# COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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## 1873

## P. L.

*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

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The Council met at Government House on Saturday, the 13th December 1873.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble B. H. Ellis.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble J. F. D. Inglis, C. S. I.
The Hon'ble Rájá Ramánáth Thákur.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.

## PRINCE OF ARCOT'S PRIVILEGES BILL.

The Hon'ble MR. HOBHOUSE presented the report of the Select Committee on the Bill to continue certain privileges and immunities now enjoyed by Prince Azím Jah Bahádur, as Prince of Arcot, to his sons on succeeding to the title.

No alterations had been made in the Bill except one, in compliance with a suggestion by a gentleman supposed to be a creditor, who recommended that the names of the sons of the Prince should be put into the Bill. The suggestion had been adopted, and the names of the Prince's sons who would succeed to the title had been inserted. A communication had been that morning received from the Madras Government, from which it appeared that there was no hurry in passing the Bill. He would therefore ask leave to postpone the two motions connected with this Bill, which stood in his name on the list of business.

## ACTS X OF 1859, XIV OF 1863 AND XXII OF 1872, EXPLANATORY BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to declare the true meaning of Acts X of 1859, XIV of 1863 and XXII of 1872. He said that this was the second time, during his short tenure of office, that it had fallen to his lot to discharge the somewhat delicate and difficult task of

attempting to cover by legislation some flaws in the Revenue judicial system of the North-Western Provinces which had been discovered in Courts of Law. It would have been far more agreeable, and would probably be far more satisfactory and efficient in every way, if the necessity could have been obviated by the action of the Courts of Law themselves. But that course had been tried and had been found impracticable, and he thought that, when the Council had heard what he had to say, hon'ble members would be convinced that they had no option before them but to pass a law on the subject. For the magnitude of the mischief was very great; it was no less than this, that numbers of law-suits, which might be counted by tens and hundreds of thousands—suits supposed to have settled various disputes between landlords and tenants,—had been found to be settled without authority; that was to say, had been found not to have been settled at all; and it was open to the parties who had been defeated in these suits to try the chance of combat again, and that, not because there had been any injustice or illegality in dealing with them on their merits, but because flaws had been found in the titles of the Judges who decided them. Now there was quite enough of the gambling spirit everywhere amongst mankind to make those who had lost eager to try their chance again, and the result was a flood of litigation on matters which had been decided by competent and impartial officers, whose only shortcoming had been that some informality had been committed in conferring powers upon them, or that it had been found that expressions hitherto supposed to apply to them did not apply to them. We had been informed—we were informed some months ago—that in one district alone, several hundreds of appeals were preferred for the purpose of quashing decisions that had been passed, and re-opening litigation. How many appeals there might be in the other districts, we did not know; but the number must be very large, and might become overwhelming unless we interfered to stay the plague. It was true that, at the instance of the High Court and the Local Government, the Judges had abstained from going on with the cases in question, but we did not know whether that abstinence had been universal, or how far any appeal might have proceeded, and we had found by experience that decrees might be made in such cases very quickly. Nor would it be possible to prolong the present suspension of trials. There was, therefore, a public evil of a kind and on a scale with which the Government were bound to deal.

Now, before he explained the present difficulties, he would just remind the Council of what took place last year. Under the existing Rent Act, X of 1859, Collectors of Land Revenue were appointed to be Judges of many disputes between landlord and tenant, which might conveniently be termed

