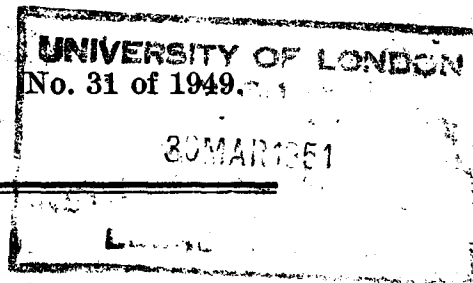


CMS 62

~~GM~~

6, 1950



In the Privy Council.

ON APPEAL

FROM THE COURT OF THE JUDGE OF APPEAL IN THE STATE OF BRUNEI.

IN THE MATTER of an *ex parte* application for leave to issue and serve a Summons together with a Plaint upon the Defendants thereto outside the Jurisdiction of the State of Brunei

and

IN THE MATTER of a Suit (Civil Suit No. 1 of 1948) instituted in the Court of the Resident of the State of Brunei.

BETWEEN

BERTRAM WILLES DAYRELL BROOKE and ANTHONY WALTER DAYRELL BROOKE - - - - - *Plaintiffs*

AND

Sir CHARLES VYNER BROOKE, G.C.M.G., CHARLES JAMES VYNER CRAIG BROOKE, RALPH EVELYN STUART JOHNSON and The Honourable ARTHUR GEORGE VILLIERS PEEL - - - - - *Defendants.*

RECORD OF PROCEEDINGS

MESSRS. WILLIAM CHARLES CROOKER,
42 GRACECHURCH STREET,
LONDON, E.C.3,
Agents for the Appellants.

**INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.**

In the Privy Council.

ON APPEAL
FROM THE COURT OF THE JUDGE OF APPEAL IN THE STATE
OF BRUNEI.

UNIVERSITY OF LONDON

W.C.1

17 JUL 1953

IN THE MATTER of an *ex parte* application for leave to serve a Summons together with a Plaint upon the Defendants thereto outside the Jurisdiction of the State of Brunei

and

IN THE MATTER of a Suit (Civil Suit No. 1 of 1948) instituted in the Court of the Resident of the State of Brunei.

BETWEEN

BERTRAM WILLES DAYRELL BROOKE and ANTHONY
WALTER DAYRELL BROOKE

Plaintiffs

AND

SIR CHARLES VYNER BROOKE, G.C.M.G., CHARLES JAMES
VYNER CRAIG BROOKE, RALPH EVELYN STUART
JOHNSON and THE HONOURABLE ARTHUR GEORGE
VILLIERS PEEL

Defendants.

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL.

FROM THE COURT OF THE JUDGE OF APPEAL IN THE STATE OF BRUNEI.

IN THE MATTER of an *ex parte* application for leave to issue and serve a Summons together with a Plaint upon the Defendants thereto outside the Jurisdiction of the State of Brunei

10

and

IN THE MATTER of a Suit (Civil Suit No. 1 of 1948) instituted in the Court of the Resident of the State of Brunei.

BETWEEN

BERTRAM WILLES DAYRELL BROOKE and ANTHONY WALTER DAYRELL BROOKE - *Plaintiffs*

AND

SIR CHARLES VYNER BROOKE, G.C.M.G., CHARLES JAMES VYNER CRAIG BROOKE, RALPH EVELYN STUART JOHNSON and THE HONOURABLE ARTHUR GEORGE VILLIERS PEEL *Defendants.*

20

RECORD OF PROCEEDINGS

No. 1.

PLAINT.

Org. duly stamped \$30.

Resident's Court Brunei

Resident's Court.

No. 1. Plaint, 14th July 1948.

IN THE COURT OF THE RESIDENT. State of Brunei.

30 .

Brunei Civil Suit No. 1 of 1948.

(1) BERTRAM WILLES DAYRELL BROOKE of 104 Paramount Court, University Street in the City of London

and

(2) ANTHONY WALTER DAYRELL BROOKE, of Sarawak Lodge, Newton Road, in the Colony of Singapore - - - - - Plaintiffs

Resident's
Court.

against

No. 1.
Plaint,
14th July
1948,
continued.

- (1) SIR CHARLES VYNER BROOKE G.C.M.G., of 73 Albion Gate, Bayswater Road, in the County of London, England
- (2) CHARLES JAMES VYNER CRAIG BROOKE, of 99 Dunstable Street, Ampthill, in the County of Bedford, England
- (3) RALPH EVELYN STUART JOHNSON, of 4 Kingsland, Newcastle-upon-Tyne, in the County of Northumberland, England

10

AND

- (4) THE HONOURABLE ARTHUR GEORGE VILLIERS PEEL, of 25 Knightsbridge Court, Sloane Street, in the County of London, England

Defendants.

PLAINT.

BERTRAM WILLES DAYRELL BROOKE and ANTHONY WALTER DAYRELL BROOKE, the above-named Plaintiffs, state as follows :—

Admitted
Sd. L. N. H.
Davis
14/7/48.

1. By the Deed of His late Highness the Sultan Omar Ali, dated the 2nd day of August 1846, and confirmed by the Deed of His late Highness the Sultan Abdul Mumin, dated the 24th day of August 1853—

20

(A) a grant of the sovereignty of the province of Sarawak was made to the late Sir James Brooke, with the right to govern the said province in any manner he pleased. And His Highness the Sultan was not to interfere during his lifetime ;

(B) power was conferred on the said Sir James Brooke to provide for the transmission of the said sovereignty after his death, subject always to the payment by each succeeding Rajah of Sarawak, on his accession, of the sum of four thousand dollars, by way of tribute, to His Highness the Sultan.

30

2. By his last Will and Testament, dated the 15th day of April, 1867, the said Sir James Brooke, in exercise of the power aforesaid, provided for the transmission of the said sovereignty after his death to his nephew, the late Sir Charles Johnson Brooke, and the heirs male of his body lawfully issuing, and in default of such issue to his nephew, the late Stuart Johnson, and the heirs male of his body lawfully issuing, and in default of such issue to Her late Majesty Queen Victoria her heirs and assigns for ever ; and that the late Baroness Burdett-Coutts, the late Sir Thomas Fairbairn, Baronet, and the late John Abel Smith should be Trustees to see the purposes aforesaid carried into effect.

40

3. The said Sir James Brooke died on the 11th day of June 1868.

4. Probate of the aforesaid Will, dated the 15th day of April 1867, was granted by the Court of Probate in England on the 27th day of July 1868 to the late Alexander Knox, the late John Gillam Booty, and the late Richard Butt, three of the Executors named therein. Power was

thereby reserved of making a like grant to the late Sir Spenser St. John, the fourth Executor named therein; but the said Sir Spenser St. John did not apply for a grant.

*Resident's
Court.*

No. 1.

Plaint,
14th July
1948,
continued.

5. By virtue of the aforesaid Deeds, dated the 2nd day of August 1846 and the 24th day of August 1853 respectively, and the aforesaid Will, dated the 15th day of April 1867, made in pursuance thereof, and on payment of the sum of four thousand dollars by way of tribute as aforesaid to His Highness the Sultan the said Sir Charles Johnson Brooke succeeded his uncle, the said Sir James Brooke, and he reigned as Rajah of Sarawak
10 until his death on the 17th day of May 1917.

6. The heir male of the said Sir Charles Johnson Brooke is his eldest son, the Defendant Sir Charles Vyner Brooke G.C.M.G. By virtue of the aforesaid Deeds, dated the 2nd day of August 1846 and the 24th day of August 1853 respectively, and the aforesaid Will, dated the 15th day of April 1867, made in pursuance thereof, and on payment of four thousand dollars by way of tribute as aforesaid to His Highness the Sultan, the said Sir Charles Vyner Brooke G.C.M.G. succeeded his father as Rajah of Sarawak.

7. The next heirs male of the said Sir Charles Johnson Brooke, in
20 order of primogeniture, are—

(A) his second son, the Plaintiff Bertram Willes Dayrell Brooke; and then

(B) his grandson, the Plaintiff Anthony Walter Dayrell Brooke (the only son of the said Bertram Willes Dayrell Brooke); and then

(C) his great-grandson James Bertram Lionel Brooke (the only son of the said Anthony Walter Dayrell Brooke); and then

(D) his grandson, the Defendant Charles James Vyner Craig Brooke (the only son of his third and youngest son, Harry Brooke,
30 now deceased).

8. The heir male of the said Stuart Johnson is the Defendant Ralph Evelyn Stuart Johnson.

9. By his last Will and Testament, respecting the State of Sarawak and the public and political affairs thereof, and dated the 16th day of December 1913, the said Sir Charles Johnson Brooke urgently enjoined that no changes in the State or in the Government thereof should be initiated by his successor, the said Sir Charles Vyner Brooke, G.C.M.G., without his first consulting his brother the Plaintiff Bertram Willes Dayrell Brooke; and, by his Oath of Accession as Rajah of Sarawak, the said Sir Charles
40 Vyner Brooke, G.C.M.G., swore to abide by the conditions expressed in the aforesaid Will dated the 16th day of December 1913.

10. By an Instrument of Cession, dated the 21st day of May 1946, the said Sir Charles Vyner Brooke, G.C.M.G. purported to cede the sovereignty of Sarawak to His Majesty King George VI, his heirs and successors. Contrary to the conditions of the aforesaid Will, dated the 16th day of December 1913, the said Sir Charles Vyner Brooke, G.C.M.G. did not first consult the Plaintiff Bertram Willes Dayrell Brooke before agreeing to make such a cession.

Resident's
Court.
—
No. 1.
Plaint,
14th July
1948,
continued.

11. The aforesaid Instrument, dated the 21st day of May 1946, recites that such a cession was authorised by the Council Negri of Sarawak, but the Plaintiffs say that the proceedings at which a Council Negri purported to give such an authorisation were tainted with irregularity and were void.

12. By an Order in Council, dated the 26th day of June 1946, His Majesty King George VI annexed Sarawak to His Majesty's dominions; but by Article 4 thereof His Majesty reserved to himself the power *inter alia* to revoke the said Order in Council.

13. Prior to the said purported cession on the 21st day of May 1946 of the sovereignty of Sarawak, the said Sir Charles Vyner Brooke, G.C.M.G., 10 caused certain moneys forming part of the State funds thereunto appertaining to be transferred to his private account, the moneys so transferred being other than his normal personal emoluments as Rajah of Sarawak; and, in particular, he caused a sum of £200,000 (two hundred thousand pounds) in cash to be thus transferred from the said State funds to his private account on or about the 15th day of April 1941.

14. Subject to the judicial interpretation by the Courts of His Highness the Sultan of the aforesaid Deeds, dated the 2nd day of August 1846 and the 24th day of August 1853 respectively, and the relevant provisions of the documents made in pursuance thereof the Plaintiffs, as 20 the heirs male, next after the said Sir Charles Vyner Brooke, G.C.M.G., of the said Sir Charles Johnson Brooke, have, in view of the facts hereinbefore set out, the right (a) to petition His Majesty King George VI to revoke the aforesaid Order in Council, dated the 26th day of June 1946, pursuant to Article 4 thereof, and (b) to an account of the moneys hereinbefore referred to (other than the normal personal emoluments of the said Sir Charles Vyner Brooke, G.C.M.G., as Rajah of Sarawak) transferred to the private account of the said Sir Charles Vyner Brooke, G.C.M.G., and of the disposal thereof. The said Sir Charles Vyner Brooke, G.C.M.G., has refused to furnish such an account; and it appears from a letter, dated the 8th day of 30 January 1948 and addressed to the Plaintiff Bertram Willes Dayrell Brooke by Messrs. Arnold, Fooks, Chadwick & Co., of 15, Bolton Street, Piccadilly, in the County of London, England, the Solicitors to the said Sir Charles Vyner Brooke, G.C.M.G., that the said Sir Charles Vyner Brooke, G.C.M.G., has no intention of furnishing such an account either to the said Plaintiff or to anyone else.

