

FEDERAL HIGH COURT

United Provinces

Vs

Governor General in Council

(Gwyer, C.J.)

23.03.1939

JUDGMENT

Gwyer, C.J.

1. In this suit between the United Provinces and the Governor-General in Council, the plaintiffs pray for a declaration that certain provisions of the Cantonments Act, 1924, were ultra vires the then Indian legislature and were therefore not a law in force in British India when Part III of the new Constitution Act came into operation; that all fines imposed and realized by Criminal Courts for offences committed within the cantonment areas in the United Provinces ought to be credited to provincial revenues; and that the plaintiffs are entitled to recover and adjust all such sums wrongly credited to Cantonment Funds since 1924. The declaration prayed for in the original plaint was limited to the last two matters; but, by leave of the Court, the plaintiffs were allowed to amend it in order that the Court might be in a position to determine the real matter in issue in the case. The Governor-General in Council by his defence denies that any provisions of the Cantonments Act 1924, were invalid; and he contends further that the dispute with the plaintiff is not one which is justiciable before this Court and that this Court has therefore no jurisdiction to entertain the suit.

2. The facts in the case are not in dispute and may be shortly summarized. A cantonment is a place in or in the vicinity of which any of His Majesty's regular forces or regular air forces are quartered and which has been declared by notification to be a cantonment for the purposes of the Acts in that behalf for the time being in force. The administration of cantonment areas, almost from their first establishment has been for obvious military reasons subject to special regulations. The first general Cantonments Act, a consolidating and amending measure, was passed in 1889 and repealed a large number of existing Acts and Regulations. The Act of 1889 was followed by another Consolidating and Amending Act in 1910 (Act 15 of 1910), and later by the very elaborate Code of 1924, an Act of 292 Sections and six schedules (Act 2 of 1924), which superseded all previous legislation and is, Though it has not itself escaped amendment, the principal Act relating to the subject which is now in force.

3. Part of the administrative machinery of every cantonment area is the Cantonment Fund, which

is credited with revenue derived from various sources and is required to be applied for the purposes, express or implied, for which any statutory powers and duties are conferred or imposed upon the administrative authority of the area; see Sections 106 and 109 of the Act of 1924. Among the above sources of revenue are all fines recovered from persons convicted of offences committed within the cantonment (i) under the Act, or any rule or bye law made thereunder, (ii) under Section 34, Police Act, 1864, or any corresponding enactment for the time being in force, (iii) under Chapters 13 and 14, I.P.C. (iv) under Section 15,6, Army Act, (v) under the provisions of any enactment providing for the crediting of a fine to the Cantonment Fund and (vi) under any other enactment for the time being in force in respect of which the Governor-General in Council has, by general or special order, directed that the fines realized thereunder shall be credited to the Cantonment Fund. These provisions have not been affected by any subsequent legislation up to 1st April 1937, and were therefore, if otherwise valid, laws in force immediately before the commencement of Part 3, Constitution Act. Statutory provisions with regard to Cantonment Funds first appeared in the Cantonments Act, 1889. The provisions of that Act which relate to them were substantially reproduced in the Consolidating and Amending Act of 1910; and Section 106 of the Act of 1924 only differs in this respect from the earlier statutes by the addition of the provisions (v) and (vi) set out above.

4. Between the enactment of the Cantonments Act, 1910, and the Cantonments Act, 1924, respectively the Montagu Chelmsford Reforms, embodied in the Government of India Act, 1919, had introduced farreaching changes in the constitutional relations between the Central and the Provincial Governments; and it is one of These changes that has given rise to the present suit. Up to 1919, the Government of India was essentially a unitary Government, with a concentration of authority at the centre. Every Provincial Government was under a statutory obligation to obey the orders of the Governor-General in Council and was under his superintendence, direction and control in all matters relating to the Government of its Province; and the Central Legislature was supreme over all persons and matters in British India. The Government of India Act, 1919, did not, by any specific enactment, alter These relationships; but it added a new Section 45-A to the existing Code which provided that statutory rules might be made (a) for the classification of subjects in relation to the functions of Government as central and provincial subjects for the purpose of distinguishing the functions of Local Governments and Local Legislatures from the functions of the Governor-General in Council and the Indian Legislature, (b) for the devolution of authority in respect of Provincial subjects to Local Governments and (c) for the allocation of revenues or other moneys to These Governments. These rules were to be made by the Governor-General in Council, with the sanction of the Secretary of State in Council, and by Section 129-A (1) of the Act were not to be subject to repeal or alteration by the Indian Legislature or by any Local Legislature.

5. It was thus that the Devolution Rules, 1920, came into existence; and they gave to the Provinces for the first time a quasi independence of the Centre by allotting to them sources of revenue of their own and assigning to them separate administrative and legislative spheres Article 3 (1) of the Rules provided that for the purpose of distinguishing the functions of the

Local Governments and Local Legislatures of Governors' Provinces from the functions of the Governor-General in Council and the Indian Legislature, subjects shall in These provinces be classified in relation to the functions of Government as central and provincial subjects in accordance with the lists set out in Schedule I.

6. This Schedule consisted of two parts: Part 1 setting out the central subjects and Part 2 the provincial subjects. In Part 1 were the following entries:

1 (b). Naval and military works and Cantonments;

30. Criminal law, including criminal procedure;

41. Legislation in regard to any provincial subject, in so far as such subject is in Part 2 of this Schedule stated to be subject to legislation by the Indian Legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

7. In Part 2 the following entry is material:

17. Administration of justice, including constitution, powers, maintenance and organization of Courts of civil and criminal jurisdiction within the Province; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts and Courts of Judicial Commissioners, and any Courts of criminal jurisdiction.

8. Lastly, Art. 14 of the rules provided that certain sources of revenue should in the case of Governors' Provinces, be allocated to the Local Government as sources of provincial revenue, and among them was included "receipts accruing in respect of provincial subjects."

9. In 1926 the then Government of the United Provinces addressed the Government of India, claiming the proceeds of fines in cantonment areas as among the 'receipts accruing in respect of provincials subjects," in as much as the fines in question accrued in respect of the administration of justice and they advanced for the first time the contention that Section 106, Cantonments Act of 1924 was ultra vires. The Government of India appear at that time to have accepted this contention, but later they rejected it. The new Provincial Government, after the coming into force of Part 3 of the Constitution Act, adhered to the view of their predecessors and insisted that the fines should be credited to provincial revenues, and since the Government of India still maintained the contrary, the present proceedings were begun. The Advocate-General of the United Provinces contended before us on behalf of the plaintiffs that "receipts accruing in respect of the administration of justice" prima facie included all fines imposed by all Criminal Courts throughout the Province. He contended also that, if Section 106 of the Act of 1924 required them to be credited to the Cantonment Fund, it was repugnant to, and inconsistent with, the Devolution Rules and therefore by implication repealed or altered them, which by reason of Section 129-A, Government of India Act, 1919, no Act of the then Indian Legislature had power to do. He argued therefore that the Act of 1924 was to that extent ultra vires and a nullity. This is the substance of the plaintiffs' case, and it appears, if I may use an old and familiar simile, to be as full of holes as a colander.

