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Court : Kolkata

Decided On : Mar-17-1936

Reported in : AIR1936Cal593,167Ind.Cas.615

Judge : M.N. Mukerji and; S.K. Ghose, JJ.

Appellant : Debendra Naraln Roy

Respondent : Jogendra Naraln Deb and ors.

Judgement :

1. These two appeals have arisen out of two suits which were instituted by the respective plaintiffs for recovery of possession of properties which, even apart from the entity which they collectively form under a recent enactment, have for a long series of years been popularly known as constituting the Bijni Raj. The properties, with the exception of a few solitary items which are comparatively recent acquisitions, lie in the Province of Assam and are extensive and valuable, covering an area of 1200 sq. miles and yielding a gross annual income of over 5 lacs of rupees. The Rajas of Bijni belong to a very ancient house which may be traced as far back as the fifteenth or sixteenth century. The Maharaja of Cooch Bihar in Bengal still represents the main line of this dynasty, and the Rajas of Darrang, Sidli and Bijni also belong to the same stock. History traces the House to an aboriginal tribe of Kochos or Rajbansis who rose to power and who on the dismemberment of the ancient Hindu kingdom of Kamrup with its capital at Gauhati by repeated Mahomedan invasions, founded a kingdom which was at one

time co-extensive with it. (See Hunter's Imperial Gazetter of India, Vol. 1, p. 240.) With successive changes of status, the Bijni Raj, which possibly was a paramount power at its inception, became a feudatory State, at first under the Mahomedans, then under the Ahoms, again under the Mahomedans and later on under the Rajas of Bhutan: and after the Bhutan war of 1864 it came to be regarded as a hereditary zemindari. The members of the Raj family call themselves Shivabansis and although it has been a matter of controversy between the parties in the present cases as to whether or not they are governed by the Hindu Law, it is not disputed that in the matter of succession they are governed, as well, by a customary law and certain Kulachar or family customs and usages.

2. The history of the Raj, with which we are concerned for the purposes of these appeals, opens with the death of the last male holder of the Raj, Raja Kumud Narain. This Raja died intestate on 9th March 1883 without any male issue and leaving him surviving two widows, Rani Siddheswari and Rani Abhoyeswari, and a daughter, Sikhareswari who died soon after. The two widows obtained possession of the estate, but disputes arose between them leading to a suit, No. 10 of 1887, commenced by Rani Abhoyeswari against Rani Siddheswari for possession of the Raj on declaration of her title. On 17th May 1891, while this suit was pending on appeal, Rani Siddheswari died. Rani Abhoyeswari thereafter continued in possession of the estate till her death on 17th October 1918. On her death the Deputy Commissioner of Goalpara stepped in and took possession of the Raj on the view that one Jogendra Narain, son of Raja Kumud Narain's brother Kirti Narayan, was entitled to the Raj, while one Heramba Prasad Barua, son of Rani Abhoyeswari's brother Bhabani Prosad Barua, was entitled to the personal estate of the said Rani. The said Jogendra Narain being a lunatic, the Court of Wards, Assam, assumed charge of the Raj on 5th December 1918 and has since then retained possession.

3. Before referring to the two suits which have given rise to the appeals, it is necessary to refer to two other suits which were previously instituted. In 1919 one Bhairabendra Narain and one Udai Narain, since deceased, who trace their descent from Maharaja Shib Narain, a common ancestor of theirs and of Raja Kumud Narain, instituted a suit at Alipur, District 24-Parganas, being Suit No. 225

of 1919, against Raja Jogendra Narain and others for recovery of possession of the Raj on declaration of their title thereto. In 1920 one Samarendra Narain instituted another suit against the Raja for similar relief at Dhubri, District Goalpara, and that suit was subsequently transferred to Alipore, District 24-Parganas, and numbered as T. Suit No. 51 of 1922. Samarendra Narain having died, his sister's son Sourendra Narain was substituted in his place as plaintiff. On 25th October 1930 Suit No. 51 of 1922 was dismissed. On the same day petitions of compromise were filed in Suit No. 51 of 1922 and Suit No. 225 of 1919 as between Raja Jogendra Narain and the plaintiffs in the two suits, namely Bhairabendra Narain and Sourendra Narain. Eventually, on 22nd December 1930, the two suits were disposed of in accordance with the compromise. To the terms of the compromise reference will be made hereafter. The two suits out of which the appeals have arisen are: T. Suit No. 84 of 1930 which has given rise to Appeal No. 171 of 1933 and T. Suit No. 164 of 1930 from which Appeal No. 205 of 1933 has emerged.

4. Suit No. 84 was instituted on 9th May 1930. The plaintiff in this suit is one Debendra Narain Roy who commenced it describing himself as the sole surviving executor to the estate of Rani Abhoyeswari. He alleged that since the death of Rani Sidheswari in 1891 Rani Abboyeswari was in possession of the entire Raj and the properties appertaining thereto in assertion of her own title adversely to and to the exclusion of all members of the Bijni Raj family or of any rightful claimants under custom or Kulachar and was in such possession to the knowledge of them all since then and till her death on 17th October 1918, and that Rani Abhoyeswari had thus acquired an absolute and indefeasible title. He alleged that the Rani had executed a Will on 30th August 1918 whereby she had appointed him as one of the executors, and that on her death he and one of the other executors, namely one Bhawani Prasad Barua, had obtained probate of the will from the High Court on the Original Side on 14th March 1919. Filing the probate along with the plaint, he prayed for a declaration that he, as executor under the will, is entitled to the entirety of the Bijni Raj mentioned in Schedule B to the plaint and for possession of the said properties and also for other incidental and consequential reliefs. Schedule B to the plaint, in which as stated in the prayer aforesaid the Bijni Raj was described, consisted of nineteen items of immoveable

properties (of which 17 were situated in the Province of Assam, one in the Province of Bengal and one in the United Provinces), one item as to mesne profits and seven items of moveables. The aggregate value of the properties was stated to be Rs. 5 lacs 47 thousand odd. Raja Jogendra Narain (designated as Kumar) represented by the Court of Wards was impleaded as defendant 1; Bhairabendra Narain, one of the two plaintiffs in suit No. 225 of 1919, and Surendra Narain, son of Uday Narain, deceased, who was the other plaintiff in that suit as defendants 2 and 3 respectively; and Sourendra Narain the plaintiff in suit No. 51 of 1922 as defendant 4.

5. Suit No. 164 was instituted on 25th October 1930, on which date, as already stated, judgment was pronounced in suit No. 51 of 1922 dismissing it, and petitions of compromise were filed in the two suits, namely No. 255 of 1919 and No. 51 of 1922, as between Raja Jogendra Narain, Bhairabendra Narain and Sourendra Narain. The plaintiffs in this suit were No. 1, Punyendra Narain and No. 2, Surendra Narain, the former being grandson by a predeceased son and the latter, as already stated, son of Uday Narain, deceased, who was co-plaintiff with Bhairabendra in suit No. 255 of 1919. In the plaint the history of the litigation between Rani Siddheswari and Rani Abhoyeswari was given; it was asserted that on Raja Kumud Narain's death one Lalit Narain, grandfather of plaintiff 2, and great grand-father of plaintiff 1, as the nearest male agnate, was entitled to succeed and did succeed to the Raj; it was alleged that Lalit Narain instituted a suit against Rani Abhoyeswari for recovery of possession of the Raj but the suit was withdrawn on a compromise under which the Rani was to remain in possession till her death; and that on the Rani's death Lalit Narain's son, Uday Narain, became entitled to succeed and did succeed to the Raj. And then in para. 14 the foundation of the claims of the two plaintiffs was set out in the following words:

That the said Kumar Uday Narain Deb died on 1st January 1924 leaving him surviving his second son, Kumar Surendra Narain Deb, plaintiff 2, and plaintiff 1 who is the only son of his predeceased eldest son, Kumar Tikendra Narain Deb. The plaintiffs state that in the selection of the eldest and nearest agnate preference has sometimes been given to the eldest branch of the family and

sometimes to the eldest member and that it is difficult to ascertain the exact rule of succession in this respect; but plaintiff 1 believed that it is lineal primogeniture and the plaintiff 2 believes that it is ordinary primogeniture; and plaintiffs agree and state that if it is the former plaintiff 1 is entitled to succeed, and if it is the latter plaintiff 2 is entitled to succeed to the Bijni Raj estate, which on the death of the said Kumar Uday Narain Deb has vested either in plaintiff 1 or in plaintiff 2.

6. Jogendra Narain, his title as Raja being disputed and designated as Kumar and represented by the Court of Wards, was impleaded as defendant 1, Bhairabendra Narain and Surendra Narain as defendants 2 and 3; Debendra Narain Roy as defendant 4; and as defendant 5 the Trustee in Bankruptcy, in London, to the estate of one Maharaj Kumar Prince Victor Nityendra Narain of Cooch Bihar was made a party on the allegation that in 1922 Uday Narain had under undue influence and coercion and at a time when he was seriously ill and hard pressed for money executed a conveyance in favour of the Prince of his right, title and interest in the Bijni Raj estate and that the Prince had since then been adjudged a bankrupt in England and his estate had vested in the Trustee. To the plaint was appended a schedule of properties, the items being the same as those described in the schedule in suit No. 84 of 1930 with only this difference, that an item of 1 lac of rupees, said to be in the Bijni Treasury which is to be found in the schedule in the latter suit is not reproduced, and the values given as regards all the other items being less so that the aggregate claim was put down at Rs. 3 lacs 10 thousand odd. Suit No. 84 of 1930 and suit No. 164, instituted as aforesaid, remained pending in the First Court of the Subordinate Judge of the 24-Parganas at Alipore. In March 1931 Mr. Laine, Member, Board of Revenue, Assam, introduced a Bill in the Assam Legislative Council, called the Bijni Succession Bill. The Bill was passed as Assam Act 2 of 1931. It received the assent of the Governor on 27th March 1931 and of the Governor-General on 9th May 1931, and was published under Section 81 (3), Government of India Act, in the Assam Gazette of 20th May 1931.