15. The object of the present proceedings is (a) to determine the true construction of the aforesaid Deeds, dated the 2nd day of August 1846 and the 24th day of August 1853 respectively and of the relevant provisions of the documents made in pursuance thereof, and also to determine the 40 *locus standi* of each of the Plaintiffs in relation to the matters hereinbefore mentioned, and (b) to obtain, as regards the said purported cession of the sovereignty of Sarawak, an account of the assets thereunto appertaining which were retained by the said Sir Charles Vyner Brooke, G.C.M.G., and which consequently were not comprised in such purported cession.

16. The said John Abel Smith died on the 7th day of January 1871. The said Sir Thomas Fairbairn, Baronet, died on the 12th day of August 1891. By a Deed, dated the 9th day of September 1898, the said Baroness Burdett-Coutts appointed her husband, the late William Lehman Ashmead-Bartlett-Burdett-Coutts, and the said Sir Spenser St. John and the late 50

Albert Henry George Earl Gray to be Trustees jointly with her of the said Will, dated the 15th day of April, 1867, to see the purposes aforesaid carried into effect. The said Baroness Burdett-Coutts died on the 30th day of December 1906. The said Sir Spenser St. John died on the 2nd day of January 1910. The said Earl Gray died on the 29th day of August 1917. The said William Lehman Ashmead-Bartlett-Burdett-Coutts died on the 28th day of July 1921.

*Resident's
Court.*
—
No. 1.
Plaint,
14th July
1948,
continued.

17. Of the Trustees named in the aforesaid Will, dated the 15th day of April 1867, to see the purposes aforesaid carried into effect, the said
10 Baroness Burdett-Coutts was the last surviving Trustee, and the said William Lehman Ashmead-Bartlett-Burdett-Coutts was her sole Executor. Of the Trustees named in the aforesaid Deed, dated the 9th day of September 1898, the said William Lehman Ashmead-Bartlett-Burdett-Coutts was the last surviving Trustee.

18. The defendant the Honourable Arthur George Villiers Peel is the last surviving Executor of the said William Lehman Ashmead-Bartlett-Burdett-Coutts. As such Executor the Honourable Arthur George Villiers Peel can claim to be the present Trustee to see the purposes aforesaid carried into effect, and it is in the said capacity that he is joined as a
20 defendant to these proceedings.

19. The said John Gillam Booty died on the 21st day of October 1875. The said Alexander Knox died on the 5th day of October 1891. The said Richard Butt died intestate on the 14th day of April 1906.

The address for service of the Plaintiffs is care of Norman Ernest Clarke of the Hongkong and Shanghai Bank, Brunei Town in the State of Brunei the agent in Brunei of the Plaintiffs.

THE PLAINTIFFS' CLAIM is for :—

(i) a declaration that on the true construction of the aforesaid
30 Deed executed by His Highness the Sultan on the 2nd day of August 1846, and of the aforesaid Deed executed by His Highness the Sultan on the 24th day of August 1853, and of the provisions made pursuant to such Deeds in the aforesaid Will executed by the said Sir James Brooke on the 15th day of April 1867—

(a) after the death of the said Sir James Brooke, and on payment by the said Sir Charles Johnson Brooke to His Highness the Sultan of the aforesaid tribute of four thousand dollars and on the said Sir Charles Johnson Brooke taking the Oath of Accession as Rajah of Sarawak, the sovereignty of the province of Sarawak vested inalienably in the said Sir Charles
40 Johnson Brooke for his life ;

(b) the heir male of the said Sir Charles Johnson Brooke is the Defendant Sir Charles Vyner Brooke, G.C.M.G., and after the death of the said Sir Charles Johnson Brooke, and on payment by the Defendant Sir Charles Vyner Brooke, G.C.M.G., to His Highness the Sultan of the aforesaid tribute of four thousand dollars and on the Defendant Sir Charles Vyner Brooke, G.C.M.G., taking the Oath of Accession as Rajah of

*Resident's
Court.*

No. 1.
Plaint,
14th July
1948,
continued.

Sarawak, the sovereignty of the province of Sarawak vested inalienably in the said Sir Charles Vyner Brooke, G.C.M.G., for his life ;

(c) in default of an heir entitled to succeed to the Raj of the province of Sarawak under the entails created by the aforesaid Will dated the 15th day of April 1867, and willing to pay to His Highness the Sultan the aforesaid tribute of four thousand dollars and to take the aforesaid Oath of Accession, the sovereignty of the province of Sarawak and the State funds and other assets thereunto appertaining revert to His Highness 10 the Sultan ;

(d) the Plaintiff Bertram Willes Dayrell Brooke is, after the Defendant Sir Charles Vyner Brooke, G.C.M.G., the next heir male of the said Sir Charles Johnson Brooke ;

(e) the Plaintiff Anthony Walter Dayrell Brooke is the heir-apparent of the said Bertram Willes Dayrell Brooke ;

(f) on the accession, after the death of the said Sir James Brooke, of each succeeding Rajah of Sarawak, there vested in him aforesaid the sovereignty of the said Raj, and the State funds and other assets thereunto appertaining so vested in him 20 as Rajah and not for his private account.

(ii) An account by the Defendant Sir Charles Vyner Brooke, G.C.M.G., of all moneys (other than the normal personal emoluments of the said Defendant as Rajah of Sarawak) transferred from the said State funds to the private account of the said Defendant prior to the 21st day of May 1946, and of the disposal thereof ;

(iii) such further and other relief as in the circumstances may be meet ; and

(iv) costs.

30

(Signed) BERTRAM WILLES DAYRELL BROOKE
by his Attorney

ANTHONY W. D. BROOKE.

(Signed) ANTHONY W. D. BROOKE.

No. 2.

LIST OF DOCUMENTS attached to Plaintiff.

Resident's
Court.

No. 2.

List of
documents
attached
to Plaintiff.

The Plaintiffs rely principally on the following documents :—

1. Deed of His late Highness the Sultan Omar Ali, dated the 2nd day of August 1846, by which he granted the sovereignty of Sarawak to the late Sir James Brooke.
 2. Deed of His late Highness the Sultan Abdel Mumin, dated the 24th day of August 1853, by which he confirmed the said grant of sovereignty.
 - 10 3. Last will and testament of the said Sir James Brooke, dated the 15th day of April 1867 (the original whereof is filed in His Majesty's Principal Probate Registry in England).
 4. Deed of the Baroness Burdett-Coutts, dated the 9th day of September 1898, by which she appointed additional trustees of the said will.
 5. Last will and testament of Sir Charles Johnson Brooke, dated the 16th day of December 1913, respecting the public and political affairs of Sarawak.
 - 20 6. Agreement, dated the 13th day of March 1941, between the Defendant Sir Charles Vyner Brooke of the one part and John Beville Archer, Cyril Drummond Le Gros Clark, Thomas Corson, James Gordon Anderson and Cecil Pitt-Hardacre of the other part.
 7. Letter, dated the 5th day of December 1947, from the Plaintiff Bertram Brooke to the Defendant Sir Charles Vyner Brooke.
 8. Letter, dated the 9th day of December 1947, from the Defendant Sir Charles Vyner Brooke to the Plaintiff Bertram Brooke.
 - 30 9. Letter, dated the 31st December 1947, from the Plaintiff Bertram Brooke to the Defendant Sir Charles Vyner Brooke.
 10. Letters, dated respectively the 2nd and the 8th days of January 1948, from Messrs. Arnold, Fooks, Chadwick & Co. (Solicitors for the Defendant Sir Charles Vyner Brooke) to the Plaintiff Bertram Willes Dayrell Brooke.
-

Resident's Court.

No. 3.

AFFIDAVIT VERIFYING PLAINT.

No. 3.
Affidavit
verifying
Plaint, 8th
July 1948.

I, ANTHONY WALTER DAYRELL BROOKE the Second Plaintiff above-named for and on behalf of and as Attorney for Bertram Willes Dayrell Brooke the first Plaintiff above-named and for myself solemnly and sincerely declare that the facts set out in the plaint above written are true to my knowledge except as to matters stated on information and belief and that as to those matters I believe them to be true.

Declared at Singapore this Eighth day of } Sgd. ANTHONY W. D.
July 1948. } BROOKE. 10

Before me,

Sgd. C. H. WITHERS-PAYNE,

Notary Public, Singapore.

(Notarial Seal).

No. 4.
Summons
in Chambers
for leave
to serve
outside the
Jurisdiction,
14th July
1948.

No. 4.

SUMMONS for Leave to Serve outside the Jurisdiction.

SUMMONS IN CHAMBERS.

LET all parties concerned attend the Resident in Chambers at the Court of the Resident on the 21st day of July 1948 on the hearing of an application on the part of the Plaintiffs for an order that the summons to each of the Defendants herein be issued for service outside the jurisdiction and that a sealed copy of each summons, together with a copy of the Plaint and a sealed copy of the order to be made hereon, be sent to the agents in England for the Plaintiffs for service on the Defendants at their respective addresses as set out in the said Plaint. 20

Dated this 14th day of July 1948.

No. 5.

AFFIDAVIT in Support of Summons for Leave to Serve outside Jurisdiction.

Resident's Court.

I, ANTHONY WALTER DAYRELL BROOKE, of full age and of British nationality, at present residing at Sarawak Lodge, Newton Road, Singapore, affirm and say as follows :—

No. 5.
Affidavit by Anthony Walter Dayrell Brooke in support of Summons for leave to serve outside Jurisdiction, 8th July 1948.

1. I am the second above-named Plaintiff and attorney of Bertram Willes Dayrell Brooke the first above-named Plaintiff.

2. The above-named Defendant Sir Charles Vyner Brooke G.C.M.G. resides at 73 Albion Gate, Bayswater Road, London, England ; the above-named Defendant Charles James Vyner Craig Brooke resides at 99 Dunstable Street, Ampthill, Bedfordshire, England ; the above-named Defendant Ralph Evelyn Stuart Johnson resides at 4 Kingsland, Newcastle-upon-Tyne, Northumberland, England, and the above-named Defendant the Honourable Arthur George Villiers Peel resides at 25 Knightsbridge Court, Sloane Street, London, England ; that is to say each of the said Defendants resides at a place outside the jurisdiction of this Honourable Court and each of the said Defendants has no place of residence or business within the said jurisdiction.

3. This suit concerns a Deed executed in Brunei by His Highness the Sultan on the 2nd day of August 1846 and a further Deed executed in Brunei by His Highness the Sultan on the 24th day of August 1853 ; and, moreover, the subject of the proceedings falls on general principles of international law and comity to be determined by the law of Brunei.

