdiction of the Federal Court as it was functioning before the Constitution of India came into force on the 26th January, 1950. The State of Seraikella was a State in Orissa and its Ruler was Raja Aditya Pratap Singh Deo. On the 16th August, 1947, the plaintiff State acceded to the Dominion of India by virtue of an Instrument of Accession executed by its Ruler and accepted by the Governor-General of India under section 6 of the Government of India Act, 1935. After reciting that under the Indian Independence Act, 1947, the Dominion of India was set up and that under the Government of India Act, 1935, as adapted, it provided that an Indian State may accede to the Dominion of India

by an Instrument of Accession, the Instrument stated that the Raja acceded to the Dominion of India and that he accepted that the matters specified in the Schedule to the Instrument were the matters with respect to which the Dominion Legislature may make laws for the State. The three principal heads mentioned in the Schedule to that Instrument were Defence, External Affairs and Communications, with particulars detailed under each of those heads. The Instrument expressly provides that by executing the same the Ruler shall not be deemed to be committed to the acceptance of any future Constitution of India or to fetter his discretion to enter into arrangements with the Government of India under any such future Constitution. It further expressly provides that nothing in the Instrument affects the continuance of the sovereignty in and over the State, or save as provided by or under the Instrument, the exercise of any powers, authority and rights so far enjoyed by him as Ruler of the State or the validity of any law then in force in the State. It also provides that the terms of the Instrument of Accession are not to be varied by any amendment of the Government of India Act or of the Indian Independence Act, 1947 unless such amendment is accepted by the Ruler or by an Instrument supplementary to the said Instrument. It was denied in the plaint that any such supplementary instrument was executed by the Ruler and no amendment of the aforesaid Acts has been accepted by him or the plaintiff State. A Standstill Agreement was also executed by the Ruler under which it was agreed that matters of common concern and specified in the Schedule to the Agreement would continue between the Dominion of India and the said State until new agreements were made in that behalf.

On the 15th December, 1947, an agreement is alleged to have been entered into between the Governor-General of India and the Ruler of the plaintiff State. By that document the Raja ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of

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the State and agreed to transfer the administration of the State to the Dominion Government on the 1st of January, 1948, Article 2 contained a provision for the Privy Purse of the Raja and it is contended by the plaintiff that when the Raja signed the document the figure in this clause had been left blank. Under article 3 of that agreement, it was provided that the Raja would be entitled to the full ownership, use and enjoyment of all private properties belonging to him on the date of the agreement and that by the 1st of January, 1948, the Raja will furnish to the Dominion Government an inventory of all immovable properties, securities and cash held by him as such private property. Under article 4, the personal privileges enjoyed by the Raja and the members of his family mentioned therein had to continue.

On the 24th of December, 1947, an Act to provide for the exercise of certain extra-provincial Jurisdiction of the Central Government (Act XLVII of 1947) was passed. Under section 3 of that Act it was provided that it shall be lawful for the Central Government to exercise extra-provincial jurisdiction in such manner as it thinks fit and the Central Government may delegate any such jurisdiction as aforesaid to any officer or authority in such manner and to such extent as it thinks fit. Under section 4 it was provided that the Central Government may by notification in the official Gazette make such orders as may seem to it expedient for the effective exercise of any extra-provincial jurisdiction of the Central Government. A notification under section 4 of that Act was thereafter issued by the Central Government delegating, under section 3, the powers contained in that Act to the Province of Orissa. On the 18th of May, 1948, that notification was cancelled and the powers in respect of the two specified States including the plaintiff State were delegated to the Province of Bihar. On the same day the Government of Bihar passed an order called "The Seraikella and Kharaswan States Order" providing for the administration of the two States. On the 5th of January, 1949, the Legislative Assembly of India,

which was also functioning as the Constituent Assembly, passed the Constituent Assembly Act I of 1949 and added section 290-A to the Government of India Act, 1935. That section runs as follows :—

"Administration of certain Acceding States as a Chief Commissioner's Province or as part of a Governor's or Chief Commissioner's Province—

(1) Where full and exclusive authority, jurisdiction and powers for and in relation to the Government of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government, the Governor-General may be Order direct

(a) that the State or the group of States shall be administered in all respects as if the State or the group of States were a Chief Commissioner's Province ; or

(b) that the State or the group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's Province specified in the Order :

Provided that if any Order made under clause (b) of this sub-section affects a Governor's Province, the Governor-General shall before making such Order, ascertain the views of the Government of that Province both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) Upon the issue of an Order under clause (a) of sub-section (1) of this section, all the provisions of this Act applicable to the Chief Commissioner's Province of Delhi shall apply to the State or the group of States in respect of which the Order is made.

(3) The Governor-General may in making an Order under sub-section (1) of this section give such supplemental, incidental and consequential directions (including directions as to representation in the Legislature) as he may deem necessary.

(4) In this section, reference to a State shall include reference to a part of a State."

On the 27th of July, 1949, the Governor-General of India promulgated an Order called the States Merger

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(Governors' Provinces) Order of 1949. The result of that was that the plaintiff State is claimed to have merged in the Province of Bihar.

The plaintiff State contends that the Government of Orissa wrongfully and illegally purported to administer the plaintiff State by virtue of the Notification of the 23rd of December, 1947, under Act XLVII of 1947. It is claimed that the Act was and is *ultra vires* and of no effect and not binding on the plaintiff State. The alleged agreement of the 15th of December, 1947, is contended to be void for want of consideration and is inoperative. Indeed it is contended that as the figure was left blank there was no agreement at all. It is contended that on the 18th May, 1948, without the consent and approval of the plaintiff State or its Ruler, the Province of Bihar wrongfully and illegally took over the administration of the State and passed the Seraikella and Kharsawan Administration Order, 1948. In paragraph 10 of the plaint it is contended that the Dominion of India had no authority to go beyond the Instrument of Accession, had no authority to delegate powers to the Province of Bihar to administer the plaintiff State and the said Order, in any event, is illegal and inoperative as it went beyond the ambit of the Extra Provincial Jurisdiction Act, 1947. As regards the Order issued by the Governor-General on the 27th of July, 1949, it is contended that he had no authority or power to promulgate the Order and the State Merger Order of 1949 purporting to be passed under section 290-A of the Government of India Act, 1935, is also void. The enactment of the Constituent Assembly Act I of 1949 is contended to be *ultra vires* and illegal. That Act is further challenged on the ground that it was enacted without the assent of the Governor-General of India. It is contended in the plaint that the defendants, *viz.,* the Union of India and the State of Bihar, deny and are interested in denying the existence or entity of the plaintiff State and in disputing the rights, privileges, powers and prerogatives of its Ruler as well as the right to the private properties as set out in the annexure. The States Merger Order of

1949 is contended to be an abuse of power and authority and a fraud on the Government of India Act, 1935, and the Indian Independence Act, 1947. It is contended that the Government of India or the Constituent Assembly had no authority to pass any legislation on a matter not specified in the Schedule to the Instrument of Accession. In paragraph 19 of the plaint it is contended that the dispute between the parties comprised and involved questions on which the existence or extent of legal rights depends and the plaintiff State is a party to the same. These disputes concern the interpretation of the Government of India Act, 1935, and/or of an order made thereunder and/or the interpretation of the Indian Independence Act and/or an order made thereunder and/or the extent of authority vested in the Dominion by virtue of the Instrument of Accession of the plaintiff State. The prayers are: (a) Interpretation of the relevant provisions of the Government of India Act, 1935, the Indian Independence Act, 1947, and the States Merger Order, 1949. (b) For a declaration that the Dominion Government had no authority to assume any power or jurisdiction beyond the matters specified in the Instrument of Accession and had no authority to delegate any power in relation to the plaintiff State to the Provincial Government of Bihar. (c) For a declaration that Act XLVII of 1947, the Constituent Assembly Act I of 1949, section 290-A of the Government of India Act, 1935, as adapted, and the States Merger Order, 1949, are *ultra vires,* illegal and inoperative in so far as they are made applicable to the plaintiff State and Orders made thereunder as also actions taken or purported to be taken thereunder; (d) For a declaration that the Province of Bihar had no authority or jurisdiction to carry on the administration of the plaintiff State and that the alleged merger was illegal and unauthorized: (e) For a declaration as to the rights of the parties and as to the extent of the authority of the Dominion of India over and in respect of the plaintiff State; (f) For a declaration that the plaintiff State retained its entity and territorial integrity, that its administration should

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in any event be carried on in the name of its Ruler and that his rights and privileges as set out in annexure 'C' and his private properties as set out in annexure 'D' remain unaffected; and (g) For a declaration that the Province of Bihar had no authority or jurisdiction over the plaintiff State and that it should not interfere in any way with the State or the sovereignty of its Ruler.