10. No doubt, fines imposed by Criminal Courts in the Province would be properly credited to

provincial revenues as receipts accruing in respect of the administration of justice, but only if not otherwise appropriated by competent authority; and entry No.30 in the list of central subjects, "Criminal law, including criminal procedure," clearly includes the power to legislate for the destination of fines for any criminal offences with respect to which it was competent for the Indian Legislature to legislate. The case in (1932) A.C. 981 is conclusive on this point. Under Section 91, British North America Act, 1867, the exclusive legislative authority of the Dominion Parliament is declared to extend (inter alia) to "criminal law, except the constitution of Courts of criminal jurisdiction, but including the procedure in criminal matters." By Section 92 the Provincial Legislatures have exclusive power to make laws (inter alia) in relation to the administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of criminal and of civil jurisdiction, and including procedure in civil matters in These Courts.

11. In the case cited the question arose whether the Dominion Parliament, by virtue of its exclusive legislative authority with respect to criminal law, was competent to direct the manner in which fines imposed for infractions of the criminal law should be appropriated. The Judicial Committee held that the Dominion Parliament was competent so to direct, and their judgment, with reference to the language of Section 91, above cited, contains the following passage:

Plainly, and indeed admittedly, this confers on the Dominion Parliament the exclusive right by legislation to create and define crimes and to import penalties for their commission. In their Lordships' opinion it no less empowers the Dominion Legislature to direct how penalties for the infraction of the criminal law shall be applied. It has always been regarded as within the scope of criminal legislation to make provision for the disposal of penalties inflicted, as innumerable instances show, and the power to do so is if not essential, at least incidental, to the power to legislate on criminal matters, for, it may well go to the emeayo of such legislation. If the power to direct the manner of application of penalties were to be dissociated from the power to create such penalties and were to be lodged in another authority, it is easy to see how penal legislation might be seriously affected, if not stultified. (Ibid at p. 104).

12. The similarity of the language in Sections 91 and 92, British North America Act, to that of the Devolution Rules will not escape attention; and there can be no doubt that the Devolution Rules, in making criminal law a central subject, gave the then Indian Legislature power not only to create criminal offences but also to provide for the destination of fines imposed in respect of such offences.

13. It will thus be seen that the Indian Legislature had power under the Devolution Rules to legislate with respect to cantonments [Entry No.1(b) of the list of central subjects] and with respect to criminal law (Entry No. 30), and that the latter power included a power to legislate with respect to the destination of fines imposed for breaches of the criminal law; and that if the Legislature chose to legislate as regards any Courts of criminal jurisdiction in a Province, including of course Courts in cantonment areas, such legislation would prevail over any

provincial legislation with respect to the administration of justice within the Province (see the concluding words of Entry No.17 in the list of Provincial Subjects). In these circumstances there appear to be no grounds on which the legislative competence of the Indian Legislature to enact Section 106, Cantonments Act, 1924, could successfully be challenged.

14. I am also of opinion that the competence of the Indian Legislature to enact that Section could not at any time have been made the subject of legal proceedings. By Section 84(2) of the then Government of India Act, the validity of any Act of the Indian Legislature, or of any Local Legislature, was not to be open to question in any legal proceedings on the ground that the Act affected a provincial subject or a central subject as the case might be. The plaintiffs urged that this provision could not apply where an Act of the Indian Legislature sought to repeal or alter or amend the Devolution Rules, since this was something which the Legislature was forbidden to do by Section 129.A of the Act. In my opinion Section 129-A had reference to legislation purporting in terms to repeal or alter or amend the Devolution Rules, and not to legislation which might be merely inconsistent with the Rules and therefore could only be said to repeal or to alter them by implication. Indeed, if any other interpretation were adopted, the whole purpose of Section 84(2) would have been defeated, for that enactment was clearly designed to make the new distribution of powers between the Centre and the Provinces an administrative and domestic arrangement only. The Provincial Governments and Legislatures, Though they obtained a much greater measure of freedom than they had enjoyed hitherto, were not entirely free from central control and the Central Legislature still retained by virtue of Section 84(2) of the Act, the power to legislate for the whole of British India. The provinces in other words were far from having acquired an autonomous status. The new administrative and legislative spheres assigned to them were not exclusive; and for protection against the invasion of the latter they had to rely on the good sense and bona fides of the Government of India and not on any Court of law. And I may point out that Act. 4 of the Devolution Rules themselves provided that:

Where any doubt arises as to whether a particular matter does or does not relate to a provincial subject, the Governor-General in Council shall decide whether the matter does or does not so relate, and his decision shall be final.

15. If any doubt remained, it was removed once and for all by the Governor-General's assent to the Act of 1924. For these reasons therefore I hold that, even if 106, Cantonments Act, 1924, had, contrary to the opinion which I have already expressed, related to a provincial and not a central subject, the Act once passed could not have been successfully challenged in any Court of law. Accordingly, it was a law in force in British India immediately before the commencement of Part 3, Constitution Act, and by reason of Section 292 of that Act it continued in force in British India until altered or repealed or amended by a competent 'Legislature or other competent authority.

16. It remains to consider the legal position since the coming into force of Part 3, Constitution Act, on 1st April 1937. It is not in dispute that Section 106 of the Act of 1924 has not been altered or repealed or amended up to the present time. There are however two orders in Council

which have a bearing on the matter and on which it is necessary to say a few words: the Government of India (Adaptation of Indian Laws) Order, 1937, and the India and Burma (Transitory Provisions) Order, 1937. By Section 293 of the Act, His Majesty is given power to provide by Order in Council that any law in force in British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty necessary or expedient for bringing the provisions of that law into accord with the provisions of the Constitution Act. Under this power, the very elaborate Government of India (Adaptation of Indian Laws) Order, 1937, has been made, an order running to some two hundred and seventy pages and covering the whole body of existing Indian legislation among the Indian Acts in which modifications and adaptations have thus been effected is the Cantonments Act, 1924, in Section 106 of which the whole of para, (c) is now to be omitted, that is to say the whole of the provisions relating to the crediting of fines to the Cantonment Fund. I assume, Though I do not know, that this adaptation or modification was made, because it was thought that after 1st April 1937, all fines imposed for breaches of the criminal law must under the new Constitution necessarily be credited to provincial revenues and that Section 106 of the Act of 1924 could only be brought into accord with this state of things by the omission of the provisions to which I have referred. But whatever the reason for the adaptation or modification and whether or not, it proceeded on a correct interpretation of the law, I do not think that it can now be challenged; and accordingly, but for the provisions of the other order which I have mentioned and to which I advert below, it appears that on 1st April 1937, the date when the Adaptation Order came into operation, the provisions of Section 106, Cantonments Act, 1924, relating to the crediting of fines to the Cantonment Fund would have ceased to have effect.

