

Bell Vs. the Municipal Commissioners for the City of Madras

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Court : Chennai

Decided On : Jan-09-1902

Reported in : (1902)ILR25Mad457

Judge : Benson and ;Bhashyam Ayyangar, JJ.

Appellant : Bell

Respondent : The Municipal Commissioners for the City of Madras

Judgement :

Benson, J.

1. Major Bell, the accused in this case, is the Superintendent of the Government Gun Carriage Factory in the City of Madras. He caused certain timber to be brought into the city on account of Government without obtaining a license and paying the fees prescribed by Section 841 of the City of Madras Municipal Act I of 1884, and for this act he has been prosecuted at the instance of the Municipal Commissioners and has been fined the nominal sum of one rupee.

2. The learned Advocate-General asks us, in the exercise of our powers of revision, to set aside the conviction and sentence as contrary to law. The object of the prosecution and of this revision petition is to obtain an authoritative decision of this Court as to the applicability of Section 341 to Government timber and firewood. The section enacts that 'no timber or firewood shall be brought within the

city without a license specifying the place and conditions of storing, to be issued by the President under the bye-laws, on payment of a fee which should not exceed the following rates: Timber Rs. 5 per ton; firewood Re. 0-6-0 per ton.'

3. There is nothing in the section to limit the liability of Government timber, though exemptions in favour of Government are found in several other sections of the Act. The *prima facie* inference is that the Legislature intended to make the section applicable to such timber. The learned Advocate-General, however, contests this inference, and contends that the conviction is bad on three grounds, viz.:

1. Because the Magistrate ought to have held that the provisions of Section 341 as to taking out a license for importing wood are merely ancillary to the provisions of Section 338 as to taking out a license for storing wood and that the exemption in favour of Government in Section 338 applies also to Section 341.

2. Because, if as held by the Magistrate, the license fee leviable under Section 341 is to be treated as a tax on importation it amounts to a toll, and Government property is expressly exempted by Section 174 from payment of tolls.

3. Because the Crown is not bound by the taxing provisions of a Statute unless there be express words to bind it, or in the absence of express words, unless the inference that it was intended to bind the Crown is manifest and irresistible, whereas on the true construction of this Statute, no such intention is anywhere to be found.

4. The first two grounds appear to me to be clearly untenable. The license mentioned in Section 341 is quite distinct from that mentioned in Section 338. The latter section requires the occupier of every place used for the sale and storage of wood and certain other inflammable materials to take out a license, just as other sections require those who keep livery-stables, slaughter-houses and bake-houses, or who exercise certain dangerous and offensive trades, to take out a license, the object being to give the Municipal authorities the power to control such places in the interest of the public. Section 341, properly understood, is a section which imposes an octroi or town duty under the guise of a license fee. This is manifest from the heavy incidence of the fee and from the proviso in the section

for a drawback of nine-tenths of the fee in case the wood is exported, and also from the fact that the president has no discretion to refuse to grant a license. A person may import wood under Section 341 without taking it to a place licensed under Section 338, and a person may keep a place under Section 338 without importing under Section 341. I can see no reason for holding that the exemption from control in Section 338 in favour of a place occupied by Government operates to exempt from taxation under Section 341 the person who imports Government wood. Nor can it, with any show of reason, be said, that the exemption provided by Section 174 in favour of Government as regards tolls, extends to the fee or town duty imposed by Section 341. The tolls referred to in Section 174 are those tolls, and those tolls alone, which the Commissioners are authorised to levy *eo nomine* by Section 170 and which are specified in schedule D of the Act.

5. There remains the contention which was pressed upon us by the Advocate-General with much force and learning, viz., that the fees payable under Section 341 are tolls, and that the Crown has a prerogative exemption as regards all tolls, and that, even if they are not 'tolls,' the Crown, or, in this country, the Secretary of State for India in Council as representing the Crown, is not bound by the taxing provisions of a Statute unless there be express words to bind the Crown, or in the absence of express words, unless the inference that it was intended to bind the Crown, is manifest and irresistible, and that such intention is not to be found in the City of Madras Municipal Act. He contended that no intention to render the Crown liable under Section 341 can properly be inferred from the fact that in other sections of the Act Government is expressly exempted from liability and he quoted a number of English cases in support of his contention. There is, no doubt, abundant authority to show that in England the Crown is by virtue of its prerogative exempt from the payment of tolls, but it is also clear from the Indian Councils Act, 1861 25 Vict. 67 that it is competent for the Indian Legislatures to make laws which may cut down the prerogative of the Crown in certain matters, This is clear with regard to the Governor-General in Council from Section 24 which provides that 'no law or regulation made by the Governor-General in Council (subject, to the power of disallowance by the Crown as hereinbefore provided) shall be deemed invalid by reason only that it affects the prerogatives of the Crown'

6. I had at first some doubt whether the Governors in Council of this Presidency and of Bombay are competent to make any law which shall affect the prerogative of the Crown. This doubt was caused by the absence of any section similar to Section 24 in regard to the powers of these local Legislatures, and it was strengthened by finding that Sir C. Ilbert in his work on the 'Government of India' (pages 223 and 226) assumed, for the same reason, that they have no such power. On further consideration, however, and after consultation with my learned colleague, I am of opinion that the local Legislatures are competent to make such a law, provided it does not affect the prerogative in regard to any matter specially exempted from their jurisdiction or from the jurisdiction of the Governor-General in Council. The authority to legislate as regards matters which affect the prerogative is not conferred on the Governor-General in Council by Section 24. That authority is conferred by Section 22 which gives the Governor-General in Council full legislative authority save in regard to certain specified matters, some of which affect the prerogative, and some of which do not do so. That section in substance re-enacts Section 43 of 3 & 4 William IV, cap. 85, with this important difference that it omits the general words of the latter section which prohibited the Governor-General in Council from 'making any laws or regulations which shall in any way affect any prerogative of the Crown.' That limitation had, in the interval, been removed by Section 26 of 16 & 17 Vict., cap. 95, which provided that 'no law or regulation made by the Governor-General in Council shall be invalid by reason only that the same affects any prerogative of the Crown, provided,' etc. Thus Section 22 of the Indian Councils Act, 1861, conferred on the Governor-General in Council a general power to legislate even in matters affecting the prerogative, except in regard to certain specified matters, and Section 24 was enacted *ex majore cautela* so as to show beyond all doubt that the important change in the law made, subject to a qualification, by Section 26 of 16 & 17 Vict., cap. 95 was, without any qualification, maintained in the new Councils Act, 24 & 25 Vict., cap. 67. The extent of the legislative powers of the Governor in Council of this Presidency and of Bombay is defined and limited in Sections 42 and 43 of this Act. Under Section 42 the Governor in Council of this Presidency may 'make laws and regulations for the peace and good government' of the Presidency provided they shall not 'affect any of the provisions of this Act or of any other Act of Parliament in

force or hereafter to be in force in such Presidency.' Section 43 then specifies certain matters which are not to be dealt with by the local Legislature save with the previous sanction of the Governor-General. In neither section is there any general limitation in regard to matters affecting the prerogative. The limitations imposed on the Governor-General in Council by the latter part of Section 22 must necessarily be held to apply to the subordinate Legislatures of this Presidency and of Bombay, but, subject thereto and to the restrictions imposed by Sections 42 and 43, a law passed by the Legislature of this Presidency for its 'peace and good government' is not, in my opinion, invalid by reason only that it affects the prerogative of the Crown. The City of Madras Municipal Act is such a law, and even if the fees specified in Section 341 thereof are to be regarded as 'tolls' to which the prerogative of the Crown would apply in England (a proposition which I think is doubtful), there would be nothing contrary to law in the local Legislature requiring such fees to be paid on Government wood in the same way as on wood, the property of private persons.

7. If the fees are not to be regarded as 'tolls,' with a special prerogative exemption in favour of Government, still less can they be regarded as necessarily inapplicable to Government if they are, as I think they are, in reality a mere tax or town duty, similar to the duty imposed by Act I of 1890 (Madras) on all tobacco brought into the City of Madras. It would, no doubt, seem to be the case that in England, owing to historical causes, the Legislature has proceeded on the view that the Crown is not bound by a Statute unless named in it, and we, therefore, find that the Crown is in many Statutes expressly stated to be bound, but it is impossible to say broadly that in India the Crown is not bound by a Statute, or the taxing provisions of a Statute, unless expressly named in it. Such express inclusion is altogether exceptional. It would be more correct to say that, as a general rule, the Indian Legislatures have proceeded on the assumption that the Government will be bound by the Statute unless expressly or by necessary implication excluded from its operation. Government, when a party to litigation, pays Court-fees just as other suitors do because there is no special exemption in favour of Government in the Court Fees Act. On the other hand, Government is specially exempted from the payment of stamp duties under the General Stamp Act 1899, Section 3, proviso 1, 'in cases where but for this exemption the