4. I desire that summonses to the said Defendants be issued for service outside the jurisdiction, and that a sealed copy of each summons, together with a copy of the Plaint and a sealed copy of the order to be made hereon, be sent to the agents in England of the Plaintiffs for service on the said Defendants.

Affirmed at Singapore by the said Anthony Walter Dayrell Brooke this 8th day of July 1948 } (Sgd.) ANTHONY W. D. BROOKE.

Before me,
(Sgd.) C. H. WITHERS-PAYNE,
(Notarial Seal) Notary Public,
Singapore.

No. 6.

ORDER on Summons for Leave to Serve outside Jurisdiction.

Before THE HONOURABLE THE RESIDENT in Chambers.

No. 6.
Order of the Resident on Summons for leave to serve outside Jurisdiction, 21st July 1948.

40 Upon the application of the above-named Plaintiffs made by way of Summons in Chambers this day and UPON READING the affidavit of Anthony Walter Dayrell Brooke sworn to on the 8th day of July 1948 and filed herein on the 14th day of July 1948 and UPON HEARING the Solicitors for the Applicants THIS COURT DOTH ORDER that the application be refused.

Dated this 21st day of July, 1948.

(Sgd.) L. N. H. DAVIS,
Resident.

*Resident's
Court.*

No. 7.

FOUNDATIONS for the Resident's Decision.

No. 7.
Grounds
for the
Resident's
decision,
21st July
1948.

This application is made under Sections 64, 65 and 66 of the F.M.S. Civil Procedure Code which, subject to such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of the State, has effect in the State of Brunei by virtue of Section 2 of Enactment 2 of 1939 "F.M.S. Laws Adoption Enactment 1939." I therefore read the word "Brunei" for the words "Federated Malay States" in applying these sections. The present application, which is supported by affidavit, is stated by Counsel to fall within the provisions of Section 66 (b) or (d). I find that the suit would only fall within the circumstances of one or both of these sub-sections if the property affected was now situate within the State of Brunei, which it is not. 10

The affidavit states that the suit concerns deeds executed in Brunei (on the copies attached to the plaint it is not stated where they were executed) and claims that the subject of the proceedings falls on general principles of international law and comity to be determined by the law of Brunei. If it were held that this is so, it would establish, notwithstanding that the defendants are not present in the State, that the suit is within the jurisdiction of the Resident's Court as defined in Section 5 (ii) of "the Courts Enactment 1908," but the question of jurisdiction is not the matter at issue in the present application which is for leave to issue summons. 20

Section 67 of the Civil Procedure Code states that leave shall not be granted unless it is made sufficiently to appear to the Court that the case is a proper one for service out of jurisdiction. The Code mentions certain cases in which such leave may be granted, but I am not satisfied that the present suit falls within any of these provisions or that it has been shown that it is a proper one for leave to be given for service of summons out of jurisdiction. 30

I therefore refuse the application.

(Sgd.) L. N. H. DAVIS,
Resident's Court Brunei.

No. 8.

PETITION OF APPEAL.

IN THE COURT OF THE JUDGE OF APPEAL.

*Court of
Judge of
Appeal.*No. 8.
Petition of
Appeal, 7th
October
1948.

To,

THE HONOURABLE THE JUDGE OF APPEAL.

THE PETITION of BERTRAM WILLES DAYRELL BROOKE
of No. 104 Paramount Court University Street in the
City of London and ANTHONY WALTER DAYRELL
BROOKE of Sarawak Lodge, Newton Road, in the Colony
of Singapore,

10

SHEWETH :—

1. That your Petitioners humbly pray that the Order herein of the Honourable the Resident dated the 21st day of July 1948 refusing the application of the Appellants for an Order that the Summons to each of the Respondents herein be issued for service outside the jurisdiction may be reviewed and that the said Order may be rescinded and that it may be Ordered that the Summons to each of the Respondents herein be issued for service outside the jurisdiction and that a sealed copy of each Summons together with a copy of the Plaint and a sealed copy of the
20 Order made if this Appeal should be granted be sent to the Agents in England for the Appellants for service on the Respondents at their respective addresses set out in the said Plaint and that the costs of this Appeal may be costs in the cause.

2. That the grounds on which your Appellants appeal from the Order aforesaid are as follows :—

(A) The learned Resident was wrong in law in holding—

(i) that the Federated Malay States Civil Procedure Code was applicable, subject to such formal alterations and amendments as might be necessary to make the same applicable to the
30 circumstances of the state of Brunei, by virtue of Section 2 of the Federated Malay States Laws Adoption Enactment, 1939 (Enactment No. 2 of 1939), because, on the contrary, in so far as the Federated Malay States Civil Procedure Code was applicable, it should have been applied, with such alterations as might be required to suit the circumstances of the State of Brunei, by virtue of Section 19 of the Courts Enactment, 1908 (Enactment No. 1 of 1908), as amended by Section 7 of the Courts (Amendment) Enactment, 1941 (Enactment No. 5 of 1941) ;

(ii) that in the application of the Federated Malay States Civil Procedure Code, the word " Brunei " should be read for the words " Federated Malay States," because, on the contrary, in
40 so far as the Federated Malay States Civil Procedure Code was applicable, it should have been construed, in its application to the State of Brunei, not as though Brunei were the Federated Malay States but as though Brunei were one of the States which formed part of the Federated Malay States ;

*Court of
Judge of
Appeal.*

No. 8.
Petition of
Appeal, 7th
October
1948,
continued.

(iii) that Section 66 of the Federated Malay States Civil Procedure Code applied subject only to the alteration of the words "Federated Malay States," because, on the contrary, in so far as the said Section 66 was applicable (if at all), its provisions were modified and amplified by virtue of Section 5 (ii) of the Courts Enactment, 1908 (Enactment No. 1 of 1908);

(iv) that the question of jurisdiction was not the matter at issue in the application for leave to be given for service of the summons out of the jurisdiction of this Honourable Court, because, on the contrary, the essential object of such application is the extension of the jurisdiction of the Court to a Defendant who is not present in the State; and 10

(v) that this suit was not a proper case for leave to be given for service of the summons out of the jurisdiction of this Honourable Court.

(B) The suit is a proper one for service of the summons outside the jurisdiction as the case—

(i) concerns deeds executed in Brunei by His Highness the Sultan relating to a grant (subject to the payment of tribute to His Highness the Sultan) of the sovereignty of a province of Brunei, and 20

(ii) in any event is one which on general principles of international law and comity falls to be determined by the law of Brunei.

3. That your Petitioners further pray that this Appeal be heard notwithstanding the time for filing this Petition may have expired, and that further evidence to wit the affidavit of the second above-named Plaintiff the said Anthony Walter Dayrell Brooke dated the 7th October 1948, may be adduced at the hearing of this appeal.

Dated this 7th day of October 1948.

30

(Sgd.) BERTRAM WILLES DAYRELL BROOKE

By his Attorney,

ANTHONY W. D. BROOKE.

(Sgd.) ANTHONY W. D. BROOKE.

No. 9.

AFFIDAVIT in support of Appeal.

Court of
Judge of
Appeal.

I, ANTHONY WALTER DAYRELL BROOKE, of full age and of British nationality, at present residing at Sarawak Lodge, Newton Road, Singapore, affirm and say as follows :—

No. 9.
Affidavit
in support
of Appeal,
7th
October
1948.

1. I am advised and verily believe that the Plaintiffs have a good cause of action against the Defendants herein, and I am further advised and verily believe that the learned Resident was wrong in refusing the Plaintiffs' application for leave to effect service of the plaint herein on the
10 Defendants out of the jurisdiction of this Honourable Court.

2. I crave leave to refer to the Affidavit affirmed by me on the 8th day of July 1948, and filed herein on the 14th day of July, 1948, in support of the said application, and in particular to paragraph 3 thereof ~~whereof~~ which relates to a deed executed by His Highness the Sultan in the year 1846 and to a further deed executed by His Highness the Sultan in the year 1853. To the best of my knowledge, information, and belief, the said deed of 1846 was executed by the Sultan Omar Ali in the town of Brunei, and the said deed of 1853 was executed by the Sultan Abdul Mumin in the town of Brunei.

20 Affirmed at Singapore by the said }
Anthony Walter Dayrell Brooke } (Sgd.) ANTHONY W. D. BROOKE
this 7th day of October 1948 }

Before me,

(Sgd.) C. H. WITHERS-PAYNE,
Notary Public,
Singapore.

Notarial Seal



19 Oct. 1948. 10 a.m.

Brooke v. Brooke & Others.

Amended petition allowed. Marked A.

Applies for extension of time for filing, not necess. but wd. grant if required.

Produces affidavit dated 7th Oct. 1948 by second appellant—admitted. Marked B.

Outlines relief sought. 10

Service to be decided in light of real difficulties.

\$200,000. If this sum did not lawfully pass to deft., the latter holds it on the same trust as the sovereignty of Sarawak. In absence of heirs (but there are heirs) the whole passes to Sultan of Brunei in reversion.

Rava Chetti v. Tuanku Alun (1883) 8 A.C. 751. St. Sett. L. Rep. Vol. 1 p. 250.

Right to a fund.

Applt.'s territory wh. *was* a province of Brunei.

Deeds executed here.

S'wak. still held under tribute to the ruler of this State. 20

Tribute may still be payable on the \$200,000 wh. might revert to the Sultan of Brunei.

Resident relied on English law—Order 11, r. 1.

Jurisdn. essently. diff. in England in Brunei.

In England depends on presence of deft. in England—diff. from most other laws.

Johnson v. Taylor [1920] A.C. 144

Ld. Haldane p. 153.

Ld. Dunedin p. 154.

England 1. Cause of action of wh. Ct. can take cognizance. 30

2. Deft. subj. to jurisdiction.

Berkeley v. Thompson (1884) 10 A.C. 45 at p. 49.

Jurisdn. extended to defendants outside the jurisdn. by Rules of Court.

Blake Odgers 13th ed. 31 note 39.

Holland Elements of jurisp. 13th at p. 413.

Brunei S. 5 Courts Enactment 1908.

If the two condns. of English law are required, subsection (2) is virtually wiped out.

“Amplification and not in derogation.” 40

S. 66 of *F.M.S. Code*.

Br. subjs. acqd. immunity from Brunei Cts.—Capitulations—Consular Ct. 1888 Protectorate. 1905 Br. Res. apptd. 1908

Sultan having consented to appt. of B.R. on his advice passed Cts. Enactment. Br. Orders in Council provd. for end of Consular jurisdn. and appeals to P.C.

No. 10.
Notes of
the Judge
of Appeal,
continued.

Complete judicial system for the State of Brunei.

Adopted civil & crim. procedure so far as local circs. permitted.

See Sec. 19.

Sec. 25.

These Laws.

- 10 1 other provisions of Cts. Enactment 1908.
2 apply subj. to local circs.
3 with necessary alterations.

1939 S. 25 repealed.

Notwithstanding gen. adoptn. in 1939 of the Laws of the FMS the particular adoptn. by sec. 19 of the Cts. Enactment 1908 of the CPC Sts. Settlements remained unrepealed until 1941. See sec. 7 of 1941 enactment. We are speaking solely of procedure not jurisdiction.

All reproduce Ord. 11 r. 1.

- 20 *S.S.* Ordinances of the Colony.