7. On the Act coming into force, it was pleaded in defence in the two suits as a bar to the plaintiff's claims. Additional written statements were filed on behalf of the plaintiffs and certain issues were framed or added to those originally framed with

the result that there came to be for trial 20 issues in suit No. 84, and 24 issues in suit No. 164. Of the 20 issues in suit No. 84 issues Nos. 14, 15 and 19 (b) related to the question of effectiveness of the probate of the will of Rani Abhoyeswari in respect of the properties situate in the Province of Assam; and issues Nos. 16, 17, 18, 19 (a) and 20 related to the question whether the Act operated as a bar. And in suit No. 164 the issue which raised the last-mentioned question was issue No. 24. Under an order of the Subordinate Judge, dated 30th January 1932, which was slightly varied by this Court on 12th July 1932, the issues in the two suits just referred to have been first tried out. The result has been that suit No. 164 has been wholly dismissed and suit No. 84 has been dismissed in part, that is to say, in respect of the properties which are situated in the Province of Assam, and has remained pending in respect of the two items of immoveable properties, one situated in Bengal and the other in the United Provinces. The plaintiffs in the two suits have preferred these appeals. At the hearing of the appeals several sets of arguments have been addressed to us: Mr. P.R. Das has addressed us on behalf of Debendra Narain Roy (Appellant in Appeal No. 171); the AdvocateGeneral and Dr. Basak, on behalf of the Court of Wards representing Raja Jogendra Narain (respondent in both the appeals); Mr. S.C. Bose, on behalf of Bhairabendra Narain (respondent in both the appeals); Mr. Gunada Charan Sen, on behalf of Punyandra Narain and Surendra Narain (appellants in Appeal No. 205); and Mr. J.N. Sen, for Maharaj Kumar Prince Victor Nityendra Narain (respondent in Appeal No. 205). The controversy in the appeals broadly speaking centres round two main questions; first: whether the Act, and particularly Section 4 of it, was ultra vires the Assam Legislature; and 2nd what is the effect of the Act upon the two suits. To deal with these questions the provisions of the Act will have to be considered; and for the first question a general view will be sufficient, but for the 2nd question a more detailed examination will be necessary. The 1st question will be taken up first. The long title of the Act is: 'An Act to regulate the succession in the Bijni Raj.' The preamble states:

Whereas it is expedient to declare and supplement the customary law of succession in the group of estates known as the Bijni Raj in Assam with a view to the prevention of disputes and the preservation of the Raj:

8. Section 1 gives the short title of the Act as 'The Bijni Succession Act, 1931' Section 2 contains definitions of the following words and expressions: 'The Bijni Raj' or 'the Raj'; 'Family'; 'The Holder of the Raj' or 'The holder' and 'prescribed.' Section 3 declares the Bijni Raj an impartible estate descendible to a single male holder according to the provisions of the Act. Section 4, which is the all-important section of the Act for the purpose of these cases, consists of three Sub-sections. Sub-section (1) declares Raja Jogendra Narain as the holder from his nomination on 28th September 1895 by Rani Abboyeswari and for his lifetime; Sub-section (2) declares Bhairabendra Narain as the next holder on Raja Jogendra Narain's death, and also provides for succession in case of Bhairabendra Narain predeceasing the Raja; and Sub-section (3) declares that subsequent successions were to be determined by nomination or appointment. Section 5 gives a list of persons in their order who would be entitled to nominate, together with the qualifications and conditions to be fulfilled to be so competent. Section 6 provides for confirmation of nominations and the effect of the confirmation. Section 7 provides for appointment to succession in case of failure of nomination. Section 8 lays down that publication in the gazette of a nomination confirmed or appointment made would be conclusive proof of title to the Raj from the appropriate date provided the person is alive on such date. Section 9 provides for temporary administration of the Raj when there is no holder. Section 10 lays down certain restrictions to transfer and on attachment or sale. Sub-section 11, 12 and 13 lay down certain savings, succession fee and power to make rules. In the schedule appended to the Act the estates of the Raj are described.

9. Leaving out of account for the moment the other provisions of the Act and confining his attention solely to the first two Sub-sections to Section 4, for that is the only part of the Act by which his client is hit, Mr. Das has argued in limine that the declaration contained therein is not `law' in the sense in which a legislative body is competent to enact it. This contention has been raised in this Court for the first time by Mr. Das and does not appear to have been raised in the Court below. 'Law in its most general and comprehensive sense,' says Blackstone (Commentaries, Vol. 1, p. 38)

signified a rule of action, and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation of optics, of mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey.

Municipal Law, called so in compliance with common speech as denoting the rule by which particular districts, communities or nations are governed,

says Blackstone (Ibid, p. 43),

is properly defined to be a rule of civil conduct prescribed by the superior power in State, commanding what is right and prohibiting what is wrong.

And, says he,

First it is a rule, not a transient sudden order from a superior to or concerning a particular person; but something permanent, uniform and universal. Therefore a particular act of the legislature to confiscate the goods of Titius or to attaint him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only and has no relation to the community in general; it is rather a sentence than a law. But an act to declare that the crime of which Titius is accused shall be deemed to be high treason; this has permanency, uniformity and universality and therefore is properly a rule. It is also a rule to distinguish it from advice or counsel which we are at liberty to follow or not, as we see proper, and to judge upon the reasonableness or unreasonableness of the thing advised; whereas our obedience to the law depends not upon our approbation, but upon the maker's will. Counsel is only a matter of persuation, law is matter of injunction; counsel acts only upon the willing, law upon the unwilling also. It is also a rule to distinguish it from a compact or agreement, for the compact is a promise proceeding from us, law is a command directed to us * * * Municipal law is also a rule of civil conduct. This distinguishes Municipal law from the natural or revealed; the former of which is the rule of moral conduct, and the latter not only the rule of moral conduct but also the rule of faith. * * * It is likewise a rule prescribed. Because a bare resolution, confirmed in the breach of the legislator without

manifesting itself by some external sign, can never be properly a law. It is requisite that this resolution be notified to the people who are to obey it. But the manner in which the notification is made is a matter of very great indifference.

10. Pertinent to this matter it is profitable to quote what Markby in his Elements of Law, when stating the conclusions of Austin drawn from Hobbes and Jeremy Bantham in his lectures on the Province of Jurisprudence has said. He has observed:

Law is a term which is used in a variety of different meanings; but widely as they differ, there runs throughout them all the common idea of a regular succession of events, governed by a rule, which originates in some power, condition or agency, upon which the succession depends. The conception of the law which we are about to consider, the law of the lawyer, is contained within and forms part of the conception of a political society. * * * In a political society one member or a certain definite body of members, possesses the absolute power of issuing commands to the rest, to which commands the rest are generally obedient. * * * It is the body of commands issued by the rulers of a political society to its members which lawyers call by the name `law.' There are only two small and very insignificant classes of the commands so issued by the rules of a political society which are nevertheless not enforced; as for instance, rules of rank and procedure in society, orders to wear mourning when a great person dies, and so forth. These are no part of law in our sense of the term. So also the rulers of a political society sometimes, but very rarely, address a command to a particular individual or individuals by name. Such occasional and specific commands are not properly comprised under the term law which, as we have said, involves the idea of a general rule, applicable to all cases which come under a common class. Austin considers that there are two other objects included within the province of jurisprudence and called laws which are, nevertheless not commands; namely declaratory laws and laws which repeal laws. But, as it seems to me, every such law, if it is addressed by the sovereign one or number to its subjects generally, if it is a signification of desire and is imperative, falls under Austin's conception of law; though it may only be a complete law, that is, a complete command, when taken in conjunction with some other signification of desire.

11. The learned Advocate General has argued that it is not permissible to separate Sub-sections (1) and (2) of Section 4 from the rest of the Act and to judge whether those Sub-sections contain declarations which would satisfy the requirements of `law' understood as above. That argument is undoubtedly reasonable. Mr. Das has argued that the declarations represent rules which are in the nature of senatus decreta or previlegia as contradistinguished from senatus consulta or legis in Roman Law-terms to which reference will be made hereafter in that they are not general rules which regarded the whole community. The argument is correct in the sense that the declarations relate to the status of two specified persons only and not of persons generally belonging to a given class or community; but to 'law' they are all the same. For even if the two Sub-sections are taken entirely divested of the context, they do lay down a rule in the sense in which Blackstone has used that term, not a transient sudden order concerning either Raja Jogendra or Bhairabendra, the operation of which is spent on them or either of them only but something which would bind the members of the Bijni Raj family as also the community in general in their relations with those persons something which, in that way presents a feature of permanency, uniformity and universality. To apply the test which Markby has referred to, the declarations are not such as are not meant to be enforced nor are they addressed to any individuals in particular, but involve the idea of a general rule applicable to all relations which the said two persons would have with the world outside in their capacity as holders of the Bijni Raj. Mr. Das's contention therefore must be overruled.

12. Mr. Das has next contended that the declarations contained in the aforesaid Sub-sections are in the nature of decrees in respect of the rights of particular individual or individuals and that though legislative enactments embodying such declarations are within the competency of the British Parliament which is a Sovereign body and which exercises not only legislative functions but certain judicial functions as well, they are entirely ultra vires the Indian legislatures, central as well as provincial. We shall have to discuss the nature of the Act taken as a whole hereafter and in that connexion will have to consider whether it can be regarded as a private Act, as Mr. Das has contended that it is. But, for the present we confine ourselves to the two subsections aforesaid which contain, what Mr. Das says, declaratory decrees in favour of the particular individuals referred to

therein. 'The principle of Parliamentary sovereignty' as Dicey in his Law on the Constitution has said,

means neither more nor less than this, namely that Parliament thus defined has under the English Constitution, the right to make or unmake any law whatever; and further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament.

13. In the classical passage on the subject of unlimited legislative authority of Parliament, Blackstone in his commentaries, Vol. 1. p. 161 has said:

It can, in short, do every thing that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament. True it is, that what the Parliament doth, no authority on earth can undo.

14. Coke in his Institutes (4th Institute, p. 36) says:

The power and jurisdiction of Parliament is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds,

and gives some instances of interference with private rights which strikingly illustrate the absolute nature of the power that the Parliament can exercise. Dicey has said:

Parliament however habitually interferes, for the public advantage, with private rights. Indeed such interference has now become (greatly to the benefit of the community) so much a matter of course as hardly to excite remark, and a few persons reflect what a sign this interference is for the supremacy of Parliament. The statute book teems with Acts under which Parliament gives privileges or rights to particular persons or imposes particular duties or liabilities upon other persons. (Law of the Constitution, pp. 46 and 47.)

15. In Maitlands' Constitutional History of England under caption 'The Work of Parliament,' at pp. 380-383 it has been pointed out that though the most important work of the Parliament is that of making statutes this is not all that it does, and that

leaving out of account the judicial power of the House of Lords as a Court for the trial of peers and as a Court to which appeals can be brought from the lower Courts, and the procedure by way of impeachment, the House of Parliament do a good deal of important work without passing statutes and hearing causes; and that such statutes as the Parliament makes are by no means confined within what a jurist or a political philosopher could consider the domain of legislation. There it has been observed:

A vast number of statutes he (i.e., jurist or the political philosopher) would class rather as privilegia than a legis; the statute lays down no general rule but deals only with a particular case. This is particularly noticeable in the last century .... One is inclined to call the last century the century of privilegia.

16. The legislative powers of the Indian legislatures, central and provincial, which are all non-sovereign law-making bodies, arise from definite Parliamentary enactments. The powers are wide and plenary, but the authority they exercise are as completely subordinate to, and as much dependent upon Acts of Parliament as is the power of any other body, which is a creature of a statute to make bylaws. When any particular case comes before the Courts, whether civil or criminal, in which the rights and liabilities of any party are affected by any legislation of an Indian legislature, the Courts may have to determine with a view to the particular case whether such legislation was or was not within the legal powers of the Council. This of course is the same thing as adjudication as regards the particular case in hand upon the validity or constitutionality of the legislation in question. The Courts however cannot declare invalid, annul or make void a law so passed, but if it is found ultra vires or unconstitutional they will refuse to give effset to it and treat it as void or invalid or having no legal existence. The leading case on the subject: Queen v. Burah (1878) 3 A C 889 in which the constitutionality of an Act (24 of 1869) of the Indian legislature was in question. Lord Selborne in delivering the judgment of the Judicial Committee, expressed himself thus:

The Indian legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in

any sense an agent or delegate of the Imperial Parliament, but has, as was intended to have, plenary powers of legislation as large and as of the same nature as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no condition or restriction by which that power is limited (in which category would of course be included any act of the Imperial Parliament at variance with it) it is not for any Court of justice to enquire further, or to enlarge constructively those conditions and restrictions.

17. It may be observed here that the same principles have since been held to apply to enactments of Colonial legislatures: see Powell v. Apllo Company (1885) 10 A C 282; Harris v. Davies (1885) 10 A C 279; Musgrave v. Chun Teeong Toy (1891) A C 272 at p. 274. The powers of the Indian legislature (which, by Section 63, Government of India Act, shall consist of the Governor-General and two Chambers namely the Council of State and the Legislative Assembly) are given by Section 65 of Act. The portion of the section relevant runs thus:

The Indian legislature shall have power to make laws (a) for all persons, for all Courts, and for all places and things, within British India.