Rent suits, and by section 150 of that Act, it was provided that all powers vested in Collectors for this purpose might be exercised by any Deputy Collector placed in charge of a Sub-division. That Act applied to Bengal and to the North-Western Provinces. In Bengal, there were tracts of territory which were known as Sub-divisions for all purposes of administration. In the North-Western Provinces, such Sub-divisions either did not exist or existed to a very insignificant extent. Therefore, what the Local Government did was to parcel out certain local areas and to appoint Deputy Collectors to them for the purposes of the section in question. They were then held to be in charge of Sub-divisions, and exercised jurisdiction accordingly. In the year 1872 exception was taken to the jurisdiction of one of these officers, and the High Court held that he could not be deemed to be in charge of a Sub-division, and that, therefore, he had not that jurisdiction which he assumed to exercise. That decision cut away the foundation of a great multitude of judgments, it was said as many as six hundred thousand, and we were called upon to interfere. We did interfere by passing an Act—Act XXII of 1872—and in that it was provided in effect that all Deputy Collectors should be deemed to be Deputy Collectors in charge of Sub-divisions, or persons with equivalent powers. Combining the two Acts of 1859 and 1872, it resulted that Deputy Collectors were equivalent to Deputy Collectors in charge of Sub-divisions, and therefore had the powers of Collectors, or, to confine ourselves to the present subject, might take cognizance of Rent suits.

Well, the case which had recently occurred and which had brought about the present difficulty, was of the following nature. A zamíndár sued certain tenants for enhancement of rent. He brought his suit to the Settlement Officer. The Settlement Officer referred it to the Deputy Collector of Etah. The Deputy Collector gave the plaintiff a decree. The defendant appealed to the District Judge of Alígarh, who again gave the plaintiff a decree. The defendants then presented a special appeal to the High Court and there took, for the first time, the objection that the Deputy Collector of Etah had no jurisdiction to hear the suit. The High Court allowed that objection, and quashed the whole proceedings as null and void for want of authority in the Judge. Now, to show the principle upon which that judgment was based; how it bore upon the practice followed throughout the North-West Provinces and in Bengal; how it affected a great number of other cases, and how it should be dealt with, it would be necessary for him (Mr. Hobhouse) to examine that utterance of the Court which we called a judgment, and which was binding upon all inferior Courts. And he would elucidate it as best he could, promising, however, to treat the Council to as small a quantity of legal exposition as was consistent with a due understanding of the case.

Now, in the first instance, the Council would observe that a Deputy Collector might have jurisdiction from two sources. He might either have original jurisdiction arising from his position as a Deputy Collector, or he might have jurisdiction by reason of a reference made to him by a Settlement Officer. The case was, in fact, a referred case; but as the Court had mentioned grounds of jurisdiction, and had denied its existence on either ground, and as both grounds were equally essential to the stability of a great many proceedings, and must therefore be the subject of our legislation, he would follow the Court in examining both grounds.

He would first take up the subject of original jurisdiction, and would state the grounds upon which the Local Government and the Revenue Courts supposed that jurisdiction to exist.

Act XIV of 1863 was an Act applicable to the North-Western Provinces, and passed for the purpose of amending and adding to the Rent Act of 1859. By section 8 of the Act of 1863, it was provided that the Local Government might invest any officer employed in making or revising settlements of the Land Revenue with the powers of a Collector for the decision of Rent suits. Soon after this Act was passed, proclamations were issued by the Local Government and by the Board of Revenue with the sanction of the Local Government, and under the latter of these, it came to be supposed (erroneously as MR. HOBHOUSE thought) that all Deputy Collectors employed in settlement work, whenever they happened to become so employed, had been invested by the Local Government with the powers of a Collector under this section 8. On considering the terms of those documents, it would be found that they were confined to Deputy Collectors employed at the date of the earlier of the documents, that was to say, on the 21st of April 1863. In point of fact, the general understanding had been the other way, and the practice had prevailed for many years that all Deputy Collectors employed in settlement work should simultaneously exercise jurisdiction over Rent suits.

A few of them had, inconsistently enough, been gazetted as invested with these special powers; but they were only a few, and, as regarded the bulk, it had been considered that their mere appointment as Deputy Collectors employed in settlement work carried with it jurisdiction to try and decide Rent suits.

