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Court : Kolkata

Decided On : Mar-26-1877

Reported in : (1878)ILR3Cal64

Judge : Richard Garth, C.J., ;Kemp, ;Jackson, ;Macpherson, ;Markby, ;Pontifex and ;Ainslie, JJ.

Appellant : The Empress;In Re: Burah and Book Singh

Respondent : Burah and Book Singh;

Judgement :

Markby, J.

1. Two persons, Burah and Book Singh, have been convicted on a charge of murder by the Deputy Commissioner of the Cossyah and Jynteeah Hills and sentenced to death. The sentence was commuted to transportation for life by the Chief Commissioner of Assam on the 23rd April 1876.

2. On the 9th July, 1870 the officer, in charge of the Kamrup jail forwarded to this Court petitions of appeal from these prisoners, unaccompanied by copies of the judgment.

3. The first question which arises in the case is, whether the High Court has any power to entertain these applications; and this question is one of so much

importance that it has been referred to a Full Bench, and has been on two occasions very fully argued.

4. The Cossyah and Jynteeah Kills comprise a considerable tract of country on the eastern frontier of Bengal, and they contain a population which, in 1862, was estimated at 120,000. The Jynteeah Hills were formerly under the independent Rajah of Jynteeah. The Cossyah Hills were divided into a number of smaller districts under different rulers. Of the twenty-five Cossyah states, five used commonly to be called 'semi-independent,' and the remaining twenty 'dependent.' It is not very clear how this division was arrived at, and it probably has never been accurately ascertained what part of the Cossyah Hills is, and what is not, British territory. But by far the greater portion has long been subject to our Government, and is therefore (21 & 22 Vict., c. 106, Section 1) included in British India.

5. Prior to 1854, there was a Political Agent of the Cossyah Hills, who exercised the usual powers of a Political Agent with regard to so much of the territory as was under chiefs who wore treated as independent; but he also held general powers for the administration of justice in those portions of the territory which had ceased to be independent. Probably, in practice, the difference was of no very great importance, the chiefs being all too insignificant to assert any independent authority. This officer was in command of the Sylhet Light Infantry, and he acted also as the Political Agent in respect of Jynteeah, which, up to tins period of the Burmese War in 1824, was independent. During that war the Jynteeah territory was taken, under the protection of the British, and the Rajah acknowledged his allegiance. In 1835 the reigning Rajah was deposed for an act of cruelty and his territory was annexed. From the date of this annexation the Political Agent of the Cossyah Hills seems to have exercised the same functions with regard to Jynteeah, as he had hitherto exercised in respect of the annexed portions of the Cossyah Hills. But he still continued to boar the somewhat inappropriate designation of Political Agent of the Cossyah Hills.

6. In the year 1835, an Act was passed (Act VI of 1835), by which the functionaries in political charge of the 'Cossyah Hills' were placed under the control and superintendence, in criminal matters, of the Court of Nizamut Adawlut. From the

records of this Court it appears that, on the 16th June, 1835, the Court informed the Government of Bengal that the Political Agent of the Cossyah Hills had submitted returns of criminal business for Jynteeah also. The Government replied that the Jynteeah territory was taken possession of on the 15th of March, whilst the Act was passed on the 13th, and that if the Court thought that this did not constitute any objection to their doing so, the Government saw no objection to the Court exercising jurisdiction in Jynteeah, which was accordingly authorized. The Court replied accepting the jurisdiction in Jynteeah from the date of the Act. The arrangement of the duties of the Political Agent of the Cossyah Hills remained as above stated until 1854, when an order was issued by the Governor of Bengal (1st March, 1854) to the Commissioner of Assam, communicating his determination to separate the civil functions of the Political Agent in the Cossyah Hills from the command of the Sylhet Light Infantry, and to vest the former in an Assistant Commissioner, subordinate to the Commissioner of Assam, 'precisely on the same footing as the other principal assistants in the Province of Assam.' The order also intimates that the officer to be appointed would be called 'Principal Assistant in charge of the Cossyah and Jynteeah Hills.' 'From that time the Cossyah and Jyntoeah Hills, though never formally annexed to the district of Assam, seem to have boon treated as part of Assam. All the criminal appeals which in Regulation Provinces would go to the Sessions Judge, wont to the Deputy Commissioner of Assam, and were apparently disposed of by him in the same manner as any other criminal appeals in Assam.

7. In the year 1861, the jurisdiction which had been exercised by the Nizamut Adawlut was transferred to the High Court upon its creation by Her Majesty's Letters Patent. The Code of Criminal Procedure was extended to Assam by a notification of the Lieutenant-Governor of Bengal published in the Gazette of 16th November, 1862, and though never expressly extended (as far as I have discovered) to the Cossyah and Jynteeah Hills, it was considered to be in force in that district without any further notification; and this it would be, if the view that this district was made a part of Assam were correct.

8. In the year 1866, the Assistant Commissioner convicted a prisoner, named II Don Dolloi, of an offence under Section 504 of the Indian Penal Code, and bound

him over to keep the peace for one year after his release. On appeal to the Deputy Commissioner of the Cossyah and Jynteeah Hills, that officer confirmed the order; but this Court, upon a petition presented by the accused, altered the period for which the party was bound over.

9. In the year 1869, the Deputy Commissioner of the Cossyah and Jynteeah Hills referred a sentence of death for confirmation by this Court under Section 380 of the Code of Criminal Procedure. The sentence was confirmed, and the prisoner was hanged.

10. Under these circumstances, there can be no doubt that this Court had at one time jurisdiction in the Cossyah and Jynteeah Hills. The only question therefore is, whether this jurisdiction has been taken away, and this renders it necessary to consider the recent legislation with regard to these districts.

11. By Section 4 of Act XXII of 1869 (which is called the 'Garo Hills Act') the Garo Hills are removed 'from the jurisdiction of the Courts of civil and criminal judicature, and from the control of the offices of revenue constituted by the Regulations of the Bengal Code, and the Acts passed by the Legislature now or heretofore established in British India, as well as from the law prescribed for the said Courts arid offices by the Regulations and Acts aforesaid;' and it is provided that 'no Act hereafter passed by the Council of the Governor-General for making haws and Regulations shall be deemed to extend to any part of the said territory unless the same be specially named therein.' By Section 5 the administration of civil, and criminal justice and the superintendence of the settlement and realization of the public revenue and of all matters relating to rent within the said territory, are vested in such officers as the said Lieutenant-Governor may, for the purpose of tribunals of first instance, or of reference and appeal, from time to time appoint;' and the officers so appointed are, in the administration of justice, to 'be subject to the direction and control of the said Lieutenant-Governor, and be guided by such instructions as he may from times to time issue.'

12. By Section 9 the Lieutenant-Governor is empowered to extend all or any of the provisions of this Act to the Cossyah and Jynteeah Hills.

13. By a notification in the Calcutta Gazette of 14th October, 1871, the Lieutenant-Governor did extend the provisions of this Act to the Cossyah and Jynteeah Hills; and he also directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district. On the 30th July, 1872, rules were issued by the Lieutenant-Governor, under Sections 5 and 9 of Act XXII of 1869, for the administration of justice and police in the Cossyah and Jynteeah Hills, in which no allusion is made to the High Court.

14. Shortly after this, another power, which had been conferred by Parliament upon the Governor-General in Council, was called into action with reference to these districts. By proclamation of the 6th February, 1874 (see Gazette of India of 7th February), in exercise of the powers conferred by Section 3 of Statute 17 and 18 Vict., c. 77, the Governor-General in Council took some districts (now forming 'Assam' and including the Cossyah and Jynteeah Hills) under his immediate authority and management, which districts were till then under the Lieutenant-Governor of Bengal, On the same day, by another proclamation, the Governor-General in Council constituted Assam a Chief Commissionership.

15. By Act VIII of 1874, after a recital that the Cossyah and Jynteeah Hills had been taken under the direct management of the Governor-General in Council, and had been made part of the Chief Commissionership of Assam, all the powers then vested in the Lieutenant-Governor of Bengal were (Section 1) transferred to the Governor-General in Council, and the Govern or-General in Council was empowered (Section 2) to delegate to the Chief Commissioner all or any of the said powers, or to withdraw the said powers.

16. By Act XIV of 1874, in which the Cossyah and Jynteeah Hills are specially named, Act XXII of 1869 is repealed, and the Local Government is empowered (Section 6) to appoint officers to administer criminal and civil justice and to regulate the procedure of officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any of the said districts. And it is also declared (Section 7) that all rules theretofore proscribed for the guidance of officers 'for all or any of the purposes mentioned in Section 6 and in force at the time of the passing of tin's Act shall continue to be in force unless and

until otherwise directed.' This Act, however, has not yet come into force in those hills, because as yet no notification under Section 3 has been published.

17. By notification of the 16th April, 1874 see Gazette of India, April 18th, the Governor-General in Council, under Section 5 of Act XXII of 1869, made certain alterations in the rules for the Cossyah and Jynteeah Hills published under the notification of July 30th, 1872, by the Lieutenant-Governor of Bengal, and republished the rules. In those rules no mention is made of the High Court.

18. It thus appears that the jurisdiction of the High Court was certainly in existence until the passing of Act XXII of 1869. The question then is, has this jurisdiction ceased by reason of that Act, or by reason of anything done by any person under that Act? For the prisoners it is contended (1) that the jurisdiction of the High Court as established by Parliament cannot be wholly abolished by any authority in this country whatsoever; (2) that if there be any authority which can abolish the jurisdiction of the High Court, it is only the Governor-General in Council exercising legislative powers at a meeting for the purpose of making laws and regulations who can do this; and that in this case the assumed abolition was not 'by this authority, but by the Lieutenant-Governor of Bengal acting under the powers given to him by Act XXII of 1869, which powers, it is contended, were not validly conferred.

19. With regard to the first question, the jurisdiction of this Court in the Cossyah and Jynteeah Hills was a jurisdiction vested in the Nizamut Adawlut at the time of its abolition, and it thus falls within the 2nd clause of Section 9 of the 21 & 25 Vict. c. 104. It is therefore, in my opinion, expressly made subject by that clause to the legislative powers of the Governor-General of India in Council, or (to use a phrase which is more convenient) to the Legislative Council of India.

20. I have given fully my reasons for this construction of the High Courts' Act in In the matter of the Petition of Syed Feda Hossein I.L.R. 1 Cale. 431, to which reasons I still adhere, and in which I understand the other members of the Full Bench substantially concur.

21. It is necessary, therefore, to consider the second objection taken on behalf of the prisoner. This objection is met by the Crown in three different ways: First it is said, that the Act of 1869 does itself actually take away the jurisdiction of this Court. Secondly, that even if it does not do so, it evinces a final determination of the legislative authority that this jurisdiction shall be taken away, and that it only leaves it to the Lieutenant-Governor to fix the exact date of the Act coming into operation; no discretion being vested in him as to whether the Act shall come into operation or not. Thirdly, that even if the Lieutenant-Governor be vested with a discretion to determine whether or no the jurisdiction of this Court shall be taken away, still there is nothing which renders such a delegation of authority illegal.

22. The first and second of the three propositions put forward on the part of the Crown depend upon what is the true construction of Act XXIJ of 1869. The Act is a very peculiar one. It recites that it is expedient to remove the Garo Hills from the jurisdiction of the Civil, Criminal, and He venue Courts and offices established under the general Regulations and Acts, and to provide for the administration of justice and the collection of revenue in the said territory.' The Act is to lie called. The Garo Hills Act, 1869,' and it is to come into operation 'on such day as the Lieutenant-Governor of Bengal shall by notification in the Calcutta Gazette direct.' Then by Section 3, 'on and after such day,' that is to say, when the Act comes into operation in the Garo Hills, Act VI of 1835, so far as it relates to the Cossyali Hills, is to be repealed. Then Sections 4 to 8 deal exclusively with the Garo Hills, and Section 9 gives the power already adverted, to, to extend all or any of the provisions of the Act to the Jynteeah Hills, the Naga Hills, and to such portion of the Cossyah Hills as for the time being forms part of British India. It is contended that Section 3, which relates to the repeal of Act VI of 1835, came into operation, so far as regards the Cossyah Hills, when the Lieutenant-Governor brought the Act into operation in the Garo Hills; that there was no discretion left as to bringing the Act into operation in the Garo Hills, and that by the repeal of Act VI of 1835 the jurisdiction of this Court, as created by that Act, was destroyed. Assuming, for the present, the correctness of the other parts of this argument, still, in my opinion, the last proposition is incorrect. When Act XXII of 1869 was passed, the jurisdiction of this Court in the Cossyah Hills in no wise depended upon Act VI of 1835. It depended upon the 24 & 25 Viet., c. 104, Section 9. Act VI of 1835, in so far as it

conferred jurisdiction upon this Court, was wholly obsolete. Moreover, as already shown, the jurisdiction of the Nizamut Adawlut was, after some discussion, extended to both the Cossyah and Jynteeah Hills, and the jurisdiction of the High Court, which is co-extensive, has been exercised in both tracts accordingly. But Section 3 of Act XXII of 1869 is expressly confined to the Cossyah Hills. The result, therefore, of this construction of Act XXII of 1869 would be that, whilst it takes away our jurisdiction in the Cossyah Hills, it leaves it in the Jynteeah Hills. This is very improbable. Ever since the year 1835 both these tracts have been under one administration forming the district of one Deputy Commissioner. The reason why the Legislature was desirous to get rid of the Act of 1835 at all events is not perhaps at first sight quite obvious. But it was, I believe, as follows: As to that large portion of the Cossyah Hills which lies within British territory, the Act was, as I have said before, obsolete. As to any small portion of the Cossyah Hills, if there should be any, which might be considered as not within British territory, the Act, though in terms applicable thereto, could not be enforced. It was, therefore, an Act which it was proper to repeal so far as the Cossyah Hills wore concerned, whether our jurisdiction remained or not. I am, therefore, clearly of opinion, notwithstanding the reference to the Cossyah Hills in Section 3 and the repeal of Act VI of 1835, that the Act of 1869 does not itself take away the jurisdiction of the High Court either in the Cossyah or in the Jynteeah Hills.

23. Nor do I think that the Act, taken as a whole, evinces a final determination on the part of the Legislature that the jurisdiction of the High Court shall be taken away. I will assume that if it did so, there would be then nothing to prevent the operation of the Act. I will assume that the operation of an Act complete in all its parts, may be suspended by the Legislature until something is done by an officer of Government. This might be considered merely as a method of promulgation, and not as any delegation of authority at all. It would be the same as if the Act had been directed to come into operation on its being printed at length in the Calcutta Gazette, If, therefore, this be the true construction of the Act, I am not prepared, as at present advised, to say that it could not operate. As regards the Garo Hills, the Act (always excepting Section 8, which presents special difficulties of its own which I need net now consider) may, I think, bear this construction. But as regards the Cossyah and Jynteeah Hills, the Act cannot, I think, be so construed. The

frame of the Act as to the Garo Hills and as to the Cossyah and Jynteeah Hills is entirely different. If the Legislature had the same final intentions as to removing the Cossyali and Jynteeah Hills from the jurisdiction of the ordinary Courts as it may, I think, notwithstanding Section 2, be considered to have had in respect of the Garo Hills, the preamble of the Act would not have been limited to declaring the expediency of removing the Garo Hills only from the jurisdiction of those Courts. It would have declared the expediency of removing the Cossyah and Jynteeah Hills also. It is true that the preamble of an Act cannot limit the express words. But hero the express words arc in accordance with the preamble. The power to bring the Act into operation generally is conferred by Section 2. The power to extend the Act to the Cossyah and Jynteeah Hills is given quite separately and in different language by Section 9; and it is not a power to extend the Act simply, but to extend 'all or any' of the provisions of the Act. The Lieutenant-Governor might, for example, have applied Sections 6 and 7 to the Cossyah and Jynteeah Hills, but not Section 4, in which case our jurisdiction would have remained as before. It cannot, I think, be said that a power of extension so conferred makes the Lieutenant-Governor the mere ministerial officer who is to promulgate the Act. It vests in the Lieutenant-Governor a double discretion; first, whether the Act shall come into operation in the Gossyah and Jynteeah Hills at all; and secondly, if so, what portion of it shall there operate. I do not mean to say that this is all the discretion vested by the Act in the Lieutenant-Governor. He may by Section 8 apply or not apply to these territories all or any portion of any law applicable to other parts of Bengal. But this portion of the Act is not now immediately before us. I am at present only considering Section 9, and what discretion that section leaves to the Lieutenant-Governor as to the application to the Cossyah and Jynteeah Hills of Section 4. Reading Section 9 by itself, the discretion appears to me to be absolute. Reading the whole Act, I can find no words which can carry any further inference than this--that the Legislative Council, when it determined it to be expedient to remove the Garo Hills from the jurisdiction of the ordinary Courts, at the same time contemplated the possibility of its being expedient to re-move the Cossyah and Jynteeah Hills from this jurisdiction also. But this they left an entirely open question to be decided by the Lieutenant-Governor of Bengal.