18. If the Act now under consideration or the declaration contained in its Section 4, Sub-sections (1) and (2) which we are at present dealing with are 'law' as we have held they are, the same would obviously be entirely within the competence of the Indian legislature. But it has been suggested that the declarations concern only particular individuals and therefore do not fall within the category of 'laws for all persons.' In our opinion, Section 65 (1) (e) cannot be construed to mean that the laws are to be general laws for all persons for all Courts and for all places and things. So far as the Local legislature of a Province is concerned the powers are given by Section 80-A (1), Government of India Act which runs in these words:

The local legislature of any province has power, subject to the provisions of this Act, to make laws, for the peace and good government of the territories for the time being constituting that province.

19. We shall hereafter refer to the several contentions that have been urged in connexion with some of the expressions used in this Sub-section; but at the present moment the point we are considering is whether the words of the Sub-section would admit of a law in the shape of such declarations as are contained in the first two sub-scetions of Section 4 of the Act under consideration. In our view of the 'laws' contemplated by Section 80-A (1) are laws of all kinds, not only laws in general or in the abstract, but rules of law in concrete cases as well. Reference in this connexion may be made to the decision of the Judicial Committee in Ashbury v. Ellis (1893) A C 339 at p. 344 where Lord Hobhouse said thus:

If the New Zealand legislature had enacted that in a concrete case such as the present one, the New Zealand Courts should have power to give the plaintiff a decree notwithstanding that the defendant held himself aloof, we should hardly have heard the suggestion that such a law was not one for the peace, order or good government of New Zealand. Of course they have framed their law in more abstract and flexible terms. But making those terms their Lordships are clear that it is for the peace, order and good Government of New Zealand, etc., etc.

20. We are of opinion therefore that the declarations contained in the first two sub.sections of Section 4 of the Act are such declarations as a Local legislature of a province, otherwise competent, is empowered to enact. In pressing his contention aforesaid, namely that it is beyond the competency of Local legislature of a province to make declaration of this nature Mr. Das has asked us to scrutinize carefully the words,

laws for the peace and good government of the territories for the time being constituting that province.

21. He has not disputed that the Assam legislature has plenary powers to make such laws as may in its opinion be conducive to peace and good government, but he has contended that such laws must partake of the character of general

legislation of provincial concern. For the purposes of this argument he was prepared to concede that a declaration, or 'a declaratory decree,' as he would call it, may be a law enacted for peace and good government. He does not dispute the correctness of the pronouncement of Rankin, C. J., in Girindra Nath Banerji v. Birendra Nath Pal 1927 Cal 496 at p. 738, which is in these words:

In my judgment it is reasonably clear that these words (meaning the words peace and good government) appearing in Section 80-A (1) and some of the other sections of the Act are used because they are words of the widest significance and it is not open to a Court of law to consider with regard to any particular piece of legislation whether it is meritorious in the sense that it will conduce to peace and good government. It is sufficient that they are words which are intended to give, subject to the restrictions of the Act, a legislative power to the body which it invests with that authority.

22. Mr. Das also desires to stand clear of the decision of the Judicial Committee in Bhagat Singh v. Emperor 1931 P C 111 which has made it perfectly plain that the Court is no judge to determine whether a particular measure is or is not for peace and good government. And he does not dispute the decision of Lord Halsbury, L. C., in Riel v. The Queen (1885) 10 A C 675, that the words authorise the utmost discretion of enactment for the attainment of the objects pointed to and that:

They are words under which the widest departure from criminal procedure as is known and practised in this country (meaning England) have been authorised in Her Majesty's Indian Empire.

23. And further observed that there was not the least colour for a contention that:

If a Court of law should come to the conclusion that a particular enactment was not calculated as a matter of fact and policy to secure 'peace, order and good government they would be entitled to regard any 'statute directed to those objects, but which a Court should think likely' to fail of that effect as ultra vires and beyond the competency of the Dominion Parliament to enact.

24. So in Keith on Responsible Government, Edn. 2, Vol. 1, p. 302, it has been said:

By modern usage the power of the Legislature is to legislate for the 'peace, order and good government' of the territory, and there can be no doubt that the phraseology agrees in effect with the older peace, welfare, and 'good government' or the Victorian power to make laws in all cases. The means to these ends are entirely for the judgment of the legislature which enacts; the test is subjective, not objective, and no Court can substitute its views of what should be enacted for those of the Legislature. This was laid down in Riel v. The Queen (1885) 10 A C 675.

25. Mr. Das however maintained that unless it is a general legislation of provincial concern it cannot be regarded as law which the local legislature of the particular province is competent to enact. He has relied in this connexion upon three cases to which we shall now refer. The first case is Russel v. Queen (1882) 7 A C 829. The case was on appeal from the Supreme Court of the Province of New Brunswick and the Act of which the validity was the question for decision was the Canada Temperance Act, 1878. Under the British North America Act, 1867, commonly called the Federation Act, the legislative authority of the Parliament of Canada was conferred by Section 91, and the exclusive powers are given to the Provincial Legislatures of the Provinces in respect of certain subjects enumerated in Section 92. Under Section 91 the Canadian Parliament has authority to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned by the Act exclusively to the legislatures of the Provinces. The section then proceeds to lay down 29 specified items with respect to which the exclusive legislative authority of the Parliament of Canada is reserved and then, at the end, it is said:

And any matter coming within any of the classes of 'subjects enumerated in the section shall not be deemed to come within the 'class of matters of a local or private nature comprised in the enumeration 'of the subjects by this Act assigned exclusively to the legislature of the' provinces.

26. In Section 92 the subjects of exclusive provincial legislation are enumerated, the last item 16, being:

Generally all matters of a merely local or private nature in the provinces.

27. One important feature of this sort of classification is obvious and that has been pointed out by Lefroy in his Constitutional Law of Canada at p. 75 in these words:

The great importance of that feature of the Federation Act (Section 91) whereby a general undefined and unrestricted power to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces by Section 92 is given to the Dominion Parliament is obvious. Yet it may mislead to speak, as is often done, of the residue of Parliament, because the provincial legislatures under Section 92 also have a residuary power to make laws in relation to generally all matters of a 'merely local or private nature in the province.' The exercise of legislative power by the Dominion Parliament in regard to all matters not enumerated in Section 91 ought, therefore, to be strictly confined to such matters as are unquestionably of Canadian interest and importance. It derives 'no jurisdiction from Section 91 when legislating on any subject not' included within the classes of subjects enumerated in that section 'to deal with any matter which is in substance of local or provincial concern and does not truly affect the interest of the Dominion' as a whole. When so legislating it has no authority to trench or 'encroach upon any class of subjects which is exclusively assigned' to provincial legislatures by Section 92. It cannot legislate 'into matters which in each province are substantially of local or' private interest upon the assumption that these matters also concern the peace, order and good government of the Dominion.

28. The feature noticed as above is very important for, as will be seen when the classification of subjects in the schedule to the Devolution Rules framed under the Government of India Act is examined this feature is there absent and in that classification any conflict that may arise under the classification under the Federation Act has been sought to be avoided by safeguards which seem reasonably adequate. Under the classification under the Indian Constitution all subjects remain central subjects, unless expressly scheduled in Part 2 of the

Schedule or declared by the Governor-General in Council to fall within the said Part as being merely of a local or private nature within a particular province. For the purpose of understanding the true import of the decision cited as aforesaid this feature has to be remembered; for the question which arose in the case was whether the subject falling exclusively within the scope of the provincial legislature as a subject of local or provincial interest, the Canadian Parliament could legislate on it as affecting the Dominion as a whole. Their Lordships refered to (1881) 7 A C 96 Citizens Insurance Co. v. Passons (1881) 7 A C 96 in which the principles with the aid of which the distribution of legislative powers as provided for in Sub-section 91 and 92, and their general scope and effect were to be construed, and held that the matter regulated by the Act in question was not a matter exclusively assigned to the provincial legislatures but was a matter which could be legislated upon by the Dominion Parliament by virtue of its general authority to make laws for the peace, order and good government of Canada. The next case relied on is Attorney-General for Ontorio v. Attorney-General for the Dominions (1896) A C 348 and the Act concerned was the Canadian Temperance Act, 1886. It was held that the general power of legislation conferred upon the Dominion Parliament by Section 91, North British America Act, 1867, in supplement of its therein enumerated powers must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in Section 92 as within the scope of provincial legislation, unless they have attained such dimensions as to affect the body politic of the Dominion. Lord Watson observed:

Their Lordships do not doubt that some matters, in their original local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest of the Dominion. But great caution must be observed in distinguishing between that which is local and provincial and therefore within the jurisdiction of the Provincial legislation and that which has ceased to be merely local or provincial and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of Canada.

29. The third case relied upon is Attorney-General for Canada v. Attorney-General for British Columbia (1930) A C 97 in which Lord Tomlin referred to several earlier decisions and stated the propositions which had been laid down therein on questions of conflict between the jurisdiction of the Parliament of the Dominion and provincial jurisdiction. These propositions were re-stated in a later decision, (1932) A C 54 In Re: the Regulation and Control of Aeronautics in Canada, (1932) A C 54, at p. 71, to which the learned Advocate-General has drawn our attention. Mr. Das seeks the cases in his favour because jurisdiction was said to be in the Dominion Parliament under the words 'peace, order and good government of Canada' in Section 91 of the Federal Act, only when the subjects were held to be unquestionably of national interest and importance. Such a criterion was necessary to be resorted to in order to settle the conflict between the two jusisdictions, but it cannot enter into the meaning of the words themselves. That the above is a correct appreciation of the decisions will be apparent from what has been said of the case in Russel v. Queen (1882) 7 A C 829 in Qick and Garran's Annotated Constitution of the Australian Commonwealth, pp. 512-513. There a Canadian case is quoted in which Strong, C.J. said:

It is established by Russel v. Queen (1882) 7 A C 829 that the Dominion being invested with authority by Section 91 to make laws for the peace, order and good government of Canada, may pass what are denominated local option laws. But as I understand that decision, such Dominion laws must be general laws not limited to a particular Province.

30. And it has been further noted there that in Attorney-General for Ontorio v. Attorney-General for the Dominions (1896) A C 348 Lord Watson observed that they need not be general laws, not limited to a particular Province, but they must be for the benefit of the whole of the Provinces, and Lord Herschell remarked that it would be too narrow to say that such laws must extend to every Province, but on the other hand they must not be local legislation in a particular Province. In our opinion, this contention of Mr. Das as will presently be seen that

any matter which, though falling within a central subject is declared by the Governor-lGeneral in Council to be of a merely local or private nature within the

Province

is a provincial subject (Schedule 1, Devolution Rules, Part 2, Item No. 51) and so a subject on which the provincial legislature may legislate. There is nothing in the description of this item to suggest that the words 'local' and 'private' as used in this item should have a meaning only co extensive with the entirety of the province of a meaning which involves, such idea as of national interest and importance extending over the whole of the province and not merely over a part of it. The local legislature is fully competent to legislate on the subject for the peace and good government of the territories 'for the time being constituting that prowince': vide Section 80-A (1) of the Act. The case in Ashbury v. Ellis (1893) A C 339, which is an authority for the proposition that under the words 'peace, order and good government of New Zealand' legislation decreeing a concrete case could legitimately be passed, has already been cited.