But the Council would observe that the Act of 1863 said nothing whatever as to the mode in which the Local Government might invest these officers with powers. They were not bound to do it by proclamation, or even by any

public or written document. A letter, a verbal direction, a message, a nod or a wink would be quite sufficient, provided only you could prove that the will of the Government was thereby expressed. He did not mean to commend such a method of doing business, and if the Government of which his hon'ble friend (Mr. Inglis) was a distinguished member, were ever to ask his (MR. HOBHOUSE'S) advice about it, he would advise them to invest each officer with the power they wished for by a formal and public document. But still, there was the law that the Government might do as they pleased, and he took it that their will and intention was a simple matter of fact, to be proved, like any other matter of fact, by evidence, circumstantial or direct. For circumstantial evidence they saw a widespread practice known to the Government, to the suitors and to the Courts, and lasting for a number of years. The ordinary inference—and, he would have thought, the legal inference—would be that what was so done was done according to the will and intention of the Government who had the legal right of willing that the officers in question should possess the jurisdiction in question, and the legal right of expressing that will in any mode they thought fit. Direct evidence might be supplied by members of the Government themselves, who were one and all ready to depose that the jurisdiction which had been exercised had been exercised in accordance with the wishes and intentions of Government; and that, if no formal expression had been given to those wishes and intentions, it was by a mere oversight, and because they thought the thing had been done; because they thought that things were in such a state that the mere appointment of a Deputy Collector to settlement-work carried with it his investiture with power to decide Rent suits.

Now, he would read to the Council the passage of the judgment in which the Court had dealt with this part of the case. It was not a full Court, but a Division Court constituted of two able Judges, Mr. Justice Pearson and Mr. Justice Turner. They said :—

'This Deputy Collector is not shown to have been employed in making or revising settlements at the time of the Government Notification, dated 21st April 1863, and did not therefore obtain the special powers described in section 8, Act XIV of 1863, by virtue of that notification. On the contrary, he appears to have been for the first time invested with the powers of a Deputy Collector in the Settlement Department, under Regulation IX of 1833, by the order of Government, dated 16th August 1867. Nor is it shown that he has since been invested with the special powers described in section 8, Act XIV of 1863, by any order subsequent to 16th August 1867. He had therefore no jurisdiction to try the suit had it been originally preferred to him.'

That was all the reference upon that point, and MR. HOBHOUSE thought the Council would feel, as he felt, the difficulty of learning from it the grounds

upon which the conclusion was based. The learned Judges did not discuss the bearing of the existing practice, indeed did not so much as refer to it. They did not discuss the applicability of such a maxim as *omnia præsumuntur rite esse acta*, or such a one as *optimus interpres rerum usus*, maxims which, though they appeared in barbarous Law Latin, were only plain common sense; they did not discuss whether the burden of proof should not rather lie upon the person who disputed than on him who affirmed the title of a *de facto* Judge; they called for no evidence on the true issue, whether the will and intentions of the Government had been exercised so as to confer the requisite jurisdiction. But looking at one document, and finding that the requisite powers were not conferred by that, they concluded that such powers did not exist, perhaps deciding, not expressly, but by implication, that written orders were necessary to confer them.

Moreover, from the extreme brevity of the judgment and its silence as to the grounds upon which the conclusion was based, he (MR. HOBHOUSE) confessed that he had very considerable difficulty in knowing what the exact conclusion was. Did the learned Judges mean to say that the Local Government was legally incapable of conferring powers on its officers by classes, and prospectively, or did they mean to say merely that, in point of fact, it had not done so? Each of these conclusions was equally consistent with the written judgment; each of them seemed to him equally probable and tenable in itself. But if we went to give validity to the things which had actually been done, we must take care to cover all possible conclusions upon which their validity might be based.

Before MR. HOBHOUSE quitted this part of the case, he must draw the attention of the Council to another phase of it, namely, its relation to Act XXII of 1872. The Deputy Collector of Etah was, at all events, a Deputy Collector. By the Act of 1872, he must be deemed to be a Deputy Collector in charge of a sub-division. By the Act of 1859, all Deputy Collectors in charge of sub-divisions could take cognizance of Rent suits. But the judgment denied that this officer could do so. It did not, indeed, refer to the Act of 1872 at all; but its words were quite general—"He had no jurisdiction to try this suit had it been originally preferred to him." It therefore seemed directly in the teeth of the Act of 1872.