S. 11 of Cts. Ord. 1907 (re-enacted 1935, s. 11)—jurisdn. exactly the same as in England. Ord. 11 r. 1 therefore necessary.

FMS S. 49 of Cts. Enactment of FMS. Territorially restricted jurisdn. imposed in SS & FMS like that in England.

Ord. 11 r. 1 was necessary to extend the jurisdn. as in England.

MU Enactment No. 1 of Brunei 1946. Refs. to F.M.S. are refs. to MU.

- 30 Federation of Malaya O-in-C 1948.
(Opn. 1st Feb. 48).

MU becomes F. of M.

Sovty. of Sultans regained.

In each State remained a BR resp. to H.C. of Malaya.

Brunei Gov. of S'wak. apptd. to be H.C. for Brunei and by enactment No. 5 of Brunei. Circuit Judges of S'wak. apptd. addt. Judges of Res. Ct., & C.J. became head of judiciary of Brunei.

- 40 Incorp. into judl. procedure of S'wak. Civil procedure—
Cts. of 1st instance remains the same.

Resident's decision.

It is not under s. 2 of 1939 enactt. but under sec. 19 of Cts. Enactment that applies. Wording different.

Shd. be read as though Brunei were *one* of the F.M.S. (e.g. Perak).

No. 10.
Notes of
the Judge
of Appeal,
continued.

Logical applic. to Brunei means land situate in Brunei or in adjoining State of Sarawak under the same C.J. (?).

In effect a Federation of two States—Brunei & Sarawak. One Govt. = H.C. Brunei.

One C.J.

Misdirection in para. 2.

Applic, in FMS is *in essence* applic. to extend jurisdn. of the Ct.

Bartlett v. Bartlett (1934) 133 L.T. 23 at p. 26.

On adoption of sec. 66 FMS to suit Brunei the list of actions set out in 66 must be altered to meet sec. 5 (2) of Cts. Enactment Brunei. 10

FMS Ct. may in *discretion* allow service outside jurisdn. a pltf. in the State of Brunei is entitled as of course in sec. 5 (2) in case properly following within terms of that sub-sec.

Amplifn. = amplifcn. of sec. 66 FMS ?

Sec. 66 (h). Sultan wd. be made a party but for his immunity.

Counsel agrees—Order that judgment be read in Res. Ct. Brunei. Requests copy be delivered to aplts.

C.A.V.

R. Y. HEDGES,

Judge of Appeal. 20

19/10/48.

Certified true copy.



R. Y. HEDGES.

No. 11.
Judgment
of the
Judge of
Appeal, 4th
November
1948.

No. 11.

JUDGMENT of the Judge of Appeal.

(The Honourable Mr. JUSTICE R. Y. HEDGES)

This is an appeal against an Order made by the Honourable the Resident in Chambers on 21st July, 1948, refusing the application of the Plaintiffs for an Order that the summons to each of the Defendants be issued for service outside the jurisdiction. 30

The main purpose of the proceedings, as disclosed in the plaint, is twofold.

In the first place the Plaintiffs seek a declaration that on the true construction of the Deed of His late Highness the Sultan Omar Ali, dated

2nd August, 1846, and confirmed by the Deed of His late Highness the Sultan Abdul Mumin dated 24th August, 1853, and of provisions made pursuant to such Deeds in the last Will and testament of Sir James Brooke dated 15th April, 1867 :—

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continued.

10 (A) after the death of Sir James Brooke, and on payment by Sir Charles Johnson Brooke to His Highness the Sultan of tribute of \$4,000 and on Sir Charles Johnson Brooke taking the Oath of Accession as Rajah of Sarawak, the sovereignty of the province of Sarawak vested inalienably in Sir Charles Johnson Brooke for his life ;

(B) the heir male of Sir Charles Johnson Brooke is the Defendant Sir Charles Vyner Brooke, G.C.M.G., and after the death of the said Sir Charles Johnson Brooke, and on payment by the Defendant Sir Charles Vyner Brooke, G.C.M.G., to His Highness the Sultan of tribute of \$4,000 and on the Defendant Sir Charles Vyner Brooke, G.C.M.G., taking the Oath of Accession as Rajah of Sarawak, the sovereignty of the province of Sarawak vested inalienably in the said Sir Charles Vyner Brooke, G.C.M.G., for his life ;

20 (C) in default of an heir entitled to succeed to the Raj of the province of Sarawak under the entails created by the Will dated 15th April, 1867, and willing to pay to His Highness the Sultan tribute of \$4,000 and to take the Oath of Accession, the sovereignty of the province of Sarawak and the State funds and other assets thereunto appertaining revert to His Highness the Sultan ;

(D) the Plaintiff Bertram Willes Dayrell Brooke is, after the Defendant Sir Charles Vyner Brooke, G.C.M.G., the next heir male of the said Sir Charles Vyner Brooke, G.C.M.G. ;

30 (E) the Plaintiff Anthony Walter Dayrell Brooke is the heir-apparent of the said Bertram Willes Dayrell ~~Brooke~~ ; **BROOKE** ;

(F) on the accession, after the death of the said Sir James Brooke, of each succeeding Rajah of Sarawak, there vested in him aforesaid the sovereignty of the said Raj, and the State funds and other assets thereunto appertaining so vested in him as Rajah and not for his private account.

40 Secondly, the Plaintiffs seek an account by the Defendant Sir Charles Vyner Brooke, K.C.M.G., of all moneys (other than the normal personal emoluments of the said Defendant as Rajah of Sarawak) transferred from the State funds to his private account prior to 21st May 1946, and of the disposal thereof.

The learned Resident relied on section 66 of the Federated Malay States Civil Procedure Code and held that this Code, subject to such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of the State, has effect in the State of Brunei by virtue of section 2 of the Federated Malay States Laws Adoption Enactment, 1939 (Enactment No. 2 of 1939). It has been represented to me, and it is one of the grounds of appeal set out in the amended petition of appeal, that if the Federated Malay States Civil Procedure Code was applicable at all, it should have been applied with such alterations as might

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be required to suit the circumstances of the State of Brunei, by virtue of section 19 of the Courts Enactment, 1908 (Enactment No. 1 of 1908), as amended by section 7 of the Courts (Amendment)-Enactment, 1941 (Enactment No. 5 of 1941). Section 19 as amended provides as follows :—

“ The procedure to be followed in civil actions and proceedings in the Court of the Resident and in Magistrates’ Courts and the procedure to be followed in prosecuting an appeal from any Magistrate’s Court to the Court of the Resident shall be that prescribed by the Civil Procedure Code of the Federated Malay States in force from time to time in the Federated Malay States with respect to Magistrates’ Courts and the mode of appeal therefrom with such alterations as may be required to suit the circumstances of the State.” 10

I am prepared to accept this contention, but with the conclusions which it is claimed must be deduced therefrom I propose to deal later.

It is desirable that I should set out in full the provisions of section 66 of the Federated Malay States Civil Procedure Code. It will be observed that this section follows, with formal amendments, the wording of Order XI, rule 1, of the Rules of the Supreme Court made and issued pursuant to the Judicature Act, 1873, now the Supreme Court of Judicature (Consolidation) Act, 1925. Section 66 provides as follows :— 20

“ 66. (i) Service out of the Federated Malay States may be allowed by the Supreme Court or a Judge thereof whenever—

(a) the whole subject-matter of the suit is immovable property situate within the Federated Malay States (with or without rents or profits); or

(b) any act, instrument, will, contract, obligation, or liability affecting immovable property situate within the Federated Malay States is sought to be construed, rectified, set aside, or enforced in the suit; or 30

(c) any relief is sought against any person domiciled or ordinarily resident within the Federated Malay States; or

(d) the action is for the administration of the estate of any deceased person, who, at the time of his death, was domiciled, or ordinarily resided, or carried on business, within the Federated Malay States, or for the execution (as to property situate within the Federated Malay States) of the trusts of any written instrument; of which the person to be served is a trustee, which ought to be executed according to the law of the Federated Malay States; or 40

(e) the action is founded on the breach or alleged breach, within the Federated Malay States of any contract wherever made, which according to the terms thereof ought to be performed within the Federated Malay States even though such breach was preceded or accompanied by a breach out of the Federated Malay States which rendered impossible the performance of the part of the contract which ought to have been performed within the Federated Malay States; or

(f) the action is founded on a tort committed within the Federated Malay States; or 50

(g) any injunction is sought as to anything to be done within the Federated Malay States, or any nuisance within the Federated Malay States is sought to be prevented or removed, whether damages are or are not also sought in respect thereof ; or

(h) any person out of the Federated Malay States is a necessary or proper party to a suit properly brought against some other person duly served within the Federated Malay States.

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10 (ii) Any order giving leave to effect such service shall, unless the mode of service be prescribed by this Code, direct in what mode service is to be effected, and the reasonable expenses of such service shall be allowed."

It was argued forcefully by Dr. Withers-Payne, who appeared as counsel for the appellants, that jurisdiction of the English Courts and jurisdiction of the Brunei Courts are governed by very different principles.

20 I propose to state briefly the position so far as jurisdiction of the English Courts is concerned, although this means covering familiar ground. At common law the jurisdiction of the High Court depended on the service of a writ upon a defendant personally present in England (*in pacem domini regis*). If the defendant was out of the realm there was no means of securing a judgment against him. The remedy was to follow the wrongdoer to his place of residence according to the maxim *actor sequitur forum rei*. A new kind of jurisdiction, often called "assumed jurisdiction," was introduced by the Common Law Procedure Act, 1852, which gave the courts a discretionary power to summon absent defendants, and it is this assumed jurisdiction that is now governed by Order XI, rule 1.

30 In English law the exercise of civil jurisdiction, in the absence of statutory provision, must be founded on one or other of two principles, the principle of effectiveness or the principle of submission. With the latter we are not concerned. So far as the principle of effectiveness is concerned, the statement of Holmes, J., in the United States Supreme Court that "the foundation of jurisdiction is physical power" has often been quoted. Generally speaking, an English Court does not consider itself competent to adjudicate upon a claim unless the property which is the subject-matter of the suit is in England or the defendant is present at the time of service of the writ in England. I quote now from the Privy Council case of *Sirdar Gurdial Singh v. Rajah of Faridkote* [1894] A.C. 670 :—

40 "All jurisdiction is properly territorial, and *extra territorium ius dicenti, impune non paretur*. Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it ; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over movables within the territory ; and, in questions of status or succession governed by domicil, it may exist as to persons domiciled, or who when living were domiciled, within the territory."

50 Counsel cited the judgment of Lord Dunedin in *Johnson v. Taylor* [1920] A.C. 144, at p. 154, in which after stating that jurisdiction, according

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1948,
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to English law, is based on the act of personal service, continued : " It is far otherwise in other systems where service is in no sense a foundation of jurisdiction, but merely a *sine qua non* before effective action is allowed. Now service being the foundation of jurisdiction, it follows that that service naturally and normally would be service within the jurisdiction. But there is an exception to this normal rule, and that is service out of the jurisdiction. This, however, is not allowed as a right, but is granted in the discretion of the Judge as a privilege, and the rule in question here prescribes the limits within which that discretion should be exercised."