Government would be liable to pay the duty chargeable in respect of such instrument.' This amounts to a statutory declaration that Government would be liable to pay the duty but for the special exemption. In like manner goods belonging to Government are specially exempted from duty under the Sea Customs Act and the Indian Tariff Act, and it would be easy to enumerate many other Acts in which exemptions are made in favour of Government on the evident assumption that but for such exemption the Government would be bound. Perhaps, however, the most important Act of all is the 'Municipal Taxation Act, 1881' passed by the Governor-General in Council. It gives the Governor-General in Council power by an order in writing to prohibit the levy by a Municipal Committee of any specified tax payable by the Secretary of State for India in Council, but provides that in such case 'the Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax,' such sums (if any) as an officer appointed by Government may, in all the circumstances of the case, determine, to be fair and reasonable. The preamble to this Act does not allege that the imposition of a tax payable by the Secretary of State to a Municipal authority is opposed to the prerogative of the Crown. It assumes that such taxation is legal. The Act, in effect, is an acknowledgment by the supreme legislative authority in India that Municipal taxes may be legally and properly payable by the Secretary of State for India in Council. We have not been referred to a single Local or Municipal Act in which Government or the Secretary of State is expressly named as liable to taxation. If such liability did not exist or if it depended, as the Advocate-General contends that it does, on the Government being expressly named in the Statute, this Municipal Taxation Act of 1881 would have had no scope for application and would have been unnecessary. The Legislature has treated such taxation as legal and proper, but has provided a special machinery for its assessment and levy, in order to guard against abuses or inconveniences that might arise if the machinery were that provided by the Acts as suitable in the case of private persons. A similar policy is embodied in the Indian Tolls (Army) Act II of 1901, and the Government Buildings Act IV of 1899. It may be noted in passing that in the former Act, octroi or town duties are specially excluded from the definition of 'tolls' from the payment of which the Act exempts military persons and certain military property and certain property of His Majesty. It is in my opinion impossible to hold that these Acts and

similar exemptions in other Acts were made by the Legislature in ignorance of the prerogative rights of the Crown or merely *ex majores cautela* and without any legal necessity. The whole history and tenor of Indian legislation is opposed to the contention. It may be taken, then, that the local Legislature has power to impose taxation for purposes that make for the peace and good government of the presidency, and that such taxation is not invalid by reason only that it is payable by the Secretary of State for India in Council. The question, then, after all comes to this, whether on the true construction of the City of Madras Municipal Act I of 1884, there is clearly manifest an intention to make Section 341 applicable to wood imported by Government, and the intention is to be gathered, according to the ordinary rules of construction, from the general scope and tenor of the Act, and of the legislation in *pari materia* of which it forms a part. I am of opinion that the question must be answered in the affirmative. We find that in the City of Madras Municipal Act (V of 1878), which was in force before the Act of 1884, there were provisions for levying taxes on buildings and lands, on professions and salaries, and on vehicles and animals, and for levying tolls on vehicles and animals entering Municipal limits. Government buildings and lands were not exempted from taxation, though the Madras Harbour Works were exempted, as were also places used for public worship and burial grounds. Besides the general tax on buildings and lands, there were special taxes leviable on buildings and lands as a water rate, and as a lighting rate. In regard to neither was the Government generally exempt, but buildings and land in Fort St. George, which all belong to Government, were exempt from the lighting tax, though not from the water tax. This is notable as showing that the Legislature had in mind the question of exemption of Government buildings and lands and expressly gave that exemption in part, though not generally. Military officers were not exempt from the tax on salaries, but gun carriages, ordinance carts and waggons, cavalry horses and vehicles and animals belonging to Government were exempt from the vehicle and animal taxes, and it was provided that no tolls should be paid 'for the passage of troops, Government stores, Government vehicles or animals or any other Government property.' Government was also exempt from the provisions of the sections which required persons exercising certain dangerous and offensive trades, keeping stables, cart-stands, &c.;, and places for the storage and sale of

wood and other inflammable substances, to take out licenses and pay fees in respect thereof.

8. A Section (328) corresponding to Section 338 of the present City of Madras Municipal Act, existed in the Act of 1878, but it had no section corresponding to Section 341. Strong objections, to a great extent sentimental, were taken by military officers to the payment of a profession tax under the Towns Improvement Act which was then in force in the mufassal Municipalities, and this, together with certain abuses which had occurred in regard to the levy of the tax on Government buildings and lands, led the Legislature to pass Act XI of 1881, the Municipal Taxation Act already referred to, by which the Governor-General in Council was empowered to prohibit the levy of any specified Municipal tax payable (1) by Military Officers, (2) by the Secretary of state for India in Council, on certain terms as to compensating the Municipal authorities. It was after this Act was passed that the present City of Madras Municipal Act, 1884, was passed, and in it we find Section 341 introduced for the first time. No exemption in favour of Government is made in this section. The effect of this section is to impose an octroi or town duty on timber and firewood brought into the City. Six years later a similar duty was imposed by Act I of 1890 (Madras) on all tobacco brought into the City, and again we find no exemption in favour of Government. Looking to the precise manner in which the Government is exempted from payment of certain taxes and fees and to the absence of any such exemption in the case of other taxes and fees, it seems to me that the clear intention of the Legislature was to give exemption in the cases specified, and not to give exemptions in cases not specified. The omission of any exemption in the case of Town duties appears to be intelligible enough, and to be in accordance with the general policy of the Supreme Indian Legislature as indicated by the Municipal Taxation Act, 1881. Under this Act, Government has the power to prohibit the levy of the tax if it sees fit to do so; but to hold that the Legislature when enacting the City of Madras Municipal Act, 1884, did not mean to make Section 341 applicable to Government, would, in my judgment, be opposed to the manifest intention of the Act, when construed in its natural sense according to accepted canons of interpretation applicable to Indian Statutes, and with reference to the course of legislation in India and the Acts which have from time to time been passed in *pari materia*.

9. In this view the conviction was right and the revision petition must be dismissed.

Bhashyam Ayyangar, J.

10. The petitioner is the Superintendent of the Gun Carriage Factory at Madras and in his official capacity caused to be brought within the City of Madras on the 7th November 1900 and the 4th February 1901, 21 logs of timber of the aggregate weight of 141 tons without obtaining a license from the Municipality of Madras, on payment of the fee prescribed by Section 341 of Madras Act I of 1884. It is admitted that the timber so brought was the property of Government and was required for the purpose of building gun carriages for His Majesty's forces and that if the same were liable to duty under Section 341, such duty will have to be paid out of the Public Indian Revenue.

11. The petitioner, having been convicted and fined by the Chief Presidency Magistrate for having brought the timber into the City without obtaining a license from the Municipality of Madras, this revision petition has been preferred for the purpose of determining whether the license prescribed by Section 341 is necessary in the case of timber brought into the City of Madras by Government. The legality of the conviction of the petitioner is questioned solely on the ground that he was not bound to obtain the license prescribed by Section 341, and it is the only question that has been argued. The learned Advocate-General, who appears for the petitioner, bases his contention on three grounds:

- i. that Section 341 is merely ancillary to Section 338 and that the exemption in favour of Government in the latter is therefore equally applicable to the former
- ii. that the exemption from payment of tolls made by Section 174 in favour of Government is applicable to the license-fee prescribed by Section 341, such fee amounting in fact to a toll; and
- iii. that the Crown is not bound by the taxing provision of a Statute unless there be express words to bind it or unless the inference that it was intended to bind the Crown is manifest and irresistible, whereas on the true construction of Madras Act I of 1884 no such intention is anywhere to be found.

12. The first two grounds are clearly untenable and present no difficulty. Section 338 enjoins that yearly licenses should be obtained in respect of every place set apart for the sale or storage (for other than private use) of timber or firewood, &c.; by the occupier of such place. The fee and the rate of fee for the issue of such licenses are to be fixed by the Commissioners with the sanction of the Governor in Council under Section 420, and 'the president may, as he in his discretion and under such restrictions and regulations as he thinks fit, grant or refuse such license.' The proviso to Section 338, exempts from the operation of the section any such place in the occupation or under the control of Government. This Section (338) was practically in force since 1867. But Section 341 was enacted only in 1884 and is in no sense ancillary to, or dependent upon, Section 338. It really imposes octroi duties or town duties on the importation of timber or firewood, the duty being regulated with reference to its weight. The importer is required, on payment of the duty, to obtain a license specifying the place and conditions of storing of the timber or firewood and the President has no discretion to refuse such license. The specification, in the license, of the intended place of storing will enable the Municipal Commissioners to find out if the occupier of such place of storage, if it be not in the occupation or under the control of Government, has obtained the license prescribed by Section 338. The primary object of Section 341 is the levy of import duty and that is entirely independent of Section 338, Incidentally, no doubt, provision is made in Section 341 in view to check the evasion of Section 338 in cases to which that section is applicable. Timber or firewood imported by Government may or may not be stored in a place in the occupation or under the control of Government. It is impossible to connect Section 341 and Section 338 in such a way as to justify the engrafting on the former, of the exemption in favour of Government contained in the latter. exemption in favour of Govern-

13. The second ground urged proceeds upon the assumptions that the scope of Section 174 is much wider than it really is and that the duty leviable under Section 341 can be regarded as a 'toll.' A reference to Section 98, particularly to Clause 9, shows that tolls leviable under the Act are only in respect of vehicles and animals entering the Municipal limits. Such tolls are dealt with in Sections 170--178 under the heading of 'tolls on animals and vehicles entering the Municipal limits' and the

rates of tolls and the vehicles and animals in respect of which tolls are leviable are specified in schedule D. A reference to the schedule shows that the rate of tolls varies according as the animals or vehicles are laden or not laden. So far as Government is concerned Section 174 exempts Government from payment of tolls for the passage of Government vehicles or animals, Government stores or any other Government property. The exemption can only relate to tolls leviable as such under Section 170 of the Act and they are specified in schedule D. I do not advert to the amendment of that section by the Indian Tolls (Army) Act (II of 1901) as the amendment does not affect the question under consideration. The duty leviable under Section 341 is not for the passage of timber or firewood, within the meaning of Section 174, but for importing the same into the City. The exemption in favour of Government in Section 174 can only apply to duties leviable under the Act as 'tolls' (Section 170) and cannot be extended to Section 341 even if the duty prescribed by the latter can be regarded as a 'toll' in its general sense. In my opinion the duty imposed by Section 341 on timber or firewood imported into the City of Madras is really an octroi-duty and that it is such is made perfectly clear by the amendment of that section by Madras Act II of 1892 providing for drawback upon timber or firewood exported from Madras, in respect of which import duty has been paid.