Now, he had been informed on high authority that, in this respect, the judgment did not express the true meaning of the Court. It was said that they intended to confine their remarks to an enhancement suit brought before a Settlement Officer invested with the powers of a Collector. There was a

peculiarity in these suits. A landlord might sue a number of his tenants, and might dispense with a certain preliminary notice, which things were said to have been done in the suit in question. But there was a very obvious distinction between defects in procedure and in the frame of the suit, and defects in the authority of the Judge. The former class of defects need not, by any means, be fatal to the validity of the proceedings, as the latter class must be. Defects in form or procedure might be disputed; if so, the dispute must be decided by the officer who had jurisdiction over the subject-matter; they might be cured; they might be waived; in short, not to trouble the Council with technicalities, the two classes of questions led to wholly different practical results. Again, this judgment was quite general in its terms. There was nothing on the face of it which told us that the suit was in one form or another form. No one who had not access to the original record could tell what the form was. There was nothing in the judgment, or in the report of the case, about the number of tenants sued, or the omission to serve a notice. If the facts were as now stated, it was a pity they were not dwelt upon, and their influence upon the decision brought out. Because this judgment was binding upon all the inferior Courts, and he could not doubt that the inferior Courts would read and interpret it as he had done and still did, namely, as an explicit ruling that an officer circumstanced as the Deputy Collector of Etah had not any original jurisdiction whatever in Rent suits, notwithstanding the Act of 1872. He would presently refer to another decision of the High Court, which seemed to him to make such a conclusion quite inevitable on the part of a subordinate Court. Now, we had to stop litigation, and the Council could not wait until the High Court, which had refused to review this case, took an opportunity of some other appeal coming up to them to state how this judgment should be interpreted. If this case could have been reheard, all might have been made clear on the rehearing. As matters stood, it seemed to him that we had no choice, except between the alternatives of allowing useless litigation to proceed on a large scale, or of declaring that the law was contrary to that plain sense in which the judgment was sure to be read.

He would now pass on to the second division of the case, namely, the jurisdiction which the Deputy Collector derived from the reference to him by the Settlement Officer. The High Court had held that no power to refer existed in the Settlement Officer. He would follow his former method, first stating the grounds upon which the Local Government and the Revenue Courts supposed that such a power did exist.

He had already referred to section 8 of Act XIV of 1863, and had shown that, under that section, the Local Government might invest any officer employ-

ed in Settlement work with the powers of a Collector for the decision of Rent suits. Well, by section 150 of Act X of 1859, all powers vested in the Collector by the preceding sections of the Act (an expression which included the jurisdiction over Rent suits) might be exercised by any Deputy Collector in cases referred to him by the Collector. Now, it had hitherto been always supposed that section 150 of Act X of 1859 gave a general power to the Collector to refer to his Deputy any suit which was brought before him. The power to refer suits for decision to another person was a most important power for the decision of suits. It was, in fact, a perfectly indispensable power. If it did not exist, Collectors could not do their work, and the whole machinery of the Revenue administration would break down. In practice, these references had prevailed on an enormous scale, and the Act of 1859 had always been construed on one view, namely, that the power existed. The view that prevailed in Bengal was just the same as that which prevailed in the North-West. Throughout the whole of these two Provinces, Collectors had been in the habit of referring to the Deputy Collectors any suits which were brought before them; and in the North-Western Provinces, Settlement Officers invested with the powers of a Collector had done the same thing to as great an extent.