Six other suits by other States of the former Eastern Agency were filed also before the Constitution of India came into force on the 26th of January, 1950, on the same lines, except that in four of them the agreement similar to the agreement of the 15th December, 1947, is admitted to have been executed by the Ruler and is admitted to be binding on the plaintiff.

The material part of section 6 of the Government of India Act, 1935, which provides for the accession of Indian States, runs as follows :—

6. *Accession of Indian States.*—(1) An Indian State shall be deemed to have acceded to the Dominion if the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof whereby the Ruler on behalf of the State :—

(a) declares that he accedes to the Dominion with the intent that the Governor-General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of his Instrument of Accession, but, subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State such functions as may be vested in them by order under this Act; and

(b) assumes the obligation of ensuring that due effect is given within the State to the provisions of this Act so far as they are applicable therein by virtue of the Instrument of Accession.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Dominion Legislature may make laws for the State, and the limitations, if any, to which the

power of the Dominion Legislature to make laws for the State, and the exercise of the executive authority of the Dominion in the State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by the Governor-General, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by any Dominion authority in relation to his State.

* * * *

(5) In this Act a State which has acceded to the Dominion is referred to as an Acceding State and the Instrument by virtue of which a State has so acceded construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State...."

A supplementary Instrument executed under sub-section (3) by the Ruler and accepted by the Governor-General is, by virtue of sub-section (5), therefore to be considered a part of the Instrument of Accession of that State. The supplementary Instruments signed by the four States only bring within the scope of discussion those supplementary Instruments on the footing that they were a part of the Instrument of Accession.

Written statements have been filed on behalf of the defendants contesting the contentions raised in the plaint. There are several contentions in respect of the jurisdiction of the Court. Several contentions cover pure issues of law and some raise issues of fact in respect of the document of 15th December, 1947. The parties agreed on the issues and they have been filed in Court. It was further agreed between the parties that issues 1, 3, 4, 5, 6 and 7 may be tried as preliminary issues and we have heard counsel on those issues fully. The first issue is in these terms:

"Whether, having regard to the subject-matter of the suit and the provisions contained in article 363 (1) of the Constitution of India, this Hon'ble Court has jurisdiction to entertain the suit."

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In the view I take of this issue I do not think it necessary to discuss the other preliminary issues raised on the question of jurisdiction. For determining this issue, it may be noted that the Federal Court, prior to the 26th of January, 1950, had original jurisdiction in respect of matters covered by section 204 of the Government of India Act. Under that section, that Court had jurisdiction in any dispute between a State and the Dominion if and in so far as the dispute involved any question (whether of law or fact) on which existence or extent of a legal right depended, provided that the said jurisdiction did not extend to a dispute to which a State was a party unless the dispute was covered by clause (a) (i) of the Proviso, which runs as follows :—

"Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder before the date of the establishment of the Dominion, or of an order made thereunder on or after that date, or the interpretation of the Indian Independence Act, 1947, or of any order made thereunder, or the extent of the legislative or executive authority vested in the Dominion by virtue of the Instrument of Accession of that State ; or.."

The rest of the section is not material. Section 204 (2) provided that the Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment. The suit having been filed prior to the 26th of January, 1950, the suit stood transferred to this Court under article 374 (2) of the Constitution of India. That article runs as follows :—

"374. (2) All suits, appeals, and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the

judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court."

Article 131 of the Constitution deals with the original jurisdiction of the Supreme Court and its material portion runs as follows :—

"Subject to the provisions of this Constitution, the Supreme Court shall....have original jurisdiction in any dispute....

(b) between the Government of India and any State or States on one side and one or more other States on the other....

if and in so far as the dispute involves any question (whether of law or fact) on which the existence of a legal right depends :

Provided that the said jurisdiction shall not extend to (i) a dispute to which a State specified in Part B of the First Schedule is a party if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution and has or has been continued in operation after such commencement."

The States specified in Part B of the First Schedule do not mention any of the plaintiff States. Article 363 of the Constitution of India runs as follows :—

"363. (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143 neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation

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arising out of any of the provisions of this Constitution relating to any such treaty, agreement, convenant, engagement, sanad or other similar instrument.

(2) In this article—

(a) 'Indian State' means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State ; and

(b) 'Ruler' includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

The first question arising for consideration is the true interpretation of article 374 (2) of the Constitution of India. It was argued that the Federal Court had jurisdiction to try the suit as framed before the Constitution of India came into operation. Under article 347 (2) that suit stood removed to the Supreme Court and the question of jurisdiction to try this suit at the present stage has to be determined only having regard to the jurisdiction of the Federal Court, because the trial of the suit was transferred to the Supreme Court under this article. It was argued that if there was any limitation on the jurisdiction of the Supreme Court to hear such a suit, (if instituted in it under its original jurisdiction), such limitation is not relevant to be considered in respect of suits which stood transferred to the Supreme Court under article 374 (2). In other words, in respect of such suits the Supreme Court had a wider jurisdiction as compared with the jurisdiction of the Federal Court, if its jurisdiction is construed as limited by virtue of the different articles of the Constitution. In this connection, some reliance was placed on the use of the word 'jurisdiction' as connected with the Supreme Court in article 374 (2). In my opinion, this argument is unsound. Article 374 is in the Part dealing with temporary and transitional provisions. In article 374 (1) it is provided that the Judges of the Federal Court holding office before the commencement of the Constitution, unless they have

elected otherwise, become Judges of the Supreme Court. Article 374 (2), in my opinion, similarly provides, firstly, for the removal of all suits, appeals and proceedings, civil or criminal, pending in the Federal Court to the Supreme Court and, secondly, provides that the Supreme Court shall have jurisdiction to hear and determine these matters. It may be noticed that in this clause provision is made not only in respect of suits but of civil and criminal appeals and also of other pending proceedings. By providing only for the removal of these matters to the Supreme Court, there will remain a lacuna, if it was not further stated that after such removal the Supreme Court shall have jurisdiction to try the matters. It is from that point of view only that, in my opinion, the Constitution states that the Supreme Court shall have jurisdiction to hear and determine the same. I think it is not correct to read those words as giving to the Supreme Court an extended jurisdiction in these matters. Two stages have therefore to be considered in determining the operation of this clause: (1) whether the suits, appeals or proceedings, which were pending before the Federal Court, were within the jurisdiction of the Federal Court; and (2) whether on removal the Supreme Court has jurisdiction to hear and determine the same having regard to all the provisions of the Constitution relating to the jurisdiction of the Supreme Court. It must be noticed that the Supreme Court was a new Court established by the Constitution of India. It had no existence before that. The jurisdiction of that Court has therefore to be ascertained by considering all the relevant articles of the Constitution of India. It is in that light that the provisions of article 363 have to be read and interpreted.

Before doing so I think it is essential to bear in mind the political background. Prior to August, 1947, British India, as it was then described, was governed under the Government of India Act, 1935 Indian States, as they were then described, were independent States not governed by the Government of India. They were under the suzerainty of His Majesty the King and their

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administration was controlled under the advice of the Political Department of the Government of India, on the footing that the King was the Sovereign and had the right to exercise suzerain powers over those States. On the passing of the Indian Independence Act, 1947, from the 15th August, 1947, the British Parliament and the King ceased to have power to make any laws for India or make any changes in its Constitution. These were left to India. As regards the Indian States, while provision continued in the Government of India Act for the Rulers signing instruments of accession, no suzerain rights were given to the Dominion of India by the Indian Independence Act. If, therefore, the Dominion of India or any of these States committed acts of aggression or territorial trespass, there was no law, the enforcement of which could give either party a relief and there was no court also which could give such a relief. Section 204 of the Government of India Act also did not provide any relief to any of these Indian States unless they signed an Instrument of Accession. With the passing of the Constitution of India, India became a Sovereign Independent Republic. If that Dominion or Republic committed any acts of aggression towards a neighbouring Indian State (as it is convenient to describe under the circumstances) the Supreme Court has no jurisdiction to give relief to the Indian State. As noticed above, its jurisdiction under article 131 is limited and even in respect of a State specified in Part B of the First Schedule if a dispute arises out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument, it will not be entertained by this Court if the conditions of the proviso apply to the same. It is with this background that we have to read article 363 of the Constitution.

The opening words of that article in terms override all provisions of the Constitution, but are made subject only to the provisions of article 143 which enables the President to consult the Supreme Court on matters referred to it. These all embracing opening words of article 363 therefore clearly override the operation of

article 374 (2) also. The result is that article 363 is the controlling article over article 374(2) also. The jurisdiction of the Supreme Court having been stated in articles 131-136, article 363 provides that notwithstanding anything contained in those articles and other articles of the Constitution, neither the Supreme Court nor any other court will have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution and which has or has been continued in operation after such commencement. If therefore the dispute arises in respect of a document of that description and if such document had been executed before the Constitution by a Ruler and which was or had continued in operation after such commencement, this Court has no jurisdiction to determine such issue. It was argued that as the agreement had to be in operation after the commencement of the Constitution, no dispute can arise in respect of such document before the commencement of the Constitution and therefore as the dispute in the present case had arisen before the commencement of the Constitution, article 363 had no operation. In my opinion, this is not a correct reading of article 363 (1). The time factor is related only to the document in question and not the dispute. It is provided that such document should have been executed before the Constitution came into force and has to be in operation after the Constitution, but the dispute, which is the subject-matter of the litigation, may arise before or after.