The principles, which I have endeavoured to state briefly, governing jurisdiction of the English Courts, are of course elementary, but it is necessary to consider whether the principles which underlie the exercise of jurisdiction by the Brunei Courts are so essentially different as has been claimed in the argument for the Appellants. It was argued that in Brunei the jurisdiction of the Resident's Court is complete by virtue of section 5 (ii) of the Courts Enactment, 1908 (No. 1 of 1908). If I have followed the argument correctly, there is no need for any assumed jurisdiction ; an application under Order XI, rule 1, is in essence an application to the Court to extend its jurisdiction, but in an application to a Brunei Court there is no need to extend the jurisdiction as the jurisdiction is already complete. 10

Section 5 of the Courts Enactment, 1908, is as follows :—

" 5.—(i) The said Court shall subject to the provisions of this and of all other Enactments for the time being in force have jurisdiction in all suits, matters and questions of a civil nature, excepting only that nothing herein contained shall be deemed to authorize any Court in the State to dissolve or annul a marriage lawfully solemnised between Christians in the United Kingdom of Great Britain and Ireland or in any British Colony, Protectorate or Possession. 30

(ii) In amplification and not in derogation of the generality of the foregoing powers the said Court may try all suits by and against all persons and bodies corporate, in all cases where the persons who are defendants are present in the State, or the corporate body which is defendant has an establishment or place of business in the State : and also in the following cases although the defendant is not present, or has not its establishment as aforesaid in the State, that is to say if the defendant has property in the State or if the whole or any part of the subject-matter of the suit is land or stock or other property situate within the State ; or where any act, deed, will or thing affecting such land, stock or property was done, executed or made within the State ; and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such suit, or for the breach whereof damages or other relief are or is demanded in such suit, was made or entered into, or was to be performed or partly performed within the State ; and whenever there has been a breach within the State of any contract wherever made ; and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate, within 40 50

the State, or if the cause of action arose in the State, or if the subject of the proceeding otherwise falls, on the general principles of international law or comity, to be determined by the law of the State. In suits founded on contract 'cause of action' as used in this section shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction, if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere."

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of the
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November
1948,
continued.

- 10 I am asked to hold that by virtue of this section, jurisdiction in the Brunei Courts is not a territorially restricted jurisdiction as in England. The Federated Malay States Civil Procedure Code must be applied "with such alterations as might be required to suit the circumstances"; the purpose of an application in Brunei under section 66 is not to extend the jurisdiction of the Court, as an application under Order XI, rule 1, in England would be, or as an application under section 66 in Malaya would be. The legislation in Singapore and in Malaya, it was argued, is based on the principle of a territorially restricted jurisdiction as in England. Section 11 of the Courts Ordinance, 1907, of Singapore, as re-enacted by
- 20 section 11 of the Courts Ordinance, 1935, and section 49 of the Courts Enactment of the Federated Malay States were quoted.

- Section 5 of the Courts Enactment, 1908, is by no means happily framed. It employs the term jurisdiction in two distinct senses. In subsection (i) it uses the term in its proper sense, meaning the right or authority of the Court. In the final sentence of subsection (ii) it employs the term as though it means the area of territory over which the Court has jurisdiction. In my view section 5 must be read in conjunction with section 19; the effect is that by section 5 (ii) the Court has authority in
- 30 State, but the exercise of this authority is dependent on service outside the State in accordance with section 66 of the Federated Malay States Civil Procedure Code.

- Holding this view, as I do, I have come to the conclusion that this appeal can only succeed if the case is a proper one for service outside the State of Brunei within the terms of section 66 of the Federated Malay States Civil Procedure Code. In the amended petition of appeal, however, it is claimed that the learned Resident was wrong in law in holding that in the application of this Code, the word "Brunei" should be read for the words "Federated Malay States," because in so far as this Code was
- 40 applicable it should have been construed, in its application to the State of Brunei, not as though Brunei were the Federated Malay States but as though Brunei were one of the States which formed part of the Federated Malay States.

- The reason for this curious proposition was not at once apparent but it became clearer in the course of argument. The various States which comprised the Federated Malay States each had their own Courts, as is now the case in the Federation of Malaya. If a plaintiff in Perak applies for service outside the Federation of Malaya (or, formerly, outside the Federated Malay States), the fact that the subject-matter of the proceedings
- 50 is land in Kedah would be sufficient to bring the matter within section 66.

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The startling suggestion was made that on this analogy, if a plaintiff applies in Brunei, the fact that the subject-matter of the proceedings is land in Sarawak will bring the matter within section 66. The Governor of Sarawak, it was pointed out, is High Commissioner for Brunei; the Chief Justice of Sarawak is Judge of Appeal in Brunei; and by virtue of section 4 of the Courts Enactment, 1908 (No. 5 of 1908), as amended by section 3 of the Courts (Amendment) Enactment, 1948 (No. 5 of 1948), a Circuit Judge of one of the Circuit Courts of the Colony of Sarawak may constitute the Court of the Resident when he is appointed to hold such Court by the High Commissioner with the concurrence of His Highness the Sultan. With the administrative and other arrangements between this State and the neighbouring Colony of Sarawak I need not deal, but I have no hesitation in saying that so far as this State is concerned, for the purposes of private international law, the Colony of Sarawak is a foreign country. 10

I agree with the learned Resident that the subject-matter of this suit does not fall within either paragraphs (B) or (D) of section 66 (i) of the Federated Malay States Civil Procedure Code. The property affected is not now within the State of Brunei. It was argued that the case might even come within paragraph (H) as His Highness the Sultan would have been made a defendant but for his immunity. I reject this argument as being without substance. 20

In the result the appeal is dismissed. I direct that this judgment be read in the Resident's Court, Brunei, and that a copy be furnished to the Appellants' solicitors.

(Sgd.) R. Y. HEDGES,
Judge of Appeal.

(Seal of
Judge of
Appeal
Brunei)

No. 12.

ORDER of the Judge of Appeal.

(The Honourable Mr. JUSTICE R. Y. HEDGES)

Dated 4th day of November 1948.

UPON reading the Order of the Honourable the Resident in Chambers dated the 21st July 1948 and by leave duly given by this Court the amended petition of appeal dated the 7th day of October 1948 and the further evidence, to wit, the affidavit of the second above-named Plaintiff, the said Anthony Walter Dayrell Brooke, dated 7th day of October 1948 and the grounds of the decision of the Honourable the Resident and the affidavit of the said Anthony Walter Dayrell Brooke dated 21st July 1948 and upon hearing Dr. C. H. Withers-Payne of Counsel for the Appellants upon the notice of appeal of the said first and second above-named Plaintiffs, Bertram Willes Dayrell Brooke and Anthony Walter Dayrell Brooke, dated the 22nd day of July 1948 from the above-mentioned order IT IS ORDERED that the said appeal be dismissed.

Signed this 7th day of December 1948.

(Sgd.) R. Y. HEDGES,
Judge of Appeal.

20

Seal of :
Judge of Appeal
Brunei.

(signed 7th December 1948)

No. 12.
Order of
the Judge
of Appeal,
dated 4th
November
1948,
signed 7th
December
1948.

No. 13.

PETITION for Special Leave to Appeal to His Majesty in Council.*[Not printed]*No. 13.
Petition
for Special
Leave to
Appeal to
His Majesty
in Council.

No. 14.

ORDER of His Majesty in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

30 (L.S.)

The 31st day of May, 1949.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. SECRETARY NOEL-BAKER

MR. GAITSKELL

SIR FRANK SOSKICE

SIR DAVID JENKINS

SIR CYRIL RADCLIFFE

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of May 1949 in the words following, viz. :—

40

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) Bertram

No. 14.
Order of
His Majesty
in Council
granting
Special
Leave to
Appeal,
31st May
1949.

No 14.
Order of
His Majesty
in Council
granting
Special
Leave to
Appeal
31st May,
1949,
continued.

Willes Dayrell Brooke (2) Anthony Walter Dayrell Brooke in the matter of an Appeal from the Court of the Judge of Appeal in the State of Brunei in the matter of an *ex parte* application for leave to issue and serve a Summons together with a Plaint upon the Defendants thereto outside the jurisdiction of the State of Brunei and in the matter of a Suit (Civil Suit No. 1 of 1948) instituted in the Court of the Resident of the State of Brunei between the Petitioners Plaintiffs and (1) Sir Charles Vyner Brooke G.C.M.G. (2) Charles James Vyner Craig Brooke (3) Ralph Evelyn Stuart Johnson (4) The Honourable Arthur George Villiers Peel Defendants 10
setting forth (amongst other matters): that the Petitioners desire special leave to appeal from an Order of the Court of the Judge of Appeal in the State of Brunei dated the 4th November 1948 and signed on the 7th December 1948 refusing leave to issue a summons for service upon the Defendants outside the jurisdiction of the State of Brunei: that the main point sought to be raised by the Petitioners is whether the provisions of section 66 of the Civil Procedure Code of the Federated Malay States (which broadly speaking reproduces the provisions of Order XI Rule 1 of the Rules of the Supreme Court in England regarding service outside the jurisdiction) override 20
the provisions of sections 4 (i) and 5 of the Courts Enactment 1908 of the State of Brunei (which the Petitioners submit give the Court of the Resident in the State of Brunei compulsory jurisdiction over absent defendants in such a case as the present): And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Order of the Court of the Judge of Appeal in the State of Brunei dated the 4th November 1948 and signed on the 7th December 1948 and for such further or other relief as to Your Majesty in Council may seem just:

“THE LORDS OF THE COMMITTEE in obedience to His late 30
Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Order of the Court of the Judge of Appeal in the State of Brunei dated the 4th day of November 1948 and signed on the 7th day of December 1948:

“AND their Lordships do further report to Your Majesty 40
that the copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor of Sarawak as High Commissioner for Brunei for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER. 50

DOCUMENTS LODGED WITH PLAINT.

*Documents
lodged
with
Plaint.*

P (1)

DEED of His Highness Sultan Omar Ali, dated 2nd August 1846.

P (1)
Deed of
H.H.
Sultan
Omar Ali,
2nd August
1846.

GRANT by Sultan Omar Ali of province of Sarawak to James Brooke as sovereign, dated August 2nd 1846.

This is the record of the agreement. The Lord Sultan Omar Ali, Saifu'd-Din, son of Sultan Muhammad Jamalulalam, in the City of Brunei, grants the province of Sarawak together with its outlying territories, from Cape Datu to the mouth of the Samarahan river unto the Tuan Besar
10 James Brooke, Esquire, Rajah of Sarawak, to be ruled in accordance with the wishes of the Tuan Besar, more especially his own but including also those of all members of his family whom he may direct to govern, and upon his part, the Lord Sultan will not interfere. In the event of the demise of the Tuan Besar, whoever of his family that may be left wishing to govern the country of Sarawak must give the Lord Sultan four thousand Spanish dollars.

Thus is the agreement; it is unalterable and uncontrovertible. It is so.

Written on the 9th day of Shaban on Friday at 3 o'clock in the year
20 1262 (August 2nd 1846).

P (2)

DEED of His Highness Sultan Abdul Mumin, dated 24th August 1853.

P (2)
Deed of
H.H.
Sultan
Abdul
Mumin,
24th
August
1853.

CONFIRMATION by Sultan Abdul Mumin of grant of Sarawak, dated August 24th, 1853.