24. It is not of course in any way necessary now to establish that there is no legislative discretion left to the Lieutenant-Governor as to the application of this Act to the Garo Hills. But it is, I think, desirable to show that the discretion (if any) under Section 2, and the discretion under Section 9, are wholly different both in kind and degree. For this purpose we may consider the matter in this way. It is just possible to conceive that the Lieutenant-Governor of Bengal might not choose to issue the notification under Section 2, and that the Governor-General in Council might not choose to compel him to do so. The Legislature would then have boon helpless; the Act would never have come into operation at all; it would have wholly miscarried; and the intention of the Legislature would have boon defeated. But would the intention of the Legislature have been defeated if the Lieutenant-Governor had given the notification under Section 2, and had not extended Section 4 of the Act to the Cossyah and Jynteeah Hills'? I think not. In the one case the Legislature counted on the action of the Lieutenant-Governor as a certainty; in the other case, they left him to act or not as he pleased. Then again, the moment the Act came into operation by the issuing of the notification under Section 2, the jurisdiction of the ordinary Courts in the Garo Hills was destroyed by the imperative words of Section 4. But even when the Act had been thus brought into operation there is still not a single imperative word applicable to the Cossyah and Jynteeah Hills at all. Even then it is only said that the Lieutenant-Governor 'may from time to time extend' to certain districts 'all or any of the provisions of the Act.' What ground is there for saying that the intention of the Legislature would have been defeated if the Lieutenant-Governor had declined to exercise any portion of those powers

25. Another way of looking at Section 9 was suggested in the course of the argument. It was said that Section 9 might be looked at merely as dealing with a question be of undaries; that all the districts mentioned in the Act, the Garo Hills, the Cossyah and Jynteeah Hills, and the Naga Hills were conterminous, and that in such wild and barbarous districts as these it would be impossible for the legislature to fix the exact limits of the application of the Act. I think this suggestion does not accord with either the geographical or the historical facts. Although the Garo Hills and the Cossyah and Jynteeah Hills and the Naga Hills are contiguous, they are three entirely separate districts. The Garo Hills belong to the

Commissionership of Cooch Behar, the Cossyah and Jynteeah Hills and the Naga Hills to the Commissionership of Assam. The boundary between the Garo Hills, the Cossyah and Jynteeah Hills, and the Naga Hills is generally well defined. In point of size the three districts are lout equal, the Cossyah and Jynteeah Hills being rather the largest. The policy of the Government has always been to keep the Garo Hills out of the proisdiction of the regular Courts, and these Courts have never established their jurisdiction in that district. On the other hand, the policy as to the Cossyah and Jynteeah Hills was to bring them under the ordinary jurisdiction of the Courts; and this jurisdiction was fully established and in action without inconvenience from 1835 up to. The Garos are said to be wild and barbarous tribes, whom the Government in 1869 were still endeavouring to reclaim to the habits of civilized life. No such assertion, as far as I am aware, could be made with regard to the inhabitants of the Cossyah and Jynteeah Hills. The district is a peaceable one; the inhabitants of it carry on peaceful pursuits. There are within it two considerable European stations, one of which is the seat of the Local Government of Assam. There are also many Europeans living in the Cossyah and Jynteeah Hills, most of them in the service of Government, hut some are settlers. The determination, therefore, to exclude the ordinary Courts of law from the Garo Hills would depend upon considerations having no application whatever, or at least only a very modified application, to the Cossyah and Jynteeah Hills. Moreover, there was a special cause which led to the legislation of 1869 as regards the Garo Hills. There had been a decision of this Court, which in effect decided that the Government had been wrong in treating certain portions of the Garo Hills as not within the jurisdiction of the ordinary Courts of justice. It was to counteract the result of this decision that the Act of 1869 was passed. It was in fact an Act passed to legalize the status quo. But the same Act, when introduced into the Cossyah and Jynteeah Hills, instead of continuing a state of things already in existence, entirely revolutionized the long established administration of the district. It threw back people who had been living for thirty-five years under a regular and settled administration according to established laws into a condition which every one would acknowledge to be only suitable to a people just emerging from barbarism,--that is to say, a condition in which all the powers of Government were centred in the hands of a single individual. This may have been necessary. I do not presume

to say that it was not so. But there is nothing in the frame of the Act of 1869, or the circumstances of the case, which would lead me to suppose that simply because this was done in the Garo Hills it was necessarily intended to be done in the Cossyah and Jynteeah Hills also.

26. I think, therefore, that the Legislature did not decide by Act XXII of 1869 that in the Cossyah and Jynteeah Hills the jurisdiction of the ordinary Courts should be excluded; that it did not express any opinion whatsoever upon that question, but that it left the decision of it to the absolute and uncontrolled discretion of the Lieutenant-Governor.

27. This being the view that I take of Act XXII of 1869, it becomes necessary to consider whether it falls within the legislative powers of the Governor-General f India in Council to delegate to the Lieutenant-Governor of Bengal the power of determining whether or no a particular district of British India shall remain subject to the jurisdiction of the High Court.

28. Now in order to ascertain this we must go back to that which is the root of the whole matter, the 24 and 25 Vict., c. 104, Section 9, which (as we are all agreed) alone makes the High Court subject to any legislative control in this country; and the question comes to this. When Parliament made the High Court subject to this legislative control, did it thereby intend to enable the Indian Legislative Council to transfer that control to another person, or did Parliament intend that that control should be exorcised by the Legislative Council of India itself

29. The argument that such a transfer of authority may take place, has been put by at least one of the learned Counsel who argued this case for the Crown on very high grounds. It is said that the legislative powers of the Governor-General of India in Council mentioned in Section 9 of the 24 & 25 Vict. c. 104, are these legislative powers which are conferred by the Councils Act (24 Section 25 Vict., c. 67); that except as regards the seven heads specifically mentioned in Section 22 of the latter Act, the Indian Legislature has a power co-equal with that of Parliament; that there is no restriction as to the mode of legislation; that the power of the Indian Legislature to delegate its authority is no more to be questioned than the power of Parliament to do the same and that every possible and imaginable power of

Parliament not specially excepted in the Councils. Act is conferred. Stress was also laid on Section 45 of 3 and 4 of Will. IV, Section 85, which provides that laws made by the Indian Legislature shall have the same force as an Act of Parliament.

30. This question although not, as I shall hereafter show, devoid of authority, has never been discusser at length, as far as I am aware, by any Knglish Judges. The task of laying down the principles upon which such a high and important question is to be determined is an extremely difficult one, and I approach it with the greatest diffidence. But it is, nevertheless, one which in the present case I am bound to attempt.

31. Before proceeding to consider the general question, I will consider an argument which was addressed to us, in order to show that the Courts of law have no jurisdiction to enter upon a consideration of this question at all. It was said that, if there be any limits to the legislative powers of the Governor-General in Council, they are political limits, and not legal onus, and that the question I am about to consider is a political one upon which Courts of law are not empowered to enter. All doubt upon this part of the case may, I think, be cleared up by a consideration of the difference between a sovereign or supreme and a subordinate or restricted Legislature. No one would contend that the Indian Legislature is itself sovereign. It exercises sovereign powers, but by delegation only, and is subordinate to Parliament. This is made clear by the 3 and 4 Will. IV, c. 85, Section 51, which is applicable to the present Legislative Council (see 24 and 25 Vict., c. 67, Section 2), and which reserves to Parliament the full power still to legislate for India, and to 'control, supervise, and prevent all proceedings and Acts whatsoever of the Governor-General in Council.' And it is well known that Parliament does exorcise a control as regards the affairs of India which it does not exercise in any other dependency of the British Crown. The Indian budget is annually laid before Parliament. Indian questions are frequently there debated on; and inquiries are constantly being there made by committees and otherwise into the conduct of affairs by the Government of this country. Now, the reasons why Courts of law cannot examine the validity of Acts passed by a sovereign or supreme Legislature have no application whatsoever to the Acts of a subordinate or restricted Legislature. Of course, within its competency, the Acts of a subordinate or

restricted Legislature tire, to use the expression of Chancellor Kent, 'as absolute and uncontrollable as laws flowing from the sovereign power,' (Kent's Com., 448; Vol. I, 11th ed., p. 485) and I may remark in passing that this explains how it is that the Acts of the Indian Legislature, if duly authorised, come to be equivalent to Acts of Parliament. But the question whether the Act is or is not within the competency of the Legislature must, as the same learned author points out, of necessity fall within the province of Courts of law to determine. The same principle was laid down by the Supreme Court of the United States in a case quoted by Chancellor Kent at page 453 (Kent's Com., Vol. I, 11th ed., p. 490). There the Chief Justice points out that the powers of the Legislature are in America (as they are in India) defined and limited by a written constitution, 'but,' he proceeds to say, to what purpose is that limitation, if those limits may at any time be passed? The distinction between a Government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if Acts prohibited and Acts allowed are of equal obligation.... The theory of every Government with a written constitution forming the fundamental and paramount law of the nation must be that an Act of the Legislature repugnant to the constitution is void. If void, it cannot bind the Courts, and oblige them to give it effect; for this would be to over row in fact what was established in theory, and to make that operative in law which was not law If the constitution be superior to an Act of the Legislature, the Courts must decide between these conflicting rules; and how can they close their yes on the constitution and see only the law.' In order properly to understand these observations and to apply them to the present ease, it must be borne in mind that the words 'constitution' and constitutional as here used do not mean precisely the same thing as with us, and the distinction is most important, as upon its due observance depend the exact limits of the competency of Courts of law to enquire into the validity of the Act of a subordinate Legislature. The Parliament of Ingland, although absolutely sovereign and supreme, is restricted by limits which arc called constitutional, and we speak of certain principles of the Lnglish constitution as being inviolable. But Parliament being in the eye of the law absolute, can do that which a subordinate Legislature cannot do. It can, in the eye of the law, by its own ordinary proceedings, alter the constitution. The proceedings, therefore, of Parliament can never be questioned

upon constitutional grounds by Courts of law. The constitutional restriction has, ex been already cut away by paramount authority before the question arises. But not so where there is a written constitution issuing from an authority superior to that of the Legislature whose functions it defines. There the constitutional restrictions always operate until the superior authority has removed them, and the Courts of law are bound to give effect to them. Moreover which is most important, as showing that the question to be decided is, in the strict sense of the word, a legal and not a political one--the restrictions here, as in America, exist in a written form, so that the only question the Court has to determine is the ordinary one--what was the intention of the sovereign, power when it created the subordinate Legislature? T desire it to be fully and clearly understood that I treat this as an ordinary question of construction of an Act or Acts of Parliament, and I do not intend to enter into any political considerations whatsoever.

32. I also desire to say that I in no way countenance fcho doctrine which has been put forward by some eminent authorities, but which I believe to be now exploded, that Courts of law can question the validity of Acts of the legislature upon general considerations of religion, morality, natural justice, the so-called social contract, or other similar grounds. I have repudiated this doctrine already in the case of the Queen v. Ameer Khan 6 B.L.K. 482 and I do so again. Where an Act has once been passed by a Legislature which is supreme, I consider it to be absolutely binding upon Courts of law. Where it is passed by a legislature the powers of which are limited, it is not the less binding, provided it be not in excess of the powers conferred upon the limited Legislature. I may seem to some persons to be here repeating more truisms, but I know by experience how much one is liable to be misunderstood when speaking upon such subjects as these.

33. Being, therefore, of opinion that it is not only within our power, but that it is our duty to say whether the authority given to the Lieutenant-Governor to take away the jurisdiction of this Court was validly conferred, I proceed to consider the general and important question, whether the Councils' Act enables the Legislative Council of India to transfer to others the powers which Parliament has conferred upon itself.

34. Now, what is the broad principle generally applicable to all cases where an authority is given to one person to do acts on behalf of another, which authority involves personal trust and confidence in the agent, and is to be exercised by him in a particular manner? It will, I think, be admitted that the agent; is bound himself to perform the acts for which he is authorised according to the manner indicated; and that he cannot transfer to others the confidence reposed in himself. No doubt, this principle has been generally laid down with reference to dealings between private individuals, but it appears to me to be equally applicable to the case of public functionaries. Parliament has said that the Governor-General of India, other with certain other specified persons whose qualifications are mentioned, may make, at meetings duly constituted, laws for the people of India. To that extent it has delegated its own sovereign authority to the Indian Legislature. But, undoubtedly, this delegation of authority was made in view of the special qualifications of the persons in whom this power is reposed, and of the safeguards which arise from the publicity and deliberation, of the proceedings of a legislative body which can only transact business at meetings duly convened and constituted. Did. Parliament intend the be itself the sole judge of what persons wore thus qualified, and what safeguards were necessary for that purpose; or did it intend to leave to the Legislature here the power to substitute any persons whom they might consider sufficiently well qualified and any safeguards which they might consider sufficiently effectual? That is the question we have to decide.

35. The only ground upon which, as it appears to me, it can be maintained that the Indian Legislative Council may transfer to others the powers entrusted to itself is the broad and general ground upon which it was placed by the learned Standing Counsel Mr. Kennedy, who argued with great force and ability that the power to do this is involved in the power to make laws. It was pointed out that there is a difference hot been a general power to make laws and a particular power, for example, to grant a lease or to execute a deed. If I give a man a power to execute a deed, and he transfers that power to some one else, he has done something clearly not authorized by the power which was restricted to the single act of executing a deed. But where Parliament has conferred upon a Legislature the general power to make laws, the only question can be, is the disputed Act a law? If it is, then it is valid, unless it falls within some prohibition. T think that this

argument is sound, and that it must be mot if the validity of Act XXII of 1869 is denied.