It was argued that the article is prospective and not retrospective. Therefore it only covers the cases which are filed in the Supreme Court after the Constitution comes into force and does not affect suits filed in the Federal Court before the Constitution of India came into operation. In my opinion this argument is based on a mistaken meaning given to the words "prospective" and "retrospective". It is not disputed that the Constitution is prospective. The question however

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is that the Supreme Court having been created by the Constitution itself, on the day the Court proceeds to determine the matter, what according to the Constitution of India, is the jurisdiction of this Court. This approach does not make the provision retrospective. In this connection, the similarity in language of articles 363 (1) and 131 proviso (i) may be noted. Considered in that way, the only question which remains for decision is whether on the structure of the plaint, the dispute raised by the suit arises out of the provision of a treaty, agreement, covenant, engagement, sanad or any other similar instrument. I have already noticed above that the dispute in respect of the agreement of the 15th December, 1947, is immaterial for the present discussion. If the plaintiff repudiates that agreement he is seeking to enforce his rights after ignoring the same. If the plaintiff (as noticed in four of the suits) relies on this agreement, it becomes a part of the Instrument of Accession under section 6 (5) of the Government of India Act, 1935. and the dispute will still have to be considered having regard to the terms of the two documents, *viz.*, the original Instrument of Accession and the supplementary Instrument. The question thus resolves itself into an analysis of the plaint and to find out what the plaintiff seeks to get by his suit. Apart from the fact that in prayers (f) and (g) of his plaint he seeks to enforce his rights under the Agreement of the 15th December, 1947, it appears clear that the whole ambit of the suit is to enforce his Instrument of Accession. The plaintiff contends firstly that it had signed the Instrument of Accession through its Ruler. The State next complains that, acting beyond the powers given over under the Instrument of Accession, the Dominion of India and the State of Bihar are trespassing wrongfully on its legislative and executive functions, that the Dominion of India and the State of Bihar are making laws which they have no power to make having regard to the Instrument of Accession, and are wrongfully interfering with the administration of the State beyond the rights given to them under the Instrument of Accession. The whole plaint is

nothing else except the claim to enforce the plaintiff's right under the Instrument of Accession. The dispute therefore in my opinion clearly is in respect of this Instrument of Accession and is covered by article 363 (1) of the Constitution of India. The question of the validity of the different enactments and orders is also based on the rights claimed under the Instrument of Accession so far as the plaintiff is concerned. On the side of the defendants, the position is that they admit the Instrument of Accession and they do not claim that they are exercising the disputed rights under that Instrument. Their contention is that the Agreement of the 15th of December, 1947, was validly signed and is binding and enforceable against the plaintiff. The defendants contend that their action in passing the disputed, legislation and orders and the action in taking over the administration are all based on that Agreement of 15th December, 1947. If the plaintiff contends that that Agreement is not binding on it, it cannot enforce its rights under the original jurisdiction of the Court. If the plaintiff has a grievance and a right to a relief which the defendants contend it has not, the forum to seek redress is not the Supreme Court exercising its original jurisdiction on the transfer of the suit from the Federal Court. According to the defendants, the situation in those circumstances will be of a Sovereign Independent State trespassing on the territories, powers and privileges of another neighbouring independent State. To redress a grievance arising out of such action on the part of the defendants, the Supreme Court is not the forum to give relief. The issue is answered in the negative, costs costs in the cause.

VIVIAN BOSE J.—I agree.

Patanjali Sastri J.

PATANJALI SASTRI J.—This is a batch of suits brought by plaintiffs claiming to be Acceding States for certain declaratory reliefs in regard to the alleged wrongful merger of their respective territories in the territories of the adjoining Provinces of Bihar and Orissa. The Dominion of India was impleaded as the

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first defendant, and the Province of Bihar or the Province of Orissa, as the case may be, as the second defendant.

The suits were instituted in the Federal Court of India under section 204 of the Government of India Act, 1935, shortly before the commencement of the new Constitution. Apart from certain minor variations, the substance of the plaintiff's case in each suit, shorn of verbiage, is that the merger and the taking over of the administration of the territory concerned, carried out in purported exercise of powers conferred by the State Merger (Governors' Provinces) Order, 1949, made by the Governor-General of India under section 290-A of the Government of India Act, 1935, was a breach of the terms of the Instrument of Accession executed by the Ruler and accepted by the Governor-General in August, 1947, which continued the sovereignty of the Ruler in and over the State, and that all notifications, orders or enactments issued or made in violation of the rights and obligations flowing out of that Instrument were *ultra vires,* void and inoperative. In the plaints in Suits Nos. 1, 2 and 3 reference was made to an agreement entered into between the Governor-General and the Ruler concerned in December, 1947, and it was alleged that it was inoperative and void because it was not a concluded agreement and, in any case, not supported by consideration. In the other Suits Nos. 4, 5, 6 and 7 that agreement was fully admitted, but "in spite of the agreement aforesaid" it was contended that "the actions taken by the defendants including the promulgation of the orders, notifications and legislation mentioned herein are wrongful, illegal and *ultra vires*" The crucial prayer in all the suits was "a declaration that the Dominion of India has no authority vested in it to assume any power or jurisdiction beyond the matters specified in the Instrument of Accession and had no authority to delegate any power or powers in relation to the plaintiff State to the Provincial Government" of Bihar or of Orissa, as the case may be. The other reliefs asked for were merely ancillary and consequential.

The defence, in the main, was based on the aforesaid agreement of December, 1947, under which, it was alleged, the plaintiff in each case "ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the plaintiff to the Government of India with effect from 1st January, 1948". It was claimed that, from that date and particularly from January 26, 1950, when the Constitution of India came into force and made the territory of the plaintiff an integral part of the territory of the State of Bihar (or of Orissa, as the case may be), the plaintiff ceased to be a distinct legal unit and had no capacity to maintain the suit. The said agreement was a political agreement and not a civil contract requiring consideration for its effectiveness and, in any case, was a concluded agreement supported by consideration. In view of that agreement, all the actions, notifications and orders referred to in the plaint proceeded "on the basis of the supersession of the said Instrument of Accession by the consent of the parties" and they were legal, valid and operative to bind the plaintiff. In a supplementary written statement the defendants raised the plea that "this Court had no jurisdiction to entertain the suit having regard to the subject-matter of the suit and the provisions contained in article 363 (1) of the Constitution of India".

On the 9th December, 1950, by consent of both sides, it was ordered by the Judge in Chambers that the suit should be heard on the preliminary issue, namely, "whether having regard to the subject matter of the suit and the provisions contained in article 363 (1) of the Constitution of India, this Court has jurisdiction to entertain the suit". When the matter was taken up for hearing on 5th March, 1951, it was considered desirable that issues should be settled on all matters in controversy in the suits, and all the issues relating to the maintainability of the suits, including the issue of jurisdiction, should be tried as preliminary issues, and the suits were adjourned to the 7th March for that purpose. The parties then filed seventeen agreed issues as arising out of the

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pleadings, and they further agreed that issues 1, 3, 4, 5, 6 and 7 might be tried first. These issues are as follows :

1. Whether having regard to the subject matter of the suit and the provisions contained in article 363 (1) of the Constitution of India, this Hon'ble Court has jurisdiction to entertain the suit ?

3. Whether the Federal Court had jurisdiction to entertain the suit under section 204 of the Government of India Act, 1935, and particularly in regard to the questions as to the existence and validity of the agreement of merger ?

4. Whether this Court has jurisdiction to entertain the suit ?

5. Whether the suit is maintainable in view of the absence of the requisite notice to the defendants under section 80 of the Civil Procedure Code ?

6. Whether having regard to the provisions of the Constitution, the plaintiff has a legal capacity and is entitled to maintain the suit ?

7. Whether this Court is competent to examine the validity of section 290-A of the Government of India Act, 1935, enacted by the Constituent Assembly ?

As I am of opinion that issue No. 1 should be found for the defendants and the suits must fail on that ground, I do not propose to consider the other issues, although arguments have been addressed to us on all of them.

The determination of issue No. 1 turns on the proper construction of articles 363 (1) and 374 (2) which read thus :

"363. (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has

or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument."

"374. (2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court."

