ALLAHABAD HIGH COURT

Kamlapat Moti Lal

Vs.

Commissioner, Income-tax

Misc. I.T. Case No. 529 of 1936

(Malik, C.J. and Seth, J.)

26.10.1949

JUDGMENT

Malik, C.J.

1. This reference under Section 66(2), Income-tax Act (XI [11] of 1922) has had a chequered history, It came up before several Benches from time to time but was not decided while the connected case No. 528 of 1936 which was a reference against the order made in the assessment year 1933-34 was decided in the year 1939.

2. The assessment year in question was 1934-35 and the previous year was the calendar year 1933.

3. The Union Indian Sugar Mills Co., Ltd., Kanpur (hereinafter referred to as the Mills) was wound up on a creditor's petition by a winding up order dated 28th May 1926. On 22nd November 1926, an application was filed by a partnership, known as Kamlapat Moti Lal (hereinafter referred to as the firm) offering to take a mortgage of the Mill or in the alternative to purchase the same. The terms of such mortgage or of sale were given in the application filed on that date. On 25th February 1927, this Court approved the Scheme of making a mortgage of the Mills to the firm on certain amended terms. The firm was put in possession of the property belonging to the Mills. Disputes, however, arose between the liquidators and the firm as to the terms to be agreed upon for the execution of the mortgage and the mortgage deed was never executed. The matter was ultimately taken to the Privy Council and was decided by their Lordships on *5th July 1929 Kamlapat Moti Lal v. Union Indian Sugar Mills Co., Ltd*[1]*.,* Their Lordships held that the share-holders should have been consulted and gave certain directions for the meeting of the share-holders. The share-holders approved of the scheme, but the firm was then not prepared to take the property on mortgage. The liquidators thereupon filed a suit for specific performance of contract. The suit was, however, dismissed by the Subordinate Judge,

Kanpur, on 6th January 1931, and as no appeal was filed against that decision, the decision became final.

4. The result, therefore, was that the firm had paid a sum of Rs. 10,62,000 and from 28rdh December 1926, was in possession of the property of the mills and was carrying on the

[1]1929 ALJ 1289 : (AIR 1929 PC 256)

business. The firm, however, claimed that the mills had been worked all along at a loss. Ultimately, as a result of fresh negotiations the property of the mills was sold to the firm on 18th May 1932, for a total sum of Rs. 11,12,000.

5. In the calendar year 1932, the firm bad made a profit. The firm claimed that during the period from 26th December 1926, to 18th May 1932, there was an unabsorbed depreciation amounting to Rs. 5,62,151 and the profit earned in the calendar year 1932 should be set oft against this amount under Section 10(2)(vi) of the Act. This claim was disallowed and ultimately a reference was made to this Court which was Miscellaneous Case No. 528 of 1936. The cage came up for decision before a Bench of this Court in April 1939 and was decided on 18th April 1939. *In re Kamlapat Moti Lal*[2]*,* The Court was of the opinion that for the purposes of assessment for the year 1933-34 on the basis of the profits made in the previous year 1932 the assessee was entitled to claim under Section 10(2)(vi) a set off of the unabsorbed previous deprecation of the period prior to the transfer, as against the profits earned in the year of transfer. Section 10(2)(vi) of the Act is as follows :

> "Such profits of gains shall be computed after making the following allowances, namely :

In respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to each percentage on the original cost thereof to the assessee as may in any case or class of oases be prescribed." In deciding the question whether the assessee was entitled to get allowance for the unabsorbed depreciation before the date of his purchase the Court relied on Section 26(2) of the Act which is as follows :

> "Where at the time of making an assessment under Section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he bad been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year."

The Court was of the opinion that as the assessment was made on the supposition that the whole of the profits for the previous year were received by the successor, even though the whole or a part of those profits might have been received by his predecessor, in the computation of the profits for the previous year deduction must also be made with respect to all the allowances enumerated in sub-section (2) of Section 10 to which the predecessor may have been entitled.

The result was that the answer to the first question was given in favor of the assessee.