31. The next contention presented by Mr. Das is a more weighty one and deserves very careful consideration. For the purposes of this contention it makes no difference whether the first two subsections of Section 4 of the Act, are taken aloof from the rest of the Act or the whole of the Act is taken together. The contention, broadly stated, is that the Act is a piece of legislation on a subject which the Assam legislature had no power to deal with. With regard to legislation dealing with private matters we have been referred to several enactments. One of these is the Murshidabad Act (15 of 1891), but Mr. Das has contended that it is an Act of the legislature and that the Indian legislature is competent to make any law and so a law such as the Act deals with. Another is the Punjab Kalra Estate Act, 1932, which was passed by the Punjab Legislature with the sanction of the Governor-General under Section 80 A (3), povernment of India Act; and Mr. Das's contention is that it is equally ultra vires, if it was passed in circum-stances similar to those under which the Bijni Succession Act was passed. The several steps in the process of reasoning on which this contention is based have to be stated with precision. First: Section 80-A (1), Government of India Act, says: ' The local legislature of any province has powers, subject to the provisions of this Act, to make laws' etc., and the expression 'subject to the provision of this Act' sneons subject to the classification of subjects into 'Central' and 'Provincial' as enumerated

in Schedule 1 of the Devolution Rules framed under Section 45-A of the Act.

32. Second: the subject with which this legislation is concerned rightly falls under item 16 or item 47 of Central Subjects and can become a provincial subject only if a declaration is made by the Governor-General in Council to the effect that it is of a merely local or private nature within the province so as to come under Item No. 51 of the Provincial Subjects, but in present case admittedly there was no such declaration; as the subject remained a Central subject the Provincial legislature had no authority to legislate on it. Third: The legislation purports to have been made with the previous sanction of the Governor-General in accordance with Sub-section (3) of Section 80-A, but that Sub-section does not confer a power on the provincial legislature to legislate on a Central Subject but only imposes on it a disability. Fourth: Clause (e) of the said Sub-section speaks of ' regulating a Central Subject' which only means this: that if there is a legislation on a Central Subject by the Indian legislature, and if a provincial legislature acting within its own field of legislation on a Provincial Subject, finds it necessary to inpinge upon that legislation of the Indian legislature, it may do so but not without the previous sanction of the Governor-General under that Sub-section; and in any event it does not mean that a provincial legislature can make an original law in respect of a Central Subject with the previous sanction of the Governor-lgeneral. If the reasoning be correct it is obvious that the Assam Legislature in enacting, only with the previous sanction of the Governor-General under Section 80-A (3), this piece of original legislation relating to a subject which is admittedly a Central Subject acted ultra vires its powers.

33. As regards the first of these points, it cannot be contended that the expression 'subject to the provisions of this Act' means only subject to Schedule 1 of the Devolution Rules in which the Central and Provincial Subjects are classified in two parts : it must mean subject to all the provisions contained in the Act itself and the rules framed under the authority of the Act as well as the schedules which form a part of the rules. That being so, Sub-section (1) of Section 80-A would mean that the power which is conferred thereby on the provincial legislature and the power so conferred is otherwise unrestricted and unconditional, is subject to the rest of the Act including Sub-sections (2), (3) and (4) of Section 80-A itself and to the

rules, including amongst others the Devolution Rules framed under Section 45-A and Section 129-A of the Act, and to Schedule 1 which is a part of Rule 3 of the said Devolution Rules. These Devolution Rules appear to have been framed by the Governor-General in Council with the sanction of the Secretary of State in Council and to have received the approval of both Houses of Parliament before they were then notified. The power as already stated, is expressed in very wide terms, not restricted or conditioned except as ' subject to the provisions of this Act.' Under Section 45-A rules being framed classifying the subjects they fall under two heads 'Central subjects' and ' Provincial subjects ' for the purpose of distinguishing the functions of the Government of India and the Indian Legislature from Local Governments and local legislatures. If the other Sub-sections of Section 80-A were not there then Sub-section (1) being subject to Section 45-A and the classification which the rules framed thereunder have made would perhaps have enabled the provincial legislature to legislate on provincial subjects only, though it must be admitted that there is anything expressly stated in the Act which would show that such would be the position. But the power given by Sub-section (1) of Section 80-A is also subject to Sub-sections (2), (3) and (4). Now, firstly, in respect of any legislation within in its exclusive field if such legislation affects any Act of Parliament the provincial legislature has no power to make it: Sub-section (4). Here then is a further curtailment of the power left to it after being subject to classification made by the rules framed under Section 45-A, when it is a matter of repealing or altering as to the particular province any law made by any authority in British India other than the legislature of that province, that provincial legislature may repeal or alter such law subject to the previous sanction of the Governor-General: Sub-section (2). Here the law to be repealed or altered may be either on a central subject or on a provincial subject and may be an enactment of the Indian legislature or of any other provincial legislature.

34. Sub-section (2) speaks of any law, ' any authority,' and is not controlled either by Sub-section (1) or by Section 45-A or the rules and classification thereunder. On the other hand Sub-section (1) being subject to Sub-section (2) the result is that notwithstanding the curtailment of the power given by Sub-section (1), by reason of the classification, the provincial legislature is entitled to travel beyond its exclusive field. If the fact be that Sub-section (2) is not controlled by Sub-section

(1), a fact which cannot possibly be controverted we do not see any reason why it should be presumed that the intention of the legislature was any different in respect of Sub-section (3) and that that Sub-section should be regarded as controlled by Sub-section (1). On the other hand it seems to us clear that just as it is the case with Sub-section (2), Sub-section (3) also reserves to Sub-section (1) a further instalment of powers notwithstanding the curtailment the latter has undergone by reason of the classification aforesaid.

35. The result, in our opinion, is that Sub-section (3) should be interpreted as meaning that the local legislature of a province if it makes or takes into consideration any law ..... '(e) regulating a Central subject,' it may not do so without the previous sanction of the Governor-General. In other words that it may do so with such previous sanction. In our judgment the expression ' subject to the provisions of the Act ' should be understood in the sense indicated above and not as Mr. Das has contended for. We are confirmed in the view that we take of the interpretation of Sub-section (3), Section 80-A on a reference to the rules framed under that Sub-section which, as already stated, are always framed by the Governor-General in Council with the sanction of the Secretary of State in Council and the approval of both Houses of Parliament, as some of these rules enable the provincial legislatures to deal with subjects, some of which are central subjects.

36. So far as point 2 is concerned it may be premised that the subject matter of the legislation falls either under item 16 or item 47. Item 16 is ' civil law, including laws regarding status, property, civil rights and liabilities and civil procedure.' The subject, concerning, as it does, the succession to the Bijni Raj, comes well under 'status,' 'property' or 'civil rights'. But whether it does so or not it does not matter, for there is item 47, the residuary item: 'all other matters not included among provincial subjects under Part 2 of this schedule.' Admittedly, there has been no declaration bringing it under item 51, part 2. The scheme of the classification is that all subjects remain central subjects unless specifically scheduled in Part 2 or taken into that part by declaration. This, it may be noted is a cardinal point of distinction between the classification of subjects under the Government of India Act and such as it is under the Federation Act to which reference has already been made. The subject, therefore, is a central subject; and this legislation has been

made on that footing, sanction under Section 80-A (3) having been obtained presumably, as the case was taken to fall within Clause (e) of that section which speaks of ' regulating any central subject.' One branch of Mr. Das's argument was that no central subject can at all be dealt with by a provincial legislature having regard to the classification of the subjects in the schedule. This argument we have already dealt with. Another branch of his argument was that if there was a declaration such as is referred to in item 51 of Part 2 of the schedule, and if after such declaration legislation is undertaken by a provincial legislature, that would be a case where the provincial legislature would be legislating on a central subject; and that the sanction under Section 80-A (3) may have been obtained on an erroneous supposition that there was such a declaration when, in fact, there was none. To this branch of his argument there are two answers. One is that if clause (e) be held to apply to such cases, then the Governor-General in Council will first have to declare the matter 'to be of a merely local or private nature within the province', and again before the law is to be made or taken into consideration, the Governor-General will have to grant sanction, a procedure which savours of unnecessary duplication. This answer, however, is not conclusive, for justification of such a double procedure is not altogether inconceivable. But the other answer is that afforded by Rule 3, Sub-section (2) of the Devolution Rules which says:

Any matter which is included in the list of provincial subjects set out in Part 2 of Schedule 1, shall to the extent of such inclusion be excluded from any central subject of which, but for such inclusion, it would form part.

37. By this rule, therefore, the matter to which the declaration would relate would at once move out of part 1 and get into part 2 and become a provincial subject, never to step out again and resume its character as a central subject. After the declaration, therefore, there would be no room for the subject to come in under Clause (e), Sub-section (3) of Section 80-A under the words 'regulating any central subject.'

38. To take up the fourth point before the third, Mr. Das's contention is based upon the meaning he seeks to attach to the word 'regulating in Clause (e) of Section 80-A (3). He has argued that the word 'regulate' does not mean 'enact' but means

'adjust'. The Court below has illustrated this contention as being of this nature. If there is a legislation by the Indian Legislature on a central subject, a provincial legislature in regulating that central subject may only frame rules for adjusting that legislation to suit the particular province. Such an extreme position has been repudiated by Mr. Das, and rightly enough, for the words of the Sub-section are 'make any law regulating a central subject.' He contends nevertheless that regulating, means 'adjusting,' so that if there is a legislation by the Indian legislature on a central subject that legislation may be varied by the provincial legislature in order to adjust it to the conditions and exigencies of the particular province, or, in other words, according to local conditions and needs of that province. It should be noticed that such a limited meaning would be inapplicable to the word, as used at other places in the Act, e.g. in Section 67. Sub-section (2) (i) read with the context in that provision, reads:

It shall not be lawful . . . to introduce at any meeting of 'either chamber of the Indian Legislature . . . any measure . . . regulating any provincial subject or any part of a provincial' subject which has not been declared by rules under this Act to be subject to legislation by the Indian Legislature.

39. It is clear that when the Indian Legislature makes an enactment, such enactment can hardly, if ever, be an enactment adjusting a pre-existing provincial legislation to the whole of British India according to the local conditions and needs thereof. Mr. Das has relied for this meaning upon the decision of this Court in Mathuramohan Saha v. Ram Kumar Saha 1916 Cal 136 We are unable to see anything in that decision which supports such a meaning. On the other hand in that case the Oxford Dictionary meaning of 'regulate' was referred to:

To control govern, direct by rules regulations; to subject to guidance or restrictions; to adapt to circumstances and surroundings.

40. To control by legislation, to subject to guidance by creating a law, are meanings which would be covered by this definition; and we see no reason why such a meaning should not be given. A subject on which there is no law is a subject which is at large and if a law is enacted in order to control or guide it that law regulates the subject. There are Regulations, which have from time to time

been enacted in respect of virgin subjects, and they regulate those subjects notwithstanding that there was no pre-existing legislation in respect of them. Mr. Das has asked us to look into the two cases which were referred to by Mukherjee, J. in that case: Municipal Corporation of Toronto v. Vergo (1896) A C 188 and Attorney-General for Ontorio v. Attorney-General for the Dominions (1896) A C 348. The former case is an authority for the proposition that a power to regulate need not necessarily include a power to prevent or prohibit; and the latter that a power to regulate assumes the conservation of the thing which is made the subject of the regulation. The cases, in our opinion, do not help Mr. Das in any way. Point 3 taken is that Sub-section (3) of Section 80-A, in the form in which it is expressed, only creates a disability and does not mean to confer a power. It is certainly correct to say that taking the subsection out of the context, that is to say without reading it along with Sub-section (1) which is controlled by it, it is difficult to find in it words which would indicate that any power was being conferred by it. But, as we have pointed out, it has to be read with Sub-section (1). Sub-section (1), as already observed, if its words 'subject to the provisions of the Act' are omitted, confers the widest possible power; and if being subject to Section 45-A that power has been curtailed, that curtailment is vitally affected by Sub-section (3). There is certainly a marked difference in the phraseology adopted in Sub-section (3) as compared with that in Sub-section (2). In the former the words are:

The local legislature of any province may not without the sanction of the Governor-General make or take into consideration, any law, etc., in the latter the words are:

The local legislature of any province may, subject to the provisions of the Sub-section next following repeal or alter as to that province any law, etc.