17. The other order, the India and Burma (Transitory Provisions) Order, 1937, was made under powers conferred by Section 310 (1), Constitution Act, which recites (inter alia) that difficulties may arise in relation to the transition from the provisions of the previous Government of India Act to the provisions of the Constitution Act and that the nature of the difficulties and of the provision which should be made for meeting them could not at the date of the passing of the Act be fully foreseen. His Majesty is accordingly empowered to make by Order in Council such temporary provision for the purpose of removing any of these difficulties as might be specified in the order. One of the difficulties which required to be dealt with appears to have arisen from the fact that certain sources of revenue, appropriated immediately before Part 3, Constitution Act, came into force for the use of certain local funds, became after that date an exclusively provincial source of revenue. It would clearly have been highly inconvenient if these sources of revenue were suddenly cut off, before the Provincial Governments and Legislatures, or These responsible for the administration of such local funds had had an opportunity of taking stock of the situation; and accordingly the order in question provided (inter alia) that in every Province, notwithstanding anything contained in the Constitution Act or in any Order in Council made thereunder, but subject to any provision to the contrary which might be made by an Act of the Indian, the Federal or the Provincial Legislature passed in the exercise of the powers respectively conferred on them by the Act, any tax, fine, penalty or other sum required by or under any law in

force immediately before the commencement of Part 3, Constitution Act, to be credited to any local fund or other fund should, during the two financial years next following 1st April 1937, continue to be so credited and should not, during These years, be deemed or be part of the revenues of the Province. Thus, the status quo was to be preserved for a period of at least two years, in the absence of legislation to the contrary; and no local 'fund found itself automatically and at once deprived of any existing source of revenue by the coming into force of Part 3, Constitution Act, merely because that particular source of revenue had now been assigned exclusively to the Province.

18. But "criminal law," which was a central subject under the Devolution Rules, remained a central subject under the Constitution Act: see Entry No. 1 of Part 1 of List III in Schedule 7 to the Act. It is true that List III is the "Concurrent Legislative List" and that the Provincial Legislatures have also power to legislate with respect to the matters enumerated in it; but, a provincial law which is repugnant to any provision of a law which the Central Legislature is competent to enact with respect to any matter enumerated in the Concurrent Legislative List is void to the extent of the repugnancy: see Section 107(1) of the Act. Nor is there anything in the Provincial Legislative List (List 2, Schedule 7) which gives a wider legislative competence to the new Provincial Legislatures than their predecessors had possessed for the present purpose under the Devolution Rules: see Entry No. 2 of that List. If I am right in my view of the competence of the then Indian Legislature to enact Section 106, Cantonments Act, 1924, it follows that the Central Legislature would have been no less competent to enact it after Part 3, Constitution Act, had come into force, and the provisions of the Transitory Provisions Order were not required for the purpose of continuing the status quo in cantonment areas for the specified period of two years by anything in the new Act. The status quo was continued in this particular case by the Constitution Act itself, until the Central Legislature, and no other Legislature chose to alter it. But the provisions of the Adaptation Order, as I have already said, rightly or wrongly did affect the status quo, because as soon as that order became operative, no fines could any longer be paid into Cantonment Funds; and accordingly the practical effect of the Transitory Provisions Order was to postpone for two years the coming into effect of so much of the Adaptation Order as relates to Section 106 of the Act of 1924, that is, until 1st April of the current year. On and after that date, unless the adaptation order is amended, the fines will no longer be credited to the Cantonment Funds, but will be credited to the revenues of Province. In my opinion, therefore, the plaintiffs are not entitled to any of the declarations for which they ask. It would not in these circumstances be necessary to go into the question of jurisdiction raised by the Advocate-General of India; but, in view of its importance and its possible bearing on future cases, I think it right to express an opinion upon it.

19. I do not think that the plaintiffs would in any event, have been entitled to the declarations for which they originally asked, in proceedings against the Governor-General in Council. Their proper course' would have been to take proceedings against a named Cantonment Board, Though it is: scarcely necessary to say that such proceedings could not have been brought in this Court. It was for that reason that the Court gave leave to amend, since the validity of Section 106 of the

Act of 1924 was the ' real question in issue, and Though it could have been raised equally well in proceedings against a Cantonment Board, that would have involved an appeal to the High Court and afterwards to this Court before the matter was finally settled. I have no doubt that it was competent for this Court to entertain a suit for a declaration that Section 106 of the Act of 1924 was ultra vires. The Federal Court has by Section 204(1) of the Act an exclusive original jurisdiction in any dispute between the Governor-General in Council (or, after Federation, the Federation) and any Province, if and in so far as the dispute involves any question, whether of law or fact, on which the existence or extent of a legal right depends. It is admitted that the legal right of the Province to have the fines now under discussion credited to Provincial Revenues and not to the Cantonment Funds depends upon the validity or otherwise of Section 106 of the Act of 1924. The plaintiffs deny the validity of the Section, the defendant asserts it; and it seems to me that this is clearly a dispute involving a question on which the existence of a legal right depends. The question might, as I have said, have been, raised in proceedings to which a Cantonment Board was itself a party; but it is convenient to all concerned that it should be disposed of in the proceedings now before the Court. A Cantonment Board is, it is true, a corporation with statutory powers 1939' *United Provinces v. Goveenor-General* (Sulaiman J.) Federal Court 65 to duties of its own; but it is not an independent body and the Central Government exercises a considerable measure of control over it, more indeed at the present time than it did before the Constitution Act came into force, as a reference to the adaptations and modifications which the Adaptation Order has made in the Act of 1924 plainly shows. I think that in these circumstances the Governor-General in Council has a sufficient interest in the subject matter of the challenged enactment to make it possible for us to entertain a suit against him at the instance of the plaintiffs for a declaration that the enactment is ultra vires.

20. It is undesirable that any attempt should be made to define what interest would be sufficient for this purpose; but I have no doubt that it is sufficient in the present case. If it be said, as, indeed the Advocate-General of India argued, that a declaration granted against the Governor-General in Council would not be binding on any Cantonment Board, I can only say that I should be very greatly surprised if a subordinate statutory body disregarded a pronouncement of this Court; and I should be even mere surprised if the Central Government did iiot take all necessary steps to see that subordinate bodies over which it is able to exercise a substantial measure of control obeyed the law as laid down by this Court. I decline indeed to contemplate the possibility of any other state of things and I draw attention to the observations of the Judicial Committee in *Fischer v. Secy, of State*¹ There is one other matter on which it seems desirable that something should be said. The Advocate-General of India complained of the pleading which he was called upon to answer, and there was in my opinion substance in his criticizms. The rules with regard to pleadings which are set out in Order 21 of the Federal Court rules are to be strictly followed; and particular attention should be given to Bule 2, which provides that every pleading shall contain, and contain only, a statement in a concise form of material facts on which the party pleading relies, but not the evidence by which These facts are to be proved nor any argumentative matter; and to Rule 5, which provides that wherever the contents of any document are material, it shall be sufficient to state the effect thereof as briefly as possible, without setting out the whole or any

part thereof, unless the precise words of the document or any part thereof are material. Adherence to these rules will enable the opposite party to know exactly what case he has to meet, will be of material assistance to the Court, and will tend to shorten proceedings by clarifying and defining the real issues in the case. The action will be dismissed and judgment entered for the Governor-General in Council, with costs.