14. I do not think that 'toll' even in its wide acceptation can comprise such a tax. 'Toll' is defined in the 'Century Dictionary' as 'a tax paid or duty imposed for some use or privilege or other reasonable consideration' and this definition, I think, brings out best the meaning of the word 'toll' from a legal point of view. The learned Advocate-General, relying upon the definition of 'toll' given in Sheppard's 'Abridgment' urges that the term will include octroi-duties or town duties on the import of goods. That definition is quoted in the argument of Counsel in *Westover v. Perkins* 2 E.& E. 57 and I am by no means satisfied that an octroi-duty payable by the owner of goods--and not by the buyer as stated in Sheppard's definition--falls within the definition. It seems to me that the definition quoted above from the Century Dictionary succinctly expresses the idea conveyed by the definition in Sheppard's 'Abridgment.' I may here refer to the definition of 'tolls' given in the Indian Tolls (Army) Act II of 1901, Section 2 (h), which, while more comprehensive than 'tolls' referred to as such in Madras Act I of 1884, expressly excludes customs-duties and octroi-duties or town-duties on the import of goods.

15. The learned Advocate-General bases his contention chiefly on the third ground. The substance of his argument is that the Crown is not bound to pay the duty imposed by Section 341 because Government is neither expressly nor by necessary implication included within the purview of that section; and that the express exemption of the Crown from taxes imposed under several other sections of the Act cannot legitimately lead to the necessary implication that the Crown is liable to pay taxes imposed by Section 341 and certain other sections in regard to which there is no similar exemption. The question was argued on both sides with reference to certain English and Indian decisions, in some of which it was held, that the Crown was not bound because it was not expressly named, and in others, it was bound though not expressly named. The extent to which decisions in English Courts, passed with reference to Statutes of Parliament and the prerogatives of the Crown under the English Law, will be a safe guide to the interpretation of Acts passed by the Indian Legislature and the prerogatives of the Crown in India, will depend very much upon the policy and course of Indian legislation and the powers of the Indian Legislature--especially of the Provincial Legislatures, whose competence to affect by legislation the prerogatives of the Crown is seriously doubted by Sir Courtenay Ilbert in his recent work on the 'Government of India' (at pages 223 and 226).

16. It is unnecessary to advert to the powers of the Indian Legislature and the course of Indian legislation prior to 3 & 4 William IV (1833), cap. 85, which vested the legislative power of the Indian Government exclusively in the Governor-General in Council. Section 43 of that Act defined the powers of the Indian Legislature as follows:

And be it enacted that the said Governor-General in Council shall have power to make laws and regulations for repealing, amending or altering any laws or regulations whatever, now in force, or hereafter to be in force in the said territories or any part thereof and to make laws and regulations for all persons, whether British or native, foreigners or others and for all Courts of Justice whether established by His Majesty's charters or otherwise and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories and for all servants of the said Company within the

dominion of princes and states in alliance with the said Company; save and except that the said Governor-General in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend or affect any of the provisions of this Act or any of the provisions of the Acts for punishing mutiny and desertion of Officers and Soldiers whether in the service of His Majesty or of the said Company, or any provisions of any Act hereafter to be passed in any wise affecting the said Company or the said territories or the inhabitants thereof or any laws or regulations which shall in any way affect any prerogative of the Crown, or the authority of Parliament or the constitution or rights of the said Company or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the said Crown over any part of the said territories.' By Section 59 of the same Statute it was provided that the Provincial Governors in Council were no longer to have the power of making laws except in case of urgent necessity and then only until the decision of the Governor-General of India in Council should be signified thereon. It will be noticed that by Section 43 the Governor-General in Council was prohibited from making any law affecting the prerogative of the Crown. This provision, however, was modified by 16 & 17 Vict., cap. 95, Section 26, which provided as follows: 'No law or regulation made by the Governor-General in Council shall be invalid by reason only that the same affects any prerogative of the Crown, provided such law or regulation shall have received the previous sanction of the Crown signified under the Royal Sign Manual of Her Majesty, countersigned by the President of the Board of Commissioners for the affairs of India.

17. When the Indian Councils Act 1861 (24 & 25 Vict., cap. 67), was passed, Section 43 of 3 & 4 William IV, cap. 85 and Section 26 of 16 & 17 Vict, cap. 95, were, among others, repealed and the legislative powers of the Provincial Governors in Council were restored. Section 22 of the Indian Councils Act defines the legislative powers of the Governor-General in Council and it substantially corresponds to Section 43 of 3 & 4 William IV, cap. 85, except in one important particular, i.e., that the prerogative of the Crown is not excepted from the legislative authority of the Governor-General in Council save, of course, in so far as the matters specially excepted may comprise certain prerogatives of the Crown.

Section 24 expressly provides that a law made by the Governor-General in Council shall not be deemed invalid by reason only that it affects the prerogatives of the Crown. This is simply a reproduction of the first part of Section 26 of 16 & 17 Vict., cap. 95, which section was repealed. This section is really superfluous and can be regarded as inserted only 'ex majore cautela,' as an important change was made in the law by sub-letting the prerogative of the Crown to the legislative authority of the Governor-General in Council, except in so far as such prerogative may relate to the allegiance of any person to the Crown or to the sovereignty or dominion of the Crown over any part of the Indian territories--which are specially excepted by the concluding paragraph of Section 22. Section 42 empowers the Provincial Governors in Council to make laws and regulations 'for the peace and good government' of the provinces, subject to the condition that no Act of Parliament then in force or thereafter to be in force in the provinces is to be affected by any provincial legislation. It will be noted that the matters which may be dealt with by the provincial Legislatures are not specifically enumerated as in the case of the Governor-General in Council nor are the matters comprised in the last paragraph of Section 22, which are excepted from the legislative authority of the Governor-General in Council, specially excepted in Section 42 from that of the Provincial Governors in Council. It seems probable that it was considered unnecessary that the exceptions covered by the last paragraph of Section 22, should be engrafted on Section 42 inasmuch as Section 42 empowers Provincial Governors in Council to make laws only for the 'peace and good government' of the province, and that such power cannot possibly extend to any of the matters comprised in the last paragraph of Section 22. Whether this is so or not, it is obvious that matters excepted from the legislative authority of the Governor-General in Council cannot be within the powers of subordinate provincial Legislatures. It is true, as pointed out by Sir C. Ilbert, that there is one section, with respect to the laws passed by provincial Legislatures corresponding to Section 24 which relates only to laws passed by the Governor-General in Council affecting the prerogative of the Crown. Does this warrant the inference drawn by Sir Courtenay Ilbert that the provincial Legislatures do not possess the power which the Governor-General in Council has, of making laws which may affect the prerogative of the Crown? If the power of the Governor-General in Council to pass such a law

was conferred by Section 24, no doubt the inference would be irresistible, that in the absence of such a section the provincial Legislature can pass no such law. The power of the Governor-General in Council to pass a law affecting the prerogative of the Crown is derived not from Section 24 but from Section 22 which, unlike the corresponding Section 43 of 3 & 4 William IV, cap. 85, does not except the prerogative of the Crown generally from the legislative jurisdiction of the Governor-General in Council. Section 42 defining the powers of the provincial Legislatures does not except the prerogative of the Crown generally from their jurisdiction and it can hardly be contended that there would be no need or occasion to affect any prerogative of the Crown in making effective laws and regulations for the 'peace and good government' of the province.