36. Now, first, as to this Act being a law, I am clearly of opinion that it is not a law in the proper sense of the word. I am at present only speaking of the Act so far as the Cossyah and Jyntooah Hills are concerned. As to those hills, in the view that I take of it, tins Act commands no one to do or to forbear from doing anything. It is simply a signification that a particular person may in those hills either do or not do certain things as he likes. That it is not a law in the ordinary acceptance of the word. I will not take the definition of law' as given by so accurate and precise a writer as Austin, since it may perhaps be objected that his views cannot be applied to British Acts of Parliament. But no one will make this objection as regards Blackstone, and how do we find that Blackstone defines a law? He says, a law 'is that rule of action which is proscribed by some superior and which the inferior is bound to obey' (Vol. I.P. 38). Tried by this test Act XXII of 1869 is not a law. I need not here advert to the distinction between substantive and adjective law, the ultimate object of both being the same; nor do I say that amongst the multitudinous varieties of moaning which have been attributed to the term 'law,' a mere permission to legislate could never be called a law. Any authoritative expression of intention might, by some persons under some circumstances, be called a law. But when a Legislative Council was constituted in India distinct from the Executive Council with power to make laws at meetings hold for the purpose, I think it was clearly intended to restrict the Legislative Council to the exercise of functions which are properly legislative,--that is, to the making of laws which (to use Blackstone's expression) are rules of action prescribed by a superior to an inferior, or of laws made in furtherance of those rules. The English Parliament is not so restricted. It is not only a legislative but a paramount sovereign body, and marry of its Acts are not laws according to Black stones definition, though as being authoritative expressions of intention they might be sometimes so called. The Indian Legislative Council cannot, in my opinion, do all that Parliament can do, even where there is no express prohibition. The powers concentrated in Parliament are in India divided between the Executive and the Legislative Councils. The Executive Council alone has the' superintendence, direction, and control of the whole civil and military government of the territories and revenue of

India (3 & 4 Will. IV, c. 85, Section 39). The Legislative Council has the power of making laws only. In England also no doubt, as in India, the executive functions of Government are generally exercised by a body distinct from Parliament, by what (in a special sense) is called 'the Government' but there is no legal impediment to Parliament taking upon itself executive functions, and the executive authorities are all responsible to Parliament for the way in which they exercise their executive powers. Indeed, to some extent, Parliament does exercise purely executive functions, as, for example, when it fixes the amount of the naval and military forces, or appropriates the public revenues. The difference in India is this. That the Executive Council and the Legislative Council are two co-ordinate and independent bodies, each having its own separate functions with which the other cannot legally interfere. For these reasons, I think that the Legislative Council, when it merely grants permission to another person to legislate, doss not make a law within the meaning of the Act from which it derives its authority.

37. I have discussed this question with reference only to the word 'laws.' The Act of Parliament uses the expression 'laws and regulations.' No reliance was placed in the argument on the use of the additional word, and I think myself that it is merely redundant.

38. But I quite admit that, in order fully to appreciate the powers of the Indian Legislature, we must not fasten our attention solely upon the meaning of a single word. We must look to the whole Act, and gather from it what were the intentions of Parliament in this respect. Indeed, we must look further. In order properly to understand the frame and intention of the Councils' Act we must consider the whole action of Parliament with regard to legislation in India from the year 1833 down to the present time. In the year 1833, by the 3rd & 4th Will. IV, c. 85, Section 43, the Governor-General in Council was empowered to make laws and regulations. Under this Act there was hut one authority in India, 'the Governor-General of India in Council.' There was not as now a separate Council for making laws and regulations. But by Section 48 all laws and regulations were to he made at some meeting of the Council at which the Governor-General and at least three of the ordinary members of Council were assembled; and at which alone the legal member of Council (as he was called) was entitled to vote. By Section 70, the

Governor-General in Council was expressly permitted to authorize the Governor-General alone to exercise all the powers which might he exercised by the Governor-General in Council, except the power of making laws and regulations.

39. From this time nothing occurred, as far as I am aware, to affect the constitution of the legislative authority-in India, until the year 1853, when by the 16th and 17th Vict., c. 95, the constitution of the Legislative Council was entirely altered by the addition of members who did not belong to the Executive Council. A distinction between the legislative and executive functions of Government is observable in the Act of William the Fourth, hut this Act puts the distinction upon much clearer ground. It puts those functions into the hands of two separate bodies. Owing to the power which the Executive Government has over the appointment of members, and for other reasons, its influence in the Legislative Council is still supreme. But the change in the constitution of the Legislative Council introduced by this Act is, nevertheless, of importance as emphasizing the distinction between legislative and executive functions. There is also no doubt that henceforth a conflict of opinion between the Executive and Legislative Councils was, theoretically, at any rate, no longer impossible.

40. In the next year, Parliament, by the 17th and 18th Vict., c. 77, granted to the Executive Council power to take any district under its own immediate authority, and to give all necessary directions respecting the administration of such districts or otherwise to provide for the administration thereof: provided always that no law or regulation should be altered except by laws made by the Legislative Council. This power to issue orders and directions is, no doubt, to some extent, a legislative power, and the Act shows how very cautiously provision was made by Parliament for a change in the legislative machinery in India. It is to he observed also that this very limited power is conferred not upon the Legislative Council but upon the Executive--a peculiarity which, as we shall see, is preserved through all the Acts of Parliament relating to this subject.

41. The next Act is the Councils Act. That Act re-confers the general power of making laws and regulations for the whole of India upon a Legislative Council somewhat differently constituted from what it had been previously, but still one

quite distinct from the Executive Council. The Act provides how the members of the Legislative Council arc to be appointed; how they are to resign their offices; and, for the validity of acts, notwithstanding certain defects in the constitution of the Council, it declares that the power of making laws shall be exercised by the Council only at meetings duly constituted in the manner directed by the Act; it provides how meetings of the Council are to be convened and adjourned, and bow rides for the conduct of business are to be made, and one important rule for the conduct of business is, by Section 19, laid down by Parliament itself, it is also remarkable that the Indian Legislature does not exercise absolute control over the rules for the conduct of its own business, nor any control over its own adjournments; the first is partly, and the second entirely, under the control of the Executive Government. The Act also confers a somewhat more restricted, but still, as far as it goes, general, legislative authority upon Local Councils in Madras and Bombay. Then, dealing with the subject of a change in the legislative machinery, the Act empowers the Governor-General in Council, that is the Executive Council, by proclamation to establish local Legislative Councils in other parts of India, each of which would possess, in regard to its own particular district, a general power to make laws similar to that possessed by the Local Councils established by the Act. Thus we find provision in the Act for the establishment and constitution of, and the conduct of business by, three Legislative Councils. We also find power to create new Local Councils given to the Executive; and it is also provided how these Local. Councils are to be constituted and bow they are to conduct their business. As to any other changes in the legislative machinery the Act is wholly silent.

42. The next Act is the 33 Vict., c. 3, expressly passed to make hotter provision for ordinary laws in certain parts of India. It was found, no doubt, that the machinery of even a local Legislature was too cumbrous for certain outlying districts, and this Act, accordingly, enables the Executive Government, under certain special restrictions, to make regulations (the word ' laws' is not used) in a particular manner without any resort to the Legislative Council. But this can only be done in those parts of India as to which the Secretary of State in Council shall declare the provisions of the Act applicable. In short, the Act provides a very special and guarded method of doing that which it is now said that the Indian Legislature may do without limit or restriction.

43. We see, therefore, that these Acts of Parliament nowhere confer any express power upon the Indian legislature to change the machinery of legislation in India, hut they do confer that power subject to important restrictions upon the Executive Government. Now Parliament, in conferring this power upon the Executive Government, necessarily proceeded upon one of two views. Either it considered that the Indian Legislature bad power to change the machinery of legislation in India, or it considered that it had no such power. In other words, Parliament, when these Acts were passed, either considered that it was making the sole and only provisions which existed for changing the legislative machinery in India, or it considered that it was conferring powers which need only be resorted to when the Executive Government could not obtain the powers which it required from the Legislative Council. I have come to the conclusion upon reading these Acts of Parliament, that Parliament considered itself to be making the only provisions which existed for changing the machinery of legislation otherwise than by an Act passed by itself. In the first place, whatever theoretical difficulty might be imagined as arising out of a conflict between the Executive and Legislative Councils, I do not think that any one over seriously contemplated that any such difficulty could occur. The existence of the Legislative Council secures publicity and deliberation in regard to the legislative action of Government. But the actual power of Government still remains for all practical purposes with the executive. I do not think, for example that Parliament passed such an Act as the 33 Vict., c. 3, merely in view of such a contingency as a conflict between the Executive and Legislative Councils. In the next place, though it is not impossible, I think it unlikely, that powers to make fundamental changes in the constitution would have been placed by Parliament simultaneously in the hands of two co-ordinate and independent bodies. In case of these two bodies working harmoniously such a double power would be useless. In case of their working inharmoniously, such a double power would, as it seems to me be objectionable. The very fact, therefore, that Parliament bestowed this power on the Executive Government of India seems to me to show that it did not already exist in the legislature But after all, what is most important, I cannot reconcile the language of these Acts of Parliament with the existence of the power now claimed for the Legislative Council of India. We must consider what the nature of the claim really is. It is nothing less than this that the

constitution of India as created by Parliament in these Statutes is a merely provisional one; that all the directions as to the mode of exercising legislative authority are only to remain in force and effect so long as the legislature may choose that they should do so. That the separation which these Statutes make between the exercise of legislative and executive functions may be nullified, and all the powers now held by the legislature may he retransferred to any executive officer it may select, whenever it pleases to do so. The legislature may, indeed, still continue to exist, but it may abrogate all its functions by transferring them to some one else. I do not so read these Acts of Parliament. I think that Parliament intended the provisions which it made for the exercise of legislative power in India to be permanent until altered by itself, and that it did not intend to give the Indian legislature power to repeal them. It may be that there is not much in India to which the term constitution can be properly applied. But there is something. The laws must now be made publicly and with deliberation. I do not think this provision either worthless or unimportant, and its worth and importance is greatly increased by the fact that it is the only protection which exists in this country against hasty and arbitrary legislation. The Counsel for the Crown argue that this protection may be swept away by the Indian legislature, and its powers of legislation placed in the hands of a single individual. I do not think so. I think tins protection was provided by Parliament for the people of India, and that it is only under the express authority of Parliament itself that they can be deprived of it.

44. Moreover, if we consider at one view the Acts of Parliament which have been passed during the last forty years, we cannot help seeing that there has been a considerable conflict of principles in dealing with Indian Legislation. At one time there was an attempt to place the legislative authority for the whole of India in a single council. This authority has been in part decentralized by the establishment of Local Councils; and from time to time in respect of certain districts, the legislative authority, after having been once separated from the executive, has been, under the express authority of Parliament, again confounded with it, and all powers without distinction have been again placed in the hands of the Executive Government, where they originally resided I believe that there is no doubt what the origin of this conflict and of these changes was. While it was considered desirable to secure for the people of India that the functions of legislation should he

separated from the other functions of Government and should be performed with publicity and deliberation, it was found impossible that this should be done by a single council, or even, entirely so, by a general council with the assistance of several local councils. Parliament has, therefore, from time to time relieved these bodies from the pressure of an extreme difficulty. We even know that to avoid the slow and tedious method of regular legislation the executive authorities did, in former times, assume the power to legislate otherwise than in the regular manner for certain districts of India. This was done to a large extent in the Non-Regulation Provinces. Put in the whole course of the controversy which has thus arisen, and the pressure thus felt, I have never seen the claim distinctly put forward, that the right to change the legislative machinery in India way included within the general power to make laws, and was one which Parliament had entrusted to the discretion of Indian Legislative Councils. As far as I am aware, this easy and simple solution of the difficulty, namely, that these bodies have the general power to transfer their legislative authority to others has never been before asserted; and no direct attempt to change the machinery of legislation in India by any Indian Legislative Council has ever yet been made.

45. Upon the whole, therefore, it seems to me that the fair and reasonable conclusion is this, that Parliament has provided for the exercise of the legislative authority of India by certain councils at meetings duly constituted; further that, if any change in the legislative machinery is necessary, Parliament has provided how and by whom that change is to be made; that the power to make this change is vested by Parliament in the Executive Government alone, no such power being vested in any of the Legislative Counsel. These arrangements for the exercise of Legislative authority and for the changes in legislative machinery depend upon five Acts of Parliament the 3 & 4 Will. IV, c. 85; the 1G & 17 Viet., c. 96; the 17 & 18 Vict. c. 77; the 24 & 25 Vict., c. G7; and the 33 Vict. c. 3. The Indian legislature is expressly forbidden to make any law which shall repeal or in any way affect the provisions of any one of those five Acts. Pour of these Acts are expressly named in the prohibitions--one in the first head of prohibition and three in the second. The remaining one is included in the general prohibition contained in the sixth head. In the view that I take, the Indian legislature cannot change the legislative machinery in India without affecting the provisions of these Acts of Parliament which created

that machinery, and if it does in any way affect them, then, ex consensus omnium, its Acts are void.

46. On both grounds, therefore, both because Act XXII of 1869 is, as regards the Cossyah and lynteeah Hills, not a law, and because if it is a law it is one which the Legislative Council of India is expressly prohibited from making, I should hold that it is so far void.

47. I have dealt with this case upon the broad grounds upon which Mr. Kennedy put it. He boldly claimed for the Indian Legislative Council of India the power to transfer its legislative functions to the Lieutenant-Governor of Bengal. Indeed, as I understood him, the only restriction he would admit was that the Legislative Council could not destroy its own power to legislate, though I see no reason why he should stop there. The Advocate-General did not, I think, go quite so far. But in my opinion there is no narrower question which can be substituted for the broad and general question which the learned Council put and which I have considered. There are no words in the Acts of Parliament upon which legislative authority could be made transferable in one class of cases and not in others. Of course, I do not for a moment suggest that every time discretion is entrusted to others there is a transfer of legislative authority. Every Act of the Legislature abounds with examples of discretion which is entrusted to the judicial and executive officers of Government, the legality of which no one would think of questioning. And there may he particular cases in which it would be a matter of considerable difficulty to say whet heir no the discretion conferred was of the legislative kind. When the difficulty arises we must deal with it. But in the present case we have not to cope with this difficulty. By the express words of 24 & 25 Vict., c. 104, Section 9, it is only by legislation that the jurisdiction of this Court can be taken away. Whoever, therefore, takes away the jurisdiction of this Court must exercise legislative authority for the purpose. I have stated my reasons in an earlier part of this judgment for holding that it was wholly by the Lieutenant-Governor, and not in any sense or to any extent by the Indian Legislative Council, that the jurisdiction of the High Court was assumed to be taken away. The broad and general question seems to me, therefore, necessarily to arise--can the legislature confer upon the Lieutenant-Governor this legislative power

48. I now come to a decision which, as it appears to mo, strongly fortifies the conclusion I have come to as to the powers of the Indian legislature. Indeed, it is a decision which rely upon far more than my own reasoning, and which we must overrule if we are to adopt the construction of the Councils' Act con-fended for by the Crown. In the year 1850 a suit was brought, in the late Supreme Court against a servant of the Commissioners for the Improvement of the Town of Calcutta for the illegal seizure of a buggy. The defendant justified the seizure under Act XVI of 1847, and certain rules which the Commissioners had made under that Act, alleging that the plaintiff had not paid the carriage tax assessed upon him by the Commissioners. The plaintiff demurred to the plea, raising a question as to the legality of these rules. The first judgment was delivered by the Chief Justice Sir Lawrence Peel gave as the judgment of himself and Sir James Colvile. On that occasion the Court intimated a strong opinion that, if these rules varied the law, they were void notwithstanding that they were made under the express authority of an Act of the legislature. When, after an amendment of the pleadings, the same question again arose, Sir Lawrence Peel gave the joint judgment of himself, Sir James Colvile, and Sir Arthur Buller. I have referred to the Registrar's book and this shows (which the report in Taylor and Bell does not) how the Court was constituted on the two occasions on which the case was before it. The important passage is the first paragraph in the second judgment, and is to be found at page 479 of the Report in Taylor and Bell. The learned Judges, though they express great doubts whether the rules in that particular case wore legal and binding, do not finally decide that point. But they do clearly and unmistakeably lay down as a general principle of law applicable to India that any substantial delegation of legislative authority by the legislature of this country is void. The actual order made was a second permission to the defendant to amend his plea upon payment of costs. The second amendment was made, but I cannot find that the case went any further, and probably it was compromised. The Act itself was shortly afterwards repealed.

49. The case was very fully argued on two occasions, the defendant being represented by the Advocate-General and the Standing Counsel, and it is in all respects an authority which seems entitled to the very greatest weight.

50. I am also disposed to think that if the American reports were available to us, we should find some authority there on this part of the case. There are several decisions of the American Courts referred to in a note to Kent's Commentaries, page 504. One cannot be quite sure without seeing the report in extensor how far these decisions go, but they seem to me to support the view that Act XXII of 1869 is, as regards the Cossyah and Jynteeah Hills, not a law.