Sulaiman J.

21. In this suit the United Provinces claim against the Governor-General in Council a declaration of their alleged legal right to have all fines imposed and realized by the Criminal Courts for offences committed within cantonment areas credited to Provincial revenues and their right to recover and adjust all such sums so far credited since 1924. A further relief, on which the claim was really based, has been allowed to be added that Section 106, Cantonments Act (Act II of 1924) was ultra vires. Under this Section, a Cantonment Fund was formed to which were to be credited all fines recovered from persons convicted of certain offences committed within each cantonment. The defendant although admitting the main facts does not admit that the United Provinces Government were entitled to fines before the new Act came into force or that they are now entitled to receive the fines disposed of by competent legislation. It is denied that Section 106 (c) was ultra vires. It is pleaded that the plaintiff has no cause of action against the defendant because the defendant never claimed the Cantonment Fund or any fines imposed or realized by Criminal Courts in cantonment areas. It is also urged that the Federal Court has no jurisdiction to entertain the present suit, so far as the two original reliefs are concerned.

22. It appears that on 29th March 1929, the Government of India (Army Department) agreed with the Government of the United Provinces that Section 106(c) was ultra vires, and that the proceeds of magisterial fines must be credited to Provincial revenues and could go into the Cantonment Funds only in the form of a contribution from Provincial revenues. But this decision was apparently not fully put into effect. Subsequently) in March 1935, the Government of India, accepting the view of the Punjab Government, took up the attitude that Section 106(c) was intra vires and would continue in operation for two years. Although the official correspondence that passed was admitted on behalf of the defendant, it is unnecessary to refer to them as it cannot possibly be suggested that a previous admission on a point of law is in any way binding on him.

23. Jurisdiction: Under Section 204, Government of India Act, 1935, the Federal Court, to the exclusion of any other Court, has original jurisdiction in any dispute between a Province and the Centre, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. The jurisdiction of the Court to entertain a suit in which such a dispute arises cannot be seriously denied but whether that dispute involves any question on which the existence or extent of a legal right depends is quite another matter, which cannot be determined without going into the merits.

24. So far as the claim of the United Provinces to recover the fines since the coming into force of the new Government of India Act is concerned, there can be no doubt that a question as to a legal

right is involved, irrespective of the final decision whether that claim is well founded or not. But, as regards the position under the Act of 1919, it has been argued that in as much as a province had no right to sue in any Court of law, the claim for such fines cannot be regarded as being based on a "legal right". The answer to this question depends on what is meant by "legal right", that is to say, whether it means a right recognized by law or enforceable in a Court of law.

25. Legal Right: The learned Advocate-General of India has relied on the definition of the term "legal right" as given by Dr. T. E. Holland in his Jurisprudence (Edn. 13, p. 82) as:

If irrespectively of his having, or not having, either the right, or moral right on his side, the power of "the State will protect him in so carrying out his wishes, and will compel such acts or forbearances on the part of other people as may be necessary in order that his wishes may be so carried out, then he has a 'legal right' so to carry out his wishes.

26. But that very definition shows that the protection under 'the power of the State' would be sufficient, and remedy through a Court of law is not essential. John Austin in his Lectures on Jurisprudence (1929 Volume I, Lect. 16, p. 398) also remarked that:

A person has a right, when the law authorizes him to exact from another an act or forbearance. The test of a right: that (independently of positive provision) the acts or forbearances enjoined are not incapable of being enforced civilly or in the way of civil action: i.e. at the discretion or pleasure of; the party towards whom they are to be done or observed.

27. The capability of its being enforced by action does not at all seem to be a necessary ingredient. Indeed, Sir John Salmond in his Jurisprudence (Edn. 7, 1924, pp. 239-40) has definitely expressed the opinion that:

Although a legal right is commonly accompanied by the power of instituting legal proceedings for the enforcement of it, this is not invariably the case, and does not pertain to the essence of the conception.

According to him the term 'legal right' is used in a wider and laxer sense to include any legally recognised interest, whether it corresponds to a legal duty or not, and in this generic sense a legal right may be defined as any advantage or benefit which is, in any manner conferred upon a person by a rule of law. (p. 246.)

28. That the enforceability by action cannot be a true test would become obvious from the familiar instance of a legal right not being extinguished and yet action on it being barred by prescription or lapse of time. A debt barred by time nevertheless exists and repayment of it is perfectly valid, even though it cannot be enforced by action in a Court of law. Numerous other instances of unenforceable legal rights can be mentioned like claims against foreign states or sovereigns, interests due on foreign bonds or claims for foreign lands, claims exceeding either the territorial or pecuniary jurisdiction of a Court. The term 'legal right' used in Section 204 obviously means right recognized by law and capable of being enforced by the power of a State but not necessarily in a Court of law. It is a right of a party recognized and protected by a rule of

law, the violation of which would be a legal wrong done to his interest and respect for which is a legal duty, even though no action may actually lie. The only ingredients seem to be a legal recognition and a legal protection. The mere fact that under the previous Act the Provincial Governments were subordinate administrations under the control of the Central Government and could only have made a representation to the Governor-General in Council or the Secretary of State, would not be sufficient in itself for holding that the former could not possibly possess any 'legal rights' at all against the Central Government, even in respect of rights conferred upon them by the provisions of the Act or the rules made thereunder. In *1 W Robinson 288* where formerly there was no remedy at Common law in respect of necessities furnished to a foreign ship, but a new Statute gave such jurisdiction, it was held that as the Act was a remedial measure, it governed even cases where the cause of action had arisen before the Act came into force. Dr. Lushington observed:

I am not aware of any principle or decision which establishes the doctrine, that a here a statute affords a new mode of suing, the cause of action must necessarily arise subsequently to the period when the statute comes into operation. On the contrary, where a statute creates a new jurisdiction, the new jurisdiction, I apprehend, takes up all past cases, and there is not the slightest injustice in this: for although the circumstances may have occurred prior to the passing of the statute, the suit or action may have been commenced subsequently.

29. And so if a 'legal right' really existed under the old Act, Section 204 of the new Act would not be inapplicable merely because the right related to an earlier period.