What the judgment said on this point he would now read. The Judges were speaking of the Settlement Officer, and assuming, for the purposes of argument, that he was himself invested with powers under Act XIV of 1863, they said:—

"But he certainly had no power to refer it to another officer. By section 8 of Act XIV of 1863, the Local Government may invest any officer employed in making or revising settlements of the land revenue with the powers of a Collector as described in Act X of 1859, for the *decision* of suits arising within the local limits of the jurisdiction assigned to such officer of the nature mentioned in section 23 of the said Act. These are the powers spoken of in section 150 of that Act, and are distinct from such powers as those given to the Collector by the second clause of section 162. The latter powers are granted to a superior officer in respect of his subordinates, while the officers invested under section 8, Act XIV of 1863, are equally invested with the same powers; and under section 10 of that enactment, 'if a suit for enhancement of rent be brought before any officer empowered under section 8 to hear the same, such suit *shall* be heard and determined by such officer;' and it is not provided that he may refer it for trial and decision to another."

Now, that was the whole of the judgment upon this subject, and the Council would see that the judgment rested on two points—

The first was, that the powers of the Collector which were transferable to the Settlement Officer were powers only for the decision of suits. The word 'decision' was emphasized in the judgment both as written and

as printed. He might have been misled by the extreme brevity of the judgment; but from the stress laid upon this word, he inferred that the learned Judges considered that the power to refer suits to another officer was not a power for the decision of suits. He would not offer to the Council any arguments to the contrary. He would only say that the idea was a new one, both to the Government and to the Revenue Courts, and had taken them by surprise. In extenuation, if it should be deemed one, of the error of those authorities who had acted on so large a scale on the contrary hypothesis, he ought to add that, having considered the case a great number of times, he was unable, even with the light now thrown upon it, to understand for what purpose the power to refer a suit to another officer was given, unless it was for the purpose of getting that suit decided.

The second point was, that there was a subsequent section, namely, section 10 of Act XIV of 1863, which expressly and positively prohibited such a reference. As it appeared to him that the really important part of the section had escaped the attention of the learned Judges—at all events it was wholly omitted from the judgment—he would read to the Council what the section said. It said—

"If a suit for enhancement of rent be brought before any officer empowered under section VIII of this Act to hear the same, such suit shall be heard and determined by such officer notwithstanding that no notice of enhancement shall have been served under section XIII of the said Act X of 1859 on the party from whom such enhanced rent is claimed."

Now it had always, up to the present moment, been understood that the section in question was simply for the purpose of regulating certain details of procedure peculiar to enhancement suits; that it was for the purpose of dispensing with a preliminary notice, and for providing that the subject-matter of the notice should appear in the statement of claim, not for the purpose of securing the identity of the Judge. The section was confined to enhancement suits; and if the object was to secure the identity of the Judge from the beginning to the end of the suit, it was difficult to understand why enhancement suits should be placed on a different footing from all other Rent suits. Moreover, the inconveniences of this decision would be manifest. Suppose a suit had proceeded some way, and the officer trying it was to die or to be removed to some other place; all the proceedings must then go for nothing, and the litigants be subject to all the expense and inconvenience of going over the same ground again. For, be it remembered, that this was not the case of a permanent office in which an officer's successor might perhaps be taken as identical with himself; but it was the case of an individual clothed with special powers by an isolated act of the Government. There was no such

connection, therefore, between predecessor and successor, as could make them the same officer. The result of the judgment was, that the same officer must hear the suit from beginning to end, and if an accident happened to the Judge who was trying the suit, it must be commenced afresh. But he was not there to argue the point. He merely pointed out that the judgment did not refer to the cardinal expressions of the section, nor to the practice under it, nor to the consequence of the new construction. He conceived the old construction to be the only workable one, and it was our duty to restore it to life. He ought to add, as before, that, as far as his ability to understand the matter went, he should and did share the error of the Revenue Courts.