6. We may mention that the two references, that is the reference against the order of the Commissioner of Income-tax for the assessment year 1933-34 (Miscellaneous case No. 528 of 1936) and for the year 1934-35 (Miscellaneous Case No. 529 of 1936) were made at the same time and were connected. The same three questions were referred for answer in both the cases and those questions were as follows :

[2]1939-7 ITR 374

> "(1) In the circumstances stated, having regard to the fact that the sale deed (Appendix A) was executed on 18th May 1932, was the assessee entitled to depreciation on the machinery and buildings in question with effect from 28th December 1926, the date on which, in pursuance of the mortgage scheme sanctioned by the High Court, it (the assessee) was put in possession of the mills ?
>
> (2) On a correct interpretation of the sale deed (Appendix A) referred to above was the assesses entitled to include a9 the original cost of the machinery and. buildings (1) the loses incurred by it in working the mills, (2) the interest on the sums advanced to the liquidators, and (3) the interest on the capital invested by it during its incumbency as mortgagee and managing agent of the Union Indian Sugar Mills Co. Ltd. Cawnpore ?
>
> (3) In the circumstances stated, was the assesses entitled to depreciation on the amount of (1) Rs. 13,391 and (2) Rs. 14,035 representing respectively the original cost of additions to buildings and machinery made by it during such incumbency ?"

7. The second question was decided against the assessee and it was held that the original costs of the machinery and buildings were only Rs. 11,13,000 and the third question was decided in favor of the assessee.

8. The third question remains no longer to be answered as the department has now accepted it that the assesses was entitled to depreciation on the amount of Rs. 13,391 and Rs. 14,035

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9. The second question also need not be considered as the assessee has now accepted it that the assessee is not entitled to claim the losses incurred by it in working the mills, the interest of the sums advanced to the liquidators and the interest on the capital invested by it before its purchase in the original cost of the machinery and buildings and Rs. 11,12,000 is, therefore, the original coat of the acquisition of the property.

10. As regards the first question, learned counsel has urged that the decision of this Court dated 18th April 1939, operates as res indicate and the assessee is entitled to claim that the profits made by it be set off against the balance of the unabsorbed depreciation.

11. We have already said that though Miscellaneous Case No. 528 of 1936 was decided by this Court on 18th April 1939, for some reason, which is not clear, the connected Miscellaneous Case No. 629 of 1936 remained pending in this Court. In the meantime the question of interpretation

of the words "being the property of the assessee in the year of succession" came up for interpretation before their Lordships of the Judicial Committee in the *Indian Iron and Steel Co., Ltd. v. The Commissioner of Income-tax, Bengal*[3], It is not disputed that as a result of that decision the assesses cannot claim to have the balance of the unabsorbed depreciation of Rs. 5,62,151 set off against the profits made in the year 1933. The argument, however, is that the decision of this Court in Miscellaneous case No. 528 of 1936 operates as res judicata and we are bound, therefore, to answer the question in the same way as it was answered in that case.

12. Before we consider the question how far the principle of res judicata applies in tax matters, it may be profitable to analyze the basis of the decision of this Court in 1939.

[3]1943-11 ITR 328 : (AIR 1943 PC 124)

Before the case came up for decision, their Lordships of the Judicial Committee in the *Commissioner of Income-tax, Madras v. Buckingham and Carnatic Co., Ltd., Madras*[4], had held that the words being the property of the assesses a sum equivalent to such percentage on the original cost thereof to the assesses meant the original cost to the actual assessee. Their Lordships had observed as follows :

> "The cost which is to be considered for the purpose of the allowance for depreciation must be the original east to the person by whom the income-tax is payable."