30. Cause of Action: But it has not been suggested that the Governor-General in Council, who has been sued, received the fines as to which a declaration has been sought. The Cantonments Act (Act 2 of 1924), consolidating and amending the previous law relating to the administration of cantonments, came into force on 1st May 1924. Under Section 11, every Cantonment Board is a body corporate having perpetual succession and with power to acquire and hold property and to sue and be sued by its name. Under Section 60 it has power to impose taxes. Under Section 106 in every Cantonment, a Cantonment Fund has to be formed to which certain specified sums have to be credited. Under Section 107(3) a Board has authority to invest the funds and also to dispose of such investments or vary them for others of a like nature. Under Section 108 the properties acquired, provided or main, trained by a Board vest in it and belong to it and are under its direction, management and control. Under Section 109 the Cantonment Fund and all properties vested in a Board are to be applied for the purposes specified.

31. It follows that the amounts of the fines which had been credited to the Cantonment Funds was under the control of Cantonment Boards and have been disbursed by them. The Cantonment Boards have not been made defendants in this suit and no relief is claimed against them. Had Cantonment Boards been made parties, they would have been entitled to claim protection under Section 272 and also to ask for notice required by Section 273. If the United Provinces desired to get a declaration of their right to recover the fines from the Cantonment Boards and claim

adjustments, they could have sued the Boards directly in their Provincial Courts, as to which Section 204 would have been inapplicable. The two reliefs originally asked for by the United Provinces should have been claimed against the Cantonment Boards which are in every sense Boards of a Local Self-Government in Cantonment areas, and These reliefs should not, in reality, be directed against the Governor-General in Council.

32. But under the amended Section 79 (a), Civil Procedure Code in the case of a suit against the Central Government, the Governor-General in Council is the authority to be named as defendant. The Central Government has certainly been disputing the claim of the plaintiff and maintaining the validity of Section 106(c), and the Governor-General in Council may have issued directions under Section 106 (c)(vi) and has made rules under Section 111 which would have to be modified if the Section were found to be ultra vires. There is thus a dispute between the parties within the meaning of Section 204. But the utmost that the United Provinces can, in the absence of the Cantonment Boards claim against the Governor-General in Council is a declaration as to the invalidity of that Section.

33. Legislative Power: Under Section 45 of the Act of 1919, every Local Government had to obey the order of the Governor-General in Council, and was under his superintendence, direction and control. The powers of a local Legislature were limited by Section 80-A. Under Section 65 (1)(a), the Indian Legislature had a general power to make 'laws for all persons, for all Courts and for all places and things within British India.' This power was conferred in the widest terms and would be comprehensive, unless there were some other obstacle in the way of exercising it. Section 84(2) also laid down that nothing in the Government of India Act or in any rule made thereunder should be construed as diminishing in any respect the powers of the Indian Legislature as laid down in Section 65.

34. It further provided that the validity of any Act of the Indian Legislature should not be open to question in any legal proceedings on the ground that the Act affected a Provincial subject.

35. Thus, so long as the Act remained in force, the power of the Indian Legislature was almost supreme. Under Section 72-D (3) (iii) expenditure of which the amount was prescribed by or under any law did not require to be submitted to the Local Council. The language of Section 84(2) was however, not so wide as it might have been. In the first place, the sub-section did not say that nothing should diminish the powers; it merely said that nothing should be construed as diminishing the powers. Again, it did not say that an Act of the Indian Legislature shall not be invalid on the ground that it affected a Provincial subject; it merely said that the validity of any such Act shall not be open to question in any legal proceedings. Section 65 and 84 read together subordinated the other provisions of the Act and the rules made thereunder to the power of the Indian Legislature. On the other hand, Section 129-A (1) laid down specially that the rules made by the Governor-General in Council with the sanction of the Secretary of State in Council, should not be subject to repeal or alteration by the Indian Legislature. This latter provision would mean that the Indian Legislature had no power to repeal or alter any such rule, and would have apparently come into conflict with the general provisions of Section 65 if they had stood by

themselves unless they were interpreted as being mutually exclusive, one referring to the specific rules made for the purposes mentioned in Sections like Section 45, and the other dealing with legislation regarding persons, Courts, places and things. While the old Act was in force, Courts were undoubtedly debarred under Section 84(2) from construing Section 129-A so as to diminish the power of the Indian Legislature and the validity of an Indian Act could not be questioned in a Court of law. The classification of subjects under the rules was therefore, bound to be construed so as not to come into conflict with any Central legislation. But Section 84 is no longer in force and the bar imposed by it has now been removed. Still, every endeavour should be made to interpret the classification as being subject to all such legislation. If however a conflict be inevitable, even then, reading the three Sections together, the conclusion is, on the whole, irresistible that the Indian Legislature prior to April 1937, possessed full power of making laws, including matters which by implication might even be contrary to the Rules. In this view the validity of Section 106 (c), Cantonments Act, cannot at all be disputed.

36. The Devolution Rules: I am further of the opinion that on a proper interpretation of the Devolution Rules themselves they did not, in any way, invalidate the aforesaid Section, as it did not at all effect a repeal or alteration of the Rules. Under Section 45-A (1)(b), Government of India Act, 1919, provision could be made by Rules under the Act for the classification of subjects, the devolution of authority in respect of provincial subjects to Local Governments and the allocation of revenues or other moneys to those Governments. Section 129-A provided that the Rules made under the Act should not be subject to repeal or alteration by the Indian Legislature or by any Local Legislature. Devolution Rule & were framed by the Governor-General in Council with the sanction of the Secretary of State in Council under Section 45-A. Under Rule 3(1) functions were classified as Central and Provincial subjects in accordance with the Lists in Schedule 1. Under sub-rule (2) any matter which was included in the List of Provincial subjects, Part II of Schedule 1 was to the extent of such inclusion excluded from any Central subject of which but for such inclusion it would form part. Under Rule 4 where any doubt arose as to whether a particular matter did or did not relate to a Provincial subject, the Governor-General in Council was to decide the matter finally. Under Rule 14 (1)(b) the sources of revenue allocated to the Local Government included receipts accruing in respect of Provincial subjects. Schedule 1, Part I, contained the Central subjects and No.1 (b) included Cantonments; No. 30 was Criminal Law including Criminal Procedure, and No. 47 comprised all other matters not included among Provincial subjects. Part II contained the Provincial subjects and included serial No. 17 in the following terms:

Administration of justice, including constitution, powers, maintenance and organization of Courts of civil and original jurisdiction within the province; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any Courts of criminal jurisdiction.