The ~~year~~^{YEAR} of the Prophet, the year one thousand two hundred and sixty nine, on which date Sultan Abdul Mumin, son of the late Lord Abdul Wahab, is possessed of the sovereign power in the country of Brunei and its dependencies. His Highness the Sultan, together with the Pangiran Muda Muhammad and the Pangiran Indra Makota, hereby
30 confirm the grant by the previous Sultan Omar Ali, Saifu'd-Din, son of the late Sultan Muhammad Jamalulalam, of the district of Sarawak and its outlying territories, extending from Cape Datu to the mouth of the River Samarahan, to the Tuan Besar, Sir James Brooke, Rajah of Sarawak. In whatever manner he pleases he may govern in the country of Sarawak, and the Sultan of Brunei will not interfere during his lifetime.

When the Tuan Besar, Sir James Brooke, Rajah of Sarawak, dies whoever succeeds him in the Government must pay four thousand large dollars to the Government of His Highness the Sultan of Brunei.

The Tuan Besar, Sir James Brooke, Rajah of Sarawak, may transmit
40 the district of Sarawak and its territories in whatever way he may please,

*Documents
lodged
with
Plaint.*

P (2)
Deed of
H.H.
Sultan
Abdul
Mumin,
24th
August
1853,
continued.

either to his heir or to any other person. Whenever one of the successors dies the successor who holds the government must pay to the government of His Highness the Sultan of Brunei four thousand large dollars.

Thus is the agreement of His Highness the Sultan of Brunei with the Tuan Besar, Sir James Brooke, Rajah of Sarawak, as it is herein set forth; it is unalterable and uncontrovertable.

This agreement shall be exchanged, one for the other, in the City of Brunei, in twelve months time. It is thus.

THE END.

This agreement was written on Saturday, the 17th day of the month 10 Zul-Kadal at 10 o'clock, in the year 1269 (24th August, 1853).

P (3)
Will of
Sir James
Brooke,
K.C.B.,
15th April
1867.

P (3)

WILL of Sir James Brooke, K.C.B., 15th April 1867.

THE LAST WILL AND TESTAMENT of SIR JAMES BROOKE K.C.B.
Rajah of Sarawak.

I JAMES BROOKE Rajah of Sarawak of Burrator in the County of Devon give devise and bequeath all that my Sovereignty of Sarawak aforesaid and all the rights and privileges whatsoever thereto belonging unto my Nephew Charles Johnson Brooke Tuan Muda of Sarawak Son of The Reverend Francis Charles Johnson and the heirs male of his Body 20 Lawfully issuing and in default of such issue unto my Nephew Stuart Johnson another son of the said Francis Charles Johnson and the heirs male of his Body lawfully issuing and in default of such issue I give devise and bequeath the said Sovereignty and Rights and privileges unto Her Majesty the Queen of England her heirs and assigns for ever And I appoint Miss Angela Georgina Burdett Coutts of Stratton Street Piccadilly and Thomas Fairbairn of the City of Manchester Esquire and John Abel Smith of Chester Square in the County of Middlesex Esquire M.P. Trustees of this my Will to see the purposes aforesaid carried into effect I bequeath to my said Nephew Charles Johnson Brooke his heirs executors and 30 administrators all my real and personal Estate in the Island of Borneo and England and constitute him likewise my Residuary Legatee and I require him to pay at his earliest convenience from the debt due to me by the State of Sarawak the sums hereinafter mentioned and bequeathed by me to Arthur Crookshank £2,000 and I bequeath to my son George Brooke his wife Eliza Brooke and their children from my property which may remain in England and from the debt which is due to me by the State of Sarawak the sum of £5,000 free of legacy Duty to be invested in trust for their joint benefit and until my Nephew Charles Johnson Brooke can realize the necessary money to make up the sum of £5,000 40 I desire that he will pay to my Executors yearly a sufficient sum to raise the income of my son George to £250 a year And I desire that my Nephew Charles Johnson Brooke will furnish to my Executors from the debt due

to me by the State of Sarawak sufficient money to purchase annuities of £52 a year each free of Legacy Duty for John Sauls of Burrator John William Moy of Sarawak William Froom of Burrator and William Read of Burrator and until my Nephew Charles Johnson Brooke can realize the necessary money he will pay to each of them the sum of £52 a year and I bequeath to Mary Sauls and Jane Greening one year's wages as a token of goodwill to be paid to them free of Legacy Duty I desire also that Messieurs Blackwood and Gordon of Glasgow should be paid for the Steamer at present building by them from the balance in my
 10 favour now at Messieurs Coutts & Company and that the management of the Vessel should be left to Mr. Arthur Crookshank and Messieurs Compton and Reid and I leave all my papers to the care of Spencer St. John Esquire H.B.M. Charge d'affaires at Hayti whom I appoint as one of my Executors together with Alexander Knox Esquire of 91 Victoria Street Westminster and John Gillam Booty and Richard Butt of Raymond Buildings Grays Inn Solicitors

*Documents
lodged
with
Plaint.*

P (3)
Will of
Sir James
Brooke,
K.C.B.,
15th April
1867,
continued.

IN WITNESS whereof I the said James Brooke have hereunto set my hand this 15th day of April 1867.

J. BROOKE.

20 SIGNED by the said James Brooke the Testator as and for his last Will and Testament in the presence of us who in his presence at his request and in the presence of each other all being present at the same time have hereunto subscribed our names as Witnesses.

ROBERT BEITH M.D. Deputy Inspector General Royal Naval Hospital Plymouth WILLIAM POLLARD Surgeon Torquay.

P (4)

DEED of Baroness Burdett-Coutts, 9th September 1898.

THIS IS A DEED POLL under the hand and seal of me ANGELA GEORGINA BARONESS BURDETT-COUTTS of Stratton Street and
 30 of Holly Lodge Highgate both in the County of Middlesex

P (4)
Deed of
Baroness
Burdett-
Coutts, 9th
September
1898.

WHEREAS the late Sir James Brooke K.C.B. Rajah of Sarawak of Burrator in the County of Devon by his last Will and Testament dated the fifteenth day of April One thousand eight hundred and sixty-seven gave devised and bequeathed All that his Sovereignty of Sarawak aforesaid and all the rights and privileges whatsoever thereto belonging unto his Nephew Charles Johnson Brooke Tuan Muda of Sarawak Son of the Reverend Francis Charles Johnson and the heirs male of his body lawfully issuing And in default of such issue unto his Nephew Stuart Johnson another son of the said Francis Charles Johnson and the heirs male of his
 40 body lawfully issuing And in default of such issue he gave devised and bequeathed the said Sovereignty and rights and privileges Unto Her Majesty The Queen of England Her Heirs and assigns for ever And he appointed Miss Angela Georgina Burdett-Coutts of Stratton Street Piccadilly and Thomas Fairbairn of the City of Manchester Esquire and John Abel Smith of Chester Square in the County of Middlesex Esquire M.P. Trustees of his said Will to see the purposes aforesaid carried into effect

*Documents
lodged
with
Plaint.*

P (4)

*Deed of
Baroness
Burdett-
Coutts, 9th
September
1898,
continued.*

AND WHEREAS the Testator the said Sir James Brooke departed this life on the _____ day of _____ One thousand eight hundred and sixty-eight and his said Will was duly proved in the Principal Registry of Her Majesty's Court of Probate on the twenty-seventh day of July One thousand eight hundred and sixty-eight

AND WHEREAS the said John Abel Smith one of the Trustees "to see the purposes aforesaid carried into effect" departed this life on the seventh day of January One thousand eight hundred and seventy-one and was interred in or adjoining Chichester Cathedral

AND WHEREAS the said Thomas Fairbairn (who afterwards became Sir Thomas Fairbairn Baronet) another of the Trustees "to see the purposes aforesaid carried into effect" departed this life on the twelfth day of August One thousand eight hundred and ninety-one and was interred at _____ in the County of _____ 10

AND WHEREAS I the said Angela Georgina Burdett-Coutts (now the Baroness Burdett-Coutts) remain the sole surviving Trustee "to see the purposes aforesaid carried into effect"

AND WHEREAS the final provision of the Testator's devise and bequest videlicet "Unto Her Majesty the Queen of England Her heirs and assigns for ever" should it ever come into effect is in my opinion a matter of concern to the Imperial interests of England and one which the Testator considered of great importance not only on that account but as a means to provide for the welfare of Sarawak the Country over which he ruled 20

NOW THIS DEED POLL WITNESSETH that I the said ANGELA GEORGINA BARONESS BURDETT-COUTTS in pursuance of the powers contained in the 31st Section of "The Conveyancing and Law of Property Act 1881" and of all other powers enabling me in this behalf and for the further carrying out of the said final provision of the Testator's devise and bequest should it ever come into effect DO HEREBY by this Instrument in writing APPOINT my Husband WILLIAM L. A. B. BURDETT-COUTTS Esquire M.P. for the City of Westminster Sir SPENCER BUCKINGHAM ST. JOHN G.C.M.C. late Her Majesty's Envoy Extraordinary and Minister of Plenipotentiary at Stockholm and The Right Honourable ALBERT HENRY GEORGE EARL GREY of Howick in the County of Northumberland and the survivors and survivor of them to be TRUSTEES and TRUSTEE jointly with myself of the Will of the said Sir James Brooke with the special view (should circumstances arise) of seeing the purposes mentioned in the said Will carried into effect 30

IN WITNESS whereof I the said Angela Georgina Baroness Burdett-Coutts hath hereunto set my hand and seal this ninth day of September One thousand eight hundred and ninety-eight. 40

SIGNED SEALED AND DELIVERED by
the above-named ANGELA GEORGINA
BARONESS BURDETT-COUTTS in the
presence of :— } BURDETT-COUTTS.

JOHN HASSARDS K.C.B.

Principal Registrar of the Province of Canterbury and Notary
Public.

P (5)

WILL of Sir Charles Johnson Brooke, 16th December 1913.*Documents
lodged
with
Plaint.*

THIS IS THE LAST WILL AND TESTAMENT of me CHARLES BROOKE Rajah of Sarawak in the Island of Borneo respecting the State of Sarawak and the public and political affairs thereof.

P (5)
Will of
Sir Charles
Johnson
Brooke,
16th
December
1913.

10 For very many years I have been Rajah of Sarawak, and independent sovereign recognised as such by H.B.M. Government and the Government of the Powers, bound only by a treaty into which I entered some years ago with the Government of Her late Majesty Queen Victoria by which the State of Sarawak became and still remains a British Protectorate although that treaty does not in any way affect my status as an independent sovereign nor authorise the British Government to control or interfere in the internal affairs of the State.