This Court, however, held that the case before their Lordships did not relate to a case under Section 26(2) of the Act and different considerations would arise in a case under Section 26(2) where the assessment was being made for the year during which there had been a change of ownership of the business. The Bench could not have intended to go behind the decision of their Lordships of the Judicial Committee and interpret the relevant words of Section 10(2)(vi) differently in years other than the year of succession. If the connected case with which we are dealing now had been heard at the same time, we have no doubt that this Court would have held itself bound by the decision of their Lordships of the Judicial Committee in the case of *Commissioner of Income-tax, Madras v. Buckingham and Carnatic Co., Ltd., Madras*[5], The Privy Council has now held that even in the year of succession the principle laid down in the above case would apply (see the *Indian Iron and Steel Co., Ltd. v. Commissioner of Income-tax, Bengal*[6]We have carefully read the judgment of this Court delivered in 1939, and we do not find anything in that judgment which would make the observations applicable to any year other than the year 1932, the yean of succession. The Court in answer to question No. 2 held that the original cost to the assessee was Rs. 11,12,000 and that is the finding that really matters now in calculating the depreciation for the calendar year in question, that is, 1933. In that view of the matter, we do not see how it can be said that the decision of this Court in 1939 operates as res judicata.

13. Mr. Pathak has urged that the question being the same, the answer must be given in the same manner. It is true that the question is the same, but the circumstances are entirely different and

the circumstances on which reliance had been placed in 1939 do not exist for the year 1933.

14. The next argument of Mr. Pathak is that we must hold that the Court came to the conclusion in 1939 that the whole of Rs. 5,62,251 was the unabsorbed depreciation of the assessee and the balance, therefore, which had remained unabsorbed must be deemed to be unabsorbed depreciation of the assessee foe the year 1933. The Court however, took care to confine its decision to the year of succession 1932, and we can find nothing in the judgment from which it could be said that the Court intended to decide the question relating to the sum of Rs. 5,62,151 not only for the year which was then relevant but also for all succeeding years. In that view of the matter, there is no question of res judicata, and it being not contended that on the merits the assessee is entitled to claim a set off of this amount, the first question must now be answered in the negative.

[4]59 Mad 175: (AIR 1936 PC 5) [6](1943-11 ITR 328: AIR 1943 PC 184)

[5](59 Mad 175: AIR 1936 PC 6)

15. In the view that I take of the previous decision in the connected case it is not necessary to discuss the law relating to res judicata in income-tax matters at any length. In view, however, of the large number of rulings cited, I may discuss some of the important ones that were placed before us.

16. There can be no doubt that if any question of right or title which is not peculiar to the year of assessment has been decided by a competent Court, the decision may be treated as res judicata in subsequent years, but the law is well settled that if the decision is of the income-tax authorities, that decision cannot operate as res judicata. The income-tax authorities cannot be treated as Courts deciding a disputed point, except for the purpose mentioned in Section 37, and further there is no other party before them and there are no pleadings. As has been said by Lord Herschell in *Boulter v. Kent Justices*[7]*,*

> "There is, in truth, no us, no controversy inter parties, and no decision in favor of one of them and against the other, unless, indeed, the entire public are regarded as the other party."

The Income-tax authorities are mainly concerned with finding out the assessable income for the year and not with deciding any questions of title. But to arrive at that income they have at times to decide certain general questions which might affect the determination of the assessable income not only in the year in question but also in subsequent years. In such cases though there cannot be any res judicata or estoppel, it has been held in some cases that the rule of natural justice prevents the income-tax authorities to re-open concluded facts merely because it suits them. Where after full enquiry an assessment has been made on a particular basis or the income has been calculated on determination of certain questions which affect the assessment not only for that year but for several years, it is not open to the Department to arbitrarily go back on it unless fresh material has come into its possession which justifies such change. This does not mean that an Income-tax Officer is bound to accept the conclusions of fact reached by his predecessor for a

previous year. An assessment is inherently of a passing nature and it cannot provide an estoppel by res judicata in later years by reason of a matter being taken into account or not being taken into account by the Income-tax Officer in an earlier year of assessment.

17. Coming to the decision of the Courts in income-tax matters, a distinction has to be drawn between decisions which affect the assessment of a particular year and decisions which settle rights or titles and which are, therefore, likely to affect the assessment of not only that year but of other years. In the latter class of cases the law is now well settled that the doctrine of res judicata, would apply.