As already pointed out, the sheet anchor of the plaintiffs' case is the Instrument of Accession, which, according to them, continues to operate in full force. They contend that "the Dominion of India or the Constituent Assembly of India has no authority or power under the Indian Independence Act or otherwise to enact section 6 of the Constituent Assembly Act I of 1949 or to introduce section 290-A into the Government of India Act, 1935, or to legislate for the plaintiff State in any manner except with reference to the matters specified in the Schedule to the said Instrument of Accession" (paragraph 18 of the plaint in Suit No. 1 of 1950). They proceed to state that "the disputes between the parties comprise and involve questions on which the extent or existence of a legal right depends and such disputes, to which the said Acceding State is a party, concern (among other things) the extent of authority vested in the Dominion by virtue of the Instrument of Accession of the plaintiff State." And prayer (b), to which reference has been made already, is for "a declaration that the Dominion Government has no authority vested in it to assume any power or jurisdiction beyond the matters specified in the Instrument of Accession" (paragraph 21). These passages are reproduced in all the plaints. On the other hand, the mainstay of the

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defence is the subsequent agreement of December 1947, and it is claimed that the States Merger (Governors' Provinces) Order, 1949, under which the impugned merger was effected, was made "on the basis of the supersession of the said Instrument of Accession by the consent of parties". (Vide paragraph 21 of the written statement of the first defendant which was adopted by the second defendant). And, although the defendants proceeded to state, on the aforesaid basis, that there was no dispute regarding the Instrument of Accession, inasmuch as that basis is repudiated in the plaints, such repudiation obviously raises the dispute whether the Instruments of Accession are still in force or have been superseded. That dispute "arising", as it does, "out of" the Instrument of Accession in each case falls within the purview of article 363 (1).

It was said that the suits involved also certain other disputes not falling within article 363 (1) such as, for instance, those relating to the agreement of December, 1947, and the validity of the Extra Provincial Jurisdiction Act, 1947, of section 290-A of the Government of India Act, 1935, and of the States Merger (Governors' Provinces) Order, 1949, etc. The controversies regarding these matters are but contentions whereby the parties seek to establish, on the one hand, that the Instrument of Accession still governs their mutual rights and obligations and, on the other, that that Instrument stands superseded and is no longer in force. Issues have no doubt been framed in regard to these matters but they cannot in my opinion, be considered to be disputes for the purposes of article 131 or article 363 (1). These articles deal with the jurisdiction of courts and they envisage disputed claims to substantive legal rights. The claims in these suits are undoubtedly based on the respective Instruments of Accession and they are repudiated because those Instrument of Accession are said to have been superseded by reason of the alleged agreement of December, 1947. These claims are disputes to which article 363 (1) clearly applies. The other so-called disputes are only incidental and ancillary controversies

raised with a view to support or overthrow the claims and cannot, in my opinion, affect the operation of the bar under that Article any more than, for instance issue No. 5 relating to the necessity for notice to the defendants under section 80 of the Civil Procedure Code.

Nevertheless, it is contended, the article has no application here and it cannot operate retrospectively and applies only to disputes *arising after* the Commencement of the Constitution. I am unable to accept this restricted interpretation of article 363 (1). While the Article undoubtedly postulates the continued operation of the treaties, agreements, etc., entered into or executed before the commencement of the Constitution and giving rise to the disputes, it does not require, as a condition of its application, that such *Disputes* should arise *after* the commencement of the Constitution. I see no reason for importing a restriction which a plain grammatical construction of the language employed does not warrant. It is not correct to say that the wider construction would make the operation of the article retrospective, for the bar to interference by the court operates only *after* the Constitution came into force irrespective of the disputes concerned having arisen before or after the commencement of the Constitution. It was said that the article should not be construed so as to bar the trial of pending suits or proceedings. But this is not a case of a pending action in a court which continues to function. The Federal Court, in which the suits were pending, and which had exclusive jurisdiction to deal with them, was abolished and a new court, the Supreme Court of India, was created with original jurisdiction strictly limited to disputes relating to legal rights between States recognised as such under the Constitution. But as the States specified in Part B of the First Schedule had a semi-sovereign status before the Constitution, agreements with them were in the nature of international treaties and covenants, and disputes arising out of them would not lie in municipal courts. That principles is given effect to, so far as the Supreme Court's

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original jurisdiction is concerned, by the proviso to article 131 which defines such jurisdiction and, in regard to all courts and in respect of all proceedings, by article 363 (1). The reason for applying that principle is greater, not less, in regard to such disputes arising *before* the Constitution when these States, then known as Indian States, enjoyed a higher degree of political freedom. Furthermore, the construction contended for by the plaintiffs as applied to article 131 would mean that the Court would, notwithstanding the proviso, have jurisdiction in respect of such disputes, provided they arose *before* the commencement of the Constitution. If that had been intended, one would expect that such jurisdiction would have been conferred by positive enactment, instead of being left to be derived by implication from a proviso intended to delimit the jurisdiction conferred by that article. It seems to me, therefore, that the proviso to article 131 must be construed as applicable to disputes of the kind mentioned arising both before and after the commencement of the Constitution. If so, article 363 (1) must receive the same construction, the language employed being essentially the same.

Even so, it is next contended, article 363, which enacts a general rule of non-interference by courts in certain classes of disputes, cannot control the operation of article 374 (2), which is a special provision providing that suits, appeals and proceedings pending in the Federal Court at the commencement of the Constitution shall stand removed to the Supreme Court and that the Supreme Court shall have jurisdiction to hear and determine the same. There would be considerable force in this argument but for the opening words of article 363 (1), namely, "notwithstanding anything in this Constitution." These words clearly indicate that the bar to the exercise of jurisdiction enacted in article 363 controls the operation of article 374 (2) and excludes the rule of construction invoked by the plaintiffs.

I find issue No. 1 for the defendants.

MAHAJAN J.—On the 16th January, 1950, ten days before the inauguration of the Constitution of India, the State of Seraikella (an Orissa State attached to the Eastern States Agency) brought a suit in the Federal Court of India against the Dominion of India and the Province of Bihar for the following reliefs :

"(a) Interpretation of the relevant provisions of the Government of India Act, 1935, the Indian Independence Act, 1947, and of the States Merger (Governors' Provinces) Order, 1949 ;

(b) Declaration that the Dominion Government has no authority vested in it to assume any power or jurisdiction beyond the matters specified in the Instrument of Accession and had no authority to delegate any power or powers in relation to the plaintiff State on the Provincial Government of Bihar or Orissa ;

(c) Declaration that the Extra Provincial Jurisdiction Act, XLVII of 1947, the Constituent Assembly Act, I of 1949, section 290-A of the Government of India Act, 1935, and the States Merger (Governors' Provinces) Order, 1949, are *ultra vires,* illegal and inoperative in so far as they are made applicable to the plaintiff State and that all orders made or purported to be made and/or all actions taken or purported to be taken thereunder are also illegal and inoperative ;

(d) Declaration that the Province of Bihar has no authority or jurisdiction to carry on the administration of the plaintiff State and that the alleged merger of the said State in the Province of Bihar is illegal and unauthorized and is not binding on the said State and its Ruler ;

(e) Declaration as to the rights of the parties and as to the extent of authority of the defendant Dominion of India over and in respect of the plaintiff States ;

(f) Declaration that the plaintiff State retains its entity and territorial integrity that its administration should in any event be carried on in the name of its Ruler and that his rights and privileges as set out in

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annexure "C" and his private properties as set out in annexure "D" remain unaffected ;

(g) Declaration that the Province of Bihar has no authority or jurisdiction over the plaintiff State and that it should not interfere in any way with the said State or the sovereignty of its Ruler."

All the different reliefs set out above in substance converge on the reliefs stated in clause (f). The plaintiff wants a declaration from this court to the effect that the State of Seraikella retains its entity and territorial integrity and has not integrated itself with the territories of the Indian Dominion.