20 Apart from that sovereignty I am in my private or individual capacity possessed of certain property in England and also of certain property in Sarawak. And by a Will in English form made in the year 1903 with certain Codicils I disposed of that private property and added in that Will the expression of my views and wishes with respect to the succession to the Sovereignty of Sarawak and the Policy and government of that State after my death and in that Will and its Codicils I directed certain payments to be made out of the revenues of the said State. But now after giving the matter careful consideration I have come to the conclusion that it is not desirable that the disposition of my own private property and the expression of my views and directions with respect to the State of Sarawak and its public and political affairs should be contained in the same document or set of documents. And accordingly by a Will in English form bearing the same date that this document bears but executed immediately before it I have revoked the Will I made in the year 1903 and all its Codicils and all other testamentary dispositions made by me (whether relating to my own private property or to the State of Sarawak or the public or political affairs of that State) and by my new Will have disposed of my own private property but have not expressed any views or directions as to the State of Sarawak or the public or political affairs of that State all of which are intended to be contained and set out in this present testament. NOW THEREFORE I DECLARE THAT THIS PRESENT document or testament shall be deemed and taken to be the final Statement of my Will with respect to the State of Sarawak and the succession to the sovereignty of that State and its policy government and revenues after my death and generally with respect to the public and political affairs of Sarawak and I desire that what I now say shall supersede all former expression of my views and wishes with respect to any of those matters AND FURTHER I say that nothing in this document shall be read as disposing of my own private property or any part of it (whether in England or in Sarawak or elsewhere) or as entitling or requiring this testament to be admitted to probate in England but always reserving to myself full power hereafter to revoke alter vary or modify this testament.

40 1. It is my urgent hope and direction that my successors in the Raj will to the best of their power uphold the dignity of Rajah of Sarawak never forgetting the very grave responsibility which that position entails

*Documents
lodged
with
Plaint.*

P (5)

Will of
Sir Charles
Johnson
Brooke,
16th
December
1913,
continued.

and will ever bear in mind that the essence and well-being of Sarawak rule depends on the proper amalgamation of Native and European Communities and that the former ought always to be fully represented in the Councils or other Public assemblies as on this properly arranged amalgamation the stability of the State of Sarawak depends.

I urge that the policy and methods of government of Sarawak as hitherto carried out by the first British born Rajah and myself may not be departed from after my death. I cannot help feeling anxiety lest the attractions of Europe may prove too strong a temptation for my successors who may not be prepared to give up the luxury of life in the West in order to live in the East and devote their lives and energies to the good of an Eastern people. If that should prove to be the case the future of Sarawak after my life is over will remain unstable and uncertain. Therefore I wish to impress upon each and everyone of my successors the necessity of establishing himself in Sarawak immediately after his accession and of taking up life there and carrying on the Government of the Country on the lines laid down and followed by my predecessor and myself and of not allowing Western attractions to separate his mind from the inhabitants and the interests of the State. Let him devote himself to the duties of the Government let him consult and employ his brothers and other members of our family and the tried and faithful servants of the State to aid and assist him in his task and let him keep the Sarawak State Advisory Council in England together as a substantial support to his unique position and great inheritance the duties of which he is in honour bound to fulfil to the best of his ability. Then he may call himself a true Rajah of the Country. Otherwise he will never make a Rajah of an Eastern people of the same type as his predecessors. Unless my successors are prepared to live and govern on the lines above laid down I should wish the Sarawak flag to be hauled down for good and all and the era of the British-born Rajahs of Sarawak to be brought to an end.

In order to do his duty properly and effectually it is necessary that the Rajah should spend at least eight months of each year in Sarawak at his post unless his health or other unexpected difficulties or old age prevent. As Rajah he should be the slave of his country and people. Otherwise the Rajah will merely be a form, a display, a title to be kept up in society in England and not a reality. The Rajahs of Sarawak should have but one home and that Sarawak. As the first Rajah used to say to me "The head cannot be long separate from the heart." I am positive that my predecessor during his many years of devotion to the cause of the natives of Borneo and his desire to found a stable country and Government for them in Sarawak never entertained the idea of thereby founding a family of Brookes to be European millionaires. Those who worked for Sarawak and assisted his cause were worthy of reward but all others however closely related had no right to expect to be made rich at the expense of Sarawak. I think it is right that the State should make provision in a moderate and reasonable degree for the family and dependants of the Rajah but even that only to such an extent as may be decided upon by the reigning Rajah and now with the additional approval and consent of the members of the Sarawak State Advisory Council in England. I have never sought to store nor did my predecessor ever store a farthing towards any fund for our private purposes. Such riches as

the country produces ought to be and have hitherto been applied solely for the good of Sarawak and for the pensioning off of Officers who have been in the service of the Country. It must be clearly understood and recognised that the State of Sarawak is not private property and that it does not in any way belong to a Company of shareholders or speculators.

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with
Plaint.*

P (5)

Will of
Sir Charles
Johnson
Brooke,
16th
December
1913,
continued.

10 With regard to pensions I have for many years past had considerable anxiety as to the future payment of pensions to the European staff of Officers my faithful followers who have worked and are working and may hereafter work under me or my successors in the Government of Sarawak as I consider the pensions and pay of those Officers should be the Rajah's first consideration in consequence of their devotion to their duties. I have consequently been year by year saving from the revenues for this purpose and there is now a fund of about £100,000 which it is my wish and intention to increase to at least £150,000 invested in the names of two Trustees both members of the Sarawak State Advisory Council in England and held by them under a separate trust deed and the income derived from this course will in future be a guarantee and safeguard against any officer failing to get his well earned pension. It has been a great satisfaction to me to see this arrangement completed before my death especially
20 as the collection of the fund has not checked the material development of the State.

The State property is in a flourishing condition. The Country is well supplied with public works and buildings comprising a dry dock a Museum which is considered one of the best in the East Government Office a Chinese Court House two large Hospitals a lay School Village Schools for native instruction a Fortress and Barracks for the drilled and uniformed force of 500 strong composed of Malays Dyaks and Indians under a European Commandant and Instructor powder magazine dwelling-houses for officers police quarters public bath houses recreation grounds
30 metalled roads and a water supply led from a Mountain ten miles distant with pipes leading to the Bazaars and dwelling-houses and to some of the more important native villages. Along the Coast of over 356 miles are Outstations Settlements under the Charge of European and Native Officers all supplied with the necessary buildings and armaments and police. There are six steam Vessels belonging to the Government of from 50 to 300 tons employed in Government service. It should be the first care of my successors after making due provision for salaries and pensions to continue the regular development of the material resources of the State and to promote to the utmost of their power the prosperity and happiness
40 and the moral and material welfare of the inhabitants.

The policy hitherto pursued has made the people happy and contented and has fostered an excellent spirit of sympathy and goodwill between the Government and the governed.

The danger which I apprehend is lest in the future too much money may be spent out of the Country and too much time and attention may be devoted to matters unconnected with its prosperity and well being. In that case the sympathy and good feeling heretofore existing will soon be at an end.

50 The State is free from debt. My motto has always been to keep out of debt and I recommend my successors to follow my example.

*Documents
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with
Plaint.*

In giving the directions which follow I have endeavoured on the one hand to make proper and adequate provision for my family friends and dependants and on the other hand to avoid placing too heavy a burden on the State Revenues.

P (5)
Will of
Sir Charles
Johnson
Brooke,
16th
December
1913,
continued.

My own private property is small but the material progress of Sarawak during the last few years has been very great and after taking all the circumstances into consideration I am satisfied that the revenues of the State can well and easily bear the charges which I propose to put upon them. Therefore I hold it due to me and to my services to Sarawak for close upon sixty years that the State of Sarawak should assume bear 10 and pay (in addition to the pensions payable to retired Officers of the Sarawak Service and other pensions or allowances latterly paid by its Treasury) the several pensions annuities and sums of money hereinafter directed to be paid to the members of my family and my relations faithful friends and dependants.

2. In confirmation of the Will of my predecessor I GIVE DEVISE AND BEQUEATH my sovereignty of Sarawak and all rights and privileges thereto belonging in manner following (that is to say) Unto my eldest Son Vyner and the heirs male of his body with remainder to my second son Bertram and the Heirs male of his body with remainder to 20 my third son Harry and the heirs male of his body with remainder to the son of my late younger brother Stuart and the heirs male of his body with remainder to H.M. the King of England.

* * * * *

And finally for the better administration of the Government and affairs of the country which covers so large an extent and considering that two heads are better than one to weigh the business that will come before the Rulers of Sarawak also being fully aware that my eldest son Vyner and his wife will be unable to spend so much of their time in Sarawak as I have done I hereby having regard to the above consideration appoint my second son Bertram to hold a position of authority in the Raj second 30 only to that of my eldest Son Vyner and I direct that my Son Bertram shall carry out the duties of Rajah and administer the Government of the State during such times as my son Vyner may be in England or absent from Sarawak and that my son Bertram shall hold the position of Vice-President in the Supreme Council and other Councils in Sarawak and be president of the Advisory Council in Westminster when he is not in Sarawak and that during his absence in Sarawak the member of the Advisory Council Senior in point of view of his previous service in Sarawak shall replace my Son Bertram as president of that Council. I furthermore 40 urgently enjoin that no material developments or changes in the State or in the Government thereof and no new works such as public works and buildings estates railways or waterways and other extensions that may from time to time be required shall be initiated by my Son Vyner without first consulting my Son Bertram. I also direct that my Son Bertram shall at all times when residing in Sarawak have free admittance to and use of the Astana with its table and other furniture and it is my wish that the Government European and Native Officers as well as the inhabitants shall pay him the same respect as is shown to his eldest brother. I raise my second son to this position hoping that he will by his extended

experience be an additional safeguard against adventurers and speculators who would desire to make profits out of the country without regard to its real welfare. And I fervently hope that my two sons will see the necessity of acting together to keep intact and develop the resources of the country which has been brought to its present state by myself and my faithful followers after so many years of devotion to it. The two together I am persuaded will have the necessary power to carry out the object in view and it is my firm belief that it will require both of them working hand and heart together to keep the edifice on a firm base more especially in these times when eager speculators are always seeking for some new place to exploit in a money making sense when the white man comes to the fore and the dark coloured is thrust to the wall and when capital rules and justice ceases, whereas the main consideration should be an honest and upright protection afforded to all races alike and particularly to the weaker ones. I furthermore direct that on my death and when my successor is proclaimed my second son Bertram shall by the Supreme Council in Sarawak be given the title of Tuan Besar and thenceforth shall be known by that title. With these my last wishes I bid my two sons Adieu and may they both prosper.

20 GIVEN under my hand and seal this 16th day of December 1913.

(Sgd.) CHARLES BROOKE (L.S.)

Rajah.

*Documents
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with
Plaint.*

P (5)

Will of
Sir Charles
Johnson
Brooke,
16th
December
1913,
continued.

P (6)

AGREEMENT between Sir Charles Vyner Brooke, G.C.M.G., and J. B. Archer and Others, 31st March 1941.

P (6)
Agreement
between
Sir Charles
Vyner
Brooke
and J. B.
Archer and
Others,
31st March
1941.

30 AGREEMENT made this 31st day of March One thousand nine hundred and forty-one between SIR CHARLES VYNER BROOKE, G.C.M.G., RAJAH OF SARAWAK (hereinafter referred to as His Highness), of the one part and JOHN BEVILLE ARCHER, CYRIL DRUMMOND LE GROS CLARK, THOMAS CORSON, JAMES GORDON ANDERSON, CECIL PITT-HARDACRE, the members for the time being of His Highness's Committee of Administration (hereinafter referred to as the Committee) of the other part WHEREBY IT IS AGREED as follows:—

1. In consideration of His Highness enacting an Order (a copy of which is annexed to this Agreement and marked "A") to provide for the transfer of certain legislative powers from Himself to the Chief Secretary, in the capacity of Officer Administering the Government, as advised from time to time by the Committee, the Committee hereby promises and undertakes:—

40 (1) To do everything in its power or in the power of its individual members to facilitate the payment to His Highness of the sum of two hundred thousand pounds (£200,000) in cash from the funds of the Sarawak Government, such payment to be made on or before the fifteenth day of April nineteen hundred and forty-one.