18. The phrase 'peace, order and good government' is used in several Acts of Parliament conferring legislative powers on Colonial assemblies. The 91st section of the British North America Act, 1867, provides that it shall be lawful for the Queen, with the advice and consent of the Senate and the House of Commons, to make laws for the 'peace, order and good government' of Canada in relation to all matters not coming within the class of subjects by this Act assigned exclusively to the Legislatures of the provinces. In *Russell v. The Queen* L.R. 7 App. Cas. 829 a question was raised as to the validity of the Canada Temperance Act, 1878, passed by the Dominion Parliament and it was held by the Privy Council that the Act did not come within one of the classes of subjects assigned to the provincial Legislatures and was intra vires of the Dominion Parliament, being of a nature which fell within the general authority of Parliament to make laws for the order and good government of Canada. In *Ashbury v. Ellis* [1893] A.C. 339 a contention was raised that the Act of Parliament, 15 & 16 Vict., cap. 72, which gave to the Legislature of New Zealand power 'to make laws for the peace, order and good government of New Zealand provided that no such law be repugnant to the laws of England' did not give power to subject to its judicial tribunals persons who neither by themselves nor by their agent were present in the colony. It was argued that though the law was not repugnant to the laws of England, yet the moment an attempt was made by the Legislature of New Zealand to affect persons out of New Zealand, that moment the local limitations of the jurisdiction were exceeded and the attempt was nugatory. Their Lordships of the Privy Council overruled the

objection, it being in their opinion 'clear that it is for the peace, order and good government of New Zealand that the Courts in New Zealand should in any case of contracts made or to be performed in New Zealand have the power of judging whether they will or will not proceed in the absence of the defendant' and that whether a foreign Court will or will not enforce a judgment passed in the absence of the defendant under such circumstances, it is sufficient for trying 'the validity of New Zealand laws in New Zealand to say that the peace, order and good government of New Zealand are promoted by the enforcement of the decrees of their own Courts in New Zealand.' Though no question of prerogative being affected by the colonial Legislature was involved in either of the above cases, they afford illustrations of the liberal interpretation which has been placed by the Judicial Committee of the Privy Council on the expression 'peace, order and good government.'

19. In *Gushing v. Dupuy* L.R.5 App. Cas. 409 the question arose as to whether the Dominion Enactment, 40 Vict., cap. 41, Section 28, amending the Canadian Insolvency Act and providing that the judgment of the Court of Appeal in matters of insolvency should be 'final' could and did derogate from the prerogative of the Crown to allow appeals as an act of grace. Their Lordships of the Privy Council thought it unnecessary to consider and decide whether the Parliament of Canada had power to interfere, by legislation, with the royal prerogative, as in their opinion the 28th section of the Insolvency Act did not profess to touch it and that upon the general principle that the rights of the Crown can be taken away only by express words, the power of the Queen to allow appeals as an act of grace was not affected by the enactment. The attention of the Privy Council was drawn to an Act of the Parliament of Canada, 31 Vict., cap. 1, enacting rules of interpretation to be applied to all future legislation, when not inconsistent with the Act or the context, which, among others, provides that no provision or enactment in any act shall affect in any manner or way whatsoever, the rights of Her Majesty, her heirs, or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby.

20. An earlier decision of the Privy Council, to the contrary in *Cuvillier v. Aylwin* 2 P.C. 72 which was followed in *The Queen v. Eduljee Byramjee* 3 M.I.A. 468 and in

The Queen v. Alloo Paroo 3 M.I.A. 488 was virtually, if not expressly, overruled on the ground that the decision in that case 'if not expressly overruled has not been followed and later decisions are opposed to it. 'A similar question arose before the Privy Council in 1856 in an appeal from the Sadr Dewani Adalat of Bombay, in *Modee Kaikhooscrow Hormusjee v. Cooverbhace* 6 M.I.A. 448 as to the operation of Act III of 1843 in barring the prerogative of the Crown from admitting appeals against an order rejecting a special appeal to the Sadr Dawani Adalat which order was declared 'final' by that Act. Their Lordships of the Privy Council held that the Act would have no such operation as the Indian Legislature had no power to limit or affect the prerogative of the Crown without its previous sanction and it did not appear that the said Act was passed after obtaining such sanction. It was for the same reason that Act VI of 1856 (an Act for granting exclusive privileges to Inventors), passed by the Legislative Council of India, was disallowed by the Court of Directors on the advice of Her Majesty's law officers (vide Preamble to Act XV of 1859) that the exclusive privilege of the Crown to grant patents for inventions was affected by the Act. The Act VI of 1856 was accordingly repealed by Act IX of 1857, but was virtually re-enacted as Act XV of 1859, after having obtained previously the sanction of Her Majesty as required by Section 26 of 16 & 17, Vict., cap. 95.

21. The Indian Councils Act, however, removed such limitation of the powers of the Indian Legislature. In that Act itself there is internal evidence that there is no such limitation even in respect of the powers of the provincial Legislatures, for Section 43 contemplates provincial legislation, with the previous sanction of the Governor-General, for regulating coins and patents or affecting the relations of Government with foreign princes or states. A reference to Sections 19 and 33 will show that both in the Governor-General's Council and in the Provincial Councils, bills may be introduced, with the previous sanction of the Governor-General or Governor as the case may be, affecting the public revenue of India or imposing any charge on such revenue. I draw attention to this special provision in connection with certain English decisions to be referred to hereafter in which it was held that although there is no special exemption of the King, yet he is exempted by virtue of his prerogative from the operation of every Act imposing a duty or a tax.

22. It has now been definitively decided by the Judicial Committee of the Privy Council in more cases than one, both from India and the Colonies, that an Indian or Colonial Legislature is not a delegate of the Imperial Legislature, that it is restricted in the area of its powers, but within that area it is unrestricted. In *The Queen v. Burah* L.R. 3 App. Cas. 889 their Lordships of the Privy Council, in overruling a Full Bench decision of the Calcutta High Court, that Section 9 of Act XXIII of 1869 was ultra vires of the Indian Legislature, laid down the general law in these terms: 'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it and it can of course do nothing beyond the limits which circumscribe those powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has and was intended to have plenary powers of legislation, as large and of the same nature as those of Parliament itself.' The same doctrine was laid down in a later case, *Hodge v. The Queen* L.R. 9 App. Cas. 117 by their Lordships of the Privy Council in the following terms: 'It appears to their Lordships, however, that the objection thus raised by the appellant is founded on an entire misapprehension of the true character and position of provincial Legislatures. They are in no sense delegates of, or acting under mandates from, the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes, in relation to the matters enumerated in Section 92, it conferred powers not in any sense to be exercised by delegation from or as agent of, the Imperial Parliament, but authority, as plenary and as ample, within the limits prescribed by Section 92, as the Imperial Parliament in the plenitude of its power possessed or could bestow. Within these limits of subjects and area, the local Legislature is supreme and has the same authority as the Imperial Parliament.' This principle was approved of and followed in an appeal from New South Wales in *Powell v. Apollo Candle Company* L.R. 10 App. Cas. 282. The same doctrine virtually finds legislative declaration in Section 45 of 3 & 4 William IV, cap. 85.

23. In my opinion, therefore, there can be no reasonable doubt as to the competence of provincial Legislatures to pass laws within the area of their powers--which is narrower than the area of the powers of the Governor-General in Council--though such laws may affect the prerogative of the Crown. If it were

otherwise, the powers of the provincial Legislature to make laws for the peace, order and good government of the province would be unduly hampered. There is no small degree of uncertainty as to the extent of the prerogatives of the Crown in India and the validity of no few enactments of the provincial Legislature will be called into question in Courts on the ground that they directly or indirectly affect the royal prerogative.

24. But in construing the general words of an enactment it may be important to consider whether any prerogative of the Crown will be affected by a literal construction; and for the purposes of this case, it will be necessary to consider whether exemption from statutory duties and taxes is, in the real sense of the expression, a 'Crown prerogative.' In the *Mayor of Lyons v. East India Company* 1 M.I.A. 175 the principle of law bearing upon the prerogatives of the Crown in India was indicated by Lord Brougham in the following terms: 'It is agreed on all hands that a foreign settlement obtained in an inhabited country by conquest or by cession from another power stands on a different relation to the present question from a settlement made by colonising, i.e., peopling an uninhabited country. In the latter case, it is said that the subjects of the Crown carry with them the laws of England, there being of course no *lex loci*. In the former case, it is allowed that the law of the country continues until the Crown or the Legislature changes it. (Vide also *Cooper v. Stuart* L.R. 14 App. Cas. 286) Then, is Calcutta to be considered as an uninhabited district settled by English subjects or as an inhabited district obtained by conquest or cession? If it falls within the latter description, has the English law incapacitating aliens ever been introduced? If that law has never been introduced, has there been such an introduction of English law generally that those parts which have been introduced draw along with them the law touching aliens? An answer to these three questions will include a consideration of the only reason for the proposition upon which the judgment below is mainly rested, viz., that the royal prerogative extends necessarily and immediately to all acquisitions however made and that the forfeiture of aliens' real estate is parcel of that prerogative.' In considering these three questions, their Lordships after adverting to the contention that there is something in the law incapacitating aliens, which makes it, so to speak, of necessary application wheresoever the sovereignty of the Crown is established, as if it were inherent in the nature of the sovereign power,

and pointing out with reference to the laws of various countries, that there is no warrant in the nature of the thing, for the position that this right is an incident of sovereignty, observe as follows: 'Besides, if reference be made to the prerogative of the English Crown, that prerogative in other particulars is of as high a nature, being given for the same purpose of protecting the State, and it is not contended that those branches are extended to Bengal. Mines of precious metals, treasure-trove, royal fish are all vested in the Crown for the purpose of maintaining its power and enabling it to defend the State. They are not enjoyed by the sovereign in all or even in most countries and no one has said that they extend to the East Indian possessions of the British Crown.' In the *Advocate-General of Bengal v. Ranee Surnomoye Dossee* 9 M.I.A. 391 Lord Kingsdown, after adverting to the introduction and establishment of the English Criminal Law in India and its application to Natives as well as Europeans with reference to the prerogatives of the Crown (pages 428--30), to forfeiture of the personal property of persons committing suicide in Calcutta, arrived at the conclusion that the English Law of 'felo de se' and forfeiture of goods and chattels did not extend to a native Hindu, though a British subject, committing suicide at Calcutta. It is unnecessary to refer to various other instances which will readily occur to one's mind, which according to the Common Law of England are comprised in the royal prerogative, but in the very nature of things are either inapplicable to or have not been introduced into India. On the other hand, it is probably true that the Crown has, according to the Common Law of India, certain prerogatives which it may exercise in India though not in England, notably the prerogative of imposing by an executive act assessment on lands and varying the same from time to time. The prerogatives of the Crown in India--a country in which the title of the British Crown is of a very mixed character--may vary in different provinces, as also in the Presidency towns as distinguished from the mufassal. The determination, with anything like legal precision, of all the prerogatives of the British Crown in India is by no means an easy task.