This suit was pending in the Federal Court on the 26th January, 1950, and under the provisions of article 374 (2) of the Constitution it has to be heard and determined by this Court. The plaintiff claims the above reliefs on the following allegations :

(1) That on the 16th August, 1947, the plaintiff State acceded to the Dominion of India under the terms of an Instrument of Accession (Exhibit A) executed by its Ruler and accepted by the Governor-General of India, that the said instrument could not be added to or amended unless such addition or amendment was accepted by the Ruler by a supplementary Instrument ; that no such supplementary Instrument was ever executed or accepted by the Ruler ;

(2) That from 31st August, 1947, the Government of Orissa wrongfully and illegally purported to administer the plaintiff State by virtue of an alleged delegation of authority by the Dominion Government by a notification dated 23rd December, 1947, issued under an Act called the Extra Provincial Jurisdiction Act, XLVII of 1947, that the said Act is *ultra vires* and of no effect and does not bind the plaintiff and that the Act was not authorised by the Instrument of Accession ;

(3) That the defendant claims to rely for the validity of its wrongful acts on an alleged agreement of 15th December, 1947, but the same is void and

inoperative and that it never became a concluded contract between the parties ;

(4) That on the 18th May, 1948, the Province of Bihar wrongfully and illegally took over the administration of the State and issued an administrative order under Act XLVII of 1947, that the Dominion of India had no authority beyond the Instrument of Accession to delegate its power to the Province of Bihar to administer the plaintiff State ;

(5) That on the 26th July, 1949, the Governor-General wrongfully and illegally promulgated an order called the States Merger Order of 1949, under which the State was illegally merged in the Province of Bihar, that this order was made under section 290-A of the Government of India Act which section was introduced in that Act by section 6 of the Constituent Assembly Act, I of 1949, which was *ultra vires* and illegal, that the Dominion of India had no authority to bring the plaintiff State within the provisions of section 290-A of the Government of India Act, that the Constituent Assembly Act, I of 1949, was inoperative as it was enacted without the consent of the Governor-General that the Merger Order prejudicially affects the existence and entity of the State, its position and status and goes beyond the ambit of section 290-A. Shorn of all its verbiage, the plaint in substance denies the agreement of the 15th December, 1947, on the foot of which the plaintiff State was integrated with the territories of the Indian Dominion and on the basis of which Act XLVII of 1947 was made applicable to it, and the notifications mentioned in the plaint were issued. On the basis of the same agreement section 290-A of the Government of India Act was also made applicable to the plaintiff State. By reason of the denial of the agreement of the 15th December it is asserted by the plaintiff that the actions of the Dominion Government in first merging the plaintiff State with the Province of Orissa and subsequently merging it with the State of Bihar is unlawful and illegal ; in other words; the plaintiff alleges that in the absence of any supplementary agreement as contemplated by

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section 6, sub-section (3), of the Government of India Act, 1935, the Dominion of India had no authority whatsoever to bring the plaintiff State within the ambit of the different statutes mentioned above and that all its acts in depriving the State of its legal entity are acts in excess of the terms of the Instrument of Accession and amount to usurpation of the sovereignty of the plaintiff State which was retained by it under that Instrument and that being so, the plaintiff is entitled to a declaration from this Court to the effect that the plaintiff State still retains its entity and territorial integrity and that the various orders and laws under which it has been integrated with the State of Bihar are void and *ultra vires* and are acts of encroachment on the sovereignty of the State. Shortly stated, the plaintiff seeks by this suit to specifically enforce the terms of the Instrument of Accession by denying the existence of the agreement of 15th December, 1947, or by pleading its invalidity.

The suit brought against the Dominion of India and the Province of Bihar has now to be continued and determined against the Government of the Union of India and the State of Bihar in view of the provisions of article 300 of the Constitution. Both the defendants contested the suit on similar grounds. The following agreed issues between the parties bring out the points in dispute that arise out of the pleadings :

1. Whether having regard to the subject matter of the suit and the provisions contained in article 363 (1) of the Constitution of India, this Hon'ble Court has jurisdiction to entertain the suit ?

2. Whether the plaintiff had ceased to be an acceding State and a distinct legal entity at the date of the institution of the suit ?

3. Whether the Federal Court had jurisdiction to entertain the suit under section 204 of the Government of India Act, 1935, and particularly in regard to the questions as to the existence and validity of the agreement of merger ?

4. Whether this Court has jurisdiction to entertain the suit ?

5. Whether the suit is maintainable in view of the absence of the requisite notice to the defendants under section 80 of the Civil Procedure Code ?

6. Whether having regard to the provisions of the Constitution, the plaintiff has a legal capacity and is entitled to maintain the suit ?

7. Whether this Court is competent to examine the validity of section 290-A of the Government of India Act, 1935, enacted by the Constituent Assembly ?

8. Whether the States Merger (Governor's Provinces) Order dated the 27th July, 1948, made by the Governor-General under section 290-A of the Government of India Act, 1935, is valid and competent ?

9. Whether the Extra Provincial Jurisdiction Act, 1947, was *ultra vires* and invalid ?

10. Whether the delegation of authority by the Government of India to the Government of Orissa was *ultra vires* and illegal ?

11. Whether the Constituent Assembly was competent to enact the Constituent Assembly Act I of 1949 under the provisions of the Indian Independence Act ?

12. Whether the Seraikella and Kharsawan States (Amendment Act) Order, 1948, is *ultra vires* and goes beyond the ambit of the Extra Provincial Jurisdiction Act. 1947 ?

13. Whether the plaint discloses any cause of action ?

14. Whether the agreement dated 15th December, 1947, is a concluded agreement between the parties ?

15. Whether the agreement dated 15th December, 1947, is void and inoperative for want of consideration ?

16. Whether the agreement dated 15th December, 1947, is a political agreement and not a civil contract ?

17. Whether the administration of the plaintiff was handed over to the Government of Bihar under

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Notification No. 217-P dated 18th May, 1948, in consultation with the Ruler of the plaintiff State ?

With the consent of parties it was decided to hear arguments on issues 1, 3, 5, 6 and 7 as they could be decided without taking any evidence.

Issue 1 : As regards this issue, it was contended by the learned Attorney-General that this Court has no jurisdiction "to determine any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India.. ..was a party and which has or has been continued in operation after such commencement....," and that the present suit relates to a dispute of this nature and though the suit is removed to the records of the Court from the Federal Court, this Court must decline to hear it. Article 363 on the basis of which this contention is raised provides thus :

"Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement..... which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement...."

The learned Attorney-General pointed out that particular subjects were removed from the jurisdiction of this Court and it had no power or authority to adjudicate on them notwithstanding any other provision in the Constitution to the contrary. The learned counsel for the plaintiff controverted this contention and urged that article 363 of the Constitution had no retrospective effect and could not affect suits that were pending in the Federal Court and

which under the provisions of article 374 (2) were removed to the Supreme Court and regarding which jurisdiction was conferred on it under the provisions of that article. It was said that article 363 could only have application to suits or disputes brought or raised after the 26th January, 1950, and not to suits that had already been brought before that date. It was further contended that the plaintiff's suit did not arise out of any treaty or agreement inasmuch as it denied the very existence of such a treaty or agreement. It was further pointed out that the suit did not relate to any of the subjects that were within the scope of this article. In order to appreciate these contentions it is necessary to refer to article 374 (2), which provides as follows :—

"All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same.."

The question for decision under this issue concerns the true scope of the provisions of articles 363 and 374 (2) of the Constitution. It is easy to frame difficult conundrums on the material offered by the two articles in question but when one considers them without a desire for controversy, they soon open to a clear and simple meaning. Article 363 takes away the jurisdiction of this Court on certain subjects if suits about them are instituted after the 26th January, 1950, or disputes concerning them arise after that date, while article 374 (2) empowers this Court to hear and to determine suits which were pending in the Federal Court of India on the 26th January, 1950, and which that court was competent to try and determine. There is, in my opinion, no conflict between these two articles. They operate on two different fields. The Federal Court of India had jurisdiction by virtue of the provisions of section 204 of the Government of India Act, 1935, to determine certain suits between acceding States and the Government of India with respect to certain subject matters and that jurisdiction was continued for the time being and was conferred on this

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Court. The original jurisdiction to the Supreme Court is conferred by article 131 in respect of similar suits but it does not embrace all the subjects that were covered by section 204 of the Government of India Act, 1935.

In *Keshavan Madhava Menon* v. *The State of Bombay*(1) it was held by this Court that the Constitution of India has no retrospective operation. This proposition was not disputed by the learned Attorney-General. Article 363 of the Constitution has therefore to be given a prospective operation and as such it cannot affect suits pending before the 26th January, 1950. It was contended by the learned Attorney-General that though the article has no retrospective operation, yet the language employed in it affects the jurisdiction of this court in respect of suits that were pending in the Federal Court if they relate to subjects stated therein. Emphasis was laid on the opening words of the article. In my opinion, this contention is without force. The opening words of the article do not make the article retrospective. Once it is held that the whole article operates prospectively on suits that are brought after the 26th January, 1950, or on disputes that arise after that date, then the opening words of the article cannot affect cases transferred to this Court from the Federal Court under the provisions of article 374 (2) of the Constitution. It is a well known rule of construction of statutes that no statute unless it be a statute dealing with procedure only should be construed as having retrospective effect, unless the statute expressly makes its provisions retrospective or retrospective effect must be given to it by necessary implication or intendment. The law leans against giving retrospective effect to statutes. Reference in this connection may be made to the decision of the Court of Exchequer in *Moon* v. *Burden*(2). There the learned Barons of the Exchequer had to consider whether section 18 of the Gaming Act, 8 and 9 Vict., Chapter 109, was retrospective. The words of that section were as follows :—

"And be it enacted, that all contracts or agreements, whether by oral or in writing by way of gaming or,

(1) [1951] S. C. R. 228.

(2) [1884] 2 Ex. 22.

wagering, shall be null and void; and that *no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing* alleged to be won upon any wager, or which shall have been deposited in the hands of any person to decide the event on which any wager shall have been made."