Now, he was informed upon good authority that there was another ground upon which the Judges proceeded, but which was not discoverable in the judgment. He had called attention more than once to section 150 of Act X of 1859—that important section under which Collectors referred cases to Deputy Collectors. Now, it had been suggested that there was no such general power of reference vested in the Collector; and that the only power he had was of a very much more limited character, namely, that, under section 162 of that Act, he might withdraw a suit from one Deputy Collector and then transfer it to another Deputy Collector. But considering what the practice had hitherto been; considering that there must be millions of decisions in Bengal and the North-Western Provinces the validity of which depended upon this power of reference, such a decision was in itself a decision of the very highest importance. It was in fact more important than the rulings which were discoverable in the judgment. If it had been the intention of the Court so to condemn all the existing practice, he should have thought it would not have been done by inference or implication, but that it would have been done by express words, and upon a discussion of the wording of the Act and the universal working of it. But still we were told upon authority which we could not dispute, that this most important assumption really did underlie the whole reasoning of the judgment, and therefore, when we were about to pass a remedial Act, we must bear this in mind, and be very careful to make our foundations sure.

These, then, were the flaws in the title of the Judges who had been trying Rent suits, and these were the flaws which we ought to repair by our legislation. For it was not suggested that any injustice had been done a single individual, or that any public inconvenience had been suffered by this exercise of jurisdiction. The whole controversy had been throughout formal, verbal or technical from beginning to end. The only hardship suffered was by the suitors who had obtained decrees, and then found that their decrees were so

much waste paper, or something worse—the materials for an additional law-suit preparatory to the re-opening of the whole original dispute. These people were in no default. They trusted, as they had a perfect right to trust, the visible authority was also the real one. MR. HOBHOUSE could not conceive anything more calculated to shake the people's trust in Government than the sudden discovery that the solemn adjudications of a million suits were so many farces, and the Judges so many impostors: that the people's time and money had been flung away, or had only succeeded in bringing them the mockery of relief, to be again snatched away from them by fresh processes of trouble and expense. It would be waste of time if he were to set himself to prove that, in such a case, the legislature ought to intervene in the speediest and most efficient manner possible.

The question then was, in what manner should we intervene? He thought we ought to pass a declaratory Act which would give validity *ex post facto* to the decisions which had been made by the Revenue Courts, so that none of them should hereafter be questioned for mere want of authority in the Judge, But here, he was sorry to say, they were met with a fresh difficulty, and they found that the usual form of remedy in such cases, a simple declaratory Act, would not suffice. We tried that last year, and he must now state to the Council what had happened since.

He held in his hand the report of a case in which one Baladeva was the appellant. Before the decision of the High Court in the sub-division case, this Baladeva had obtained a decree from a Deputy Collector for enhancement of rent. When the decision in the sub-division case was made known, a great number of appeals were presented for the purpose of quashing the decrees of the Deputy Collectors. We were perfectly aware of that fact, and openly declared our intention of framing a law in a shape which should cover the disputed ground and repress litigation. We adopted the usual and simple course of an Act declaring the meaning of Acts X of 1859 and XIV of 1863. Now the Council must know that a declaratory Act was essentially and in its nature retrospective. It fastened upon the original Act and said what its meaning was, and the meaning so declared, took effect as from the date of the original Act, and was not confined to the date of the declaring Act. Every decision made contrary to the meaning so declared was contrary to law, contrary to the meaning of the original Act, and if the soundness of that decision came to be discussed in any Court of justice, that court of justice was bound to deal with it according to the declared meaning of the original Act.

Well, our friend Baladeva had got his original decree. An appeal was presented to quash that decree, for want of authority in the Deputy Collector.

The appeal was heard before Act XXII of 1872 could be passed, and the Judge, obeying the ruling of the High Court, quashed the proceedings of the Court below. When the Act was passed, Baladeva went up with it in his hand to the High Court and said to it: "now the decision of the Judge was wrong, the legislature says so, please to restore me my decree of which I have been unjustly deprived." He no doubt trusted that, when the legislature declared the meaning of an Act to be so and so, the High Court would give that meaning to it, and guide all its proceedings by it. But all he got was a dismissal of his appeal with costs.