37. Serial No. 50 was as follows:

Imposition by legislation of punishments by fine, penalty or imprisonment for enforcing

any law of the province relating to any provincial subject; subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules:

38. It is thus clear that on the one hand cantonments were a Central subject and so were Criminal Law and Procedure as also all other matters not included among Provincial subjects. On the other hand, Administration of Justice was a Provincial subject and in express terms it included constitution, powers, maintenance and organization of Civil and Criminal Courts; but this was subject to legislation by the Indian Legislature "as regards Courts" of criminal jurisdiction and High Courts but not other matters. It is also clear that imposition of fine for enforcing any law of the Province relating to any Provincial subject was specifically assigned to the provinces; but even this was subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation was imposed under the Rules. It is equally clear that the Lists did not specifically refer to fines imposed under Central laws much less did they specifically mention fines realized under such laws within Cantonments. The question is whether they came under I (1-a), I, (30) or I, (47), or else II (17).

39. Cantonments: Cantonments were no doubt assigned to the Centre, while Administration of Justice to the Provinces. But it cannot be said that Cantonments with their entire administration were expressly excepted and the Administration of Justice did not extend to such areas. The Government of India themselves had not taken this view as they handed over the Administration of Justice in Cantonment areas to the Provinces. Had Administration of Justice not been specially assigned to the Provinces, the subject "Cantonments" would have included such administration. But under Rule 3(2) the Administration of Justice in Cantonments, which would otherwise have formed part of the subject "Cantonments" must be deemed to be excluded from it, owing to its inclusion in the Provincial List. This rule as to overlapping, gave predominance to the Provincial subjects. If Administration of Justice were to be confined to areas outside cantonments, there would still be a curtailment of that power. The scope of the Administration of Justice must therefore extend to Cantonments also just as to other areas. It is accordingly not possible to hold that Cantonments were wholly outside the jurisdiction of the Provinces.

40. Administration of Justice: The Administration of Justice refers to the constitution, powers, maintenance and organization of Courts as also akin matters, and may not necessarily include the appropriation of all fines realized under Central legislation, even though serial No. 17 made this Provincial power subject to Central legislation only "as regards Courts" of criminal jurisdiction. That the expression "Administration of Justice" did not include jneel (Sulaiman J.) Federal Court 69 "imposition of fines, etc." follows from the fact that such an imposition was mentioned separately under serial No. 50 as a distinct and independent subject. The two must therefore form separate and not overlapping categories. The remarks of their Lordships of the Privy Council in *P. V. Valin v. J. Langlois*² may well be quoted in this connexion:

But one thing at least is clear that These words, (i. Rule Administration of Justice) do not point expressly or by any necessary implication to the particular subject of election

petitions; and when we find in the same Act another clause which deals expressly with these petitions, there is not the smallest difficulty in taking the two clauses together and placing upon them both a consistent construction.

41. If Administration of Justice had been intended to include imposition of fines as well, there would have been no necessity for mentioning such imposition under a separate head and confining it to the enforcement of Provincial laws only. The imposition of fines under criminal legislation of the Centre would more appropriately come under the category "Criminal Law and Procedure" and not "Administration of Justice." If so directed by Central Legislation, the fines when realized, would be receipts accruing in respect of Criminal Law and Procedure, and not receipts accruing in respect of Administration of Justice.

42. Criminal Legislation: When a Legislature can declare certain acts or commissions as criminal offences, and has power to prohibit them, it must necessarily possess authority to enforce the observance of its prohibitions by the imposition of criminal sanctions or penalties for disobedience, otherwise this power would be wholly abortive. With the power to prohibit an act, there must co-exist the incidental power to impose punishment for the violation of such a prohibition. The subject Criminal law including Criminal Procedure is obviously used in its general and wide sense so as to occupy the entire field except what has been excepted and carved out of it in Part II. As the language used in the Devolution Rules is very similar to that employed in the Canadian Constitution (Section. 92 No.27 and Section 92 No.14), the words, which Lord Herschell is reported to have used in *Att. Genl. for Ontario v. A. J. for the Dominion of Canada*³ [Lefroy: Canada's Federal System (1913) p. 320] are equally applicable :

It is all the criminal law in the widest and fullest sense, except that part of it which is necessary for the purpose of enforcing, whether by fine, penalty or imprisonment, any of the laws validly made under the 16 clauses under which laws are to be made by the Provincial Government.

43. Again, it was observed in *Att. Genl. For Ontario v. Hamilton Street Railway Co*⁴. that:

It is therefore the criminal law in its widest sense that is reserved... The fact that from the criminal law generally there is one exception... renders it more clear, if anything were necessary to render it more clear, that with that exception the criminal law in its widest sense is reserved over the exclusive authority of the Dominion Parliament.

In *Bradlaugh v. Clarke*⁵ the Earl of Selborne stated that it was known to be the law that every unappropriated penalty goes to the King, and that a common informer cannot have right to, or interest in, a penalty imposed by a public statute, or by a just and reasonable implication from the words which the Legislature has used.

44. In *Toronto City Corporation v. The King*⁶ of the Criminal Code of Canada had provided that fines imposed in the Province of Ontario should be paid over to the municipal or local authority. Their Lordships of the Privy Council upholding the validity of the provision laid down at p. 104:

In the case of fines, it is only These which are "unappropriated" which belong to the Crown, i.e. These the disposition of which has not been by competent authority otherwise

directed. The criminal law provides many instances in which fines imposed for particular crimes or offences are directed to be paid over to named persons or institutions; for example, to a common informer. The motive may be either the encouragement of the detection and prosecution of crime or the recognition of the special claim of a particular institution or object to the benefit of this source of revenue. In so far as the Legislature directs the special application of fines, the prerogative right to fines is abrogated...It has always been regarded as within the scope of criminal legislation to make provision for the disposal of penalties inflicted, as innumerable instances show, and the power to do so is, if not essential, at least incidental, to the power to legislate on criminal matters for it may well go to the efficacy of such legislation. If the power to direct the manner of application of penalties were to be dissociated from the power to create such penalties and were to be lodged in another authority, it is easy to see how penal legislation might seriously be affected, if not stultified.

45. In deciding the case their Lordships proceeded upon the general principle that any prerogative right to fines, which as a 'royalty' passed from the Province of Canada to the Province of Ontario at the Union, was a right only to such fines as might not be otherwise appropriated by the Dominion Parliament in the exercise of its exclusive right to legislate on all matters coming within the Criminal Law (page 105).

46. This view was expressed even assuming without deciding that the 'royalties' assigned to the Provinces included fines imposed for infraction of the Criminal Law. The same remarks apply to the present case, even if fines were included in the Administration of Justice.