25. I shall now proceed to consider how far the canon of interpretation commonly stated in the form that 'the Crown is not bound by a Statute unless named in it' can be safely applied to Acts of the Indian Legislature and in particular to taxing Acts. The various cases in the English reports, in which this canon of interpretation was

considered and in some of which it was held that the Crown was not bound because it was not expressly named or included by necessary implication, and others in which the Crown was held bound though not so named or included will be found collected in Maxwell's 'Interpretation of Statutes' (3rd edition), pages 186--193, and Hardcastle's 'Construction of Statutory Law' (2nd edition), pages 401--421. It may not be easy to reconcile all the cases or to deduce therefrom certain definite rules of interpretation. The leading canon seems to be that laid down by Lord Coke in the Magdalene College case 11 Rep. 74, which the Master of the Rolls states as follows in *Ex parte Postmaster-General* L.R. 10 Ch. D. 595: 'Where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the King shall be bound by such Act though not particularly named therein; but where a Statute is general and any prerogative, right, title or interest is thereby divested or taken from the King, in such case the King shall not be bound unless the Statute is made by express terms to extend to him.' The Master of the Rolls after observing that that is the general rule and that the point came before the Court of Exchequer in *Attorney-General v. Donaldson* 10 M.& W. 117 and there Baron Alderson, in delivering the judgment of the Court, said: 'It is a well-established rule, generally speaking, in the construction of Acts of Parliament that the King is not included unless there be words to that effect,' held that although the Crown was named in some of the sections of the Bankruptcy Act, 1869, it was not bound by the other provisions of the Act so as to deprive it of its undoubted prerogative of 'Extent.' This is one of the cases which the learned Advocate-General relies upon. A reference to the judgment of the Master of the Rolls will show that the decision is based not only upon the general canon of interpretation, but also upon the positive conclusion he arrived at from the wording of the sections that the Legislature intended not to deprive the Crown of its undoubted prerogative.

26. Adverting to the first portion of Lord Coke's rule, Maxwell (at page 193) points out that it would probably be more accurate to say that the Crown is not excluded from the operation of a Statute where neither its prerogative rights nor property are in question. As regards the latter portion of the rule, judicial decisions have clearly established that the Crown is sufficiently named in a Statute, within the meaning of the rule, when the intention of the Legislature to include it is clear and manifest.

The canon of interpretation simply amounts to this, that it is to be presumed that the Legislature does not intend to deprive the Crown of any prerogative right, or property unless it expresses its intention to do so in explicit terms or makes the inference irresistible. Such a rule of interpretation is not peculiar to the Crown. It is analogous to and founded upon the principle on which, for instance, the following canons of interpretation are equally applicable to the construction of Statutes--viz.: (i), it is a sound rule to construe a Statute in conformity with the Common Law rather than against it, except where and so far as the Statute is plainly intended to alter the course of the Common Law *The Queen v. Morris* L.R. 1 C.C.R. 90 (ii), it is a maxim that a Statute made in the affirmative, without any negative expressed or implied does not take away the Common Law (Coke); (iii) 'where there are general words in a later Act capable of reasonable and sensible application, without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier legislation indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so'--' *generalalia specialibus non derogant*' *Seward v. 'Vera Cruz'* L.R. 10 App. Cas. 69 (iv) the general rule undoubtedly is that the jurisdiction of Superior Courts is not taken away except by express words or necessary implication *Albon v. Pyke* 4 M.& Gr. 421 etc. These compendious canons of interpretation which are in the nature of maxims can only be regarded as mere guides to the interpretation of Statutes and ought not to be applied as if they were statutory clauses, enacted with all the precision and provisos of an Interpretation Act.

27. In *Theberge v. Laudy* L.R. 2 App. Cas. 102 the Lord Chancellor in an appeal from the Superior Court of Quebec in Canada, while holding in that particular case that the Crown had not the prerogative of admitting an appeal from a judgment of the Superior Court under the 'Quebec Controverted Elections Act, 1875,' affirmed the general principle of construction in the following words: 'Their Lordships wish to state distinctly that they do not imply any doubt whatever as to the general principle that the prerogative of the Crown cannot be taken away except by express words; and that they would be prepared to uphold, as often has been held before, that in any case where the prerogative of the Crown has existed, precise words must be shown to take away that prerogative.'

28. This emphatic statement of the rule being founded upon general principles of construction is undoubtedly applicable as much to Indian enactments as to Colonial or Imperial Statutes; and if general words of an Indian enactment are such as according to their literal interpretation would divest the Crown of, or take away from it, any prerogative, right, title or interest, they would certainly have to be construed in a limited sense so as not to produce such a result which, it may be reasonable to infer, could not have been in the contemplation of the Legislature, in the absence of a clear indication of an intention to the contrary. But it is unduly stretching the language of the rule, to bring within its scope general words of a Statute imposing a tax and claim exemption for the Crown on the ground that the Crown is divested of any prerogative, right, title or interest, by giving full effect to the general words.

29. So far as exemption from any tax imposed by a Statute is concerned, the question for determination is whether according to the right construction of the Statute, the Crown is or is not made liable to pay the tax. In the former case, it is bound to pay; in the latter, it is not; in neither case is there any question of prerogative. The rule of construction above adverted to cannot itself be regarded as a prerogative of the Crown. A Statute imposing a tax upon Crown property, which tax will be payable out of the public revenue, cannot reasonably be regarded as divesting the Crown of any right, title or interest, within the meaning of the above rules---especially when such tax is levied for purposes connected with the good government of the country, for which purpose, such revenues are, in India vested in trust in the Crown, by Section 39 of 21 & 22 Vict., cap. 106.

30. In the English reports, the above canon of interpretation has often been referred to, as in *Attorney-General v. Donaldson* 10 M. & W. 117 : 11 L.J. 338 as a well-established rule, according to which, generally speaking, the Crown is not included in a Statute unless there be words to that effect; and the exemption of the Crown from payment of rates imposed by Statutes is referred to as an implied prerogative right of the Crown. The state of the English law on this question was fully reviewed and considered by the House of Lords in *Coomber v. Justices of Berks* L.R. 9 App. Cas. 61. I cannot do better than quote the following extracts from the judgments of Lords Blackburn, Watson and Bramwell in that case. Lord

Blackburn (pages 65-66): 'In *The King v. Cook* 3 T.R. 519 the general principle as to the construction of Statutes imposing charges as containing an exemption of the Crown was laid down. That was a case raising the question whether the duty on post-horses was exigible in respect of post-horses carrying an express from the Governor of Portsmouth to one of His Majesty's Principal Secretaries of State, which was not on any private business whatever, but wholly related to the public concerns of this kingdom. It was held that it was not exigible. Lord Kanyon, delivering the judgment of the Court, says 'Now, although there is no special exemption of the King in this Act of Parliament (25 Geo. 3, cap. 51) yet I am of opinion that he is exempted by virtue of his prerogative in the same manner as he is virtually exempted from the 43rd Bliz. and every other Act imposing a duty or tax on the subjects.' There may well be expressions in an Act imposing a duty or tax on the subjects, such as to show that the intention of the Legislature was to impose the duty on some property belonging to the Crown. But I do not think it made out that there is any such intention shown in the Income-tax Act. Reliance was placed in the argument on the general words of the rule 'which rule shall be construed to extend to all lands, tenements and hereditaments or heritages capable of actual occupation of whatever nature and for whatever purpose occupied or enjoyed.' But I do not think this can be construed as taking away the exemption, by virtue of the prerogative, of property actually occupied or enjoyed by the Crown I should rather infer that those who framed the Act thought that unless expressly named, such an occupation would have been exempted There had been a considerable number of decisions on the poor-rate, which laid down a much wider principle than that laid down in *The King v. Cook* 3 T.R. 519 namely, that whenever property was occupied for public purposes' it was exempted from poor-rate. In *the Mersey Docks v. Cameron* 11 H.L.C. 443; 35 L.J. 1 it was decided by this House that the exemption to such an extent could not be supported. But, whilst this was decided, it was not said that all the cases which established exemptions on the ground indicated in *The King v. Cook* 3 T.R. 519 were wrong. The passage at pages 464, 465, in the opinion of the majority of the Judges, which I delivered and which has been so often quoted, shows that those who joined in that opinion thought that many of them, such as those deciding that buildings occupied by the Post Office, the Horse Guards, or the Admiralty, were