51. It was asked in the course of the argument what was to be done in the case of emergency, and whether the legislature might not do that which was necessary to meet an emergency? And assuming the answer to this question to be that the Legislating might do what was necessary, it was then argued that the Court could not enquire whether the emergency existed or not, for of this the Legislature was the sole judge. In fact, whilst asking us to dismiss all political considerations, the learned Counsel ask us to decide this case on the ground of political necessity. But we have nothing to do with any such question at all. Upon an emergency in which danger to life and property is involved, the law as it stands, and without any alteration, gives increased and exceptional powers to the executive. In extreme eases the executive may suspend the operation of all laws, But I am not aware that such emergencies in any way affect the powers of the Legislature; certainly not unless the Legislature were actually overawed.

52. Lastly, it was said that whether the Indian Legislative Council can or cannot lawfully delegate the power to make laws, it had done so for a long series of years, and a long list of Acts passed between 1845 and 1868 has been handed in to us, all of which, it is said, must be treated as instances of delegation of legislative authority, if Act XXII of 1869 he so treated. It was then argued that Parliament must have known what the Legislature of this country had been doing, and, had it not approved what was done, would have used language which would have placed the illegality of these proceedings beyond all possible doubt have some difficulty in dealing with an argument based upon an assumption of fact in a matter of this kind. I imagine that Parliament, when legislating for India, is dependent mainly upon such information as may lie imparted to it by the Secretary of State, or by individual members who have a special acquaintance with this country. The position is, in fact, substantially the same in this as in all other cases where the

subject of legislation is not one of every-day experience. If the information thus obtained were not found to be sufficient, special inquiries would then be directed. Whether in the particular case under consideration Parliament did really arrive at a knowledge of the particular provisions in these Acts which are now relied on, I am at a loss how to determine. I cannot, however, think that we need enter upon this inquiry. For even if we presume knowledge, still to infer ratification from silence would lead to consequences which seem to me inadmissible. Upon one particular point Parliament expressly refers to the practice hen, and no doubt, therefore, was so far acquainted with it. In Section 25 of the Councils' Act it is recited that doubts have arisen as to the power to make laws for the Non-Regulation Provinces, otherwise than at regular meetings of the Legislative Council in conformity with the 3 & 4 Win. IV, c. 85. The section then goes on to give validity to laws that had not been so made. But it has never been contended that this recital and this ratification have legalized the previous practice. On the contrary, the accepted view has, I believe, always been that the previous practice was put an end to by this very Act. Speaking of this very practice in a minute recorded in 1868, Sir Henry Maine says--this system, of which the legality had long been doubted, was destroyed by the Indian Councils' Act. No legislative authority now exists in India which is not derived from this Statute.' Put if the argument of tacit recognition which I am now considering be correct, how is it possible to escape the conclusion that all the vague powers, half legislative, hall executive, previously exorcised in the Non-Regulation Provinces arc valid and subsisting powers? The argument seems here to stand on its strongest ground.

53. Nor do the Acts contained in the list which was handed in appear to me to afford (as was asserted) so many clear and undisputed instances of a transfer of legislative authority. I must guard myself against being drawn into a final expression of opinion as to the construction of Acts which are not properly before us. I must also observe that the argument only extends to Acts passed prior to the Councils' Act. It is not, and could not be, contended that the Indian legislature can have increased its own powers by any recent usurpation. This gets rid of the two Acts most relied on,--namely Act XXIII of 1861, Section 39, and Act XXV of 1861, Section 115.1 Neither of these Acts had been passed when the Councils' Act received the Royal assent, though, in probably, they were passed before the

Councils' Act came into operation. I may also observe that these sections only confer powers on the Executive Government to extend the Acts to Non-Regulation Provinces. But we know that as to these districts certain exceptional notions were at that time held which are now exploded. As to those Acts which were passed prior to the Councils' Act becoming' law, Act VIII of 1859, Section 385,2 and Act XIV of 1859, Section 24, J also relate only to Non-Regulation Provinces. Act VII of 1815 only empowers the Local Government to make rules respecting the levying of water rates and so forth for canals which have been constructed at the expense of Government. Act XXXV of 1850 and Act XXXVI of 1857 give to the Local Government powers which are not legislative, but may be judicial. Act XVII of 1853 seems to me merely to give power to fix the limits of cantonments. Act XVII of 1854 reserves to the Governor-General in Council powers which he would have had without this reservation. Act XXII of 1855, Act XX of 1856, Act XXIV of 1859, and Act V of 1861 are more difficult to construe. It would certainly have been safer to treat them as what are called General Clauses Acts, and for the Legislature in each case to have sanctioned their extension. But I may observe generally as to the provisions which these and many other Acts contain for the making of rules by the Executive Government in conformity with the Act, that we have the very high authority of the Judges who decided the case of Biddle v. Tariney Ghnrn Banerjee 1 Tay. & Boll 390; see p. 404 that the power to make such rules may be largely conferred without any delegation of legislative authority. Act XXIX of 1857 does not seem to mo to confer any legislative powers at all. Act XXIX of 1858 was passed to meet a pressing emergency during the mutiny, and ought not, I think, to be taken as a precedent. Act XIII of 1859, Section 5,4 and Act IX of 1860, Section 9,5 are in my opinion of very doubtful validity. I am not sure that they have ever been acted upon. It is by no means easy to ascertain this, for it is one of the peculiar results of this method of legislation that there is no information upon the subject contained in the Statute hook. But this I know that I have often heard the validity of these provisions questioned. Upon the whole, the list of Acts prior to the passing of the Councils' Act does not seem to mo to show any clear practice of transferring legislative authority which Parliament can be said to have known and roeognizod.

54. Before leaving this I. must observe that it contains a number of Acts which wore evidently inserted under an entire misconception as to the nature of the difficulty winch the Crown has to meet in establishing a claim now put forward on behalf of Indian Legislature. It has never been doubted that the Legislature may confer discretion of the most extensive kind upon the executive officers of Government. I have already adverted to this, and but for the misconception which this list discloses, I should not have thought it necessary to advert to it again. But it cannot be too clearly understood that no one denies that the Indian Legislature may entrust to the executive officer of Government power, for example, to regulate public processions and to keep order in places of public resort. And the insertion of this provision (Act XIII of 1856, Section 77) in the list handed up only shows how entirely the question before us may be misunderstood. No one would think of challenging such a provision as this, as being beyond the powers of the Indian Legislature. If my view of the law threw any doubt upon the power of the Indian Legislature to pass such an Act as this, I should abandon it at once. But surely it is not necessary to insist at length upon the difference between the delegation of a power to keep order in the public streets, and the delegation of a power to abolish all the existing Courts of justice in a large district, and to substitute such new ones as the delegates may deem advisable. All that can be said is, that there may be a difficulty in some cases in saying whether the Act amounts to a transfer of legislative power. There would be precisely the same difficulty in drawing an exact line between the functions of the legislative and the functions of the executive council--between the powers which Judges possess to make rules of procedure, and the power which they do not possess to make rules of substantive law. But this does not prove that these distinctions do not exist or that they arc not to be observed. We are, as I have already pointed out, not now called upon to deal with difficulties of this kind. If we are ever called upon to do so, I do not doubt that the utmost endeavour will be made to avoid impeding the useful action of the legislature. I say with confidence that this Court (the only one of which I have a right to speak) has always shown the greatest care and circumspection in questioning the validity of Acts passed by the Indian Legislature. On the present occasion it has been pressed very strongly that the view of the law which I take would lead to the most disastrous consequences. Nothing has been adduced in

support of this statement, which appeal's to me quite unfounded. I would gladly have refrained from expressing any opinion upon these Acts at all, but not being able to do so, I am compelled to admit that there are some provisions in some of the Acts passed by the Legislative Council the legality of which, upon the view of the law to which I adhere, may he doubtful. But I say distinctly that. there is no ground whatever for the sweeping assertion which has been made that, on this view of the law, a very large proportion of these Acts must be at once pronounced to be illegal. No such consequences followed from the decision of Biddle v. Tariney Churn Banerjee 1 Tay. & Bell 390 and my decision goes no further. The only proposition of law which I lay down is, that the Legislative Council of India cannot confer any power to legislate upon the Lieutenant-Governor of Bengal.

55. In my opinion, our jurisdiction in the Cossyah and Jynteeah Hills is now the same as it was before the notification was issued by the Lieutenant-Governor, and we ought, therefore, to send for the record of this case, in order to see whether the appeal should be admitted.

Kemp, J.

56. I concur in the judgment of Mr. Justice Markby.

Ainsley, J.

57. By 3 & 4 Will. IV, c. 85, Section 43, the Governor-General in Council had power to make laws and regulations for repealing, amending, or altering any laws or regulations whatever then in force or thereafter to be in force in the Indian territories of Her Majesty or any part thereof, and to make laws and regulations for all persons and all Courts of justice and the jurisdiction thereof, and for all places and things whatsoever throughout the whole and every part of the said territories, with certain reservations; and by Section 45 all laws made as aforesaid wore to have the force and effect of Acts of Parliament.

58. By 16 &, 17 Vict., c. 95, Section 22, provision was made for the better exercise of the powers of making laws and regulations by the addition to the Council of the Governor-General of certain persons as legislative councilors; and by Section 23 it

was enacted that the powers of making laws or regulations vested in the Governor-Gen oral in Council should be exercised only at meetings of the said Council at which a certain number of members and certain particular members should be present.

59. By 24 A 25 Vict., c. 67, Section 2, the 43rd section of the Act of William IV, and the 22nd and 23rd sections of the Act 16 & 17 Viet, are repealed, but the 45th section of the former is maintained in force, save so far as the same may be altered by or be repugnant to this Act. Sections 9 and 10 provide for the constitution of a Legislative Council, and Section 15 restricts the power of making laws and regulations to meetings of the Council at which a certain proportion of members is present; by Section 6 the Governor-General alone is authorized in certain eases to exercise all the powers of the Governor-General in Council except the power of making laws and regulations. Section 22 re-enacts the provisions of Section 43 of the Act of William TV, with the addition that the power is capable of being exercised at meetings of Council for the purpose of making laws and regulations, at which by Section 19 no other business can be transacted, and except at which by Section 5 no laws or regulations can be made. Section 25 validates certain laws and regulations therefore made otherwise than at meetings of a Legislative Council in respect of the Non-Regulation Provinces. By Section 23 the Governor-General, in cases of emergency, may make ordinances for the peace and good government of the Indian territories of Her Majesty or any part thereof, to have effect for six months only and subject to be controlled or superseded by a law made at a meeting of the Legislative Council. Sections 34 and 45 restrict the power of making laws and regulations conferred on subordinate Legislatures so that as in the case of the Council of the Governor-General it can only be exercised at a meeting for the purpose of making laws and regulations, and in no case can they modify Acts of the imperial Parliament.

60. The 1st section of 33 Vict., c. 3, provides, that in respect of any part of the territories under the Government or Administration of any Governor, Lieu-tenant-Governor or Chief Commissioner to which the Secretary of State shall from time to time by resolution declare the provisions of the section to be applicable, the Governor, Lieutenant-Governor or Chief Commissioner, as the case may he, may

propose drafts of regulations for the peace and good government of such parts to the Governor-General in Council, which, on receiving his assent and being duly published, shall have the force of laws made at a meeting of the Legislative Council.

61. There is further a provision in 17 & 18 Vict., c. 77, Section 3, by which the Governor-General in Council (with the sanction of the Court of Directors of the Last India Company) could by proclamation take under the immediate authority and management of the Governor-General in Council any part of the territories under the Government of the Last India Company, and thereupon could give all necessary orders and directions respecting the administration of such part, or otherwise provide for the administration of the same; but this is coupled with a proviso that no law in force at the time in such part should be altered or repealed except by a law made by the Governor-General in Council.

62. The Imperial Parliament has thus carefully declared the mode in which legislation by the Government of India is to be carried on. Ordinarily it is to be by laws made at meetings of the Legislative Council of the Governor-General; under emergencies and for the limited term of six months, by the Governor-General alone; and in respect of particular places, to be defined by the Secretary of State, by the Governor-General in (Executive) Council on the proposal of the Local Government.

63. When Act XXII of 1869 was passed, the last provisions had not come into existence. This Act was passed by the G ever nor-General in Council under the General powers conferred by Section 22 of the Indian Councils' Act, subject to the limitation specified in that section.

64. The question is, whether the Supreme Indian Legislature did itself, directly or by necessary implication, exclude the Cossyab and Jynteeab Hills from the territorial jurisdiction of the High Court. I confine myself to this one matter which is all that we need consider for the purposes of the appeal before us at the persent stage of the proceedings, I understand we are all agreed that such exclusion is within the powers of the Legislature.

65. I think it did not do so, but that it left the question of such exclusion unsettled. The preamble and title of the Act speak only of the Garo Hills; the Cossyah Hills are not mentioned until Section 9 is reached, except that in Section 3 it is said that from the date of the notification provided for in Section 2, Act VI of 1835 (so far as it relates to the Cossyah Hills) shall be repealed. With this exception, the first eight sections refer exclusively to the Gare Hills. Then comes the 9th section, which empowers the Lieutenant-Governor from time to time, by notification in the Calcutta Gazette, to extend all or any of the provisions of the other sections to the Jynteeah Hills, the Naga Hills, and to such portion of the Cossyah Hills as for the time being forms part of British territory.

66. This provision for a separate notification makes it clear that no part of the territory mentioned in Section 9 is affected by the Act in consequence of the notification provided for in Section 2; and that if the Act has any operation there, it is simply as the result of the will of the Lieutenant-Governor. The repeal of so much of Act VI of 1835 as affects the Cossyah Hills from the date when the Act came into force in the Garo Hills (namely, the 1st March, 1870) is of no practical importance; this much of the Act was wholly obsolete. The Courts of Sudder Dewany and Nizamut Adawlut, to which powers of superintendence had been given by the Act, had ceased to exist; and by the 9th section of the High Courts' Act (24 k 25 Vict., C. 104) this Court bad been vested with the same powers that the former Courts had. That the Government of India in the Legislative Council should take the opportunity of repealing this obsolete Act at the same time that it was dealing with the law applicable to the Garo Hills, is not to my mind sufficient ground for saying that the Legislature in September, 1869, made a declaration in respect of the Jynteeah, the Naga, or the Cossyah Hills similar to that which it had made in respect of the Garo Hills. As to these last, certain provisions were absolutely enacted, and all that was referred to the Lieutenant-Governor was to fix a day from which they should take effect.

67. The preamble declares the expediency of dealing with the Garo Hills, but says not a word about the others. The notification necessary to start the' operation of the Act in respect of the Garo Hills has no effect in the Cossyah and other hills. Whether or not the Act shall ever come into operation at all in the latter, and if so,

the extent to which effect shall be given to it, is left entirely to the discretion of the Lieutenant-Governor. The 2nd and 9th sections are not framed in the same form. The first directs that the Act shall come into operation and that the Lieutenant-Governor shall fix a date of commencement, and merely leaves the particular date to be determined by the Lieutenant-Governor as is commonly done when the introduction of a new law requires some adjustment of the administrative machinery.

68. The fixing of such date is a ministerial not a legislative act; but the determination whether the law shall be applied at all is not a ministerial, but a legislative act. As this determination was not arrived at by the Supreme Legislature, but was remitted to the discretion of the Lieutenant-Governor, it convent he said that the Legislature excluded the Cossyah and Jynteeah Hills from the jurisdiction of the High Court; it went no further than to say that if at any time, the Lieutenant-Governor shall think fit to exclude them he may do so. In fact, the Lieutenant-Governor did not avail himself of the power for two years after the passing of the Act, whereas he issued the notification under Section 2 within five months from that time, and it rested entirely with him to determine whether he ever would avail himself of it, and if so, in what district and to what extent. He might possibly have determined only to apply the provisions of Section 5, relating to the public revenue and rent, and of Section 7, as to cesses, in one tract, while he applied the whole law in another. The Supreme Legislature could have no knowledge beforehand of what would be the results of the passing of the Act. It certainly cannot be said that the four hill tracts named in the Act were all in the same condition at the date of the passing of the Act of 1869, so that what was good law for one was necessarily applicable to the others; if this had been so, the frame of the Act would have been different from what it is. If then it was uncertain whether the jurisdiction of this Court in the Cossyah Hills would ever be taken away at all, it cannot be held that it was actually taken away by the Supreme Legislature in the Act of 1869, and that all that was left to the Lieutenant-Governor was to make arrangements accordingly and to fix a date for the commencement of the operation of the Act.