The High Court on this occasion consisted of two learned Judges, Mr. Justice Spankie and Mr. Justice Turner; Mr. Spankie considered that they were bound to reverse the decree of the Judge, and to restore that of the Deputy Collector. But Mr. Turner was the Senior Judge; he was of the contrary opinion, and his opinion necessarily prevailed. He laid down broadly that this legislature could not make a law to operate retrospectively on a judicial decision. He insisted upon it that what the High Court declared to be the reading of the law was really the true reading, whatever the legislature might have said to the contrary. He said that the Judge's law was good at the time when he delivered his judgment, and therefore the High Court had no right to say it was bad. But MR. HOBHOUSE had better read to the Council the very words which Mr. Justice Turner had used. He said:—

"At the time the Judge gave the decision from which this special appeal is presented, Act XXII of 1872 had not been passed; it must therefore be held in accordance with the rulings of this Court that his judgment was correct. A new law passed since the decision cannot, it appears to me, make that decision wrong, which was, and still is, in reference to the law then in force, right. After the passing of Act XXII of 1872, which cured no defect in Act X of 1859, but declared that certain officers who had erroneously exercised a jurisdiction they did not possess, should not therefore be deemed not to have had jurisdiction. No one can impugn the exercise by the officers therein mentioned of the jurisdiction which they had erroneously assumed, what *was* wrong we cannot now say was wrong; but there is nothing in the Act which authorizes me to rule that a decision given in accordance with the law, as it stood before the Act was passed, was contrary to law or usage, having the force of law, at the time the decision was passed. Acts are sometimes passed declaring that the intention of the legislature in a particular enactment has been other than the Courts have construed it to be, but such declarations do not affect cases already decided."

He then passed to another topic with which MR. HOBHOUSE would not trouble the Council, because it appeared to him to be irrelevant, and that the observations required much qualification before they could be accepted as accurate.

Now, that the District Judge in this case was perfectly justified in what he did was clear enough. He only did his duty. He was bound, whatever his own opinion might be, to follow the ruling of the High Court, which was the highest authoritative ruling then in existence. But before the matter came up to the High Court, the legislature had intervened, and had said that the true meaning of the Acts should be taken to be the reverse of that which the High Court had ruled. That was a higher ruling by which all Courts were bound. If a statute said white, and the legislature said it meant black, it was the painful duty of a Court of justice to say that, for the purpose of that particular law, white was to be read in the sense of black. Well, we had done nothing quite so unreasonable here. The High Court thought that the Local Government and the Revenue Courts had misconstrued the statutes. The Government took the view that the construction which had prevailed was the reasonable one, and, indeed, the only one compatible with the due discharge of public business. And the legislature declared that the construction which had prevailed should be taken as the true one.

Now, just suppose that it was the Privy Council who had reversed the ruling of the High Court. It would have been an act of direct disobedience to their superiors if they had not decided every appeal which came before them in accordance with the views of the Privy Council. They would not then have said that, when the Judge delivered his decision, it was in accordance with law, because their superior Court would have admonished them that it was not in accordance with law. But for the purpose of guiding Courts of justice, there was no essential distinction between a declaration of law by a superior Court and a declaration of law by the legislature, except that the legislature was the ultimate authority and the higher of the two. And there was no formal distinction between the two cases except this, that the superior Court would say outright that the Court below was wrong; while the legislature from its position was able to use more courteous terms, not desiring to express an opinion who was right and who was wrong, but merely saying that the law was to be taken in a sense contrary to that given to it by the Judges. He did not for a moment suppose that any such thing was meant, but the Council would see that, in point of fact and of substance, the learned Judge, of whose ability and attainments Mr. HOBHOUSE wished to speak with all respect, had set up the ruling of the High Court above the ruling of the legislature, and had refused to recognize our right in such a case as that of Baladeva to validate impugned decisions and so to quiet titles.