41. Why then is this difference? Dr. Basak has treated us to a very interesting discourse on this matter and we acknowledge the great assistance that we have derived from his laborious research into the history of the legislation concerning the subsections. As regards an investigation into the history of an enactment there are certain cardinal rules to be observed when such investigation is undertaken for construing a statute. Three cases will be sufficient for the purpose. In interpreting a statute the proper course in the first instance is to examine the language of the

statute and to ask what is its natural meaning uninfluenced by the considerations derived from the previous state of the law and not to start by inquiring how the law previously stood and then, assuming that it was probably intended to have it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view: per Lord Herschell in Bank of England v. Valiagno (1891) A C 107 at p. 144. It is useless to enter into an enquiry with regard to the history of an enactment and any supposed defect in the former legislation on the subject which it was intended to cure, in cases where the words of the enactment are clear. It is only material to enter into such an enquiry where the words of an enactment are ambiguous and capable of two meanings in order to determine which of the two meanings was intended: Per Lord Esher M.R. in Reg. v. Bishop of London (1889) 24 Q B D 213 at pp. 214-215. We have not to do with the history of the words unless the words are doubtful and require historical investigation to explain them. If the words are really and fairly doubtful then according to well-known legal principles and principles of common sense, historical investigation may be used for the purpose of clearing away the doubt which the phraseology of the statute creates: per Coleridge, C.J. in Reg. v. Most (1881) 7 Q B D 244, at p. 251.

42. The doubt, which the difference in phraseology to which reference has been made, creates, necessitates an historical investigation, and so long as we do not attack the problem of interpretation at the wrong end we think we are justified in enquiring how the Sub-sections found their way into this Act. Section 80-A in its present language was inserted by the Government of India Act 1919, 9 & 10 Geo. V, c. 101. The phraseology of Sub-sections (2) and (3) appearing in Section 80-A is the same as in Section 79, Government of India Act, 1915, 5 & 6 Geo V, c. 61. If the history of the Sub-sections is traced down from the Regulating Act, 1773 (Geo III, c. 63, Sub-section 36 and 37), through the Indian Councils Act 1861 (24 & 25 Vic., c. 67, Sub-section 42, 43, 44 and 48) and the Indian Councils Act, 1892 (55 & 56 Vic., c. 14, Section 5) it becomes perfectly clear that while the provisions corresponding to Sub-section (3) of Section 80-A always imposed a restriction to the unrestricted power of legislation conferred on the local legislature by the provision corresponding to Sub-section (1), the provision corresponding to Sub-section (2) was originally introduced to confer a power on the provincial

legislatures which the provision corresponding to Sub-section (1) which was there was not sufficient to confer. The difference in the phraseology is thus accounted for: when a power was being conferred, the word 'may' was used; when a power already possessed was being curtailed the words 'may not' were used.

43. The result, in our opinion, is that the several Sub-sections of Section 80-A are not to be read as mutually exclusive, but the first is controlled by the other three, the second controls the first and is in its turn controlled by the third, the third controls both the first and the second, and the fourth with which we are not very much concerned here, controls all the others. To 'adopt Mr. Das's construction of Sub-section (3) as conferring a disability only would be to ignore the expression 'without the sanction, etc,' an expression which plainly indicates that there is some power reserved somewhere and, in our opinion, that power is contained in Sub-section (1).

44. The foundation of Mr. Das's arguments in connexion with the question of the competency of the Assam legislature rests on the assumption that the matter of the legislation falling within a subject which admittedly is Central can come within the purview of the jurisdiction of that legislature, only by being declared by the Governor-General-in-Council as being of a merely local or private nature within the province' and so being brought under item 51, Part 2 of the Schedule of classification. His argument has been adopted by Mr. Gunada Charan Sen and Mr. J.N. Sen with some variations here and there the structure and substance remaining more or less the same. Mr. Gunada Charan Sen has submitted an alternative conttontion that as the language of item 51, Part 2 of the Schedule, attracts the matter of this legislation, that should be treated as a provincial subject and not a central subject; and that even if it be conceded that Section 80-A, Sub-section (3), Clause (e), enables a provincial legislature to legislate on a Central Subject, that power would be of no avail because here the subject was Provincial and not Central. This argument is obviously untenable because unlike, as in the Federation Act, a matter, though it may be of merely local or private nature within the province, does not under the Government of India Act become a Provincial Subject unless there is a declaration by the Governor-General in Council to that effect.

45. In our judgment a declaration contemplated in item 51, Part 2 of the Schedule of classification is not the only way in which a provincial legislature is enabled to deal with a Central Subject, and we are of opinion that a Central Subject may be legislated upon by such legislature under Section 80-A (3), Government of India Act, as was done in this case. We are also inclined, as at present advised, to agree with Mr. Bose that these two are not the only ways in which a Central Subject may be handled by a provincial legislature; but of such other procedure as may be available, it is not necessary for us to go into details. In agreement with the Court below therefore we hold that the Act was intra vires the Assam legislature. We next come to the second question, namely as to the effect of the Act upon the two suits now before us on appeal. In dealing with the second question in the Court below a very large number of authorities were cited on behalf of the parties and have been noticed by the learned Judge in his judgment. Many of them are on principles governing the construction of statutes and their effects. About these principles there is no doubt whatsoever at the present day and accordingly they have not been disputed before us. This relieves us of the necessity of discussing some of these authorities. The points however which have been stressed upon before us on behalf of the parties as favouring their respective contentions and such authorities as may have some bearing on those points will only have to be considered. One important contention that has been urged by Mr. Das is that the Act is a private Act as distinguished from a public Act. On this head his argument, broadly speaking, is that the Act being so regarded, its construction and effect must be judged on the lines on which they are judged in English Courts. Blackstone, J., while saying that:

Law in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action whether animate or inanimate, rational or irrational.

and defining Municipal Law as

a rule of civil conduct prescribed by the supreme power in a state,

has classified statutes according to their several kinds in the manner following:

Statutes are either general or special, public or private. A general or public Act is a universal rule that regards the whole community; and of this the Courts of law are bound to take notice judicially and ex officio, without the statute being particularly pleaded or formally set forth by the party who claims an advantage under it. Special or private Acts are rather exceptions than rules being those which only operate upon particular persons and private concerns, such as the Romans entitled senatus decreta in contradistinction to the senatus consulta which regarded the whole community; and of these which are not promulgated with the same notoriety as the former, the Judges are not bound to take notice, unless they be formally shown and pleaded.

46. It should however be mentioned here that for the purposes of judicial notice all Acts passed after 1850 are decreed public Acts unless the contrary is declared therein. (Interpretation Act, 1889, 52 & 53, Vic., c. 63, Section 9.) The senatus consulta, in form, had nothing of the imperative of a lex about it; the presiding consuls or the Emperor submitted their proposals and the senate approved of them. These however were the principal statutory factors of the jus novum law that differed widely from the principles of the old juis civile: see Muirhead's Law of Rome, 3rd Edn., p. 278. About the end of the first century they had superseded legis, but just after the close of the second century they were in their turn superseded by the Imperial Constitution: see Hunter's Roman Law, 2nd Edn., p. 75. The private statutes lay down no general rule, but deal with a particular case, and would, as observed by Maitland in his Constitutional History of England in a passage already quoted, be classed by jurists and political philosophers rather as privilegia than as legis:

All legislative proposals which are submitted to Parliament are divided into two classes and are described either as public or private Bills. Parliament deals with each of these classes in a different manner. A public Bill may be introduced by any Member in either House, but a private Bill may only be laid before Parliament upon a petition presented by the parties interested; and the procedure which is adopted to pass a public Bill into law is not the same in all respects as that which is adopted with regard to a private Bill. The boundary line which divides the subjects which should be submitted to Parliament by means of a public Bill and those which

should be submitted to it by means of a private Bill 'is extremely difficult to draw, but as a general rule .... any measure which affects only private interests or refers to a particular locality should be introduced as a private Bill. ..... There are however many Bills which, although introduced into Parliament as public bills are found to affect private interests. Bills of this kind are subject partly to the rules of procedure which govern private Bills and partly to those which govern public Bills and are known as hybrid Bills: Halsbury's Laws of England, Vol. 21, pp. 702-703, paragraphs 1285-1288.

Private Bills, although they deal with almost every class of subjects, are divided into two groups, namely: (1) Local Bills, which are commonly referred to as private Bills, are Bills promoted by particular corporations, companies and other parties who require parliamentary powers for the object or undertaking which they have in view, and therefore include Bills in relation to specified railways, harbours, piers, roads or tramways, supply of gas, water or electricity improvements, sanitary or police matters, in local districts. A general Bill dealing with any of these subjects could be a public Bill; but where it is desired to apply or extend the general law in the case of a locality or to give exemption from it, this is done by a private Bill. (2) Personal Bills which affect only the interests or property of the individuals to which they relate. Ibid pp. 727-728, para. 1353.

47. The procedure that is adopted with regard to private Bills is described in great detail in Halsbury's Laws of England, Vol. 21, p. 729, et seq, para. 1356, onwards. In May's Parliament Practice, pp. 686 to 689, it is clearly brought out how in passing public Bills Parliament acts strictly in its legislative capacity;. while in passing private Bills it still exercises its legislative functions but its proceedings partake of a judicial character. The following extract may conveniently, be quoted to illustrate the position:

The persons whose private interests are to be appear as suitors for the Bill, while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of justice are maintained; various conditions are required to be observed, and their observance to be strictly proved; and if the parties do not sustain the Bill in its progress by following every regulation and form prescribed, it

is not forwarded by the House before which it is pending. If they abandon it, and no other parties undertake its support the Bill is lost, however sensible the House may be of its value. The analogy which all these circumstances bear to the proceedings of a Court of Justice is further supported by fees which is required of every party promoting or opposing, private Bill, or petitioning or opposing any particular provision. ... The union of the judicial and legislative functions is not confined to the forms of procedure but is an important principle in the inquiries and decision of Parliament, upon the merits of private Bills. 'As a Court it inquires into and adjudicates upon the interests of private parties, as a legislature it is watchful over the interests of the public.'

48. The analogy to proceedings in Court is so complete that even parties are sometimes restrained by prohibitory injunctions from promoting or opposing a private Bill or compelled by mandatory injunction to apply for a private Bill and in good faith to promote it.