Although the section provided that no suit should be brought or *maintained* in any court for the recovery of any such sum, nevertheless the Court of Exchequer held that that section did not apply to suits which had been instituted though not decided before the Act came into force. It was observed by Baron Parke that the enactment "that all contracts or agreements, by way of gaming or wagering shall be null and void", if it stood by itself, *ought most clearly* to be construed as applicable to future contracts and agreements only, and that if the next part stood alone, it would, *though not so clearly,* be construed to apply to future actions only and it should be construed to mean, not that an action already brought should not be maintained but that no action should afterwards be brought, or, if brought, maintained. *In Beadling* v. *Coll*(1), the Court of Appeal in England held that the Gaming Act, 1922, which provided that no action under section 2 of the Gaming Act, 1855, to recover back money paid in respect of gaming debts "shall be *entertained* in any court", did not apply to actions which had been commenced before the Gaming Act of 1922 came into force. In *Henshall* v. *Porter* (2), McCardie J., went further and held that the Gaming Act, 1922, which prohibited all courts from entertaining such suits, did not apply to cases *Where the cause of action had arisen before the passing of the Act though no suit had been instituted until the Act had been passed.* The rule laid down in these cases was expressly approved by the Federal Court of India in *The United Provinces* v. *Mst. Atiqa Begum*(3) and the learned Attorney-General frankly conceded that the rule laid down therein was not contested. It seems to me that this rule of construction

(1) [1922]39 T. L. R. 128.
(2) [1923] 2 K. B. 193.
(3) [1940] F. C. R. 110.

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has apposite application to the construction of article 363 of the Constitution and the article has no retrospective operation and only affects disputes that would arise after the 26th January, 1950. As pointed out in Willis in his Constitutional Law, the same principles govern the construction of constitutions and the construction of statutes, but that the dominant force in the construction of constitution is to construe one part in the light of the provisions in the other part, as the constitution is a logical whole, each provision of which is an integral part of itself. In the majority judgment of this Court in *Keshavan Madhava Menon* v. *The State of Bombay*(1) it was observed that the idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India and that idea can be given effect to if article 363 (1) is construed as above. Any other interpretation of article 363 would make the provisions of article 374 (2) partially nugatory inasmuch as certain suits pending in the Federal Court under section 204 of the Government of India Act, though removed to this Court with a direction that they have to be determined by us, could not be heard by this Court. Such a result is avoided if article 363 is construed as suggested by me.

The contention raised by the learned counsel for the plaintiff that this suit does not arise out of any agreement as it questions its very existence does not seem sound because the dispute in this case clearly arises out of the provisions of the Instrument of Accession.

The next contention raised that the suit in so far as it questions the validity of certain statutes by interpreting the provisions of the Government of India Act and the Independence Act has force as these subjects fall outside the scope of article 363. The question of jurisdiction has to be determined on the allegations made in the plaint and cannot be decided by considering the written statement and the validity of the grounds alleged in the plaint.

(1) [1951] S. C. R. 228.

For the reasons given above I respectfully beg to differ from the view of the majority of the Court on this issue and hold that issue 1 should be decided in favour of the plaintiff.

Issue 3 : Section 204 of the Government of India Act provides as follows :—

"(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Dominion, any of the Provinces or any of the Acceding States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder before the date of the establishment of the Dominion, or of an order made thereunder on or after that date, or the interpretation of the Indian Independence Act, 1947, or of any order made thereunder, or the extent of the legislative or executive authority vested in the Dominion by virtue of the Instrument of Accession of that State ; or....".

Under this section the Federal Court was conferred exclusive jurisdiction on disputes between the Dominion, any of the Provinces or the Acceding States, provided that in the case of the Acceding States the conditions laid down in clause (a) cited above were fulfilled. It was contended by the learned Attorney-General that the basic relief claimed in the plaint is that the Instrument of Accession subsists and that in substance the suit is to enforce the terms of the Instrument of Accession on the allegation that these have been contravened, but that the fact is that the Instrument of Accession was superseded by the agreement of the 15th December, 1949, and is no longer subsisting,

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and that being so, the subject matter of this dispute is outside the scope of the section. It was also argued that unlawful acts by one sovereign State over the sovereignty of another State would be in the nature of political acts (acts of State) and that the municipal courts could have no jurisdiction to give relief concerning them. It was not disputed that in those suits in which the execution of the supplementary agreement of the 15th December, 1949, was not denied the controversy raised in the plaint would be within the ambit of the section. In reply to these contentions the following submissions were made on behalf of the plaintiffs in this and in the connected suits :

(1) That the subject matter of the suit concerned the construction of sections 6 and 101 of the Government of India Act, 1935, and the point to be decided was whether on the correct construction of these sections the Dominion of India was competent to pass the Extra Territorial Jurisdiction Act, XLVII of 1947, so as to affect the plaintiff's rights, and could promulgate the various orders concerning the merger of the plaintiff State ;

(2) That on the allegations in the plaint, that on a true construction of the provisions of section 6(3) of the Government of India Act, 1935, the alleged or admitted supplementary instrument did not fall within its purview was a matter within section 204 of that Act ;

(3) That it having been alleged in the plaint that the merger order in pursuance of which plaintiff State was merged with the Province of Bihar was not within the ambit of section 290-A, brought the suit within the provisions of section 204 inasmuch as it was a question concerning the interpretation of section 290-A of that Act ;

(4) That on the allegations in the plaint that on a proper construction of the Indian Independence Act, section 290-A was not a valid piece of legislation the suit came again within the ambit of the section ;

(5) That the defendant not having raised the plea of act of State to defend its various actions taken qua

the plaintiff State, the point could not be raised at this stage, and that in any case when the defendant had pleaded that its acts were done under the agreement of 15th December, 1949, it was not open to it to take that plea.

As already observed, the question of jurisdiction has to be decided purely on the allegations made in the plaint and it seems clear that on those allegations the suit is within the ambit of section 204. It is, however, quite a different matter that those allegations may not on further inquiry be substantiated. Questions regarding the interpretation both of the Government of India Act and of the Indian Independence Act have been canvassed in the plaint and it has also been contended that on a true construction of the scope of the Instrument of Accession which subsists none of the acts of the defendant can be justified. The merger order, it has been said, is in excess of the provisions of section 290-A of the Government of India Act and this raises the question of the true scope and intent of that section. The issue therefore is decided in favour of the plaintiff.

Issue 6: The decision of the question raised by this issue depends on the determination of the question whether the plaintiff State has been validly integrated with the Province of Bihar. If section 290-A of the Government of India Act is not a valid piece of legislation or if the merger order issued under that section is void, then it cannot be said that the plaintiff State no longer exists and has been merged in the Province of Bihar. The learned Attorney-General made reference to article 1 of the Constitution, which defines the territories of India and also referred to the schedule in which it has been noted that the territory of the State of Bihar includes those territories which under the provisions of section 290-A have been integrated with it. This statement in the schedule has to be read subject to the contention raised above. It cannot be denied that an Instrument of Accession was executed by the plaintiff State in favour of the Dominion of

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India and the plaintiff by this suit alleges that on the true construction of that instrument the plaintiff State retains its integrity. The plaintiff State denies the execution of the supplementary instrument and also denies that its merger is valid under its terms. Without determining the correctness of these allegations it is difficult to hold that mere non-recognition of the State in the Constitution wipes out its existence and that the situation is analogous to the case of death of a party in a suit. It may be pointed out that under the terms of the Instrument of Accession the plaintiff was not bound either to accept the future Constitution of India or to subscribe to its terms and that being so, it would not be correct to find that by the coming into force of the Constitution the plaintiff's suit has abated. This Court has to decide the case in the situation in which it was instituted in the Federal Court of India and on the merits of the controversy it has to be determined whether the State has been integrated validly with the territories of the Dominion of India or not. In these circumstances, in my opinion, the plea of abatement raised has no validity. It was argued that this Court must accept the Constitution and cannot go behind it. This is unquestionably so, but in this case no question arises of going behind the Constitution, when the court is only exercising jurisdiction conferred on it by article 374 (2) of the Constitution and deciding suits filed by Acceding States before the Constitution came into force.