18. In considering the question whether a particular decision is binding we have also to consider how long and to what extent such a decision is effective. Final decisions on questions of law or fact, even by Courts of law, can have binding effect only to the same set of facts and circumstances and cannot operate as res judicata when the facts are different. If a question of law once decided between an assessee and the Department is to be considered as res judicata for all times, as is argued by Mr. Pathak, we shall have different rules of law for different assessees. To my mind, the decision must be confined to the particular set of facts or to the particular transaction and cannot be made applicable

[7](1897) AC 556 : (66 LJ QB 787)

to other facts even if three facts are similar. In the case before us, it was decided by this Court that in the year of transfer the assessee was entitled to deduct from the profits made the accumulated depreciation of previous years prior to the date of its purchase. If the same question arose between the assessee and the department in connection with some other purchase in some subsequent year, it is not possible to argue that as between the assessee and the department it would have to be taken as good law in spite of the decision to the contrary of their Lordships of the Judicial Committee in *Indian Iron and Steel Co. Ltd, v. Commissioner of Income-tax, Bengal*[8]*,* All that can, therefore, be said is that if in the course of the assessment for one year a general question of right or title has bean decided, this decision will not only govern the assessment for the year in question but in subsequent years. Even if the question has not been expressly decided but the decision is by implication, either because the paint was not raised or was conceded, the same result will follow.

19. In the leading case of *Hoystead v. Commissioner of Taxation*[9]*,* the question arose how many deductions of £5,000 should be made by the respondent which depended on the decision of the question whether the beneficiaries were joint owners or not. The point of number of deductions was decided on appeal by the High Court of Australia without an express decision on the question of jointness. In the subsequent year the Commissioner wanted to go back on that decision. The matter again coming up before the High Court it was held that the previous judgment did not operate as res judicata. On further appeal to the Privy Council the decision of the Full Court was upset and it was held that :

> "The Commissioner was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries wore joint owners, it being assumed and admitted that they were, the matter so admitted was fundamental to the decision then given."

Lord Shaw held that the following three points were settled :

> "(1) that the admission of a fact fundamental to the decision arrived at cannot be withdrawn and a fresh litigation started, with a view of obtaining another judgment upon a different assumption of fact;
> (2) the same principle applies not only to an erroneous admission of a fundamental fact, but to an erroneous assumption as to the legal quality of that fact. Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper appreciation by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle;
> (3) the same principle namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also

[8](1943) 11 ITR 328: (AIR 1943 PC 124)
[9]1926 AC 155: (96 LJ PC 79)

> a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken. The came principle of setting parties right to rest applies and estoppel occurs."

The judgment of the High Court of Australia, which was upset by their Lordships of the Judicial Committee, was based on the ground that at the previous hearing

> "the attention of the learned Justice was not directed to the question whether the beneficiaries were taxable as joint owners, and he did not consider it;" (see *Hoystead v. Federal Commissioner of Taxation*[10],)

20. *In re Koenigsberg Public Trustee v. Koenigsberg*[2], the testator, Joseph Koenigsberg executed his will on 23rd June 1936 and died on 26th April 1941. By clause 2 he bequeathed certain legacies and by cl. 3, the annuities mentioned in the will were to commence from the date of his death. The question was whether the annuities were payable in full. This depended upon the decision of the question whether for the purposes of Section 25, Finance Act, 1941, a will should be deemed to be made not at the date of signature but at the death of the testator. Following the decision of the Court of Appeal in *In re Waring*[12], it was assumed that the provisions of Section 25, Finance Act, 1941 were applicable as the will was executed before 1939 although the testator

did not die until after that date and the annuities were, therefore, not payable in full. The decision in In ra Waring, (1942) Ch. 426 : (1942-2 All England Reporter 260) was overruled by the House of Lords in *Berkeley v. Berkeley*[13], and the question arose whether the previous decision that the annuities were not payable in full operated as res judicata. It was held that :

> "As the annuitants had been parties to the previous proceedings, in which the correctness of the decision of the Court of Appeal was admitted or assumed, and as the matter so admitted or assumed was fundamental to the decision then given, the annuitants ware estopped from re-opening the matter, on the ground of res judicata by implication."

21. Before the decision in Hoystead's case, (1926 AC 155 : 96 LJ PC 79) another case, *Broken Hill Proprietary Co., Ltd. v. Municipal Council of Broken, Hill*[14], came up before the Privy Council on appeal from the Supreme Court of New South Wales. It was held in that case that,

> "the average annual value was to be ascertained by dividing the value of the output during the three years by three, not by multiplying it by 205 and dividing it by 365."