exempt, were obviously right and that those which decided that buildings occupied for Police and for the Assize Courts were exempt, though not so obviously right, were capable of being supported on a ground that did not touch the case then before the House. I do not think that opinion can be properly cited as an authority that those cases were rightly decided, but certainly their authority was not weakened by anything said in that opinion. The House, in *Mersey Docks v. Cameron* 11 H.L.C. 443 did not decide that those cases to which I have referred were rightly decided; but the language of the Lord Chancellor (Lord Westbury) at page 505, seems to me to add to their authority. He there says, that the 'public purposes' to make an exemption 'must be such as are required and created by the government of the country and are therefore to be deemed part of the use and service of the Crown'; and in *Greig v. University of Edinburgh* L.R. 1 H.L.350 he more clearly shows what was his view by using this language, 'property occupied by servants of the Crown, and (according to the theory of the Constitution) property occupied for the purposes of the administration of the government of the country, became exempt from liability to the poor-rate.' Lord Cranworth in *Mersey Docks v. Cameron* 11 H.L.C. 443 by using the words 'more or less sound,' seems to me to guard against being supposed to decide that those cases which proceeded on this ground were all right in deciding that the purposes were those of the public government, to such an extent as to bring them within the principle of *The King v. Cook* 3 T.R. 519 but he certainly does not at all impeach them. The Scotch cases on the Scotch poor law proceed on a similar ground. It has been pointed out that in the Scottish poor law, half the poor-rate is imposed on the owner in respect of property, and so far the case is more closely analogous to that of the income-tax; but, I think, that whether the rate is exigible in respect of property, or in respect of occupation, the ground of exemption must be the same, viz., as said by the Lord Chancellor (Cairns) in *Greig v. University of Edinburgh* L.R. 1 H.L. 350 the Crown not being named in the English or Scotch Statutes on the subject of assessment, and not being bound by Statute when not expressly named, any property which is in the occupation of the Crown or of persons using it exclusively in or for the service of the Crown is not rateable to the relief of the 'poor' (pages 67--69) I do not say that the Assize Courts, maintained by the county for the administration of the Queen's justice in the Queen's Courts, are

quite so clearly occupied by the servants of the Crown, as those Courts which are maintained by the Woods and Forests out of the general revenue of the country. Nor do I say that the Police Station maintained by the country for the maintenance of the police is quite so clearly occupied by the servants of the Crown as a barrack maintained for soldiers, and paid for out of the general revenues of the country. But I think there is great reason for saying that both are maintained for the purposes of the administration, or those purposes of the Government which are, according to the theory of the Constitution, administered by the Sovereign. If it was a new point whether buildings occupied for the purpose of County Courts and County Police were liable to be rated for the poor-rate, I think there would be considerable force in the argument that the county occupying property in order to fulfil a duty to the Crown which it is required to fulfil at its own expense, is not occupying it for the Government, or in the service of the Government. But as for many years property thus occupied has been uniformly held exempt from the poor-rate, I do not think your Lordships ought now to hold that it is liable to poor-rate (pages 69--70) It seems to me that it is not material whether the assessment Statute imposing any tax, does so, like the Poor-rate Acts, for a local purpose, or like the Statute imposing a duty on post-horses, considered in *The King v. Cook* 3 T.R. 519 or the income-tax, for an imperial purpose. In each there is an implied exemption on the ground of prerogative. And if the property is so held as to bring it within the ground of exemption for the one Statute, it must surely be brought within the ground of exemption for the other (page 71) Lord Watson.-- It was accordingly argued for the appellant that your Lordships are free in this case to consider all questions as to the proper extent and limit of Crown privilege, as if these had now arisen for the first time for decision. The statement in point of fact upon which that argument was rested is not strictly accurate, because as has been pointed out by my noble and learned friend, the Court in *The King v. Cook* 3 T.R. 319 gave effect to the privilege of the Crown not in the case of a local but of a general tax, holding that such privilege extended not only to the Act of Elizabeth, but to every Act imposing a tax upon the subjects of the Crown. But I should have been prepared to hold, apart from the authority of that case, that the appellant's contestation upon this point is untenable. The exemption of the Crown from the incidence of rating Statutes is a general privilege and is nowise dependent upon

the local or imperial character of the rate. It takes effect in all cases when the Crown is not named in the Statute, or I should prefer to say, in all cases where the enactments do not take away the privilege, either in express terms or by plain and necessary implication. There is not, in my opinion, one kind of Crown exemption from the Statute of Elizabeth and another kind of Crown exemption from the Income Tax Acts, (page 76) Lord Bramwell.--The poor-rate is local. Whatever exempts part of the property in a rated locality, adds to the burden on the rest, and there is this additional hardship, that the exempted part may increase the burden itself by adding to the numbers chargeable on the rate. Moreover, the reasoning on which that exemption was founded may be doubtful. But it is the law; the law as confirmed in this House by the reasoning in the Mersey Docks case 11 H.L.C 443; 35 L.J. 1 For, as I have said, there is some hardship in exempting any property from a local rate, there is none in exempting from a general tax a class of property everywhere within the range of the tax. The payers and receivers of the poor-rate are not the same. If the Crown paid income-tax, it would be at once payer and receiver. And indeed in one view the question is unimportant. For if this kind of property pays everywhere, a less rate of income-tax will be necessary and a greater local rate everywhere. Whereas by our decision more income-tax may be required and less local rate. And this is what many people think desirable (pages 7S-80).'

31. It is clear from the above extracts that unless the Crown is included expressly or by necessary implication, Crown property is not liable in England to any rates or taxes. Adverting to Lord Bramwell's adverse criticism of the course of decisions as to Crown exemptions, I may mention that it is stated in Castle's Law of Rating (2nd edition, 1886) at page 121, that, 'within the last few years attempts have been made in Parliament to carry through an Act which will remove the exemption from rateability of Government property'. Lords Kenyon and Blackburn refer to the exemption of the Crown, as an implied exemption by virtue or on the ground of prerogative. It may be inferred from the observation made by Lord Blackburn that framers of English Statutes generally proceed on the principle that unless the Crown be expressly included it will not be bound by the Statute, and whenever it is intended to bind the Crown, it is expressly named, e.g., The Arbitration Act, 1889, Section 23; The Patents, etc., Act, 1883, Section 27; The Bankruptcy Act, 1883,

Section 150; The Interpretation Act, 1889, Section 30; The Stamp Act, 1891, Section 119.

32. The reference by Lords Kenyon and Blackburn to the prerogative of the Crown as the reason for its implied exemption must be understood as referring only to the above rule of interpretation and not to any prerogative of the Crown in its real sense. Similarly the privilege of the Crown to use an invention without compensation to the patentee, notwithstanding the grant of a patent for the exclusive right to the use of the invention and the implied exemption of the Crown from payment of tolls, notwithstanding a grant, by itself, of a right to levy tolls, are referred to as prerogatives of the Crown, though such privilege and exemption are only the result of the rule applicable to the interpretation of Crown-grants, the grant in either case being made in the exercise of one and the same branch of the royal prerogative *Feather v. The Queen* 35 L.J. 200.

33. In the *Mayor, do., of Weymouth v. Nugent* 34 L.J. 81 on which the learned Advocate-General specially relies, Cockburn, C.J., explained as follows the immunity enjoyed by the Crown from payment of tolls: 'It may be said that the doctrine of the immunity enjoyed by the Crown from payment of tolls arose in times when tolls were levied by virtue of a grant from the Crown or under prescription which presumed a prior grant from the Crown, and therefore it might well be assumed that where tolls were granted by the Crown, it was not intended by the Crown that it should itself be barred by the grant; but whether that be the origin of the immunity or not, it has obtained from the earliest times, and it cannot be supposed that the Legislature could have intended to make the Crown liable to the payment of those duties, without making any mention of the Crown at all.' Both on the ground of the exemption of the Crown from payment of tolls and on the ground that the Crown is not bound by an Act of Parliament unless it is expressly named therein, it was held in that case, that the Crown was not bound to pay wharfage duties under 6 Geo. 4 for stones which were brought by a barge into the harbour for the purpose of being used on Government works which were being carried on there. The Chief Justice refers to both these grounds, as being based upon 'two great rules which, from an early period of our history, have obtained as to the royal prerogative.' The decision was arrived at notwithstanding that there

were only certain specified exemptions in the Statute in favour of the Crown, from which it was argued that it was to be inferred that it was intended by the Legislature, that there should be no other exemptions. This argument did not prevail, the Chief Justice holding that such exemptions were inserted 'ex majore cautela' and were intended to meet cases, which, it was thought, would most likely arise.

34. This decision follows the principle laid down in the earlier case of *Westover v. Perkins* 2 E.& E. 57 : 28 L.J. 227 which is also relied upon by the learned Advocate-General and in which Lord Campbell said: 'From time immemorial the Sovereign has been exempt from toll and where tolls are enforced by Statute there is an implied exemption of the Sovereign's property.' In the case of *Smithett v. Blythel B. & Ad.* 509 also cited in support of the petition, the question turned upon 3 Geo. 36 which confirmed a patent formerly granted by the Crown for taking tolls in respect of a light-house. There was a proviso that nothing in the Act should extend to charge the King's ships-of-war with the duties granted by the Act or patent. At the time of the passing of the Statute, the post office' packets in respect of which toll was claimed from the Crown were not ships owned by the Crown. It was held, that the exemption of His Majesty's ships-of-war did not by implication, render post office packets, which some years after the passing of the Act became the property of the Crown, chargeable with toll.