Issue 5 : In my judgment, the plea raised under section 80 of the Code of Civil Procedure has no validity. The Code of Civil Procedure has not been made applicable as in the case of High Courts by section 117 to the Federal Court of India. By section 204 of the Government of India Act, exclusive original jurisdiction was conferred on the Federal Court in respect of suits between States and States which were outside the ken of the Code of Civil Procedure. By section 214 of the Government of India Act, the Federal Court was authorised to make its own rules of procedure. The Code in section 4 has enacted that it does not affect

any special jurisdiction or special forms of procedure. Rule 5 of the Federal Court Rules framed under Section 214 of the Government of India Act lays down in clear and unambiguous language that none of the provisions of the Code of Civil Procedure shall apply to any proceedings in the Federal Court unless specifically incorporated in these rules. The provisions of section 80 have not been incorporated in the rules and that being so, section 80 cannot affect suits instituted in the Federal Court under section 204 of the Government of India Act, 1935. It was contended by the learned Attorney-General that the condition precedent for instituting a suit laid down in section 80 was not a matter of procedure falling within the ambit of section 214 of the Government of India Act and that the Federal Court could not make rules eliminating the condition precedent laid down in section 80 before a suit could be instituted against the Government. In my judgment, this contention is not sound. Section 214 lays down that the Federal Court may from time to time with the approval of the Governor-General make rules of court for regulating generally the practice and procedure of the court. "Practice" in its larger sense like procedure, denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law that gives and defines the right. "Procedure" as defined in Wharton means the mode in which successive steps in litigation are taken. It seems to me that what is enacted in section 80 is the first step in litigation between the parties when the cause of action is complete. Section 80 in effect provides that an advance copy of the plaint should be served on the defendant and no suit should be instituted in court until the expiry of two months after such service. Section 80 does not define the rights of parties or confer any rights on the parties. It only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, *i.e.*, machinery as distinguished from its products [Vide *Boyser* v. *Minors*(1).]

(1) 50 L. J. Ex. 555.

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Reference was made by the learned Attorney-General to the decision in *Bhagchand Dagadusa* v. *Secretary of State for India* (1). At page 357 their Lordships of the Privy Council examined the view that had been taken in some of the High Courts in India on the applicability of section 80 to suits for injunction and it was held that these had been decided on an erroneous assumption that a statutory provision as to procedure was subject to an exception in cases of hardship or in cases where irremediable harm might be caused, if it was strictly applied. It was pointed out that the Procedure Code must be read in accordance with the natural meaning of its words and that section 80 being explicit and mandatory, it admitted of no implications or exceptions. Their Lordships then made these observations :—

"To argue as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while section 80 is mere procedure, is fallacious, for section 80 imposes a statutory and unqualified obligation upon the Court."

The learned Attorney-General relying on those observations contended that section 80 did not lay down any rule of procedure but was a provision affecting substantive rights. I am unable to accede to this contention. Their Lordships did not decide, and it is not possible to think that they would make any such decision, that section 80 did not lay down a rule of procedure but was a piece of legislation defining substantive rights. All that they said was that section 80 was not mere procedure but was of a mandatory character and more than this they did not say.

Further, it seems to me that suits between States and States in respect of their political or public rights and which were wholly outside the ambit of the Code of Civil Procedure could not be governed by a rule like this which aptly applies to cases of private persons seeking to enforce private rights against Government. Parliament while conferring original jurisdiction on

(1) L. R. 54 I. A. 338.

the Federal Court of India concerning these political rights could not be intended to clog the enforcement of those rights by the provisions of section 80 of the Code of Civil Procedure. The only conditions precedent for the maintainability of the suit are those laid down in section 204 and the hearing of these suits has to be in accordance with the rules of procedure prescribed by the Federal Court of India under the provisions of section 214 of the Government of India Act.

Issue 7: This issue was not very seriously argued by the learned counsel for the plaintiff. The validity of section 290-A of the Government of India Act was disputed on the ground that the assent of the Governor-General was not obtained to the addition of this section in the Act. The section was added to the Government of India Act by the Constituent Assembly in its sovereign capacity and was assented to by the President of the Assembly. The Government of India Act, 1935, was the Constitution Act of the Dominion of India and the Constituent Assembly was authorized by the Independence Act to amend or alter it till that Assembly framed a permanent Constitution for India. The provisions of sections 6 and 8 of the Independence Act fully bear this out. In my opinion, there is no validity in the contention raised on behalf of the plaintiff State that section 290-A was not a valid piece of legislation and that it could not become law till the assent of the Governor-General was obtained in respect of it. This Court has no jurisdiction to examine the legislation passed by a sovereign body.

The result is that these suits, in my opinion, cannot be disposed of on the preliminary issues and must proceed to trial on the other issues. This order will also be treated as an order in all the other connected suits.

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DAS J.—I prefer to base my decision on issue No. 6 and I express no opinion on the other preliminary issues argued before us.

The seven suits which have been posted before us for hearing on several preliminary issues came to be instituted in the following circumstances:

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On different dates hereinafter mentioned each of the plaintiff States acceded to the Dominion of India by virtue of Instruments of Accession executed by their respective Rulers and accepted by the Governor-General of India. Each of the said States also entered into standstill agreements with the Dominion of India. Later on, each of the plaintiff States entered into separate Articles of Agreement with the Governor-General of India. Instruments of Accession and stand-still agreements entered into by the State of Seraikella (plaintiff in Suit No. 1 of 1950), the State of Dhenkanal (plaintiff in Suit No. 2 of 1950), and the State of Baudh (plaintiff in Suit No. 3 of 1950) were executed on or about August 16, 1947, by the State of Tigiria (plaintiff in Suit No. 4 of 1950) and the State of Athgarh (plaintiff in Suit No. 5 of 1950) on August 15, 1947, and by the State of Baramba (plaintiff in Suit No. 6 of 1950) and the State of Narsinghpur (plaintiff in Suit No. 7 of 1950) on July 18, 1947, and November 11, 1947, respectively. Articles of Agreement were executed by the States of Seraikella, Dhenkanal and Baudh on December 15, 1947, and by the States of Tigiria, Athgarh, Baramba and Narsinghpur on December 14, 1947.

By the Instruments of Accession, which were in the same terms in all the cases, the respective Rulers of the plaintiff States acceded to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other administrative authority should, by virtue of the said Instruments but subject to the terms thereof and for the purposes only of the Dominion, exercise in relation to the State concerned such functions as might be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th of August, 1947. By article 3 of the said Instrument of Accession, the respective Rulers accepted the matters specified in the Schedule as matters with respect to which the Dominion Legislature might make laws for the respective States. The matters specified in the Schedule comprised, broadly speaking,

Defence, External Affairs and Communications. Article 5 provided that the terms of the Instrument of Accession should not be varied by any amendment of the Government of India Act or of the Indian Independence Act, 1947, unless such amendment was accepted by the Ruler by an Instrument supplementary to the Instrument of Accession. Article 7 provided that nothing in the Instrument of Accession should be deemed to commit the Ruler of the State concerned in any way to acceptance of any future Constitution of India or to fetter his discretion to enter into arrangements with the Government of India under any such future Constitution. Article 8 preserved the continuance of the Ruler's sovereignty in and over his State, and, save as provided by or under the Instrument of Accession, the exercise of all powers, authority and rights then enjoyed by him as Ruler of the State.

By the standstill agreements, which were also in similar terms, all agreements and administrative arrangements as to matters of common concern then existing between the Crown and any Indian State continued as between the Dominion of India and the State.

By article 1 of the Agreements, the respective Rulers ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on the first day of January, 1948, and the Dominion Government, as from the last mentioned date, became competent to exercise the ceded powers, authority and jurisdiction in such manner and through such agency as it might think fit. Article 2 secured to the respective Rulers their respective privy purse. It may here be mentioned that the amount of the privy purse payable to the Rulers of the States of Seraikella, Dhenkanal and Baudh not having been agreed upon at the date of the signing of the Articles of Agreements the space meant for inserting the amount of privy purse was left blank in the

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Agreements signed by the said Rulers. Article 3 preserved the Rulers full ownership, use and enjoyment of all his private properties as distinct from State properties. Article 4 saved all personal privileges enjoyed by the Rulers whether within or outside the territories of the States immediately before the 15th day of August, 1947. Article 5 guaranteed the succession according to law and custom to the Gaddi of the State and to the Ruler's personal rights, privileges, dignities and titles.

On December 24, 1947, the Extra-Provincial Jurisdiction Act, 1947 (Act XLVII of 1947) received the assent of the Governor-General and came into force. The preamble of the Act and the definition, in section 2 of 'extra-provincial jurisdiction' made it quite clear that the Central Government could, under this Act, exercise extra-provincial jurisdiction over a State only if it had by treaty, agreement etc. acquired full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State. In the case of these seven States the Central Government could exercise extra-provincial jurisdiction over them only on the strength of the Articles of Agreement of December, 1947. It could not exercise extra-provincial jurisdiction by reason of the Instrument of Accession.