69. It is consequently necessary to ascertain whether the delegation of power to the Lieutenant-Governor to remove the Cossyah and Jynteeah Hills from the jurisdiction of this Court by a legislative declaration was within the powers of the Legislative Council. On this point, the language of Section 22 of the Councils' Act appears to me to leave no doubt.

70. Power is given to the Governor-General in Council at meetings for the purpose of making laws and regulations to alter any laws and make laws for all persons, places, and Courts of justice in the Indian territories of Her Majesty; provided, inter alia, that such laws shall not in any way affect any of the provisions of the Councils Act.

71. The law under consideration is a law made undoubtedly at a meeting of the Legislative Council of the Governor-General, and so far a good law; and if it does not fall within one of the seven exceptions specified in Section 22, it has by the 45th section of 3 & 4 Will. IV, c. 85, all the force and effect of an Act of Parliament; but if it does fall within one of those exceptions, this last-mentioned enactment gives it no force at all. Section 22 of the Councils Act having been substituted for the earlier provisions on the same subject (3 & 4 Will. IV, c. 85, Section 43, as modified by 16 & 17 Vict., c. 95, Section 23), the words of Section 45--'all laws and regulations made as aforesaid'--only apply to laws properly made under Section 22 of the Councils' Act, and not within one of the exceptions.

72. The Act of Parliament requires that, ordinarily, all laws shall be made only at a meeting of the Council of the Govern or-General held for the sole purpose of making laws and regulations, and at which certain persons are present. When laws are to be made otherwise, there is a specific provision according to the nature of the case, but these exceptional provisions are made by Parliament itself and not left to the discretion of the Indian Legislature; and it is and has long been an established rule (Section 70, 3 & 4 Wilt. IV, c. 85, and Section 6, 24 & 25 Vict., c. 67) that the Governor-General himself shall not by himself, except when specially authorised by Parliament, exercise the power of making laws and regulations. It would not be possible for the Legislative Council validly to divest itself of its own functions and transfer them to the Govern or-General alone. A law

to such effect made by the Council would violate the provisions of both Section 6 and Section 15, whether that law purported to vest the Governor-General with legislative powers generally or specially, and would therefore, under the express words of Section 22, be ultra vires. But if this is so as to the Governor-General, surely it must be so as to the Lieutenant-Governor of Bengal. The same reasons which apply in the one case for restraining the highest officer of the Crown in India from exercising legislative powers alone and for entrusting those powers only to a Council to be exercised at a meeting at which not less than a certain number of members shall be present, must apply with more force to a subordinate officer; and Section 15 is as much violated in one case as in the other.

73. Therefore, in my opinion, the conferring on the Lieutenant-Governor power to remove the Cossyah Hills from the jurisdiction of this Court was ultra vires.

74. If it was ultra vires, this Court is bound to take notice of the fact. The power formerly exercised by the Nizamut Adawlut in this tract of country was given to this Court by Act of Parliament (Section 9, 24 & 25 Vict., c. 104), and unless it has been validly taken away we are bound to exercise it.

75. No doubt the Governor-General in Council, whatever construction be put on the section referred to, has power to put an end to this Court's jurisdiction in this tract of country, but no other authority in India can do so. But if the Governor-General in Council wishes to do it, he must proceed by the exercise of his legislative powers as created or declared by the Councils' Act, and in no other way. The High Courts' Act provides no new mode of legislation, but makes the jurisdiction of the High Courts subject to the legislative powers of the Governor-General in Council, which must be looked for elsewhere. If lie shall proceed in any other way, this Court is constrained by the Act of Parliament to continue the exercise of its jurisdiction.

76. But it is said that this view of the provisions of Section 22 of the Councils' Act is at variance with that taken through a long course of years, as shown by a series of enactments, in which a somewhat similar mode of supplementing the action of the Legislative Council has boon adopted.

77. I think it unnecessary now to express any opinion as to the validity of the Acts referred to. Assuming them to have been validly enacted, then-existence does not support the argument that the mode of legislation adopted in Act XXII of 1860 is only that which has been constantly adopted without objection; and that as it cannot be assumed that this mode of legislation has escaped the observation of the Imperial Parliament, it has the warrant of a tacit approval.

78. It appears to me that a distinction must be drawn between provisions by which the carrying out of the declared decisions of the Supreme Legislature is furthered, and provisions which give a power to act independently of the discretion of the Council of the Governor-General. As an example of the one, I may take Section 385 of Act VIII of 1859, or Section 445, Act XXV of 1861. These are laws intended to be eventually of universal application in British India (the latter, re-enacted in X of 1872, is now, with very few exceptions, the only law on the subject) : the actual introduction of these enactments was in certain tracts of country postponed, and made to depend on the discretion of the Local Government. The Supreme Legislature had considered these laws and adopted them as laws to be eventually in force everywhere; but instead of declaring that they were to take effect everywhere at once, it was content to declare the ultimate law and leave the Local Governments to advance up to this standard as fast as they conveniently could. When a Local Government declared such a law to he in force, it was merely parting with a power of delay conferred upon it; it did not make any law; the law introduced was the law made by the Governor-General in Council with the express intention that it should become the law of the particular tract of country in due time. But Act XXII of 1869 does not stand on precisely the same footing. There was no expression of a determination by or desire of the Legislative Council that eventually the Jynteeah Hills, the Naga Hills, and the Cossyah Hills should be reduced to the same condition as the Garo Hills; at the most it can only be said that there was an expectation that such a measure might become necessary. But an attempt to provide beforehand for the contingency of such a state of things arising in the former as then warranted the introduction of the measure into the Garo Hills, does not amount to a determination that this was the law which it was desirable to put into force in all those bill tracts; had this been the intention of the legislature, I should have expected it to have been expressed in plain language.

79. The provisions of Section 39,6 Act XXIII of 1861, do not affect my view of this matter. This section allows a Local Government, with the previous sanction of the Governor-General in Council, to annex any restriction, limitation, or proviso it may think proper when extending the Code of Civil Procedure to any territory not subject to the general regulations; but this is merely another form of delaying the full extension of the Code. So far as the Code obtains operation, it is still, because the extension is, pro tanto, a carrying out of the intention of the superior Legislature that this shall be sooner or later the law in the particular tract of country. As I. road the section, no power is given to amend the law itself; it is only a power to keep some portion in abeyance or to make its operation contingent on something external to it, which again is only another form of postponing its full operation.

80. A very large number of the Acts referred to in the schedule submitted to us of Acts containing delegation of powers is of the same character. The subject of many is limited, but the mode of legislation is substantially the same. The general law on each subject is propounded by the Legislature; the gradual application of it is entrusted to some authority named in the Act. In form, it may he that the law is made for one or more named members of a class with power to extend it to others; but in effect, this is making a law for the class with a power granted to the Local Government to introduce it more or less rapidly as may seem fit. The distinctive feature in my opinion is, that in each of these cases the law is constructive by addition to, or remodeling of, the Statute law then existing as to each class of subjects under the directly exercised discretion of a legislative body; whereas Act XXII of 1869, as far as we are now concerned with it, is destructive, and operates merely to terminate the operation of established laws.

81. There is another class of Acts in which there is apparently a clear delegation of legislative power. I refer to Acts which contain a provision giving power to make rules or bye-laws, and to impose taxes or fix fees and charges; but these are clearly distinguishable from such an Act as Act XXII of 1869, so far as we are concerned with it now, which is only so far as it gives power to the Lieutenant-Governor to repeal Section 9 of 24 & 25 Vict., c. 104. Whether the powers conferred in these Acts to make rules and bye-laws can in all cases be defended,

is a matter I need not discuss, All legislation of this class is subordinate to, and in furtherance of, the defined object of each particular Act.

82. The case of Biddle v. Tariney Churn Banerjee 1 Tay. & Bell 390 at p. 409, and again at p. 479 of the report, is authority for holding that, while the validity of rules which can he brought within the definition of ministerial acts is undoubted, the validity of other rules such as therein mentioned,--namely, rules imposing a penalty directly, or granting power or compelling discovery,--is open to grave doubt, if indeed the case does not go so far as to rule that they are absolutely invalid. It is foreign to my present purpose to discuss that case; it is enough to show that the delegation relied on does not stand unquestioned, but that there is very high authority for doubting its validity. As I have referred to this case, I take the opportunity of observing that it seems to me strongly to support the earlier part, of my judgment. At page 406 the learned Chief Justice, Sir Lawrence Peel, observes,--'The Legislature of India, though it possesses large legislative powers, is still a limited Legislature, and exercises a delegated authority of making laws. Independently of the territorial limits assigned to its power of making laws, there are other limits imposed which the legislature must not exceed; and it is the province of the Courts of justice of the country to decide on the legality of Acts of the legislature, if a suit be instituted to decide whether the Legislature has or has not exceeded the limits within which it may legislate.' Again, at page 479, as I understand the judgment, he assumes as undoubted that delegation of legislative authority by the Indian Legislature is beyond its powers, the question being in each case whether there has or has not been such delegation.

83. The Acts which are most analogous to the Act under consideration, so far as we have new to deal with it, are few in number; they have been termed deregulartionizing Acts.

84. Act XXI of 1845 was passed while the 3 and 4 Will. IV. c. 85, was in force; the power of legislation was then vested in the Governor-General in Council. This Act does not make any transfer of that power, but simply declares that the same authority in which the legislative power rested, viz., the Govern or-General in Council, may by order in Council do certain things. The same remarks apply to

Acts VT and XI of 1846.

85. After the passing of 16 & 17 Vict., c. 95, we come to the Sonthal Districts' Act XXXVII of 1855. This differs in form from Act XXII of 1869, and is distinctly a legislative declaration by the Governor-General in Council. The Lieutenant-Governor has, by Section 6, to give effect to it by proclamation; but this obviously is a merely administrative action. The power to allow an appeal in Clause 1, Section 4, notwithstanding the declaration in that section that all decisions and sentences passed according to the provisions of the Act are final, is a power to relax the stringency of the Act in the direction of the general law.

86. The Chittagong Hill Tracts' Act XXTI of 1860 approaches, in some respects, more nearly to the form of the Act under consideration. Whether any of its provisions are open to question is beyond the scope of my present enquiry. So far as the abolition of the jurisdiction of the Courts of civil and criminal judicature is concerned, the direct and undoubted authority of the Governor-General in Council has been exercised, in the Kohilkhund Act XIV of 1861 there is a slight change of form. While the Supreme Legislature makes a direct declaration in respect of certain tracts specified in the schedule, it gives power to the Lieutenant-Governor, North-Western Provisices, to define the portions of Pergunnas Juspoor and Kashipore in the district of Moradabad, which arc to be subject to the Act; but it does not give him power to include these pleasure or not at his pleasure and at such time as he may think fit.

87. There is no provision for more than one proclamation giving effect to the Act. This Act approaches to, but docs not reach, the form of Act XXII of 1869.

88. Act XXIV of 1864 is wholly different; it validates rules previously made. As far as it empowers the Local Government to extend any Regulation or Act then in force, it may be said to give legislative power; but this is not such a power as is now in question, and whether such powers have been rightly or wrongly given is a matter on which I express no opinion.

89. On the whole, then, I am of opinion that the jurisdiction of this Court in the Cossyah and Jynteeah Hills has not been validly taken away, and that we are

hound to entertain the appeal.

Macpherson, J.

90. In my opinion the Governor-General in Council has power by legislation to remove from the jurisdiction of this Court a district over which the Court was declared by the Letters Patent to have jurisdiction. That power seems to me to he expressly conferred by Section 9 of 24 & 25 Vict., c. 104--without which section legislation on the subject would be wholly prohibited by the proviso in 24 & 25 Vict., c. 07, Section 22, that the Governor-General in Council shall not have the power of making any law which shall repeal or in any way affect any of the provisions of that Act or of any Act passed in the same session, or thereafter to he passed, in anywise affecting Her Majesty's Indian territories or the inhabitants thereof.

91. These two Statutes, 24 & 25 Vict., c, 67 and e. 104, wore passed within a few days of each other (one on the 1st of August, and the other on the 6th); and I think it clear that it was intended by Sections 9, 11, and 13 of the later Act to preserve to the Governor-General in Council certain legislative powers which otherwise, by reason of the proviso, in Section 22 of c. 67, the Governor-General in Council would not have had. A consideration of the forms of the High Courts' Act will show that the matters covered by the three sections 9, 11, and 13--in which alone the legislative powers of the Governor-General in Council are saved--are the only matters relating to the High Court in respect of which the Governor--General in Council was intended to have legislative powers. And the express saving of these powers in Sections 11 and 13 was necessary, because those sections relate to matters not included or dealt with in Section 9. The Governor-General in Council has no legislative power in relation to the High Court save what is reserved to him by 24 & 25 Vict., c. 104; and the Loiters Patent could give no such power not already given by that Statute.

92. Although I do not doubt that the conclusion arrived at in Meare's case 14 B.L.R. 106 was correct, I do not concur in the construction there put upon those two Statutes, I. dissent wholly from the theory, which seems to be the basis of the

late Chief -Justice's decision in Mear's case 14 B.L.R. 106, that a declaration of jurisdiction contained in the Letters Patent can be affected by legislation by the Governor-General in Council, because the declaration in the Letters Patent is not a 'provision of the Act' within the moaning of Section 22. In my opinion it is a provision of the Act within the meaning of Section 22, and as such the legislative powers of the Governor-General in Council would be wholly barred in respect of it were those powers not given or reserved to the Governor-General in Council by Section 9 of the High Courts Act. It is only so far as legislative powers are expressly given or reserved by 24 and 25 Vict., c. 104, that the Governor-General in Council has any legislative authority over the jurisdiction, of the High Court. Section 9, however, does seem to me to give the Governor-General in Council plenary powers of legislation as regards the jurisdiction. For I read that section as declaring that the Court shall have and exercise all such civil and other jurisdiction, original and appellate, and all such powers in relation to the administration of justice in the Presidency, as the Letters Patent shall direct: and save as by the Letters Patent otherwise directed, and subject and without prejudice to the legislative powers of the Governor-General in Council in relation to the matters, aforesaid (i.e., all the matters mentioned in Section 9, with which the Grown is authorized to deal in the Letters Patent), the Court shall have and exercise all jurisdiction and every power, Ac, in any manner vested in the abolished Courts (Supreme and Sudder) of the same Presidency. The section, in short, vested in the new Court all the jurisdictions and all the powers of every description of the two abolished Courts, except so far as those jurisdictions and powers might be altered or taken away by the Letters Patent or by subsequent legislation by the Govern or-Gen oral in Council.

93. This construction of the Statute no doubt leads to the conclusion that the Governor-General in Council has power to alter wholly, and to take away, the jurisdiction of the High Court--and further, that the Govern or-Gen oral in Council is the only authority in India by which the jurisdiction or powers of this Court can be altered or in any way affected. Nevertheless, it appears to me to be the right construction : and it is the construction which, as a matter of fact, was invariably put upon the law up to the time of Meare's case 14 B.L.R., 106. If it he the right construction, it cannot be questioned that the Governor-General in Council could

legally remove the Cossyah and Jyntceah Hills from our jurisdiction.