Now, he would take upon himself to assure the Council that they could legislate with retrospective effect, and that they could reverse the decisions of Courts

of justice, at least as effectively as their superior Courts could. He thought it was a most delicate and disagreeable task, and one which he would shrink from, except under pressure of necessity; but in this case he thought that the public interest demanded it of them. He did not see how in any other way they could effectually quiet titles or avoid a great deal of worry, expense, litigation and confusion. They could not afford to have frequent repetitions of such treatment as the unhappy Baladeva had received. We must then bear this judgment in mind; and we must bear in mind that a simple declaration would not serve our purpose, but that we must make the terms of our law more special, and leave only the alternatives of the accomplishment of our object on the one hand, or, on the other, a clear denial of our power to say that a judicial decision, when once delivered, was wrong, and must be treated as wrong in all Courts of justice.

There was only one other point to which he would refer, and that had been suggested by Mr. Justice Turner. That learned Judge thought that there was at least one other respect in which the procedure of the Revenue Courts might be held to be informal. On enquiry, MR. HOBHOUSE believed that to be the case, but he did not think it necessary to enlarge on the subject. Mr. Turner had suggested a general enactment, providing that the decisions of the Revenue Courts should not be impugned for mere want of authority in the Judge. He (MR. HOBHOUSE) thought the suggestion was a very good one. He confessed he did not, as a rule, like such sweeping provisions. It was said, *dolus latet in generalibus:* which he would render—'in general expressions, there lurks error;' and it was not uncommonly found that enactments passed in very general terms were not precise enough in some cases, and in other cases carried their principle to an unexpected and undesired extent. But the present case was so peculiar; there were so many flaws found or suspected in the procedure, as to which there had undoubtedly been some irregularity and informality, that he thought it would be a prudent course to run the risk of passing a general enactment as had been suggested. He should therefore ask the Council to adopt the suggestion of Mr. Justice Turner, and begged to thank him for it.

He had now only to explain to the Council the terms of the Bill which he should ask leave to introduce. It was a great deal longer than he could have wished; but those who had followed him through his statement, if only he had been lucky enough to make himself clear to them, would find it simple enough, and would understand the reason for its length. It recited the various enactments which he had referred to, the acts of the Local Government, and the practice which had prevailed in the Revenue Courts. It then recited the several rulings of the High Court as extracted from their judgments.

Then, section 1 affirmed the title of the Deputy Collectors and other Revenue Officers under Act XIV of 1863. Section 2 affirmed the all-essential power of Collectors to refer cases to Deputy Collectors. Section 3 affirmed the same thing of Settlement Officers invested with the powers of Collectors. Section 4 explained the meaning of section ten of Act XIV of 1863, and showed that it referred only to details of procedure, and was not intended to secure the identity of the Judge. Section 5 followed out the others, and declared that suits decided according to the received practice should be deemed to have been decided by proper authority.

The object of section 6 he had just explained; it was intended to protect the decisions of Revenue Officers against failure for want of authority, owing to causes hitherto unknown or only conjectured. Section 7 was intended to apply to appeals and to cover such a case as that of Baladeva. Section 8 called the attention of the Courts to certain elements of which no trace was to be found in their decisions, namely, a regard to existing practice, and a presumption, in the absence of evidence, that business had been conducted rightly rather than wrongly.

This Act was intended to extend only to the Provinces under the government of the Lieutenant-Governor of the North-Western Provinces. But section 2 related also to the law which ran in Bengal, and though that was now superseded, it might be considered in Committee whether there was ground for extending that part of the Act to Bengal.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to declare the true meaning of Acts X of 1859, XIV of 1863 and XXII of 1872——The Hon'ble Messrs. Bayley, Inglis and Dalyell and the Mover.

The Council adjourned to Tuesday, the 23rd December 1873.

WHITLEY STOKES,

CALCUTTA; *The 13th December* 1873. } *Secretary to the Government of India, Legislative Department.*

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