On December 23, 1947, the Central Government issued a notification purporting to delegate its extra-provincial jurisdiction with respect to the plaintiff States under the Extra-Provincial Jurisdiction Act, 1947 (No. XLVII of 1947) to the Government of Orissa which at once began to exercise extra-provincial jurisdiction over the seven States. It is not quite clear how there could be a delegation of jurisdiction before the Act came into force. Be that as it may, on May 18, 1948, another notification was issued by the Central Government under sections 3 and 4 of the Extra-Provincial Jurisdiction Act, 1947, cancelling the previous notification with respect only to the State of Seraikella and the State of Kharsawan and delegating its jurisdiction in or in relation to those two States to the Government of

Bihar and on the same date the Government of Bihar after promulgating the Seraikella and Kharsawan States Order assumed jurisdiction over them. The other States continued to be administered by the Government of Orissa. The Constituent Assembly by the Government of India (Amendment) Act, 1949 (No. I of 1949) which received the assent of the President of the Constituent Assembly on January 10, 1949, amended the Government of India Act, 1935, by, *inter alia* inserting the following section as section 290-A :—

"Administration of certain acceding States as a Chief Commissioner's Province or as part of a Governor's or Chief Commissioner's Province.—(1) Where full and exclusive authority, jurisdiction and powers for and in relation to the governance of any Indian State or of any group of such States are for the time being exercisable by the Dominion of India, the Governor-General may by order direct—

(a) that the State or the group of States shall be administered in all respects as if the State or the group of States were a Chief Commissioner's Province ; or

(b) that the State or the group of States shall be administered in all respects as if the States or the group of States form part of a Governor's or a Chief Commissioner's Province specified in the order :

Provided that if any order made under clause (b) of this sub-section affects a Governor's Province, the Governor-General shall before making such order ascertain the views of the Government of that Province both with respect to the proposal to make the order and with respect to the provisions to be inserted therein".

It will be noticed that the Governor-General could act under the new section only where full and exclusive authority, jurisdiction and powers for and in relation to the governance of any Indian State were for the time being exercisable by the Dominion of India. It follows that the Governor-General could, under this new section, make an order of merger with respect to these seven States only on the strength of the Articles

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of Agreements of December 1947. He could not make any such order by reason of the Instrument of Accession.

In exercise of the powers conferred on him by the new section 290-A, the Governor-General, on July 27, 1949, promulgated an Order called the States' Merger (Governors' Provinces) Order, 1949. Section 3 of this Order provided as follows :—

"As from the appointed day, the States specified in each of the Schedules shall be administered in all respects as if they formed part of the Province specified in the heading of that Schedule ; and accordingly, any reference to an acceding State in the Government of India Act, 1935, or in any Act or Ordinance made on or after the appointed day shall be construed as not including a reference to any of the merged States, and any reference in any such Act or Ordinance as aforesaid to a Province specified in a Schedule to this Order shall be construed as including the territories of all the States specified in that Schedule."

Schedule III of the Order showed that the State of Seraikella was one of the two States merged in the Province of Bihar and Schedule IV showed that the other Orissa States including the plaintiffs in Suits Nos. 2 to 7 of 1950 were merged in the Province of Orissa.

Being aggrieved by the enactments, orders and notifications resulting in their merger with Bihar or Orissa the plaintiff States filed the present suits in the Federal Court of India in its Original Jurisdiction. Suit No. 1 of 1950 was filed on or about January 15, 1950, and the other six suits were filed on January 23, 1950. The defendants in the suits are two in number. The first defendant in all the suits is the Dominion of India and the second defendant in Suit No. 1 is the State of Bihar while the second defendant in all the other suits is the State of Orissa. The main written statements in all the suits are filed on behalf of the first defendant and the second defendant, the State of Bihar or the State of Orissa, as the case may be, has adopted

the contentions set forth in the written statements of the first defendant. An additional written statement was filed by the first defendant raising another preliminary issue of law which has also been adopted by the second defendant.

The Constitution of India having come into force on January 26, 1950, all these suits, by virtue of article 374 (2), stood removed to this Court which was created by the Constitution. The learned Chamber Judge directed that the issue of law raised in the additional written statement be tried as a preliminary issue. When the suits were called on for hearing on that preliminary issue, learned Attorney-General handed in a list of 17 issues and it was agreed by counsel on both sides that the following issues only should be determined first as preliminary issues :—

1. Whether having regard to the subject-matter of the suit and the provisions contained in article 363(1) of the Constitution of India, this Hon'ble Court has jurisdiction to entertain the suit ?

3. Whether the Federal Court had jurisdiction to entertain the suit under section 204 of the Government of India Act, 1935, and particularly in regard to the questions as to the existence and validity of the agreement of merger ?

4. Whether this Court has jurisdiction to entertain the suit ?

5. Whether the suit is maintainable in view of the absence of the requisite notice to the defendants under section 80 of the Civil Procedure Code ?

6. Whether having regard to the provisions of the Constitution the plaintiff has a legal capacity and is entitled to maintain the suit ?

7. Whether this Court is competent to examine the validity of section 290-A of the Government of India Act, 1935, enacted by the Constituent assembly ?

Re-Issue No. 6.—I take up issue No. 6 which appears to me to be decisive. Article 1 of the Constitution says that India shall be a Union of States and that the States and territories thereof shall be the States and

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their territories specified in Parts A, B and C of the First Schedule. The First Schedule to the Constitution in Parts A, B and C sets out the names of the States and indicates what the territories of the States shall be comprised of. The third paragraph in Part A provides as follows :—

"The territory of each of the other States in this Part shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290-A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province."

The argument is that as the territories of the plaintiff States, by virtue of the States' Merger (Governors' Provinces) Order, 1949, made under section 290-A of the Government of India Act, 1935, were immediately before the commencement of the Constitution being administered as if they formed part of the Provinces of Bihar or Orissa, the territories of the States of Bihar and Orissa therefore now comprise the territories of the plaintiff States. The subjects of the plaintiff States have now become the citizens of India, their territories have been merged in the State of Bihar or Orissa, as the case may be. These States are no longer recognised as States in Parts A, B or C of the First Schedule to the Constitution. In short, they have ceased to be States so far as our Constitution is concerned and consequently they have no legal existence as acceding States which this Court which is bound by the Constitution may recognise. These States, in the circumstances, cannot come to this Court to enforce their political rights and are no longer entitled to maintain the suits. Learned counsel for the plaintiffs, however, contend that the order made under section 290-A of the Government of India Act, being *ultra vires* and illegal, the territories of the States were never lawfully administered as part of the Provinces of Bihar or Orissa and, therefore, the territories of the State of Bihar or Orissa cannot be

said to comprise the territories of the plaintiff States. It seems to me that the contention of the learned counsel for the plaintiffs is misconceived, for the part of the sentence beginning with the words "which immediately before the commencement" and ending with the words "formed part of that Province" are but description of the territories which the Constitution states are to be comprised in the territories of the States of Bihar or Orissa. The validity or otherwise of the order made under section 290-A of the Government of India Act has no relevancy. The question is whether the territories of the plaintiff States were in fact being administered as if they formed part of the Provinces of Bihar or Orissa and whether such territories were being so administered by virtue of an order made under section 290-A of the Government of India Act. There can be no doubt that the answer must be in the affirmative. This Court is bound by the Constitution and cannot question the validity of any of its provisions. The Constitution says that the territories of Bihar and Orissa shall comprise the territories specified in Part A and this Court must accept that position. None of these States is included amongst the States named in Parts A, B and C. Our Constitution does not recognise any of these States as an acceding State. The Government of India Act which recognised them as acceding States has been repealed. Therefore, the plaintiff States have no existence in the eye of the Constitution and cannot come to this Court to enforce their political rights. It is not necessary to consider whether in international law there may be a State without any territory or without any subject such as many of the States, which during the last war had been overrun by the invaders and which functioned in foreign countries, claimed to be. The problem before us is quite different. The States which are plaintiffs in suits Nos. 4, 5, 6 and 7 ceased to be acceding States by reason of the Merger agreement of December 1947 admittedly concluded by their respective Rulers. In any event, our Constitution has quite clearly eliminated these States as such by absorbing

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their territories with the States of Bihar or Orissa. As our Constitution does not recognise these States as acceding States or even as States, this Court cannot recognise these States or their political rights. These cases may have been within the jurisdiction of the Federal Court when they were instituted, but since then the Government of India Act has been repealed and the new Constitution has come into force. Under the Constitution, these States do not exist at all. Assuming that these States are still in existence notionally, they have, at any rate, ceased to be States of the kind which could maintain a suit under section 204 of the Government of India Act. After the repeal of the Government of India Act and the commencement of the Constitution none of these States is an acceding State which may continue a suit filed under section 204. The suits must, therefore, be regarded as having abated by reason of the elimination of the plaintiff States as States or acceding States just as an ordinary suit would abate on the death of a plaintiff. In my judgment, these suits can no longer be continued in this Court.

In view of my decision on issue No. 6, the other preliminary issues need not be considered.

Suits dismissed.

Agent for the plaintiffs in Suits Nos. 1, 3 & 4: *R. R. Biswas.*

Agent for the plaintiffs in Suits Nos. 2 & 5: *P. K. Chatterjee.*

Agent for the plaintiffs in Suits Nos. 6 & 7: *S. C. Bannerjee.*

Agent for the defendants: ***P. A. Mehta.***