47. If Criminal Law prohibiting certain acts or omissions must necessarily include imposition of penalty and fine for enforcing such prohibition, then Criminal Procedure must necessarily include the method of exacting such penalties and fines and realizing such fines. The Code of Criminal Procedure (Act 5 of 1898) with subsequent amendments provides for the method of recovering fines. Under Section 33 imprisonment can be awarded in default of payment of fine. If the fine is not paid, the Court under Section 386 can either (a) issue a warrant for levy of the amount by attachment and sale of the offender's moveable property, or (b) issue a warrant to the Collector authorising him to realize the amount by execution according to civil process against his moveable or immovable property. Rules can be made by the Local Government regarding the first case, while warrant in the second case is deemed to be a civil decree and is executable as such. Under Section 388 the Court has power to allow time for payment of the fine. By Section 545 a Criminal Court is authorized to order the whole or any part of the fine recovered to be applied (a) in defraying expenses properly incurred in the prosecution, (b) in payment of compensation for loss or injury and (c) for compensating a bona fide purchaser when the property is restored to the person entitled. Thus, Criminal Law and Procedure cover the entire field of creating crimes, imposing penalties and realizing fines.

48. Imposition of fine for enforcing any law of the Province had been specifically mentioned, and assigned to the Provinces, but imposition of fine under a Criminal Law of the Centre had not

been separately mentioned at all. Such imposition must therefore fall under the general category of Criminal Law and Procedure and be assigned to the Centre. Fines imposed for convictions under such law and directed to be applied in a specified way would, when realized, be receipts accruing in respect of such Criminal Law and Procedure and not in respect of Administration of Justice. Not being receipts accruing in respect of a Provincial subject, they could not be allocated to the Local Government as sources of Provincial revenues. Of course, any surplus, the expenditure of which had not been prescribed by a competent authority, would remain as part of the Provincial Revenues.

49. Present position: Section 292 of the present Act, in express terms lays down that all the existing law in force in British India shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority. Under the India and Burma (Transitory Provisions) Order, 1937, paragraph 4 (a), any tax, fine, penalty, or other sum of whatever nature required by or under any law as in force immediately before the commencement of Part III of the India Act, to be credited to any local fund or other fund shall, during the two financial years next following, continue to be so credited and shall not during These years be deemed to be part of the revenues of the Province. This paragraph would apply to the fines credited to the Cantonment Funds as Section 106(c) was "a law in force." The Section being *intra vires*, the provisions of the paragraph would be applicable, and such fines credited to the Cantonment Fund must be deemed not to form part of the revenues of the United Provinces at all, and must continue to be so credited till 31st March 1939.

50. In the new Government of India Act, Schedule 7 contains both Federal and Provincial Legislative Lists as well as a Concurrent Legislative List. In the first List No. 2 only Local Self-Government in Cantonment areas (not being Cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and within British India, the delimitation of such areas are now assigned to the Federation, and not the whole subject of Cantonments. In List 2 No. 1 the Administration of Justice and constitution and organization of Provincial Courts have been assigned to the Provinces. Jurisdiction and powers of Courts with respect to matters contained in List 2 are assigned separately under No. 2. Again, the whole subject of Criminal Law has not been assigned exclusively to the Federation. Offences against laws with respect to all the matters in the first two Lists are assigned to the Federation and the Provinces, respectively, and Criminal Law excluding such offences, along with Criminal Procedure has been put in the Concurrent List. Instead of a provision as to the allocation of receipts accruing in respect of particular subjects, we now have Section 136 under which the revenues of the Federation include all revenues and public moneys raised or received by the Federation; and the revenues of the Province include all revenues and public moneys raised or received by a Province. The transitional provisions in Section 313 (3)(b) are on the same lines. Imposition of fine, penalty or imprisonment for enforcing any law is not separately mentioned and is obviously covered by the category "Offences against Laws" and by the general category in the Concurrent Legislative List "Criminal Law." The clause permitting "expenditure of which the amount is prescribed by or under any law" which occurred in the old Section 72(D)(3) (iii) has been omitted from the

corresponding Section 78 in the new Act.

51. But as Section 106 (c) has in fact been deleted under the Government of India (Adaptation of Indian Laws) Order, 1937, and from 1st April 1939, all such fines will be credited to the provincial revenues, it is unnecessary to consider the propriety of the deletion. Of course, under Section 292 the provision would remain in force if not deleted. I agree that the whole suit should be dismissed with costs.

Yaradachariar J.

52. I agree that the suit must be dismissed with costs. As the material facts and the relevant provisions of law have been set out in the judgments which have just been delivered, I shall state my reasons very briefly.

53. In view of our conclusion that the suit fails on the merits, the objections taken on behalf of the Government of India to the maintainability of the suit do not call for more than a brief notice. The maintainability of the suit was objected to on two grounds: (1) that the case did not involve a dispute of the kind contemplated by Section 204, Government of India Act, 1935, and (2) that the Government of India was not the party against whom the plaintiff was entitled to claim the reliefs prayed for in the plaint.

54. To take the second objection first, it must be conceded that there was considerable force in it so far as the reliefs originally prayed for were concerned, because the Government of India did not collect or receive any portion of the fines to which the suit relates. But after the addition of the prayer for a declaration that Section 106 (c), Cantonments Act, 1924, was ultra vires the Central Legislature the learned counsel for the defendant recognized that this objection lost its force. It cannot be denied that the Government of India to whom the administration of Cantonments has been entrusted has maintained and does continue to maintain that Section 106 (c), Cantonments Act, was valid and on this footing has disputed the plaintiff's claim to credit the fines in question to Provincial revenues. This is certainly sufficient to entitle the plaintiff to ask for the declaration now prayed for, as against the Government of India. The absence of the Cantonment Boards from the array of parties is, for the reasons given by my Lord, immaterial so far as the prayer for declaratory relief is concerned.

55. In connexion with the first objection, the learned Advocate-General of India had to draw a distinction between the position as it was prior to 1937 (when Part III of the Government of India Act of 1935 came into force) and the position of affairs subsequent to 1937; and his contention was based on the relative position of the United Provinces administration and the Government of India during the earlier period. I did not understand the learned counsel for the defendant to contend, or at any rate he did not seriously maintain, that even if there had been in existence a "legal right," the mere absence of a remedy or of a tribunal before which the person entitled to the right could have claimed relief would justify the dismissal of a suit instituted before a tribunal which has admittedly been brought into existence by the Act of 1935.

56. The decision in 3 The "Alexander" (1841) 1 W Rob 288 is authority for the proposition that a person to whom a right had accrued might avail himself of a remedy which was given by a statute enacted subsequent to the date of the accrual of the right. The contention of the learned counsel was that prior to 1937 the Government of the United Provinces had no "legal right" which could be said to have been infringed or which it could not seek to vindicate with the aid of the procedure provided for by Section 204 of the Act of 1935. This contention as to the absence of a "legal right" he sought to support by two arguments: (1) that the original absence of a remedy at law implied the non-existence of a legal right, and (2) that during the antecedent period, the Government of the United Provinces and the Government of India were not two independent legal entities or juristic persons with reference to whom it could be predicated that the one had a right against the other.