*Documents
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with
Plaint.*

*. P (6)
Agreement
between
Sir Charles
Vyner
Brooke
and J. B.
Archer and
Others,
31st March
1941,
continued.*

(2) To write off the loan of thirty-two thousand dollars (\$32,000) advanced to His Highness for the purchase of His Highness's house at Cameron Highlands.

(3) To include in the proposed Constitutional Reforms provisions adequate to safeguard absolutely for the remainder of His Highness's lifetime :—

(A) The payment of the sum of sixty thousand dollars (\$60,000) a year to His Highness for the upkeep and maintenance of the Astana ;

(B) The payment of the sum of twenty-one thousand dollars 10 (\$21,000) a year to His Highness for charitable disbursements, which sum His Highness is entitled to expend at His absolute discretion ;

(C) The payment of the sum of seven thousand dollars (\$7,000) a month to His Highness by way of personal emoluments ;

(D) The payment annually to His Highness of the net income received from the Sarawak Advisory Council Trust Fund ;

(E) The right of His Highness to sole and undisputed possession and use of the Astana and its grounds ; 20

(F) The right of His Highness to sole and undisputed possession and use of His Highness's Motor Yacht " Maimuna " ;

(G) The right of His Highness to confer titles and award decorations at His Highness's absolute will and discretion ;

(H) The right of His Highness to visit any part of Sarawak at His Highness's absolute will and discretion and to exercise His customary prerogatives in accordance with the advice of His responsible advisers ;

(I) The vesting in His Highness in his personal capacity with full rights of transfer and devise of all His Highness's 30 personal lands in Sarawak, including " Bedil House " and grounds ;

(J) The right of His Highness to confer or to refuse to confer titles on members of His Highness's family ;

(K) The maintenance of the present annual payments to members of His Highness's family ;

(L) The maintenance of the pay of the Datus now holding Office in accordance with the scale approved by His Highness.

(4) To do everything in its power or in the power of its individual members to ensure that the proposed Constitutional Reforms 40 are carried through with proper respect and regard for His Highness's personal position, to make it clearly understood throughout the State that the reforms are inaugurated in commemoration of the Centenary of the rule of His Highness's family in Sarawak and to secure adequate native representation in any legislative body that may be set up.

(5) To guarantee that any person to whom His Highness has given permission in writing to reside in Sarawak shall continue to

be permitted to reside there for so long as he does not commit an offence against the criminal law or engage in subversive activities.

(6) To refrain, until the enactment of the Constitutional Reforms, from increasing the number of members of the Committee of Administration above the number at the time of the signing of this Agreement.

(7) In the event of the death of His Highness the Tuan Muda before the enactment of the Constitutional Reforms, to appoint, after due consideration and circumspection, an heir to His Highness's throne.

10

(8) On His Highness's death to assume responsibility for the payment of all pensions granted by His Highness to Asiatics and debited to the Astana account not exceeding the sum of five thousand dollars (\$5,000) a year.

(9) To honour any written contracts entered into between His Highness and officers of the Sarawak Government prior to 16th March, 1941, and subsisting on the day of the signing of this Agreement.

2. In consideration of the foregoing covenants His Highness expressly promises and undertakes on behalf of Himself and His successors that neither He nor any member of His family has or will have any claim on the funds of the Government of Sarawak other than those claims set out in this Agreement.

IN WITNESS WHEREOF We Have Hereunto Set Our Hands This Thirty-First Day of March One thousand Nine Hundred and Forty-one.

SIGNED by Sir Charles Vyner Brooke, } C. V. BROOKE
G.C.M.G., Rajah of Sarawak } Rajah.

In the presence of : Name—~~Thomas~~ ^{G.T.M.} McBryan.

30

Description
Private Secretary
Occupation to His Highness the Rajah
of Sarawak.

Signed by

John Beville Archer
Cyril Drummond Le Gros Clark
Thomas Corson
James Gordon Anderson
Cecil Pitt-Hardacre

40

In the presence of : Name Illegible.
Description
Occupation Rubber Regulation Officer
Sarawak.

31st November, 1941.

Documents
lodged
with
Plaint.
—
P (6)
Agreement
between
Sir Charles
Vyner
Brooke
and J. B.
Archer and
Others,
31st March
1941,
continued.

*Documents
lodged
with
Plaint.*

P (7)
Letter,
Capt.
Bertram
Brooke to
Sir Charles
Vyner
Brooke, 5th
December
1947.

P (7)

LETTER, Captain Bertram Brooke to Sir Charles Vyner Brooke, 5th December 1947.

104, PARAMOUNT COURT,
University St.,
London, W.C.1.

5th December 1947.

RAJAH,

Whatever the ultimate outcome of the purported cession of Sarawak may be (and as you are well aware I dispute the validity of it) it leaves unaffected the fact that our father's political Will laid an obligation not only upon you but upon me also, to see that the funds of the State have always been applied for the benefit of Sarawak and not for the private purposes of the Rajahs ; I should I feel be failing in my duty to the people of Sarawak if I personally make no effort to satisfy myself that in this respect the conditions of our father's political Will have been carried out. 10

Accordingly I now ask you formally to let me have—

(1) an account as from the 1st September 1945 (the date after which I have had no financial reports in this connection) of all moneys transferred from the State funds to your private account, and 20

(2) in respect of all moneys so transferred (over and above the normal personal emoluments of a Rajah), including particularly all moneys so transferred to your Private account as a result of the purported agreement between yourself and the Sarawak Committee of Administration dated the 31st March 1941, ~~and~~ an account of how such moneys were applied by you for the good of Sarawak.

I have the honour to be,

Rajah,

BERTRAM BROOKE,

Tuan Muda. 30

H.H.
Sir Charles Vyner Brooke, G.C.M.G.,
Rajah of Sarawak,
73 Albion Gate,
Bayswater Road,
W.2.

P (8)

LETTER, Sir Charles Vyner Brooke to Capt. Bertram Brooke.

73, ALBION GATE,
BAYSWATER ROAD,
LONDON, W.2.

9th December 1947.

SIR,

I acknowledge receipt of your letter of the 5th instant, which will receive consideration.

10

Yours faithfully,

C. V. BROOKE,

Rajah.

His Highness,
The Tuan Muda of Sarawak,
104, Paramount Court,
University Street, W.C.1.*Documents
lodged
with
Plaint.*P (8)
Letter from
Sir Charles
Vyner
Brooke
to Capt.
Bertram
Brooke, 9th
December
1947.

P (9)

LETTER, Captain Bertram Brooke to Sir Charles Vyner Brooke, 31st December 1947.

104, PARAMOUNT COURT,
LONDON, W.C.1.

31st December, 1947.

20

RAJAH,

On the 9th December and in answer to my letter of the 5th December you wrote me :—

“ I acknowledge receipt of your letter of the 5th instant, which will receive consideration.”

I am not content to allow the matter to drift and unless I hear from you during the next seven days that you are prepared to supply without delay the information for which I ask I shall assume that you deny my
30 right to it and refuse to supply it at all.

I have the honour to be,

Rajah,

BERTRAM BROOKE,

Tuan Muda.

H.H.

Sir Charles Vyner Brooke, G.C.M.G.,
Rajah of Sarawak,
73 Albion Gate,
Bayswater Road,

40 London, W.2.

P (9)
Letter,
Capt.
Bertram
Brooke to
Sir Charles
Vyner
Brooke,
31st
December
1947.

*Documents
lodged
with
Plaint.*

P (10)

**LETTER, Arnold, Fooks, Chadwick & Co. to Captain Bertram Brooke,
2nd January 1948.**

15, BOLTON STREET,
PICCADILLY,
LONDON, W.1.

2nd January, 1948.

P (10)
Letter from
Arnold,
Fooks,
Chadwick
& Co. to
Capt.
Bertram
Brooke, 2nd
January
1948.

4/EH

DEAR SIR,

We write to inform you that we have received instructions from 10 ~~our~~ client, the Rajah of Sarawak, in connection with your letter to him of the 5th December last.

Our Mr. Lloyd, who deals with the Rajah's affairs, is at present out of London but we will be writing to you again on his return at the end of next week.

Yours faithfully,

ARNOLD FOOKS CHADWICK & CO.

Captain Bertram Brooke,
104, Paramount Court,
University Street,
London, W.C.1.

P (11)

LETTER, Arnold, Fooks, Chadwick & Co. to Captain Bertram Brooke,
8th January 1948.

15 BOLTON STREET,
PICCADILLY,
LONDON, W.1.

8th January, 1948.

*Documents
lodged
with
Plaint.*

P (11)
Letter from
Arnold,
Fooks,
Chadwick
& Co. to
Capt.
Bertram
Brooke, 8th
January
1948.

4/EH

DEAR SIR,

10 Further to our letter of the 2nd instant we have now had an opportunity of considering your letter of the 5th December the " Political Will " of the late Rajah, and obtaining instructions from our client, Sir Charles Brooke.

Although we understand the Rajah has always given every consideration to the late Rajah's wishes as expressed in the " Political Will ", you will appreciate that the " Will " has no legal effect ; it is merely an expression of his private views which could, from a legal aspect, be followed out or disregarded.

20 There can be no possible liability on our client's behalf to render you or anyone else the accounts for which you ask in your letter, and our client has no intention of furnishing you with any such accounts. Further, no attempt is made to impose such a liability on our client in the " Political Will ".

As a courtesy to you, our client asks us to inform you that all payments made on the Sarawak Government Account during the period of the Far Eastern War were in fact legalised by the Council Negri before the Cession of the State. He adds that you have for many years received an income in excess of the amounts laid down in the " Political Will ".

30 Our client does not intend to carry on a correspondence with you on these matters ; as Sarawak has been ceded to the Crown any current queries you may have with regard to the State should be addressed to the Colonial Office.

Yours faithfully,

ARNOLD FOOKS CHADWICK & CO.

Captain Bertram Brooke,
104, Paramount Court,
University Street,
London, W.C.1.

In the Privy Council.

ON APPEAL

FROM THE COURT OF THE JUDGE OF APPEAL IN THE STATE
OF BRUNEI.

IN THE MATTER of an *ex parte* application for leave to
issue and serve a Summons together with a Plaint upon the
Defendants thereto outside the Jurisdiction of the State
of Brunei

and

IN THE MATTER of a Suit (Civil Suit No. 1 of 1948) instituted
in the Court of the Resident of the State of Brunei.

BETWEEN

BERTRAM WILLES DAYRELL BROOKE and ANTHONY
WALTER DAYRELL BROOKE - - - - - *Plaintiffs*

AND

Sir CHARLES VYNER BROOKE, G.C.M.G., CHARLES
JAMES VYNER CRAIG BROOKE, RALPH EVELYN
STUART JOHNSON and The Honourable ARTHUR
GEORGE VILLIERS PEEL - - - - - *Defendants.*

RECORD OF PROCEEDINGS

MESSRS. WILLIAM CHARLES CROCKER,
42 GRACECHURCH STREET,
LONDON, E.C.3,
Agents for the Appellants.