94. But it is argued that if the Govern or-General in Council had this power, it has not been legally exercised, inasmuch as the Governor-General in Council did not attempt or profess to remove the Cossyah and Jyntoeah Hills from the jurisdiction of the High Court, but merely passed an Act authorising the Lieutenant-Governor to remove them if he at any time should think fit to do so. And it is contended that a removal by an order based on the authority thus given to the Lieutenant-Governor of Bengal is not legal.

95. It is an undeniable fact that the Governor-General in Council did by Act XXII of 1869 empower the Lieutenant-Governor of Bengal at his pleasure to extend the provisions of the Act to the districts in question, and that by virtue of the power so conferred on the Lieutenant-Governor those provisions have since been extended in the manner contemplated.

96. The first question which here arises is whether, the Governor-General in Council having passed such an Act, this Court can decline to recognise or be bound by it, on the ground that it was ultra vires of the Governor-General in Council to legislate in such a fashion, i.e., to delegate to the Lieutenant-Governor of Bengal functions which were expressly vested in the Governor-General in Council. In considering this matter, it is necessary to go back a little and see what the legislative powers of the Governor-General in Council really are.

97. The Statute 3 & 4 Will. IV, c. 85, Section 43, gave the Governor-General in Council power to make laws for repealing or altering any laws or Regulations whatever then in force or thereafter to be in force {in British India, & c.), and for all persons of whatever nationality,--and for all Courts of justice whether established by Royal Charter or otherwise, and the jurisdiction thereof,--save and except that the Governor-General in Council was not to have power by legislation to repeal or alter any of the provisions of that Act (3 & 4 Will. IV, c. 85) or of any Act to be thereafter passed affecting the East India Company of the said territories, or the inhabitants thereof, &c.; This power of legislation was (Section 44) subject to the right of the Court of Directors to disallow any law which might have been passed, which was thereupon (i.e., if disallowed) to be repealed. By Section 45 it was

enacted, and this section stands unrepealed to the present day,--that all laws made as aforesaid (i.e., by the Govern or-General in Council under the powers given by that Act) 'shall be of the same force and effect within and throughout the said territories as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all Courts of justice whatsoever within the same territories in the same manner as any public Act of Parliament would and ought to be taken notice of: and it shall not be necessary to register or publish in any Court of justice any laws or regulations made by the said Governor-General in Council.'

98. By the Statute 16 & 17 Vict., c. 95, the Council of the Governor-General for legislative purposes received a new constitution : but the legislative powers of the Council and the effect to be given to its Acts remained as they were under Statute 3 K.A. Will. IV, c. 85.

99. The Statute 17 & 18 Vict., c. 77, Section 3, empowers the Govern or-General in Council, with the consent of tins Home authorities, from time to time, by proclamation, to take any district under the immediate management of the Governor-General of India in Council, and thereupon to give all necessary orders respecting the administration of such district, or otherwise to provide for the administration thereof. But it is expressly provided that no law or regulation in force in any such district at the time it is so taken under the immediate management of the Governor-General of India in Council shall be altered or repealed except by law or regulation made by the Governor-General of India in Council.

100. Then came the Indian Councils Act, 24 & 25 Vict., c. 67, which again gave a fresh constitution to the Council of the Governor-General for making Laws and Regulations. This Act, however, to describe it generally, left the legislative powers of the Governor-General in Council unaltered, save that local Legislatures were re-established and certain matters appertaining more peculiarly to the executive were declared (Section P9) not to be cognizable without the previous sanction of the Governor-General. The legislative power, which was taken away from the Presidencies of Madras and Bombay by 3 & 4 Will. IV, c. 8, was, in a modified degree, restored to them; and the establishment of a local Legislature for Bengal

was authorised. The legislative powers conferred on the Governor-General in Council by 3 & 4 Will. IV, c. 85, were left unimpaired, but under the new Act, 24 & 25 Vict., c. 67, were to be exercised for the most part in matters of more general administration and such as affected the interests of the Indian Empire at large. In the preamble of the Councils' Act it is merely recited that it is expedient that the provisions of former Acts of Parliament respecting the constitution and functions of the Governor-(Jeneral in Council should be consolidated, and in certain respects amended. The second section repeals Sections 40, 43, 44, 50, and certain other Sections of 3 & 4 Will. IV, c. 85; and it is declared that all other enactments then in force with relation to the Council of the Governor-General of India or to the Councils of the other Presidencies shall continue in force, save so far as the same are altered by or are repugnant to this Act.' Section 22 declares the powers of the Governor-General in Council as regards the subjects of legislation. It is, in truth, a mere re-enactment of the repealed Section 43 of 3 & 4 Will. IV, c. 85, altered formally and with reference to the changes which were being made in the constitution of the Council. It gives the Governor-General in Council power to repeal or alter any existing law of whatever kind, save that it expressly provides that the Governor-General in Council shall not have the power of making laws or regulations which shall repeal or in any way affect any of the provisions of the Act (24 & 25 Vict., c. 67) itself or any of the then unrepealed sections of 3 & 4 Will. IV, c. 85, and 17 & 18 Vict., c. 77, and certain other Statutes named,- and save also that the Governor-General in Council shall not have power to make laws which repeal or affect any provisions of any Act passed in the then present Session of Parliament, or thereafter to be passed, in any wise affecting Her Majesty's Indian territories or the inhabitants thereof. The 3 & 4 Will. IV, c. 85, remains in force, except so far as it is expressly repealed or is repugnant to the Councils' Act. Section 45 is still unrepealed, though the Councils' Act repeals the two sections immediately preceding and Section 50 which follows it. And there is nothing in Section 45 repugnant to the Councils' Act. Therefore it is clear that Section 45 is still in force, and applies to all laws made by the Governor-General in Council under the Councils' Act. Of course an Act passed by the Governor-General in Council in contravention of Section 22 of 24 & 25 Vict., c. 67, would not be an Act duly passed, the legislative powers of the Governor-General in Council being by

that section expressly barred in such cases. But an Act passed by the Governor-General in Council under the Councils' Act, and not falling within any of the prohibitions therein contained, seems, under Section 45 of 3 & 4 Will. IV, c. 85, to have the same effect hero as an Act of Parliament would or ought to have and it must be taken notice of by us in the same manner as any public Act of Parliament. If this be so, this Court has no power to question the authority of the Governor-General in Council, if once satisfied that the Act is not within any of the prohibitions of the Councils' Act. For there is no doubt that, had a public Act of Parliament boon passed in the same terms as Act XXII of 1869, we should have been bound to accept it without question.

101. But, if it be open to me to question the authority of the Governor-General in Council to pass a law which does not fall within any of the restrictive provisions of 24 & 25 Vict., c. 67, I am unable to say that the Cossyah and Jyntooah Hills have not been legally removed from the jurisdiction of the High Court. By Section 4 of the Act, the Govern or-General in Council did expressly remove the (Jaro Hills from our jurisdiction, leaving it, however, to the Lieutenant-Governor of Bengal to fix the date from which the removal was to have effect. Then (Sections 5--8) the Govern or-General in Council practically left it to the Lieutenant-Governor to provide, as he should think fit, for the administration, in all respects of the district, and gave authority to the Lieutenant-Governor to extend to the Garo Hills any law, or any portion of any law, then in force in the other territories subject to the Lieutenant-Governor, or which might thereafter be enacted by the Council of the Governor-General, or of the Lieutenant-Governor, for making Laws and Regulations.

102. As regards the Cossyah and Jyntooah Hills, after, in Section 3, repealing Act VI of 1835 (which repeal, it may be noted, did not of itself in any way affect the jurisdiction of the High Court over these Hills), the Governor-General in Council bys.9 empowered the Lieutenant-Governor from time to time to extend, mutatis mutandis, all or any of the provisions contained in the other sections of the Act to the Cossyah and Jynteeah Hills. It is left to the Lieutenant-Governor to say whether these districts shall he removed from the Court's jurisdiction or not,--and also, if removed, what law shall be administered in them, No doubt the whole

future position of the Cossyah and Jynteeah Hills is loft absolutely to the discretion of the Lieutenant-Governor. For all that is really decided by the Governor-General in Council is, that it is fit and proper that the Cossyah and Jynteeah Hills shall be removed from the jurisdiction of the High Court if the Lieutenant-Governor shall think it right at any time that they shall be so removed. No other matter is actually decided by the Governor-General in Council than that it is right that these districts shall be made over wholly to the Lieutenant-Governor's control, if and when he chooses to take them over. It is impossible to deny that this is practically an entire delegation to the Lieutenant-Governor by the Governor-General in Council of the legislative powers of the Council. But on what precise grounds can I say that such delegation is illegal? The Act does not fall within any of the restrictive provisions of the Statute 24 & 25 Vict., c. 67; and there is no positive law which prohibits such delegation. The question is really one of intention,--what powers did the Supreme Legislature intend to confer on the subordinate Legislature, the Council of the Govern or-Gen oral of India for the purpose of making Laws and Regulations

103. Reading the Councils Act with the High Courts' Act 24 & 25 Vict., c. 104, it is sufficiently clear that the intention of the Supreme Legislature was, that the jurisdiction of the High Court should remain as defined in the Statute, c. 104, except so far as otherwise declared by the Letters Patent or by the legislative enactments of the Govern or-General in Council, And it is fairly argued that if the Statutes gave no power of legislation in such matters to any authority in India save the Governor-General in Council, it could not have been the intention that the Govern or-General in Council should by legislation confer on the Lieutenant-Governor those powers which it was clearly intended should be exercised by the Govern or-General in Council alone. But although I do not doubt that the Governor-General in Council is the only authority in India who can by legislation affect the jurisdiction of this Court, I am not prepared to say that if the Legislative Council of the Governor-General passes an Act declaring that such rules affecting the jurisdiction as the Lieutenant-Governor may make shall have the effect of law, and if rules affecting the jurisdiction are thereupon made by the Lieutenant-Governor, the alteration of the jurisdiction would be otherwise than by the Governor-General in Council in exercise of his legislative powers. For if we hold that the Governor-General in Council must, if the object is to affect the jurisdiction

of this Court, do it by the direct act of the Council assembled for the purpose of making laws and regulations, and cannot do it through authority given by that Council to the Lieutenant-Governor or any other functionary, we are in fact legislating and imposing a restriction on the legislative powers of the Governor-General in Council which is not imposed by the Statute.

104. There are, as I have said, grounds for arguing that the intention was that legislation to affect this Court's jurisdiction should be by the Governor-General in Council directly and not by delegation. On the other hand, the Statute does not expressly say so; and it might have been expected to say so if such had really been the intention, inasmuch as for years prior to the passing of the Statutes of 24 & 25 Vict., powers of legislation had been delegated repeatedly by the Governor-General in Council to the Lieutenant-Governor and other executive officers, and it may be presumed that in framing these Statutes provision would have been made against a repetition of the evil, had it been deemed in fact to be an evil.

105. Act XXII of 1869 is certainly an exceedingly strong instance of legislation by the Governor-General in Council in a manner amounting to a delegation to the Lieutenant-Governor of Bengal of the legislative powers of the Council. Still powers of a similar nature (though usually not so extensive) have constantly for years past been given by the Governor-General in Council by legislation to various executive authorities. It is very difficult, for example, to distinguish in principle the present case from that of the Civil Procedure Code (Act VIIT of 1859), which by Section 385 took effect in any part of the territories not subject to the general regulations only when extended thereto by the Governor-General in (Executive) Council or by the Local Government to which the particular territory happened to be subordinate. In like manner, the first Criminal Procedure Code (XXV of 1861) took effect in Non-Regulation Districts only when extended to them by the Governor-General in (Executive) Council or by the Local Government to which the territory was subordinate. It is substantially neither more nor less than a delegation of legislative authority to say to the Lieutenant-Governor or any other officer,--Here is a new Code; but it is left wholly to your discretion to decide whether--and if at all, when--it is to be applied to such and such territories now under your government.' The principle in these and other such cases is really the same as in the case now

before us. Yet, such delegations are frequent.

106. Altogether, I do not think that the passing of Act XXII of 1869 was absolutely ultra vires of the Governor-General in Council. And after the course of practice which undoubtedly has been followed in this matter for very many years, I should certainly decline to declare such an Act to be beyond the powers of the Governor-General in Council, unless I considered it clear beyond all question that it was so.

107. I think, therefore, that we have no jurisdiction to entertain this appeal.

108. Various important points which I have not touched upon have been discussed in the course of the argument. But in the view which I take of the position of the Legislative Council of the Governor-General with reference to this Court, it seems to me unnecessary to go further into them.

Pontlfex, J.

109. I concur in the judgment of Mr. Justice Macpherson.

Jackson, J.

110. Assenting, as 1 do, to the decision in Feda Hossein's case I.L.R. 1 Calc., 431, and being therefore of opinion that the jurisdiction of the High Courts can be affected by legislative action of the Governor-General of India in Council, and by no other authority in this country, I have only to consider whether our jurisdiction has been validly taken away, and whether, if we should think otherwise, we are competent to give effect to our opinions.

111. It is contended on behalf of the Crown that the jurisdiction of this Court over the Cossyah and Jynteeah Hills was put an end to by a notification of the Lieutenant-Governor of Bengal, dated 14th October 1871, which notification purports to have been issued under the authority of the 9th section of an Act of the Govorner-Goneral in Council, called Act XXII of 1869, which received the assent of the Governor-General on the 24th September of that year.

112. It is further contended that the clause of this Act which empowered the Lieutenant-Governor to issue such proclamation is a law made by the Governor-General in Council under the authority of 24 & 25 Vict., c. 67; that by virtue of Clause 45, 3 & 4 Will. IV, c. 85, a law so made is of the same force and effect in India as any Act of Parliament, and that, consequently, neither this nor any other Court in India is competent to inquire into the validity of the Act or to question the mode in which the Legislature carries out its conclusions.

113. I will address myself first to the latter branch of this argument, and for this purpose it is necessary to state what my opinion is regarding the constitution and powers of the Indian Legislature.

114. This body is composed of the members of the executive Government, with the addition of certain persons (not to be less than six or more than twelve in number) nominated by the Governor-General as members of the Council for the purpose of making laws and regulations only. It derives its powers from Parliament and from no other source (see Forsyth's Cases and Opinions on Constitutional Law, page 17; see also 1 Harington's Analysis, Part I, Section 1), and those powers are to he exercised in a particular manner and are compassed by certain bounds.

115. The powers in question, sparingly granted at first, subjected originally, and down to 1834, to the necessity of registration in the Supreme Courts, and thereafter to the inspection and control of both Houses of Parliament, were gradually enlarged by successive regulating Acts, until they reached their present limits. They are now defined by the Statute known as the Indian Councils' Act, 1861. By that Act the Council, when constituted for legislative purposes, was declared absolutely incapable of transacting any business or entertaining any motion other than the consideration and enactment, or the introduction, of measures of a legislative kind, except that it might amend the rules for the conduct of its business which had been made before it came into existence. The legislative powers committed to the Governor-General in Council are described, and the restrictions on them set forth, in the 22nd clause of the Statute.

116. It was observed during the argument that there is a distinction between the grant of powers which are absolute, except as to matters expressly reserved, and that of powers extending only up to certain limits, not beyond; it was contended that the former of these was the description applicable to the powers of the Indian Legislature. It seems to me that the contrary is the case for the following reasons: The section which defines and guards by various provisos the powers conferred for legislative purposes, is thus entitled, 'Extent of the powers of the Governor-General in Council to make laws and regulations at such meetings.' If is no doubt one of the rules for construing Statutes that no weight is to b;: allowed to the marginal notes, nor should I refer to this one, but that the powers for like purposes entrusted to Governors in Council are similarly defined in Sections 42 and 43, and such defining clauses are afterwards referred to in Section 48 as provisions limiting the power of the Governors in Council.

117. The powers expressly conferred by Section 22 are-

Subject to the provisions heroin contained 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 Indian territories, and to make laws and regulations for all persons, and for all Courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of Princes or States in alliance with Her Majesty.