49. As regards the classification of Parliamentary statutes at different periods the history from the earliest times to the present day is given in Crais on Statute Law, pp. 56-57: see also, per Parks, B., in Richards v. Easto (1846) 15 M & W 244 and per Coleridge, J. in Shepherd v. Sharp (1856) 25 L J Ex 254. The words 'of a merely local or private nature within the province' appearing in item 51 of Part 2 of the classification schedule under the Government of India Act have unquestionably some relations to the 'Local' and 'personal' Bills which are the two classes of private Bills referred to above. But merely because an Act is a local and personal Act, as being confined to certain local limits and as affecting the status of a particular description of persons only, it would not cease to be a public act, if the Act is the product of the legislature in its legislative capacity and is not the result of a procedure in which the legislature is called upon to enact a law embodying a conclusion arrived at by it judicially or upon the basis of a contract as between the rival parties for whose benefit the law is intended. The substance of the enactment may be of a local and personal nature regarded from some points of view and in that way the enactment may partake of some of the characteristics of a private Act under Parliamentary legislation; but if the procedure which is resorted to in the matter of enactment of private Acts by Parliament be, as it is, unknown to the

Indian and Provincial Legislatures, it is not at all apparent why the present Act, even though it may be regarded as local and personal in some of its aspects, is any the less a public Act than any other piece of legislation in this country. Several decisions bearing on the rules of interpretation to be adopted as regards private Acts have been cited before us. One is Dawson v. Paver (1844) 5 Hare 415. In that case Wigram V.C. said:

Where an act of Parliament in express terms or by necessary implication empowers an individual or individuals to take or interfere with the property or rights of another, and upon a sound construction of the Act it appears to the Court that such was the intention of the legislature in such cases it may well be the duty of the Court, whose province is to declare and not to make the law to give effect to the decree of the legislature so expressed. But where an Act of Parliament merely enables an individual or individuals to deal with property of his or their own, for their own benefit, and does not in terms or by necessary implication, empower him or them to take or interfere with the property or rights of others, questions of a very different character arise. Here the distinction between public and private Acts of Parliament becomes materials. By a private Act of Parliament I do not mean merely a private estate's Act. But local and personal as distinguished from general public Acts. Public Acts, it is said in the books, bind all the Queen's subjects. But of private Acts of Parliament, it is said, that they do not bind strangers, unless by express words or necessary implication the intention to affect the rights of strangers is apparent in the Act; and whether the Act is public or private does not depend on any technical considerations (such as having a clause or declaration that the Act shall be deemed a public Act) but upon the nature and substance of the case. For these general propositions it is not necessary I should do more than refer to Sir Francis Barrington's Case, (1616) 8 Co Rep 136 (b) and Lucy v. Levington (1671) 1 Ventris 175. That the defendants' Act in this case is a local and personal and in that sense a private Act of Parliament does not admit of dispute. It is local as being confined to a particular place; and personal as being expressed to be for the benefit of the individuals named in it, and not for the benefit of all Her Majesty's subjects: however all may incidentally be benefited by that which improves this particular district. (His Honour read the title and preamble of the Act.) Here we have that which in many of the reported cases is stated to be the

distinguishing feature of a private Act of Parliament. It states that the persons intended to be benefited . by the Act are the persons having personal interest in the property which is the purpose of the Act to improve; and the Act then appoints Commissioners, empowers them to enclose and contains the drainage clause upon which the defendants more especially found the right which they have insisted upon in this suit. The plaintiff is a stranger to the Act upon which the defendants are proceeding.

50. It may be observed in this connexion that in R. v. London County Council (1893) 69 L T 440 on appeal Reg. v. London County Council (1893) 2 Q B 454 also it has been held that the list of what are local and personal Acts is the substance and character of the Acts themselves and not the mere form or description. It is apparent that the matter is a matter of substance and not of form or technicality, and if from the general tenor of the Act it appears that it purports to determine the status of individuals not merely inter se but also as governing their relations with others (an element which is obviously present in the Bijni Succession Act) the Act can hardly be regarded as a private Act in the sense in which the term is understood in Parliamentary legislation. This is a point of difference arising upon the substance of the enactment. It will be seen that Wigram, v. C. in the case aforesaid observed

The plaintiff is a stranger to the Act upon which the defendants are proceeding.

51. To understand the exact significance of this observation it is necessary to look into the facts, because in that case no question of procedure as regards the passing of a private Act was referred to and the word 'stranger' therefore, was not used for the purpose of signifying that the plaintiff was not a contesting party in the legislation before the Parliament. The word was there used as meaning a person whose rights were not intended to be affected by the provisions of the Act. It is true to say that everybody is in some sense bound by a statute even though it be a private Act. As was explained by Hale, C.J. in Lucy v. Levington (1671) 1 Ventris 175:

Every man is so far party to a private Act of Parliament as not to gainsay it, but not so as to give up his interest; it is the great question in Sir Francis Barrington's

Case, (1616) 8 Co Rep 136 (b). The matter of the Act there decides it to be between the foresters and the proprietors of the soil; and there it shall not extend to the commoners to take away their common. Suppose an Act says, whereas in a controversy concerning land between A and B it is enacted that A shall enjoy it, this does not bind others, though there be no saving clause because it was only intended to end the difference between the two.

52. In Dawson v. Paver (1844) 5 Hare 415 the plaintiff was said to be stranger because the Act empowered certain persons to deal with their own property in a certain place and defined by a certain description and there were no words which either expressly or by necessary implication imported that the legislature intended to affect the rights of other persons in other property, and the plaintiff fell within the last mentioned category. As Wigram, V.C. pointed out in the case aforesaid:

In private Acts in general the legislature does nothing more than enable persons to enter into a contract who could not otherwise enter into it; and the persons who are parties to the Act are expressly named in it [quoting from the judgment of Lord Chief Baron McDonald in Riddle v. White 4 Gwill 1387]. (Then referring to certain other cases). But these cases leave untouched the proposition that an Act of Parliament, not being a public Act, will not bind the right of strangers unless by express words or necessary implication the intention to do so can be collected. It is a question of construction.

53. The importance of the question whether the Act is a public Act or a private Act consists only in this that if it is the latter then, though there be no saving clause, the rights of third parties will not be regarded as affected by necessary implication: See Craies on Statute Law, p. 467, note (0), referring to Co. Litt, p. 25, note 16. To illustrate this rule of construction several other cases have been cited, Shrewsbury v. Scott (1859) 6 C B N S 1, in which Cockburn, C.J. said:

We have been reminded that a private Act could never bind persons who were not parties to the Act. Provisions, however general in their terms, could not be held to affect the rights of parties who were not before the Parliament and whose rights are not intended to be affected.

54. In Altrincham Union v. Chasire Lines Committee (1885) 15 Q B D 597, Lord Esher said:

In the case of a private Act which is obtained by persons for their own benefit you construe more strictly provisions which they allege to be for their benefit, because the persons who obtain a private Act ought to take care that it is so worded that that which they desire to obtain is plainly stated in it.

55. In Townley v. Gibson (1789) 2 T R 701 at p. 705, Lord Kenyon observed that:

Private Acts are not to be construed in precisely the same way as public Acts, but rather like a conveyance or contract according to the intention of the parties.

and Lord Wensleydale said in Rowbotham v. Wilson (1860) 8 H L C 348, 'as an agreement.' So also Lord Halsbury, L.C. said in Herron v. The Rathmines and Rathgar Improvement Commissioners (1892) A C 498 that the particular provisions may be regarded as words of contract to which the legislature has given its sanction rather than the words of the legislature itself. In Groat Northern Piccadily and Brompton Ry. Co. v. Attorney-General (1909) A C 1, Lord Loreburn, L.C. said:

The Courts will take every means of defeating an attempt by a private Act to take away the right either of the Crown or of persons who have not been brought in. And I desire to say for myself that I am not satisfied with regard to these private Acts of Parliament that there are sufficient means either of securing accurate drafting or of safeguarding the rights of persons other than those who are concerned in the private legislation.

56. The ratio of these decisions, on which Mr. Das has relied, is based upon the distinction in procedure that obtains for getting a private Act passed and inasmuch as the procedure is entirely foreign to the Indian legislatures, central as well as provincial, the principles of construction enunciated in them can hardly apply to the Bijni Succession Act, even though that Act in some of its features may be taken to resemble a private Act. On the other hand, the learned Advocate-General has relied upon several cases which have laid down that even as regards Acts of this

nature the enactments contained in them must be given the fullest effect when the necessary implication of the enactment justifies the same, e.g. (1907) 1 Ch 50 In Re: Wilton's Settled Estate, (1907) 1 Ch 50. Mr. Das has drawn our attention to the compromise in the two suits, Nos. 255 of 1919 and 51 of 1922, in order to establish that the Bijni Succession Act, or at least Section 4 thereof, enacts what the parties, or at least two of them, namely, Raja Jogendra and Bhairabendra, agreed amongst themselves. And he has contended, that call it a private Act or a public Act, if the position be that an enactment merely declares what is a matter of agreement as between them the declaration can bind nobody but themselves. This principle has been affirmed in several cases on private Acts to which we have already referred. Now the Subordinate Judge has summarised the net result of the compromise in these words:

By the compromise Raja Jogendra Narain was acknowledged to be proprietor and holder of the Bijni Raj estate and he was to continue to own and hold the estate for the term of his natural life, and after his death the plaintiff in Suit No. 225 of 1919, Bhairebendra, was to become the proprietor of the Raj estate his interest being vested estate in remainder in it from the time of the compromise. Bhairabendra got besides Rs. 1,50,000 from Raja Jogendra Narain. The plaintiff in Suit No. 51 of 1922, Sourendra, gave up and abandoned all claims to the Raj, on getting five lacs of rupees from the Raja. Sourendra's sister was married to Bhairabendra.

57. This summary is substantially correct; except that to be more accurate it may be said that while the Raja Jogendra Narain was to be the proprietor of the Bijni Raj for life, Bhairabendra was to be absolute owner, the interest of Bhairabendra being a vested interest in the remainder in the sense that his sons, grandsons, and so on, in the eldest male line (lineal primogeniture) and failing them his nearest and eldest agnatic relations (ordinary primogeniture) would succeed to the Raj as an impartible Raj. The whole of the Act, with the exception of Sub-section 3 and 4, is clearly outside the terms of the compromise. Section 3 declared the impartibility of the Raj, as the compromise also intended. Sub-section (1), Section 4 not only declares Raja Jogendra as the holder of the Raj as was provided for by the compromise but also stated, 'with title dating from his nomination to the succession made by Rani Abhoyeswari Debi on 28th September 1895,' a statement the effect

of which is not to be found anywhere in the compromise. In Sub-section (2), Section 4, Bhairabendra's title as the holder of the Raj after the death of Raja Jogendra is affirmed; this is what the compromise intended. But in that Sub-section it is also provided that, in case Bhairabendra dies, his successor, according to lineal or ordinary primogeniture, as is also intended by the compromise, is to be the person who would, in the opinion of the Governor of Assam, be such heir, a condition which is not in the compromise but which perhaps does not after all signify a substantial deviation. But Section (3) deviates from the compromise altogether; for after there is one succession on Raja Jogendra's death the right of Bhairabendra's heirs according to lineal or ordinary primogeniture, such as is reserved by the compromise, is entirely taken away by the Act and such succession is thenceforward to be governed by nomination or appointment.

58. The points of similarity between the compromise and the provision contained in Section 4 of the Act are so few while the divergence between them is so marked and wide, that it is not possible to presume that the section is merely an embodiment of an agreement, such as forms the essence of a private legislation. It should be remembered that at the date when the Bill was introduced there was in existence not merely the compromise, but also a judgment in a contested suit, namely No. 51 of 1922, in which, as it is said, various questions relating to succession to the Bijni Raj were discussed and adjudicated upon. It is possible and indeed very probable that the compromise was known to the legislature. But the supposition that it was on the footing of the compromise that the Legislature proceeded to make the declarations contained in Sub-sections (1) and (2) of Section 4, which are in their form declarations in rem is not founded on any tangible materials, either in the shape of express words or of recitals of circumstances or anything else, such as are to be found in private Acts. Indeed, it is quite possible and not at all unreasonable to imagine that upon such materials as were before it the legislature was satisfied that according to the customary law of succession to the Bijni Raj which it was laying down in the other provisions of the Act, Raja Jogendra, having had the nomination from Rani Abhoyeswari, was entitled to continue as the holder of the Raj in preference to all others and that Raja Jogendra, having consented to Bhairabendra coming in after his lifetime, had

also nominated him as his successor, so that Bhairabendra under the said law was entitled to the declaration that was being made in his favour.

59. The only part of the Act by which Mr. Das's client, the plaintiff in suit No. 84, is hit is Section 4, because he has set up a title anterior to the date on which the Act came into being, a date on which the suit was pending. And as the declaration made in Sub-section (2), Section 4 will take practical effect only on the death of Raja Jogendra it will not be incorrect to say that the said plaintiff is more immediately hit by Sub-section (1) of that section which says:

Raja Jogendra Narain Bhup of Bijni is hereby declared and shall during his lifetime be the holder of the Raj with title dating from his nomination to the succession made by Rani Abhoyeswari on 28th October 1895.