The appellants' mine was worked during the years 1919, 1920 and 1922 during 205 days only owing to strikes and the low price obtainable for ore, though maintenance was continued during the whole period. It was further held that a previous decision of the High Court of Australia as to the valuation for a previous year was not res judicata. It was

[10]20 Com LR 537 at p. 552
[11](1948) 1 Ch. D. 727
[12](1942) Ch. 426: (1942-2 All England Reporter 250)
[13]1946 AC 555: (1946-2 All England Reporter 154)
[14]1926 AC 94: (95 LJ PC 33)

observed by their Lordships of the Judicial Committee at the concluding portion of the judgment that :

> "The decision of the High Court related to a valuation and a liability to a tax in a previous year, and no doubt as regards that year the decision could not be disputed. The present case relates to a new question namely, the valuation for a different year and the liability for that year. It is not esdem questio, and therefore the principle of res judicata cannot apply."

This case when contrasted with Hoystead's case, (1926 AC 156 : 95 LJ PC 79), brings out how far the principle of res judicata is to be applied to previous decisions in income-tax cases. Where the decision is as regards the title or the rights of the parties in some property or about the nature of the property, and the decision has nothing to do with fluctuations of the income, nor is it confined to the ascertainment of the value or of the income for any particular year, the decision would operate as res judicata.

22. In contrast to the decision in Hoystead's case, (1928 AC 155 : 95 LJ PC 79), where it was held that a previous decision of the High Court of Australia operated as res judicata, may be cited

the case of *Commissioners of Inland Revenue v. Sheath*[15], where a previous decision of the Commissioners, whether payments out of the income of a lunatic of his committee's remuneration and of the lunacy percentage on his clear annual income payable to the Court under Section 348, Lunacy Act, 1830, and the Lunacy Rules, 1892, Section 133, cannot be deducted from a lunatic's gross income for the purpose of an assessment to super-tax, was held not to operate as res judicata to prevent a contrary decision in assessing to super-tax for a later year. Lord Hanworth, Master of the Rolls, observed :

> "I am, therefore, of opinion that the assessment is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. No doubt a decision reached in one year would be a cogent factor in the determination of a similar point in a following year, but I cannot think that it is to be treated as an estoppel binding upon the same party for all years."

Greer L.J. held that

> "it (the decision) is final not as a judgment inter parties but as the final estimate of the statutory estimating body. No lis comes into existence until there has been a final estimate of the income which determines the tax payable. There can be no us until the rights and duties are ascertained and thereafter questioned by litigation. It would be unfortunate if we were compelled to arrive at any other result, because it might well the that in any one year the tax-payer might not think it worth while to challenge the decision of the Commissioners for that particular year, though it might in later years prove to be worth his while to contest their view on the other band. It is equally likely that there may be many cases in which the Crown would be quite prepared to make a concession in one year, whereas they might rightly conclude in subsequent years that it would not be in the interests of taxpayers generally that they should make such a concession."

[15](1932) 2 KB 362 : (101 LJ KB 330)

23. We have already said that question 2 was decided against the assessee, and Mr. Pathak on behalf of the assessee does not question that decision. Question 3 was decided in favor of the assessee, and Mr. Das on behalf of the Department has not challenged the previous decision. As regards question 1, our answer is in the negative. The assesses was not entitled to claim the accumulated depreciation during the period prior to the date of purchase.

24. The assessee must pay the costs of the proceedings which we assess at the figure of Rs. 700.

Seth, J.

25. I agree that the first question should he answered against the assessee and in the negative, and that in view of the concessions made by the learned counsel for the parties the second and third questions referred to us do not call for any answer. I also agree that, even if it be assumed

that the rule of res judicata applies to income-tax cases, the decision in Mis. Case No. 628 of 1936 (In re Moti Lal Kamlapat. (1939) 7 ITR 374 All) does not operate as res judicata in favor of the assessee.