118. This languages appears to me to contemplate the exertion and exercise of the legislative mind of the Council in relation to the subject-matters indicated, and not to include the enabling of any person or any body of persons to repeal laws at their pleasure, or to make laws for Courts of justice or the like.

119. But before pursuing this topic further, I return to the question of the competency of this Court to discuss the validity of the Act; and on this point 1 think that one argument may be derived in favour of the opinion which I hold from the very provision of the Act of Will. IV, on which the advisers of the Crown have placed so much reliance. If we are to interpret the 45th section of that Statute in the way contended for, and the words are given the fullest sense of which they are susceptible, it would be necessary to hold that an Act of the Indian Legislature

once passed, whether it observed or transgressed the provisos, would be good and valid until repealed, for the words of the section are 'that all laws and regulations made as aforesaid (which means, vide Section 44, by the said Governor-General in Council made') so long as they shall remain unrepealed shall be of the same force and effect,' & c.

120. Now, it is not contended that a law and regulation made by the Governor-General in Council, forbidding the Secretary of State from borrowing money in England for the service of India, or altering the Mutiny Act, would be valid, of would have any force or effect, and therefore some limitation must be put upon the swooping terms of Section 45. But it seems manifest that Parliament must have had in mind the possibility and propriety of such laws being questioned on grounds apart from the breach of any of the provisos contained in Section 22.

121. For Section 24 expressly provides that-

no law or regulation made by the Governor-General in Council...shall be deemed invalid by reason only that it affects the prerogative of the Crown;

and Section 14 provides that-

no law or regulation made by the Governor-General in Council, in accordance with the provisions of this Act, shall be deemed invalid by reason only that the proportion of non-official members hereby provided was not complete.

122. Clearly, therefore, in these cases it was thought necessary to protect the laws in question from being called in question, and the place of question must certainly have been the Courts in this country.

123. From those premises, therefore--the limited character of the Legislature, the conspicuous absence of severeign or oven general powers, the language of the Statute in Section 48, and the provision against challenge on specified grounds--I. deduce the opinion that the Courts in India must have the power of examining the Acts of the Indian Legislature for the purpose of inquiring whether they have been made in accordance with the limited (though doubtless extremely large) powers conferred by a Parliament, and also in the manner prescribed by Statute; and

further, that the effect and force attributed to such Acts by Section 45 of 3 & 4 Will. IV, c. 85, belong only to laws passed under those same conditions.

124. But it is further contended that if the Courts have any such power, it can only apply to the provisions touching forbidden subjects, or to those connected with the enacting machinery which are contained in the Statute, and that it cannot extend to criticising the mode in which the Legislature thinks fit to carry out its intentions. If this wore so, my answer to the objection would be that, in the case before us, the Legislature has expressed no intention at all, but has merely given anticipative sanctions to any course which the Local Government may at any time think fit to take in reference to a matter as extensive and important as any matter can be. But I think this Court is bound, where its jurisdiction is concerned, and more especially in a matter of criminal jurisdiction, to examine every objection to the validity of an Act, not of course in a captious spirit, remembering indeed that it is under the Legislature, but also that both are the creatures of Parliament.

125. I have already said that the language of the 22nd clause of the Indian Councils' Act appeared to me not to warrant the handing over to any specified person the power to repeal or to make laws, and it is manifest that such is the effect of Section 9, Act XXII of 1869. It in fact enables an authority quite distinct from the Government of India, in either its legislative or its executive capacity, to abolish if it thinks lit all tribunals and all constituted authorities in a given tract of country, and to do so at any future time, and with reference to a condition of things not oven approximately understood by the Legislature. In point of fact, the discretion entrusted to the Lieutenant-Governor was not exercised till more than two years after the passing of the Act--was not exercised at all by the Lieutenant-Governor in office when it was passed, nor even was that Lieutenant-Governor a member of the Council which passed it; for the Act, as is well known, was passed at Simta, where, by Statute, the Lieutenant-Governor of the Punjab, and not the Lieutenant-Governor of Bengal, sits in the Indian Legislature.

126. It seems to mo, therefore, clear that the mind of the Governor-General in Council was not, and could not, have been applied at all, for legislative purposes, to the circumstances of the Cossyah and -Jynteeah Hills in or about October,

1871, and that he did not by any law, at that or any other time, take away the jurisdiction of the High Court. The Legislature being competent to take away by a law this Court's jurisdiction, might also, no doubt, by a law declare that at the end of two years such jurisdiction should cease; but it made no such law, and evidently bad not made up its mind upon the subject one way or the other.

127. Bentham, in his Chrostomathia (Vol. VIII, Works, page 94, Note), defines a law as-

a discourse...expressive of the will of some person or persons lo whom, on the occasion and in relation to the subject in question, whether by habit or express engagement, the members of the community to which it is addressed are disposed to pay obedience;

and he gives a very similar definition else where (Vol. III, p. 215), A regulation can be hardly a less positive or determinate expression of will enforced by sanction. If a law includes a declaration that a given person may do, or not do, a particular thing as lie chooses, and if the permissive enactment in Section 9, Act XXII, is a lawful exercise of the legislative power conferred on the Governor-General in Council, then it would be equally within that power to enact that it should be competent to the Lieutenant-Governor to abrogate and to re-introduce at his pleasure the whole of the existing law in every part of the Lower Provinces. That, it will doubtless be said, would be a lawful but an absurd and culpable stretch of legislative power; and it ought to be assumed that no such extravagance could emanate from the Governor-General in Council; but in truth the case supposed is not by many degree, removed from the case before us, only the character of such an Act is palpable when applied to our own case, which escapes observation when it refers to a distant and little known object. At any rate, the argument for the Crown is capable of being pushed to the most dangerous lengths; and if the case appeared to mo only doubtful, I should think it more reasonable to conclude that Parliament had not intended to allow a latitude which might, though it presumably would not, be so abused.

128. But there are other reasons which, as I think, point with equal plainness to the same conclusion. Parliament itself seems to have commentedon this matter, in

some places indirectly, in others directly.

129. The 25th section of the Indian Councils Act recites that it has been doubted whether the Government of India had the power of making rules or laws for the Non-Regulation Provinces otherwise than by way of formal legislation, and it then proceeds to validate all such rules or laws made prior to the passing of this Act. Now, irrespectively of what seems tome the unmistakable provision in favour of past rules only, it occurs to me to ask why, if the powers of the Indian Legislature have as wide an extent as is claimed for them, resort was had to the authority of Parliament in this matter? Why should not the Governor-General in Council have passed an Act legalizing such rules of previous date, and permitting them for the future? It was, it seems tome, because its powers were considered unequal to that strain, and because Parliament, in legalizing the past, thought it not right to sanction the practice in the future.

130. A somewhat similar measure of those powers is presented by the enactment of the Statute 34 & 35 c. 34, which, it seems to me, in the view contended for on the part of the Crown, would be been at least in part superfluous.

131. These declarations of the British Parliament seem to me on the one hand to indicate a distinct view as to the powers of the Indian Legislature, and on the other an equally distinct determination that every relaxing of the strict rule as to the form of legislation should emanate from itself. In short, it seems to be clear that, after the passing of the Indian Councils' Act down to 1870, all legislation for every part of British India was required to be by laws passed at a meeting for making laws and regulations. That undoubtedly was, and probably continues to be, the opinion of Sir Henry Maine, for it is plainly so stated in a paper of his written in 1868, which be has published as an appendix to his work on Village Communities. And on this point I think myself justified in referring to the despatch of Sir Charles Wood in transmitting a copy of the Indian Councils' Act to Lord Canning's Government. I am aware that there is high authority against such references, and also of the danger in some instances of making them, but the despatch is in tins instance to be used against the Crown, whose Minister Sir Charles Wood then was; and I believe there is no reason whatever for supposing that the Secretary of State was not on that

occasion a perfectly faithful interpreter of the meaning of Parliament, or that the decision of Parliament in this particular was at all other than what the Ministry intended it to be. Sir C. Wood says in paragraph 27 of the despatch (written in August 1861)--'You will observe, however, that henceforth legislative measures affecting any of the territories, regulation or non-regulation, under the dominion of Her Majesty at the date of the passing of the Act, must he passed either by the Council of the Governor-General, or by that of the Government to which such territories may be subject.' It would be, I think, a very imperfect and unreal compliance with that injunction, if the Governor-General in Council contented himself with a legislative declaration that the local Executive might in a given locality do anything that pleased it.

132. But further, as in regard to some of these provinces a more convenient and flexible procedure was found to he requisite, and as the remedy was in the hands of Parliament, a further Act was passed in 1870 (33 Vict., c. 3), wherein it was declared to be expedient that provision should be made to enable the Governor-General of India in Council to make regulations for the peace and good government of certain territories in India otherwise than at meetings for the purpose of making laws and reflations; and provision was made accordingly. It cannot have boon intended that there should be in existence, simultaneously, two methods of changing the law for such territories, and I should, therefore, consider that for this reason alone the course taken under the Act of 1869, about a year and a half after the passing of the Statute just mentioned, was bad but I also think it in plain contravention of the Indian Councils' Act.

133. As to the nature and extent of the legislative powers intended to be conferred on the Indian Government fit is really that by the Indian Councils' Act, any one who desires to observe how differently Parliament works when it gives complete authority, reserving only its own supreme and paramount rights, need only compare that Act with the Statute 30 Vict., c. 3, constituting the Dominion of Canada with its superior and subordinate Legislatures.

134. One argument, however, which was much relied on, I must not leave unnoticed, although I do not deal very fully with it. Our attention was drawn to a

great number of instances in which, beginning from 1844-45, and coming down to the present time, a power had been exercised more or less analogous to that used in the present instance; and with reference to these enactments it was contended, first, that a long course of legislation of the permissive or delogatory kind must be taken to have established the practice and therefore the authority of that course; and, secondly, that, inasmuch as many of such enactments were anterior to the Indian Councils' Act, Parliament must be taken to have noticed the course of practice, and by passing it over in silence to have sanctioned what it observed. As to this it seems to mo in the first place that the great majority of the Acts named in the list handed up to us differ so widely from the present one as to be of little value for the purpose of the argument. It often happens, and must often happen, that the usurpation of a power passes 'unnoticed, or at least unchallenged when the occasion is insignificant, or when the attendant circumstances appear to justify or to excuse to encroachment. To leave to an inferior or a different authority the provision of means for carrying out a law, or to entrust to its discretion the choice of a precise date for putting it in force, appears to me not incompatible with the retention by the Legislature in its own hands of the principal decision as to the policy of the law; and many of the Acts referred to go no further than this trifling delegation. Speaking without any claim to precision, because f have not thought myself bound to go through the list, I venture to affirm that not more than two or throe of these instances can be at all classed in importances, and in departure, as I view it, from the statutory powers of the Government of India to legislate, with the present one. And as the questioning of such assumptions of powers is matter of accident not originating with the Courts, no argument can be founded on their having hitherto passed unnoticed by the Judges. With Parliament of course the case is widely different. The sovereign Legislature intervenes when and as it pleases of its own motion or impelled thereto from outside; and if any consent could be inferred from the silence of Parliament, the Courts would he concluded. But on such a topic as this I do not think that we are bound to presume the knowledge of Parliament, or that it would be safe to draw so important an inference from its silence. It cannot be said that the practice under consideration has ever been free from doubts as to its legality. Judicial doubts on the subject were expressed in the case of Biddle v. Tariney Chum Banerjee 1 Tay. and Bell

390 to the decision in which case, so far as it went, we are bound to pay the highest respect; and we may feel tolerably certain that if the matter had attracted the attention of Parliament, it would have been dealt with in a manner similar to that adopted in the 25th section of the Indian Councils' Act, that is to say, the doubts would have been recited and the practice legalized either for the past or for all time.

135. I am unable, therefore, to assume even that Parliament was cognizant of, still less that it intended by silence to approve, the mode of the legislation referred to.

136. Upon those considerations it seems to me that the notification of the Lieutenant-Governor issued under authority of Act XXII of 1869, Section 9, could not have the effect of putting an end to the jurisdiction of the High Court. I take it as clear that this Court had jurisdiction in the Cossyah and Jynteeah Hills, because that was a jurisdiction vested in the Court of Nizamut Adawlut at the time of its abolition; and the result is that, me judice, such jurisdiction has not been validly taken away, but still exists.

137. I wish now to say that when I first committed to writing the views which I held upon this very important question, I found myself to have arrived, by a nearly similar train of reasoning, at the same opinion which my brother Markby has expressed with a fullness of treatment and an amplitude of research to which I do not pretend. I might have adopted, perhaps, every word of that exhaustive judgment, but T thought it on the whole more respectful to the Government, as well as more satisfactory to myself, that I should indicate, however slightly, the grounds of my own independent conclusion.

Garth, C.J.

138. The important questions which we have to decide in this case have now been maturely and anxiously considered by this Court; and although I regret for some reasons the decision at which the majority of the Court have arrived, it is satisfactory to know that the points have been argued as fully as they could have been; and that our attention has been called, as I believe it has, to all the available materials, which could guide our minds to a just conclusion.

139. The case has been twice argued,--first by the Legal Remembrancer on behalf of the Government of Bengal; and again, at the instance of the Government of India, by the Advocate-General and the Standing Counsel Mr. Kennedy for the Crown, and by Mr. Phillips on behalf of the prisoners, whose services the Government have very properly retained for that purpose.

140. Upon the first point which we have to determine, there is little or no difference of opinion, We are all agreed that the Governor-General in Council could, in the exorcise of his legislative powers, have removed the district of the Cossyah and Jynteeah Hills from the jurisdiction of the High Court.

141. The only question is, whether by the moans which they have adopted, they have effectually carried out that object.

142. The jurisdiction of the Court has certainly not in this instance been taken away by any direct action of the legislative body. Act XXII of 1869 did not of itself even profess to take away that jurisdiction. It can only be said to have done so indirectly, by conferring upon the Lieutenant-Governor of Bengal what was undoubtedly a very large discretionary power. He was by that Act invested with authority to remove the district in question from the jurisdiction of the High Court, and to abolish entirely at his own discretion and at his own time the laws and the system of judicature which prevailed there. He had also the power of introducing new laws, and of reconstituting a judicial system in accordance with his own views; or he might, if he had so pleased, have left the district entirely destitute of any laws, or any judicial system whatever.

143. It may indeed be open to grave doubt, whether, looking only to the Statutes from which the Legislature of India derive their powers, it was contemplated by Parliament that they should exercise those powers by conferring on any other person, or body of persons, so large a discretion.

144. But the question which we have to decide, is, not whether in this instance the Legislature have exercised their powers wisely, or in such a way as Parliament intended that they should exercise them; but-

1st.--Whether they had the power to take away the jurisdiction of the Court by the means which they adopted? and

2ndly.--Whether that is a question which the Courts of this country have a right to determine?

145. It will be convenient to deal first with the last of these points.

146. It was argued at the bar, that the power of making laws and regulations which was given to the Legislature of this country by the Councils Act, was as extensive a power (subject to the restrictions contained in Section 22), as was possessed by the Imperial Legislature; and that any enactment which they were pleased to pass under the name of a law, could be no more questioned by the Courts than an Act of Parliament. But it seems to me, that a great and dangerous fallacy underlies this argument; because there may be many enactments which the Indian Legislature may pass, and honestly believe that they have a right to pass, hut which may, nevertheless, be ultra vires, and of no force at all as laws. Suppose, for example, that an Act were passed, which in point of fact infringed one of the restrictions in Section 22, but which the Legislature bond fide believed was no infringement: would the belief of the Legislature that they were justified in passing such an Act prohibit Courts of justice from inquiring into the validity of it? Or to take another instance unconnected with the restrictions in Section 22; suppose the Legislature were to pass an Act, by which they authorized certain police officers to arrest a French subject in Chandernagore, and upon the man being arrested in Chandernagore, and brought in custody to Calcutta, he were to institute a suit here for illegal imprisonment,--would the Courts here have no jurisdiction to enquire into the legality of the imprisonment, and would the prisoner be utterly without remedy, simply because the Government had passed the Act, and believed that they had a right to pass it as a law? These instances are of course very clear; but in others considerable doubt might arise as to whether an Act passed by the Legislature was or was not within their powers; and in all such cases, unless Courts of law had jurisdiction to determine this question, the Indian public would have no means of redress, and the Government here would be virtually autocratic.