60. To get over the effect of this declaration Mr. Das has advanced several arguments. It has been argued in the first place that the word prevention in the expression 'with a view to the prevention of dispute' appearing in the preamble implies futurity, and that therefore the enactment should be read as intended to apply to such disputes as may in future arise, the disputes which were existing at the time when the Act came into being not being intended to be governed by it. For the meaning of the word 'prevent' reference has been made to the case in Goverdale v. Grant (1882) 8 Q B D 600 where in a charter party the words were 'accidents preventing the leading' and Pollock, J. made certain observations indicating that the strict grammatical and original meaning of the word 'prevent' is averting something which is to come in future; but in the same judgment there are observations to the effect that the word in popular language means stopping something either before it has commenced or while it is going on. Disputes which had already commenced or were going on would therefore equally come within the purview of the word. Besides there are also the words, 'for the preservation of the Raj,' an expression which indicates a continuity in respect of a state of things existing from before and therefore the legislation may well be taken to have been intended to apply to disputes which had already commenced and which threatened the existence of the Raj, as being a legislation which would put an end to such disputes. Secondly, it has been pointed out that even though the portion of

Sub-section (i), Section 4 which runs in these words:

Raja Jogendra Narain Bhup of Bijni is hereby declared and shall during his lifetime be the holder of the Raj

stands as a declaration of his status for the entire period commencing from the point of time when the declaration is made and ending with the termination of his life, the plaintiff in suit No. 84 is not affected because his title is a title which was previously acquired. And that there-fore the words which really affect him are the words

with title dating from the nomination to the succession made by Rani Abhoyeswari Debi on 28th September 1895,

words which speak of a continuity of title from the date aforesaid up to the present day that there is no room left for the title of anybody else. To get over the effect of these words it is said that they are no part of the enactment, but are mere recitals in the nature of a preamble, the correctness of which it is open to a party to challenge against whom they are sought to be used. It is pointed out that in many statutes there are subsidiary preambles other than the preamble to the statute as a whole; the subsidiary preambles being in the nature of recitals of facts prefacing some particular section or sections, and that the offending words referred to above are of that character. Several cases have been referred to in this connexion Mettens v. Hill (1901) 1 Ch 842 the case of a private Act in which Cozens Hardy, J. said that the recital though admissible against persons claiming under the Act is not conclusive and the Court is at liberty to consider the fact or the law to be different from the statement in the recital. R. v. Haughton (1853) 1 El & Bl 501 in which Lord Campbell made similar observations and also remarked that the recital in a private Act is merely evidence and not conclusive as an estoppel: (1844) 12 Cl & F 295 Wharton Peerage Claim (1844) 12 Cl & F 295, in which it was held that the recital in a private Act was very strong evidence, for it is the well-known practice of the Parliament not to allow such recitals to be inserted unless their truth was judicially established. It has also been argued that though a recital in an Act of Parliament may be used as svidenco it is not conclusive evidence and it is liable to be rebutted: see Craies on Statute Law, p. 492. As instances in which such

recitals were distinguished from enactments, the cases in Brindaban v. Brindaban (1874) 1 I A 178 and Baban Mayacha v. Nagu Shranucha (1877) 2 Bom 19 have been cited. On the other hand the learned Advocate-General and Mr. Bose have referred to a number of cases for the purpose of showing the conclusive character of recitals in Acts of Parliament. One of them is Commissioner for special purpose of Income-tax v. Pamsel (1891) A C 531, in which at p. 549, Lord Halsbury, L. C., said

That, in fact, the language of an Act of Parliament may be founded on some mistake and that words may be clumsily used I do not deny. But I do not think it is competent to any Court to proceed upon the assumption that the legislature has made a mistake. Whatever the real fact may be, I think a Court of law is bound to proceed upon the assumption that the legislature is an ideal person that does not make mistakes. It must be assumed that it has intended what it has said, and I think any other view of the mode in which one must approach the interpretation of a statute, would give authority for an interpretation of the language of an Act of Parliament, which would be attended with the most serious consequences.

61. Another case is Labrador Co. v. Queen (1893) A C 104, in which, at p. 123, Lord Hannen said:

This is an absolute statement by the legislature that there was a seigneurie of Mingan. Even if it could be proved that the legislature was deceived, it would not be competent for a Court of law to disregard its enactments. If a mistake has been made the legislature can correct it. The Act of Parliament has declared that there is a signeuries of Mingan, and that thenceforward its tenure shall be changed into that of frank aleuroturier. The Courts of law cannot sit in judgment on the legislature, but must obey and give effect to its determination.

62. A third case is Bentley v. Rotherham and Kimbarworth Local Board of Health (1876) 4 Ch D 588 which is an authority for the position that with regard to subsidiary recitals the canon of construction is the same, namely that if the enactment part is clear and unambiguous they may not be referred to for the purposes of construction. We do not consider it necessary to deal with, these cases in further detail because we are clearly of opinion that there is no foundation

for the contention that the words 'with title dating back,' etc., can be taken apart from the rest of the passage and treated as a mere recital and not as a part of the enactment. Thirdly, Mr. Das has addressed to us some arguments in order to emphasise the distinction between declaratory and remedial Acts. Declaratory statutes are generally retrospective in their operation. Blackstone, J. in Nicol v. Verelet (1779) 2 Wm 1277, said:

Declaratory statutes do not prove the law was otherwise before, but rather the reverse.

63. 'A declaratory Act,' said Coleridge, C.J. in Jones B. Bennett (1890) 63 L T 705:

means to declare the law, or to declare that which has always been the law, and there having been doubts which have arisen Parliament declares what the law is and enacts that it shall continue what it then is.

64. But declaratory statutes may be of various kinds. For instance a statute may correct an error in a former statute, and if the two are of the same session of Parliament, the second has relation back to the time when the first one was passed: Attorney-General v. Pongett (1816) 2 Price 381. It may be explanatory of a former statute; and so there may be cases in which, unless retrospective operation is given, it would fail of its object: see Parke, B., in R. v. Dursley (1832) 3 B & Ad 465. There is also abundant authority for holding that if an Act is in its nature a declaratory Act the argument that it must not be construed so as to take away previous rights is not applicable: see Attorney-General v. Theobold (1890) 24 Q B D 557; Attorney General v. Hertford (1849) 18 L J Ex 332. But it has been held that the use of the words ' it is declared' in a statute does not necessarily import that the statute is merely declaratory of existing law and, therefore, retrospective; and that the use of the expression 'it is declared to introduce new rules of law' is not incorrect and is far from uncommon: Harding v. Queensland Stamp Commissioners (1898) A C 769. In Young v. Adams (1898) A C 469, Lord Waston delivering the judgment of the Judicial Committee pointed out that the cases do not lay down an invariable rule and observed as follows:

It does not seem to me probable that the legislature should intend to extinguish by means of retrospective enactment, rights and interests which might have already vested in a very limited class of persons, consisting so far as appears of one individual, namely the respondent. In such cases their Lordships are of opinion that the rule laid down by Erle, C.J. in Midland Ry. Co. v. Pye (1861) 10 C B N S 179 at p. 191 ought to apply. They think that in a case like the present the learned C.J. was right in saying that a retrospective operation ought not to be given to the statute unless the intention of the legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks one's sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment.

65. It will serve no useful purpose to refer to the other cases cited before us in this connexion because here we are able, as we shall presently proceed to show, to distinguish upon the words of the Act itself, the language of the Act in that respect being plain and unambiguous, which of its provisions are retrospective and which prospective, and we have not to rely upon any presumption as to intent relating to its operation to be inferred from the character of the Act being declaratory or otherwise.

66. Fourthly Mr. Das has cited before us a variety of decisions either laying down general principles of interpretation relating to retrospective operation of statutes or dealing with specific enactments in which such priciples have been applied. The rule is so firmly settled that we consider it unnecessary to refer to the cases in detail. Retrospectivity is never presumed and in law is regarded as retrospective only where it is so by express enactment or it is a necessary implication from the language employed by the legis-lature, the presumption always being against the taking away of vested rights. In Craies on Statute Law it is expressed thus (p. 326):

67. Before giving such a construction, (meaning a retrospective construction to an Act of Parliament) one would require that it should either appear very clearly in the terms of the Act or arise by necessary and distinct interpretation. And perhaps no rule of construction is more firmly established than this: that a retrospective

operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only: Referring to Smith v. Callander (1901) A C 297 at p. 305; Main v. Stark (1890) 15 A C 384 at p. 387 Gilmore v. Shuter (1679) 2 Mod 310; Moon v. Durden (1848) 2 Ex 22; Hickson v. Darlow (1883) 23 Ch D 690; Waugh v. Middleton (1853) 8 Ex 352; Larpent v. Bibby (1855) 5 H L C 481; William v. Harding (1866) 1 H L C; Hough v. Windus (1864) 12 Q B D 224; Ellis v. McCormick (1869) 4 Q B 271; Re Joseph Suche Co. Ltd. (1875) 1 Ch D48; Re Athlumnay (1898) 2 Q B 547.

68. Some of these cases have been referred to by Mr. Das in his arguments on this part of the case. Other cases cited by him in this connexion are the following: Reid v. Reid (1886) 31 Ch D 402 at p. 408 in which Bowen, L. J., said:

It seems to me that even in construing an Act which is to a certain extent retrospective and in construing a section, which to a certain extent retrospective, we ought, nevertheless, to bear in mind that maxim (i.e., omnis nova constitutio futuris formam imponere debet non praeterites) as applicable where we reach the line at which the words of the section cease to be plain.

Gardner v. Lucas (1878) 3 A C 582, in which Lord O'Hagan said:

Unless there is a clear intention of the legislature, clear and unequivocal, or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective and not retrospective;

and Lord Blackburn observed:

Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument of no effect at all and from which the party was at liberty to depart so long as be pleased binding, I think the prima facie construction of the Act is that it is not to be retrospective, and it would require strong reasons to show that it is not the case.

Mayor etc of Yarmouth v. Simmons (1878) 10 Ch D 518, in which Fry, J., said that the retrospective construction was not to be favoured, unless the legislature clearly and distinctly authorised the doing of something which is physically inconsistent with the existence of an existing right.

69. Mr. Das has also referred to two Indian cases decided by the Judicial Committee both of which dealt with the question of succession of taluqdars under the Oudh Estates Act 1 of 1869. Under Section 10 of that Act the entry of the name of a person in certain lists to be prepared under the Act is conclusive evidence of the fact that he was a taluqdar. In one of these cases, Shankar Baksh v. Hardeo Baksh (1891) 16 Cal 397, their Lordships held that an entry had been improperly made and so declined to give effect to it; a list to be prepared under an enactment is evidently of different probative value from the enactment itself. In the other case, Mahammad Abdus Samad v. Kurban Husain (1904) 26 All 119, all that was decided was that the Act could have no retrospective operation, so as to deprive the successors of a person, who had died before the Act came into existence, of rights which they had already acquired on his death. The learned Advocate-General and Mr. Bose have also referred to some of these cases and also a number of other cases bearing on this question, but it will serve no useful purpose to refer to them as they also lay down the very same principle; the only difference being that in them it was possible to infer by necessary implication an intention to confer retrospective operation. Each of these cases, it may be stated turned on the language and intendment of the particular statute with which it was concerned; and it is obvious that the cases, beyond laying down the general rule, to which we have already referred, do not afford us any assistance in construing the Bijni Succession Act which neither bears any similarity to any of them in its provisions, nor are in any respect pari materia with any of them. As the learned Advocate-General has submitted, the authority of a decision whether it is to apply or not to apply to a different statute is of little value. Jessel, M. R., in In Re: New Callao (1882) 22 Ch D 484, said:

Now as regards Little's case (1878) 8 Ch D 806 of course it is binding on this Court whenever you get the identical circumstances, but it is not binding if you consider it a case of construction; because nothing is better settled than that the construction

put upon an instrument by a Court of law or equity is not binding on another Court of law or equity, even of inferior jurisdiction, as regards the construction of an instrument couched in somewhat similar language.