57. As to the first of the two arguments just referred to, I agree with my learned brother that the non-existence of a remedy at law is not a conclusive test against the existence of a "legal right" and that on the true construction of Section 204, Government of India Act, this Court has only to see whether there was a right recognizable by law and not one enforceable in a Court of law. The second argument seems to me however to be more substantial. As explained in Holland's Jurisprudence (Ch. 8), the conception of a "legal right" involves the existence of at least two persons, that is, the person entitled and the person obliged to do or forbear to borrow the phraseology of Holland, "the person of inherence," and "the person of incidence." It was rightly maintained by the learned Advocate General of India that prior to the coming into force of the new constitution, all rights and liabilities pertaining to the Government of India or to the Governments of the Provinces had to be enforced only by or against the Secretary of State for India and that the Governments of the Provinces were only subordinate administrations bound to carry out the directions of the Central Government and of the Secretary of State. On this basis, it will not be reasonable to treat the Government of the United Provinces as having legal rights against the Government of India. But the learned counsel had to concede that in this respect, the position had become different under the new constitution; and in the view that even after the coming into force of the new constitution, the Government of India has been taking up an attitude which entitles the Government of the United Provinces to claim the declaratory relief now prayed for, this objection, based upon the antecedent state of things, is not fatal to the maintenance of the suit so far as it relates to the declaratory relief.

58. Dealing with the merits, I would like to state at the outset that Though the plaintiff challenged the validity of all the six sub-clauses comprised in clause (c) of Section 106, Cantonments Act of 1924, the learned counsel for the plaintiff recognized in the course of the argument that the contention was untenable at least in respect of sub-clause. (i) and (v), As the benefit of the "Devolution Rules" could be claimed by the plaintiff only in respect of items not otherwise validly disposed of, he had to admit that there could be no basis for the contention of ultra vires in cases in which by legislation in force even prior to the Devolution Rules or by the express provisions of the very enactment which created particular offences, there was a direction to credit to the Cantonment fund, the fines realized in particular classes of cases. Even as regards the

items enumerated in the other subclauses, the contention that the provision was ultra vires fails on two grounds: (i) that the very provision on which the plaintiff's claim is based, namely the language of item No. 17 in the list of provincial subjects appended to the Devolution Rules, reserves "legislation by the Indian Legislature as regards... any Courts of criminal jurisdiction," and (ii) that in any view as to the inter relation of the various items in the two parts of that Schedule '(Central and Provincial), the competency of the Indian Legislature to make laws within the limits prescribed by Section 65, Government of India Act of 1919, is placed beyond doubt by Section 84 (2) of that Act.

59. The learned counsel for the plaintiff attempted to read the reservation in the concluding part of Item 17 in the list of provincial subjects as limited to "constitution, powers, maintenance and organization of Courts", the words immediately preceding the reservation, and as not qualifying the whole item opening with the words "Administration of Justice." Apart from the difficulty created by the punctuation in the way of so reading the words of reservation, this does not seem to me to be a natural reading of the item taken as a whole. It is only when full effect is given to the reservation of the Indian Legislature's power in this item that due effect will be given to the inclusion of "Criminal Law including Criminal Procedure", as Item 30 in the list of central subjects. Item 41 in the central list is the corollary to the reservations made in various items of the provincial list in respect of the power of the Central Legislature to deal with matters included in the provincial list. Item 50 in the provincial list does not seem to me to throw any light on the point now under consideration. It relates only to legislation by the Provincial Legislatures including the power to prescribe penalties, and among them "fines". The insertion of an express power in this behalf cannot be held to suggest or preclude by any kind of implication any inference as to the right to collect or appropriate fines prescribed by existing enactments of the Provincial Legislature or by enactments of the Central Legislature. It has not been disputed by the learned Advocate-General of India that, in the ordinary course, the power to collect fines imposed on conviction would have passed to the Provincial Government under the head of "Administration of Justice" (Item 17). It is the reservation of the power of the Central Legislature in that very article, so far as Courts of criminal jurisdiction are concerned, that enables the Central Legislature to deal with fines which would otherwise have passed under that article. The decision of the Judicial Committee in (1932) A.C. 981 is authority for the proposition that a power to legislate in respect of Criminal law and Criminal Procedure includes a power to prescribe the destination of the fines realized in the course of the administration of criminal justice.

60. As I have already observed, a second answer to the plaintiff's contention is furnished by Section 84 (2), Government of India Act of 1919 which in terms provided that nothing in that Act or in any rule made there under should be construed as diminishing in any respect the powers of the Indian Legislature as laid down in Section 65 of the Act. The apparent conflict between this provision and Section 129-A of the Act can be avoided by reading Section 129-A in the manner suggested by my Lord. As explained in his judgment, and in paras. 141 to 143 of the Statutory Commission's Report, the distribution of functions between the Central and Provincial

Governments and Legislatures by the Devolution Rules was introduced by the Act of 1919 only as a matter of practical and administrative arrangement, the Central Legislature nevertheless remaining "theoretically entitled to legislate over the whole field." Having regard to the formalities to be gone through before any proposal could become law in this country, there was nothing illogical in Parliament assuming that notwithstanding the theoretical continuance of the full powers of the Central Legislature, it would not attempt to change the Devolution Rules in contravention of Section 129-A of the Act.

61. The learned counsel for the plaintiff attempted to press into his service a suggestion thrown out by my learned brother in the course of the argument to the effect that the words "nothing in this Act...shall be construed as limiting" in Section 84(2) may not suffice to effectuate a real continuance of the full power of the Indian Legislature, but only prevent the Court from construing the Act in such a way as to invalidate any Act passed by the Central Legislature. On this assumption, it was suggested that on the repeal of the Act of 1919, the restraint thus imposed on the Court must be held to have disappeared and that the Court must now construe the Act according to the natural meaning of the words used. In support of this argument, reliance was placed on the latter portion of Section 84, Clause (2), which in terms precludes the question of ultra vires being raised in any legal proceeding. This does not seem to me to be a proper interpretation of the language of the clause. "When an enactment states that nothing therein shall be construed as having a particular effect, it does not seem to me right to interpret that provision merely as prohibiting a Court from 'placing a particular construction on the enactment. It is the method usually adopted for declaring that even if on account of the imperfections of language the words found in the enactment should seem to suggest a particular meaning, such was not the true intention of the Legislature. The latter part of Section 84(2) cannot, in my opinion, be used to limit the significance of the earlier words, because the latter part relates not only to Acts of the Central Legislature but also to Acts of the Local Legislature, whereas the earlier portion relates only to Acts of the Indian Legislature. It follows that notwithstanding the Devolution Rules framed under the Government of India Act of 1919, the Indian Legislature was competent to enact Section 106(c), Cantonments Act of 1924.

Cases Referred.

1(1899) 22 Mad 270

2(1880) 5 A.C. 115 at p. 119

3(1896) A.C. 348

4(1905) A.C. 524 at pp. 528 and 529

5(1883) 8 A.C. 354 at p. 368

6(1932) A.C. 98