35. These three cases proceed on one and the same principle and they relate to the implied exemption of the Crown from payment of tolls; in each of them it was held that such implication was not negatived by the mere fact that certain exemptions in favour of the Crown were expressly made none of which covered the exemption claimed.

36. It is unnecessary to refer specially to the *Mersey Docks* case 11 H.L.C. 443 which is the leading authority on the implied exemption, from rates and taxes, of Crown property occupied by or on behalf of the Crown for purposes connected with any department of the Government, as that decision has been followed and fully explained in the later decision of the House of Lords in *Coomber v. Justices of Berks* L.R. 9 App. Cas. 61 already referred to and quoted from.

37. The cases of *Perry v. Eames* [1891] 1 Ch. 658 and *Wheaton v. Maple & Co.* [1893] 3 Ch. 48 which are also referred to, are not very much in point. Those cases turned upon Sections 2 and 3 of the Prescription Act (2 & 8 William IV, cap. 71). It was held that the former section in which the Crown is specially named did not apply to an easement of light which is specially and exclusively governed by Section 3, in which the Crown is omitted, notwithstanding that the Crown is expressly mentioned in Sections 1 and 2, and that therefore no easement of light against the Crown can be acquired by prescription under Section 3.

38. I shall now proceed to refer to certain Indian decisions, which have a bearing upon the question under consideration. In *Secretary of State for India v. Bombay Landing & Shipping Co.* 5 Bom. H.C.R. 23 Westropp, C.J., after a full investigation of the various systems of law, including the Hindu and the Muhammadan laws, as to the prerogative priority of Crown-debts, held that a judgment debt due to the Crown was in Bombay entitled to the same precedence in execution as a like judgment debt in England, if there were no special legislative provision affecting that right in the particular case. In answer to the argument that Section 183 of the Indian Companies Act (X of 1866) was such special legislative provision, he held that as the Crown was not either expressly or by implication bound by Section 183, the prerogative of the Crown was not affected. In the soundness of this decision, on both the points I fully concur. In this case the general words of Section 183 would, if literally construed, divest the Crown of one of its prerogatives and it was rightly held that the section cannot be so construed, as it did not appear either in express terms or by implication that it was intended by the Legislature that the section should have such effect.

39. In *Ganpat Putaya v. The Collector of Kanara* I.L.R. 1 Bom. 7 the question raised was whether the Crown has the first claim to the proceeds of a pauper suit, to the extent of the amount of Court fee that would have been payable at the institution of the suit had the plaintiff not been a pauper. It was held that the Crown had such priority by reason of its prerogative and that Section 309 of the Code of Civil Procedure (VIII of 1859) which enables Government to recover the same in the same manner as costs of suit are recoverable, does not divest the Crown of its prerogative. This provision simply enables the Government to recover the debt

due to it on account of Court fees which forms an item of costs in the suit, by mere process of execution, instead of by a separate suit and it cannot, therefore, be construed as taking away by implication the priority which the claim of the Crown has by virtue of its prerogative. West, J., states the canon of construction applicable to such a case as follows: 'It is a universal rule that prerogative and the advantages it affords cannot be taken away except by consent of the Crown embodied in a Statute. This rule of interpretation is well established and applies not only to the Statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules in England. And the rule as applied to the present case is not an unreasonable one.' This decision was approved of and followed by the High Court of Allahabad in *Collector of Moradabad v. Muhamad Daimkhan* I.L.R. 2 All. 196. I may here refer to Section 212 of the Indian Companies Act, 1882, which corresponds to and substantially reproduces Section 183 of the Act of 1866, with a proviso that nothing in that section applies to proceedings by Government and also to Section 411 of the present Code of Civil Procedure (XIV of 1882) which corresponds to Section 309 of Act VIII of 1859 with an additional clause that the amount due to Government shall be a first charge on the subject-matter of the suit. These additions simply give legislative sanction to the above decisions and have been made only 'ex majores cautela'

40. In *Ramachandra v. Pichai Kanni* I.L.R. 7 Mad. 436 the question arose whether arrears of rent due by an Abkari renter--which are not charged upon his land---take precedence of a hypothecation debt due by the renter. It was decided and in my opinion rightly, that it had no priority over a mortgage debt. But with all respect to the learned Judges who decided the case, I see no reason to doubt the decisions of the Bombay and Allahabad High Courts in the above two cases.

41. I shall now turn to a few more Indian decisions which bear on the question of the law of limitation and prescription as affecting the Crown. In *The Secretary of State for India v. Mathurabhai* I.L.R. 14 Bom. 213 the Chief Justice, following the rule of interpretation of Statutes applicable to the Crown, which was laid down in *Ganpat Putaya v. The Collector of Kanara* I.L.R. 1 Bom. 7 already referred to held that Section 26 of the Indian Limitation Act (XV of 1877) in which the Crown was

not mentioned and which section has since been transferred to the Indian Easements Act with an additional special provision prescribing a period of 60 years for acquisition of rights of easements by limitation against the Crown, was not applicable to the Crown and that no right of easement can be acquired against the Crown under that section.

42. In *Arzan v. Rhakal Chunder Roy Chowdhry* I.L.R. 10 Calc. 214 it was assumed that Section 26 which provided a period of only 20 years for acquisition of rights of easement by prescription was applicable as against the Crown. In *Appaya v. The Collector of Vizagapatam* I.L.R. 4 Mad. 155 the question was whether the Crown was bound by the three years period of limitation prescribed for application for execution of decrees, and it was held that it was bound. 'We are of opinion that the Government is not entitled to any exemption from the provisions of the Limitation Act relating to applications. If the maxim on which the Counsel for the Crown relies applies to this country--and the Crown is not bound by the provisions of any Act unless they are expressly declared binding on the Crown--it may be inferred from the circumstance that this Act contains provisions prescribing a limitation to the Government for the institution of suit and presentation of Criminal appeals, that the Legislature contemplated that the Crown should be bound by the provisions of the Act and should enjoy a privilege to the extent expressed and no further--expression facit cessare tacitum' (pages 156--157). The same view was taken by the High Court of Bombay in *Venubhai v. Collector of Nasik* I.L.R. 7 Bom. 552 footnote.

43. In the *Secretary of State v. Virarayan* I.L.R. 9 Mad. 175 the question as to how far the Crown was bound by the earlier laws of limitation prior to Act IIX of 1871, in which the Crown was not at all mentioned, was raised, but not decided (page 185).

44. Adverting to the English maxim of interpretation that the Crown is not bound by a Statute unless expressly named, Mr. Sedgwick, an American author, observes: 'But in this country generally I should doubt whether this construction could be safely assumed as a general rule. The English precedents are based on the old feudal ideas of royal dignity and prerogative; and where the terms of an Act are sweeping and universal, I see no good reason for excluding the Government, if not

specially named, merely because it is Government.' ('Construction of statutory and constitutional laws,' page 27.) Mr. Endlich, another American author, says: 'The test, therefore, in every case in which the question whether or not Government is included in the language of a Statute, has to be met and determined, cannot be a mere general rule either one way or the other, arbitrarily applied, but must be the object of the enactment, the purposes it is to serve, the mischief it is to remedy and the consequences that are to follow-- starting with the fair and natural presumption that primarily the Legislature intended to legislate upon the rights and affairs of individuals only.'

45. Turning now to the policy and course of Indian legislation, which, I may say, for upwards of fifty years has been under the direction and control of some of the most eminent English jurists and parliamentary draftsmen--not to say that some of the more important measures were actually drafted and settled by eminent English Judges before being introduced into the Indian Legislative Council,-- it is noteworthy that as a general rule Government is specially excluded, whenever the Legislature considered that certain provisions of an enactment should not bind the Government; and this feature is specially noticeable in measures of taxation, whether imperial, provincial or local and whether such taxes are levied by Government or by 'local authorities' [X of 1897, 3 (28)] who as a rule have to administer their funds subject to the control of Government. I know of only one instance--possibly there may be a few more, though I doubt it-- in which the Crown is expressly included, i.e., Section 17 of the Inventions and Designs Act, 1888, which is substantially a reproduction of Section 27 of the English Patents, &c., Act, 1883.

46. By way of illustration I may mention the following instances in which Government has been specially exempted:

Indian Contract Act, Section 74.--The exception provides that when any sum is fixed by way of liquidated damages payable to Government, the whole amount shall be recoverable and not merely reasonable compensation to be fixed by the Court.

Specific Relief Act, Section 9.--Government is excepted from the operation of this section under which a summary suit may be brought by a person dispossessed, without his consent, of immoveable property otherwise than in due course of Law. Section 45'-- The Secretary of State for India in Council, the Government of India and the Local Governments are exempted from writs of Mandamus to be issued by the High Court. Section 56 (d)-- exempts the various departments of the Government of India and of the Local Governments from writs of injunction.

Indian Registration Act, Section 90--exempts from the operation of the Act various documents issued by Government.

Indian Easements Act, Section 2 (a) and (b)--exempts certain prerogatives and customary rights of the Crown from the operation of the Easements Act.

The Crown Grants Act, XV of 1896--exempts Crown grants from the operation of the Transfer of Property Act, both retrospectively and prospectively.