147. It may be said, no doubt, that the right which Her Majesty in Council possesses of putting a veto on any Act which is passed by the Legislature, affords some security against any excess of their powers; but it must be borne in mind that the scrutiny to which Indian measures are subjected by Her Majesty in Council, is not so much a legal security, for the purpose of ascertaining whether the Act is or is not strictly within the powers of the Legislature, as a scrutiny of policy and prudence to determine whether the Act is in accordance with the views of the Home Government, and a wise and prudent measure having regard to the interests of the Empire.

148. I am, therefore, of opinion that it is the province and duty of this Court to determine whether by the Act of 1869, and the notification in the Gazette, which was made in accordance with its provisions, the jurisdiction of this Court has been abolished; and that it is not because that Act has been passed by the Legislature as a law that we are disabled from inquiring into its validity.

149. No doubt, as soon as the fact is once established, that an Act of the Legislature which has boon duly passed is within the scope of their powers, the Court have no right to inquire into the propriety or wisdom of the law which is established by that Act; but it is not every Act which the Legislature may pass which can legally be considered as a law. Thus to bring the argument nearer homo to our present purpose, suppose the Legislature were to pass an Act, transferring the whole of their legislative powers over the Indian Empire to the Governor-General. That, in my opinion, would not be a law at all within the meaning of the Statute. It would simply be an abdication of their legislative powers in favour of the Governor-General, directly at variance with the language and plain meaning of the Councils' Act; and I should say the same of a similar transfer of their powers with regard to any portion of the Indian Empire.

150. Now I consider that the question in the present case is, whether that portion of the Act of 1869 which relates to the Cossyah Hills, is a law properly so called, or a mere transfer of the powers of the Legislature to the Lieutenant-Governor of Bengal.

151. I quite agree with my learned brothers, that this is a question of construction, and one to be determined not only by reference to the Councils' Act itself, but to other Acts of the Imperial Legislature which may be found to have a bearing upon the subject, and to other important considerations, to which I shall presently refer.

152. If the Act of 1869 stood alone, as the only instance of its class, and we had only to determine whether the transfer of power to the Lieutenant Governor which is thereby made was such a law as the Councils' Act authorized, I confess I should feel more doubt upon the question. But having regard to the course and character of the legislation which has been going on in this country, and in England with reference to this country, for the last forty years, it appears to me that the Imperial Legislature have themselves put a construction upon the Councils' Act, which (so long as it is not inconsistent with the language of the Act itself we are bound in duty to adopt, however much it may be opposed to our first impressions; and I quite think also, that every reasonable intendment, which can legally be made by this Court in favour of the validity of the acts of Legislature, should undoubtedly be made.

153. Now, upon looking hack through the Acts of Council since the year 1833, when the East India Company's Charter Act was passed, it seems to mo impossible to resist the conclusion that the principle and the course of action which has constantly been pursued by the Legislature of this country, is precisely that which is now called in question in the Act of 1869.

154. By the Act of 1833 the legislative powers which were then conferred upon the Governor-General in Council were in the same language, and (for the purposes of the present case) to the same effect, as those given by the Councils' Act in 1861; and from the time when that Act passed, the Governor-General in Council has constantly been in the habit of exercising those powers through the instrumentality of high officials and public bodies, in whom a large discretion has been vested for that purpose; and when we consider the extent and variety of the business of the Legislature, it is difficult to see how without such machinery they could effectually discharge their functions.

155. It would seem almost impossible in a country like British India, so vast in extent, so various in its population, its laws, and its customs, that the Legislature could perform its multifarious duties satisfactorily, without entrusting to the Executive Government, to the Governors of provinces, or to other high officials, and representative bodies, a considerable share in the working out of their manifold and comprehensive measures; and it would also seem impossible, that they should do this effectually without vesting in those high personages and bodies a large amount of discretionary power.

156. Moreover, it must be borne in mind that whatever important trusts are thus created by the Legislature, they are by no means absolute or irrevocable. Her Majesty in Council can put a veto upon any Act of the Governor-General in Council which her advisers may not approve, and the Government here are always in a position to see how the powers which they have conferred are being exercised, and if they are exercised injudiciously, or otherwise than in accordance with their intentions, or if, having been exercised, the result is in any decree inconvenient, they can always by another Act recall their powers, or rectify the inconvenience. Now, it will be sufficient for my present purpose that I should refer to a few only of the Acts of Council which were passed by the Legislature, between 1883, the year of the East Indian Charter, and the passing of the Councils' Act in the year 1861; and I would refer in the first place to the Procedure Codes of 1859 and 1861 as being remarkable instances of the course of action to which T have alluded.

157. The Civil Procedure Code of 1859, which effected a great change in the law, was only applied in the first instance to the Regulation Provinces of Bengal, Madras, and Bombay; and under the provisions of Section 385, it was not to take effect in any other parts of India, until it should be extended thereto by the Governor-General in Council, or by the Local Government of any Non-Regulation territory. Time the Lieutenant-Governors of Non-Regulation Provinces were empowered at their own discretion, and at their own time, to extend, each to his own territory, the provisions of a Statute, which not only introduced an entirely new procedure into the Civil Courts, but contained enactments which affected very materially the rights, liberties, and property of the subject; and by Act XX III of 1861 (which was passed in the same year as the Councils' Act) the Local

Governments of Non-Regulation Provinces were invested with a much larger discretion; because they were by that Act authorized to introduce the same Code into their respective provinces, subject to such restrictions, limitations, and provisos as they might think proper.

158. Then again, by Act XXV of 1861, the Criminal Procedure Code, a similar power was given to certain Local Governments of introducing at their own option the provisions of that Code into their respective territories; and this Act not only introduced new modes of procedure, but contained many enactments which made a very material change in the criminal law.

159. It seems to me impossible to deny that these Acts did in fact confer upon the Local Governments of Non-Regulation Provinces precisely the same kind of power, although different in degree, as by the Act of 1869 was vested in the Lieutenant-Governor of Bengal; they placed entirely in the hands of the Local Government of those Provinces the right of abolishing at their pleasure the old system of procedure, and of introducing a new system, which very materially changed the law, and affected the rights and liberties of the inhabitants of those Provinces. And the Civil Procedure Code of 1861 went further, because it gave the Local Governments a power to alter or modify the Code in any way they might think proper, and so to introduce a different law into their respective Provinces from that which was in force in the Regulation Provinces.

160. And there were many other Acts passed during the period which I have defined, in which the Legislature proceeded upon the same principle, although the powers conferred by those Acts might not have been so extensive as in the two instances which I have just named. Thus, Act II of 1835 gave the Bengal Government full power to issue any instructions which it might think proper for the control and guidance of the Courts of Assam and Cachar. Act VI of 1835 contained similar provisions with regard to the Courts in the Cossyah Hills. Act XXI of 1845 authorized the Governor-General in his executive capacity to place any of certain specified territories under a totally different system of law from that to which they were then subject. Act IX of 1846 empowered the Madras Government to make laws for the regulation of the Madras Harbour. Act XVI of 1846 conferred

upon certain Commissioners the right of making bye-laws for the town of Calcutta. Act XI of 1848 gave the same Commissioners still larger powers of a similar kind. Act I of 1852 empowered the Bombay Government to make laws for the regulation of the Bombay Harbour, Act XXII of 1860 affords a more striking illustration of the same principle. By that Act the Chitta gong Hill Tracts were entirely excluded from the jurisdiction of the ordinary Courts, both civil and criminal, and from the control of the revenue laws and officers; and they wore placed entirely in the hands of the Lieutenant-Governor of Bengal, who was to appoint what Courts and officers he thought proper, and give what instructions he pleased for the governance of such Courts and officers. And again, Act XIV of 1861 contained similar provisions with regard to the Rohilcund Hill Tracts : placing the administration of justice and the management of the revenue in the hands of the Lieutenant-Governor of the North-West Provinces.

161. Now all these Acts amount in one sense to a transfer of legislative power, because in each of them the Legislature entrusts to some other person or body of persons the making of laws and regulations which it might have made itself. Thus, instead of making laws for the regulation of the harbours of Madras and Bombay, it has transferred the power of making those laws to the Local Governments. Instead of introducing the Procedure Codes into the Non-Regulation Provinces, it has left the introduction of those Codes to the discretion of the Local Governments. Instead of organizing a system of judicature and revenue laws for outlying districts such as Assam and the Chittagong and Rohilcund Hill Tracts, it has transferred to the Local Government the duty of making laws for these districts.

162. The difference between the transfer of authority in all these cases and in that which we are now called upon to decide, appears to me one of degree only, not of principle; and if Courts of justice had to determine in each of such cases how far the Legislature might or might not go in the creation of these important trusts, and in conferring powers upon high officials, which they might have exercised themselves, the task would not only he one of extreme difficulty, but must load in my opinion to most inconvenient results.

163. Has then the Legislature of this country been proceeding all these years upon a principle unwarranted by law'? Has it been abdicating its proper functions and transferring powers which it had no right to transfer? The answer to this question will be found in the Councils' Act of 1861. That Act has put a construction upon the meaning of the Indian Charter of 1833 which it seems to me almost impossible to misunderstand.

164. It cannot seriously be supposed that the Imperial Parliament, when it was reconstituting and strengthening the Legislative Council in 1861, conferring upon it fresh powers, and subjecting it to restrictions which had not been previously imposed, could have been in ignorance of the mode in which the powers of legislation, which had existed for nearly thirty years, had been exorcised by the Governor-General in Council.7 The Acts of that Legislature had been regularly transmitted to England for the approval of Her Majesty in Council. They were well known to the authorities at the India House. They had been considered by Her Majesty's advisers; and many of them, more especially the Procedure Codes, had been carefully discussed and considered both in England and in this country. The Act of 1859 was prepared and passed under the auspices of Sir Barnes Peacock; and the Acts of 1861 were also passed at the time when he was not only Chief Justice of the High Court but also a Member of Council.

165. It cannot be supposed therefore, that if the provisions of those Acts had been contrary to law or oven questionable, they would have escaped the vigilance of Sir Barnes PEACOCK, whose keen perceptions and long experience both as a legislator and as a judge, rendered him peculiarly capable of detecting any such illegality. Nor, on the other hand, can it be supposed, that the Imperial Parliament would have renewed in the Councils' Act of 1861 the legislative powers which the Governor-General in Council had so long exercised, if they had disapproved of the course of action which the Legislature had been pursuing. The fact that with the knowledge of the circumstances which they must he assumed to have possessed, Parliament did in the Councils' Act renew the powers which were given by the Act of 1833, appears to me to amount to a statutory acknowledgment that the course of action which had been pursued by the legislature in the exorcise of those powors was one which the Act had authorized.

166. As regards the case of Biddle v. Tariney Churn Banerjee Tay. & Bell 390 which has been relied upon by Mr. Justice Markby, I need only say that, although I entertain the greatest respect for the learned Judges who took part in that decision, I cannot help considering that the view which they took in that case of the powers of the Legislature has been since virtually disregarded by the Legislature itself, and overruled by the Imperial Parliament by the construction which they have put upon the Act of 1833. I behave that at the time when that case was decided, it was generally supposed that the power of the Legislature to transfer its authority was very limited. If that case wore now law to the full extent of the decision, it would follow that a great many Acts of the legislature which have been acted upon as laws for years past, and are acted upon now, were altogether illegal.

167. I am, therefore, of opinion that Act XXII of 1869, the principle of which I cannot distinguish from that of the Acts which I have mentioned, was a law which the Legislature were justified in passing, and which did, in conjunction with the notification which was made under it, effectually remove the districts in question from the jurisdiction of the High Court. But as the majority of the Court are of a contrary opinion, the appeal made by the prisoners will be entertained, and the records will be sent for.

168. It is much to be desired that this adverse judgment, and the vast importance of the question which it involves, may induce the Government of India to take this case, if it is open to them to do so, on appeal to the Privy Council.

1. [Section 445: This act shall come into operation in the Presidencies of Bengal,

Madras,

and Bombay on the first day of January, 1862, but shall not

Commencement a n d take effect in any part of the Territories in British India not

operation of Act. subject to the General Regulations of Bengal, Madras, or

Bombay, until the same shall be extended thereto by the

Governor-General of India in Council, or by the Local Government to which such Territory is

subordinate, and until such extension shall have been notified in the Gazette.]

2. [Section 385: This Act shall not take effect in any part of the territories not

subject to the

general regulations of Jiengal, Madras and Bombay, until the

Act not to take effect in same shall be extended thereto by the Governor-General of

places not subject to the India in Council or by the Local Government

to which such terri-

gencral regulations until tory is subordinate, and notified in the 'Gazette'

extended thereto. (Supplemented by Act XXIII, 1861, Section 39 and by Act IX,

1863, Section 1.)]

3. [Section 24: This Act shall take effect throughout the Presidencies of Bengal, Madras, and

Bombay, including the Presidency Towns and the Straits' Settle

Operation of Act. ment; but shall not take effect in any Non-regulation Province

or place until the same shall be extended thereto by public

Notification by the Governor-General in Council or by the Local Government to which such

Province or place is subordinate. Whenever this Act shall be

Trial of pending suits, &c., extended to any Non-regulation Province, or place by the Gover-

in any Non-regulation Pro- nor-General in Council, or by the Local Government to which

vincc or place to which the such Province or place is subordinate, all suits which within

Act is extended. such Province or plane shall be pending at the date of such notifi-

cation or shall be instituted within the period of two years from

the date thereof, shall be tried and determined as if this Act had not been passed; but all

suits to which the provisions of this Act are applicable that shall be instituted within such

Province or place after the expiration of the said period, shall b e governed by this Act and by

no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

Amended by Act XIV, 1862 an Act of temporary operation and since defunct.]

4. [Section 5: This Act may be extended by the Governor-Genoral of India in Council, or by the

the executive Government of any Presidency or place, to any

Act may be extended by place within the limits of their respective jurisdictions. In

Government. the event of this Act being so extended, the powers hereby vest-

ed in a Magistrate of Police shall be exorcised by such officer or

officers as shall be specially appointed by Government to exorcise such powers.

Supplemented by Act III, 1863, of the Madras Council.]

5. [Section 9: This Act shall take effect only in those districts or places to which it shall be

extended by order of the Governor-General ofIndia in Council,

Operation of Act. or of the Executive Government any Presidency or place.]

6. [Section 39: When, under the provisionsof Section 385 of the said Act, the Act is extended

to any part of the territories not subject to the General Rogula-

Execusion of Act to Non- tions of Bengal, Madras, and Bombay, it shall belawful for the

Regulation provinces. Government to whioh the Territory is subordinate to declare

that tins Act shall take effect therein subject to any restriction,

limitation, or proviso which it may think proper. In such case the restriction, limitation,

or proviso shall be inserted in the declaration or notification of such extension. When the

Act is extended by the Local Government to any territory subordinate to such Government,

and such extension is made subject to any restriction, limitation, or provisio, the previous

sanction of the Governor-Gen oral of India in Council shall be requisite.]

7. [The Privy Council observed:

'If their Lordships were to adopt the view of the majority of the High Court, they

(unless distinctions were made on grounds; beyond the competency of the judicial office) would

be casting doubt upon the validity of a long course of legislation, appropriate, as far as they

can Judge, to the peculiar circumstances of India; great part of which belongs to the period

antecedent to the year 1861 and must therefore (as Sir Richard Garth well observed) be

presumed to have been known to, and in the view of, the Imperial Parliament

when the Council's Act of that year was passed.' L.R. 3. A.C. 907 : L.R. 5

I.A. 196 : I.L.R. Cal. 172 (183).]

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