26. That case did not decide anything beyond this, that the assessee was entitled to set off the unabsorbed depreciation, that had accumulated before the transfer, against the profits earned in the year of transfer. It did not decide that the assessee was entitled to set off any part of that unabsorbed depreciation against the profits earned in any other year. The decision of the Judicial Committee in the Buckingham and Carnatic Company's case, 59 Mad 175 : (AIR 1936 PC 5) was distinguished on this precise ground that it does not apply to a case where assessment is made on a successor in respect of profits earned by his predecessor. The substance of the decision in Misc. Case No. 628 of 1936, *In re Moti Lal Kamlapat*[16], may be expressed thus : Though the assessee is not entitled to set off the unabsorbed depreciation of Rs. 5,62,151 against the profits earned during any other year, according to the decision of the Judicial Committee, the assessee is entitled to set it off against the profits earned in the year in which the transfer took place. So expressed, if this decision operates at all as res judicata, it operates in favor of the department and not in favor of the assessee.

27. I do not wish to express any opinion on the vexed question whether the rule of res judicata applies to cases decided under the Income-tax law of this country, for while the decision of the House of Lords in *Hoystead v. Commissioner of Taxation*[17], lends support to the contention that the rule applies to tax cases, the following considerations against that contention are not devoid of merit.

28. (1) Questions of facts arising for decision in income-tax cases are not tried according to the rules of judicial trials. The income-tax authorities are not bound by rules of evidence, and not infrequently the income-tax officer takes into consideration information received privately. There is no provision which makes it obligatory for the income-tax authorities to summon a document or a witness whom the assessee may desire to produce. Section 37 of the Act, no doubt, invests the authorities with power to summon witnesses

[16](1939-7 ITR 374 All)

[17]1926 AC 155: (93 LJ PC 79)

and compel production of documents, but there is nothing to indicate that an assessee may require the authorities to exercise those powers. There is no provision authorising an assessee to cross-examine witnesses on whose testimony the authorities may chose to rely, and there is no provision to the effect that the evidence of a witness, whom the assessee had no opportunity to cross-examine, shall be excluded from consideration. It is thus evident that the departmental enquiry does not possess the essential attributes of a judicial trial before a Court of law.

29. (2) It is not disputed that the decision of income-tax authorities does not operate as res judicata. The reasons why it does not operate as res judicata are contained in the following

quotation from the observations of Lord Herschell in *Boulter v. The Justices of Kent*[18],

> "There is, in truth, no lis, no controversy inter parties, and no decision in favor of one of them and against the other, unless, indeed, the entire public are regarded as the other party ....."

These observations apply equally to decisions in references under Section 66 of the Act.
30. (3) The learned counsel for the assesses has not been able to cite even a single case in which the rule of res judicata might have been applied to a decision under the Indian law of Income-tax or under the English law of Income-tax. The decision which was held to operate as res judicata, *In re Koenigsberg Public Trustee v. Koenigsberg*[19], was not a decision in an income-tax case, and *Hoystead v. Commissioner of Taxation*[20] was a case from Australia.

31. (4) It is not known whether the procedure adopted by the department in enquiries in tax cases in Australia partakes of the nature of the enquiries in judicial trials in Courts or whether it is like the procedure followed in this country. Without better information on the point it is not possible to say that the same considerations, which applied to Hoy stead's case, (1926 AC 155 : 95 LJ PC 79), (ubi supra), apply to decisions in income-tax cases in this country also. Moreover, the precise question, whether the rule of res judicata applies to tax cases also, was not canvassed in Hoy stead's case, (1926 AC 155 : 95 LJ PC 79). It was undisputed that it applied to such cases and the only question canvassed before the House of Lords was whether the requirements of the rule were satisfied or not.

32. For all the reasons mentioned above, I find myself unable to assent readily to the view that the rule of res judicata applies to income-tax cases, even to a limited extent, and as this case can be disposed of without deciding this question, I refrain from expressing any opinion one way or the other. I would reserve it for the future.

33. With these observations, I concur in the order proposed.

Reference answered.

[18]1897 AC 556: (66 LJ QB 787)
[19](1948) 1 Ch. D. 727)
[20]1926 AC 165: (95 LJ PC 79)