The Civil Procedure Code, Sections 295 (proviso), 356 (b) and 411--preserve the precedence of Crown-debts. 616 (a)--exempts from the operation of the chapter relating to appeals to the Queen in Council, the prerogative rights of Her Majesty to receive and admit appeals.

The Indian Companies Act, Section 212 (proviso)--exempts proceedings by Government against Companies in liquidation from being invalidated under the section.

Sea Customs Act, 1878, Section 20 (proviso)--exempts goods belonging to Government from liability to customs duties. There is a corresponding exemption in the Indian Tariff Act.

Indian Ports Act, 1889, Section 1 (4) i--exempts from the operation of the Act vessels belonging to or in the service of Her Majesty or the Government of India.

Indian Stamp Act, 1899, Section 3, proviso (1), is as follows: 'That no duty shall be chargeable in respect of any instrument executed by or on behalf of or in respect of the Government, in cases where but for this exemption the Government would

be liable to pay the duty chargeable in respect of such instrument.' This is a legislative declaration that but for this exemption Government would be liable to pay stamp duty in cases in which according to the rules laid down in Section 29, the liability will devolve upon Government and not upon the other party to the instrument. Such declaration is very significant in that neither in Section 29 nor in any other section is Government expressly or by necessary implication included. There is no similar exemption in favour of Government under the Court Fees Act. Government pays Court fees like other litigants and if successful, recovers the same as costs from the adversary and thus it will be seen that Government is really benefited. There is also another weighty reason against the exemption of Government from paying Court fees, for the result of such exemption would naturally be to increase the burden of Court fees upon the rest of the litigants by raising the scale of fees. Under the various Municipalities Acts Government is specially exempted from payment of certain specified tolls and taxes, but not from others. In the City of Madras Municipality Act (Madras Act I of 1884) itself--Section 154 (a) exempts 'gun-carriages, ordnance carts or wagons, cavalry horses or any vehicle or animal belonging to the Government' from payment of taxes on vehicles or animals; Section 164 (a) exempts gun-carriages, ordnance carts or wagons or other such property of Government from liability to registration and payment of fees therefor; Section 174 exempts Government from payment of tolls under 170, the provisos to Sections 332, 335 and 338 exempts places in the occupation or under the control of Government from the operation of those respective sections and the necessity for obtaining licences on payment of fees.

India Act XI of 1851 has a most important bearing upon the question immediately under consideration. Section 3 provides that, notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may by an order in writing prohibit the levy by a Municipal corporation of any specified tax payable by the Secretary of State for India and Section 5 provides that so long as any order thus made under Section 3 is in force, the Secretary of State shall be liable to pay to the Municipal corporation in lieu of such tax such sums as an officer from time to time appointed in this behalf by the local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable. There is no provision in any of the Municipalities Acts I am

aware of, which expressly subjects the Government to any tax or duty payable under the Act. And if the contention on behalf of the petitioner that it is not liable to pay any tax or duty, unless there be express provision imposing the same on Government, be well-founded, there would have been no object in passing the said enactment and it will have to remain a dead letter. The policy of the Indian Legislature is clearly indicated by the said Act XI of 1881, Viz., that Government should be liable to Municipal rates and duties unless specially exempted by law; but that when there is no such exemption, the Governor-General should be empowered by law to suspend the ordinary procedure for the levy and collection of a tax or duty payable to a Municipal corporation, without depriving the Municipality of the probable amount which Government would reasonably have to pay if the duty or tax was paid and collected according to the ordinary procedure. A similar policy underlies the Government Buildings Act IV of 1899 and the Indian Tolls (Army) Act II of 1901.

47. The learned Advocate-General relying upon the observations of Lord Herschell in *Bank of England v. Vagliano Brothers* [1891] A.C. 107 urges that these and other similar enactments should not be referred to in construing Section 341 of Madras Act I of 1884. This contention is, in my opinion, entirely inadmissible and the authority invoked in no way supports it. In that case the question turned upon the construction of Section 7 (3) of the English Bills of Exchange Act, 1882, and Lord Herschell, in differing from the Court of Appeal as to the construction of the said provision, observed that 'the proper course in the construction of an enactment is in the first instance to examine the language of the Statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view' and that in his opinion, the Bills of Exchange Act was certainly not intended to be a mere Code of the existing law and that it is not open to question that it was intended to alter and did alter it in certain respects and that it should not be presumed that any particular provision was intended to be a statement of the existing law rather than a substituted enactment. He, however, guarded himself by saying that he was, of course, far from asserting that resort may never be had to

the previous state of the law for the purpose of aiding in the construction of the provisions of a Code and that, for example, if a provision be of doubtful import, such resort would be perfectly legitimate, or again, if in an enactment words be found which have previously acquired a technical meaning or been used in a sense other than their ordinary one, the same interpretation might well be put upon them in the new enactment, and that he gave these merely as illustrations, not as exhausting the category.

48. This rule of interpretation was followed in *Robinson v. Canadian Pacific Railway Company* [1892] A.C. 481 in regard to the construction of section in the Civil Code of Lower Canada and recently in an Indian case in *Norendra Nath Sircar v. Kamalbasini Dasi* L.R. 23 IndAp 18 in construing Section 111 of the Indian Succession Act, which section was incorporated in the Hindu Wills Act. In the last-mentioned case it was held that a Statute intended to embody in a Code a particular branch of the law must be construed according to the natural meaning of the language used and not on the presumption that it was intended to leave the existing law unaltered.

49. The principle of interpretation affirmed in these cases in each of which the question turned upon the construction of a section in a statutory Code does not in the least militate against the long established rule of construction that in regard to the construction of any particular Act, recourse may and ought to be had to other Acts of similar scope on similar subjects vide *Colquhoun v. Brooks* L.R. 14 App. Cas. 493 and that Acts which are in *pari materia* 'are to be taken together as forming one system' and though made at different times or even expired and not referring to each other, they shall be taken as 'interpreting and enforcing each other.'

50. Instead of trying to interpret Section 341 of Madras Act I of 1884, 'by roaming over a vast number of authorities in order to discover by a minute and critical examination' what the case law in England is as to the exemption of the Crown from the payment of tolls, poor-rates and other taxes imposed by Statutes--a course deprecated by Lords Herschell and Macnaghten in the cases above referred to,--it will certainly be much safer to interpret the section with reference to

the course of Legislation in India and the Acts already referred to in *pari materia* with Madras Act I of 1884.

51. The conclusions, therefore, I come to are, that-

(i) the canon of interpretation of Statutes that the prerogative or rights of the Crown cannot be taken away except by express words or necessary implication, is as applicable to the Statutes passed by the Indian Legislatures as to Parliamentary and Colonial Statutes; and this is really concluded by the authority of the Privy Council in more appeals than one from the Colonies;

(ii) when in an Indian Act the Crown is not expressly included and the question is whether it is bound by necessary implication the course of Indian Legislation and Acts in *pari materia* with the Act in question will have an important bearing upon the construction of the Act;

(iii) notwithstanding that in several Indian enactments the Crown has been specially exempted, the above rule of interpretation will nevertheless hold good in construing the provisions of an enactment from the operation of which the Crown is not expressly exempted, when a question is raised as to whether such provisions take away a right, or prerogative of the Crown;

(iv) the said rule, based like other cognate rules of construction upon the maxim '*generalia specialibus non derogant*' is not really a prerogative of the Crown, though such rule as well as the rule relating to the construction of Crown-grants are dealt with in treatises under the head of 'prerogatives of the Crown' and also loosely referred to as such in some English decisions;

(v) the English law as to the exemption of the Crown and Crown property from payment of tolls, poor-rates and other taxes, local or imperial, imposed by Statutes rests partly upon historical reasons and principally upon judicial decisions which do not proceed upon a course of reasoning or principle which will be binding on Indian Courts;

(vi) exemption from payment of tolls, rates and taxes is not in reality a prerogative of the Crown, but depends solely upon the right construction to be put upon the

Crown-grant or the Statute in question;

(vii) since the passing of the Indian Councils Act, 1861, not only the Viceregal Council but also the Provincial Councils can, without obtaining the previous sanction of the Crown, make laws affecting the prerogatives of the Crown, when such prerogatives have no relation to any of the matters specially exempted from their respective legislative jurisdictions;

(viii) even if the imposition of a duty or tax upon Crown property be regarded as affecting the prerogative of the Crown, it is competent for the Provincial Legislatures to impose such duty or tax, which will be payable out of the current public revenue, measures affecting which or imposing charges whereon, are specially contemplated by Section 38 of the Indian Councils Act, as being within the competence even of Provincial Legislatures;

(ix) according to the uniform course of Indian legislation, Statutes imposing duties or taxes bind Government as much as its subjects, unless the very nature of the duty or tax is such as to be inapplicable to Government, and whenever it is the intention of the Legislature to exempt Government from any duty or tax which in its nature is not inapplicable to Government, the Government is specially exempted, and this is specially so in regard to taxes imposed by the Legislature for the benefit of local authorities, and in particular, Municipalities;

(x) timber brought into the city of Madras, by or on behalf of Government, is liable to the duty prescribed by Section 341 of Act (Madras) I of 1884.

52. The revision petition therefore fails and ought to be dismissed.