70. Fifthly, Mr. Das has drawn our attention to certain decisions in which the effect of subsequent legislation upon pending suits have been considered. The general law of course is that the law as it existed at the date when an action was commenced must decide the rights of the parties in the suit, unless the legislature expresses a clear intention to vary the relation of litigant parties to each other: the words used must appear to the Court to compel them to give the law an ex post facto operation, Hitcheock v. Way (1837) 6 A & E 943. Cases illustrative of this general rule (that when the law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights) are noted in Maxwell's Interpretation of Statutes 7th Edn., p. 192; Thistleton v. Frewer (1862) 31 L J Ex 230, Wright v. Greenroyd (1862) 31 L J Q B 4, Leman v. Housley (1875) 44 L J Q B 22 and Young v. Hughes (1859) 4 H & N 76. One of the cases relied upon by Mr. Das is Moon v. Durden (1848) 2 Ex 22, which was a case in which the question was whether a new enactment could defeat a pending action for a wager already commenced, that is to say an action for enforcement of a vested right. Parke B, while observing that the general rule is nova constitutio futuris forman, etc., laid down there that that rule which is one of construction only will yield to a sufficiently expressed intention of the legislature that the enactment should have a retrospective operation. He said:

In some cases the legislature has thought it just to make enactments retrospective even at some sacrifice of general principles. But then it does so on express terms; and generally, I believe invariably, couples the retrospective enactment with the best indemnity in favour of vested rights which the nature of the case admits.

71. In Re Joseph Suche Co. Ltd. (1875) 1 Ch D48, Jessel, M. R., in considering the effect of Section 10, Judicature Act, 1875, upon a winding up which had already commenced, observes:

I so decide because it is a general rule that when the legislature alters the rights of parties by taking away or conferring on them only right of action, its enactments unless in express terms they apply to pending actions, do not affect them.

72. A large number of important decisions bearing on the question of retrospective operation of statutes of pending actions were reviewed by McCardie, J. in Bowling v. Camp (1823) 128 L T 342. Some of these decisions also have been laid before us, the rule being everywhere stated in the same cogent fashion. It was argued that it would be attributing the grossest form of injustice to the legislature to proceed on the assumption that when an action has already commenced the legislature has passed an enactment turning a good claim into a bad claim, a good suit into a bad suit, without making any provision for cost and compensation in the shape of indemnity. If however that provision of the enactment itself is clear, unambiguous and compelling in its meaning, the absence of a provision as to costs or compensation is not quite material. And it may be stated also that the Code makes a provision, which leaves the discretion of the Court so wide in the matter of costs that it may be safely assumed that in cases in which a pending action is affected by a new enactment a proper order, even though it be an order entitling an unsuccessful party for costs against the successful one, may not be beyond the competency of the Court, provided of course the claim of the unsuccessful party is found prima facie to be a good claim under the law as it previously stood. Certain Indian decisions have also been referred to in this connexion, none laying down any principle other than this that in order to affect a pending suit, there must be something in the Act itself clearly indicating such an intention on the part of the legislature. The cases are Jnanendra Narayan v. Saroda Slandei 1931 Cal 25; Debendra v. Pashupati 1932 Cal 198; Jagamohan Ghose v. Behari Barui (1935) 39 C W N 1006; Brojendra Kumar v. Sushil Chandra 1936 Cal 334. The cases turned on the special language and feature of the particular enactments to which they related and which bear no similarity to the Bijni Succession Act. The case in Shaikh Sardarali v. Sheikh Daliluddi Ostagar 1928 Cal 640 has also been referred to in which the decision in Colonial Sugar Refining Co. v. Irving (1905) A C 369 was relied on for holding that a right of appeal is not a mere matter of procedure but a vested right accruing as on the date of commencement of the suit. On behalf of the respondents reliance was placed on

the decision in the case in Quilton v. Mapleson (1882) 9 Q B D 672 in which there are certain remarks which the respondents desire to use in their favour. The special features of that case are explained in the decision of this Court in Brojendra Kumar v. Sushil Chandra 1936 Cal 334. They have also referred to the recent decision of the Judicial Committee in K.C. Mukerji v. Mt. Ram Ratan Kuer 1936 P C 49. It would be sufficient to say that the considerations that arose in that case were widely different. Several other cases were also placed before us on their behalf of which one deserves mention: Promotho Nath Pal v. Sourav Dasi 1920 Cal 435, which suggests no departure from the general rule that

The rule that enactments in a statute are generally to be construed to be prospective and intended to regulate the future conduct of persons is deeply founded on good sense and strict justice and in the absence of clear words to that effect, a statute will not be construed so as to take away a vested right of action acquired before it was passed.

73. For the purpose of deciding the second question, we shall have to construe the Act for ourselves, bearing in mind the cardinal rules of construction. But before we proceed to do so it would be convenient to deal with two matters which arise at the outset. Firstly we have been asked on behalf of the appellant to look into the statement of objects and reasons for the enactment. To this the respondents object; but at the same time the respondent, by way of retaliation as it were, have referred us to the debates in the Legislative Council relating, to the passing of the enactment. We think we are precluded from looking into either of these things. Proceedings of the legislature in passing an Act including statements of objects and reasons, and debates of the legislature must be excluded from consideration: Administrator-General v. Premlal (1895) 22 Cal 788. Nor are we at liberty to construe the Act by any reference to the Bill in its original form: Herron v. The Rathmines and Rathgar Improvement Commissioners (1892) A C 498 at p. 501. The Judicial Committee has said in Krishna Ayyanger v. Nallaperumal Pillai 1920 P C 56 at p. 42:

No statement made on the introduction of the measure or its discussion can be looked at as affording any guidance as to the meaning of the words.

74. Also, as was observed by Denman, C.J. in Q. v. Capel (1841) 12 Ad & E 381:

We are pressed with a history of the introduction of .this proviso into the Act in its passage through Parliament. Of such facts, if capable of being ascertained, we are not permitted judicially to take notice. The law must ever be interpreted by the general rules of construction and we cannot travel out of its language in search of any supposed intention.

75. Another matter that arises is whether in construing Section 4 of the Act or rather the first two Sub-sections of that section we should confine our attention to that section or the said two Sub-sections alone or whether we should look at the rest of the Act as well. On behalf of the respondents we have been asked to adopt the former course, because certain difficulties were felt in construing the rest of the Act in the light of certain submissions that were made on their behalf. It was said that we need not trouble to consider whether a particular interpretation of Section 4 would fit in with the rest of the Act, because no question as regards the rest of the Act has yet arisen and any such question will be dealt with when, if ever, it does arise. We are of opinion that we must take the whole of the Act into consideration, and if any construction of Section 4 does not fit in with the rest of the Act we must reject it and look for some other construction which would apply to all parts of the Act equally well. But in doing so we shall not be permitted to alter the meaning of what is of itself clear and explicit. In Bentley v. Rotherham and Kimbarworth Local Board of Health (1876) 4 Ch D 588 Jessel, M. R. expressed the rule in this way:

There is no doubt a rule applicable to Acts of Parliament as well as to other legal instruments, that you may control the plainest words by reference to the context. But then, as has been said very often, you must have a context even more plain, or at least as plain as the word to be controlled.

76. The Rule is also expressed thus:

It is only when any part of the Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought to be had to such context for that purpose. No rule of construction can require that when the words

of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part. [Craies on Statute Law, p. 93, referring to (1784) 1 Leach C. C.(Edn. 4) 355 Palmer's Case, (1784) 1 Leach 355 and Warburton v. Loveland (1831) 2 D & Cl 480 at 489].

77. Of the rule of construction to be adopted not many need be cited. One of the leading rules may be quoted, as the first rule from the language of Tindal, C.J. when delivering the opinion of the Judges in Sussex Peerage Case (1844) 11 Cl & F 85 at p. 143:

The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed it. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such cases best declare the intention of the law-giver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute and to have recourse to the preamble, which according to Dyer, C.J. in Stowel v. Lord Zouch 1 Plow 353 at p. 369, is 'a key to open the mind of the makers of the Act and the mischief they are intended to redress.'

78. A second rule, which may be availed of where a doubt arises, whether general words have been used in general or particular sense has been expressed thus by Turner, L.J. in Hawkins v. Gathercol (1854) 6 D G M & G 1, quoting from Stradling v. Morgan 1 Plow 201 at p. 204:

Expositions have always been founded upon the intent of the Legislature, which they (the sages of law) have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances.

79. A third rule is to be found in Attorney-General v. Sillem (1863) 2 H & C 178 in which Pollock, C.B. pointed out the dangers of travelling out of the Act itself and

observed:

In construing the statute it is our duty to ascertain the true legal meaning of the words used by the legislature and to collect the intention from the statute itself, either the preamble or the enactments, and not to make out the intention from some other sources of information and then construe the words of the statute in order to meet the assumed intention.

80. And there is a fourth rule, which is very important as it lays down the order in which one should proceed. Sir W. Page Wood, v. C in Cope v. Doherty (1858) 4 K & J 367 has said

In construing any Act of the legislature the verbal construction of the particular section in question, if it be plain and simple, must govern the Court in arriving at its conclusion. If there be any doubt or difficulty in the wording of the particular section in question, the Court is entitled to look first at the circumstances attending the passing of the Act, next at the preamble, as far as it affords any indication which may serve as a key to the interpretation of the Act, and then, I may add, to the whole purport and scope of the Act to be collected from the various clauses other than the particular clause the meaning of which is in dispute.

81. Bearing in mind the procedure laid down in the decision last mentioned let us first of all examine Section 4, Sub-section (1). The Sub-section contains a clear and unequivocal declaration:

Raja Jogendra Narain Bhup is hereby declared and shall during his lifetime be the holder of the Raja with title dating from his nomination to the succession made by Rani Abhoyeswari Debi on 28th September 1895.

82. Sub-section (2) also contains a declaration about Bairabendra succeeding as the holder of the Raj upon the death of Raja Jogendra. The declaration in Sub-section (1) therefore though made 'hereby,' that is to say as at the time when the Act comes into operation, does, by its own words, go back to the nomination at the one end and the death of the other of Raja Jogendra giving him a continuous status as holder of the Raj during the entire period. There is no question, upon the

words used, of the declaration having anything to do with any period antecedent to the nomination. And commencing from the nomination and ending with his natural life the same status is assured to him. There is no question of any further retrospective or prospective operation of the declaration. It does not matter for the purposes of the cases before us, whether the declaration contained in Section 3 is retrospective in its operation. As regards Section 5 the word 'shall' being used in the proviso contained in that section, the section, as an enactment, is prospective. So also are the sections that follow. So far then, no doubt or difficulty arises.

83. Then, what is the status that has been declared in Sub-section (1)? The answer must be,-The status of Holder of the Raj with title to that status as obtained by the nomination. 'The Raj' or 'The Bijni Raj' is defined as a group of estates, etc.: Section 2 (1), and the estates are listed in the Sehedule. 'The Holder of the Raj' or 'The Holder' means the owner of the Raj: Section 2 (3). It thus appears that instead of declaring the title of Raja Jogendra to the eutstays, etc., which comprise the Raj, his title as 'Holder of the Raj' is declared, the expression 'Holder of the Raj' meaning that he is the owner of group of estates, etc., which constitute the Raj. The form in which the declaration is expressed suggests that the group of estates, etc., constitutes one entire entity to which Raja Jogendra having succeeded as owner by virtue of his nomination acquired the status of the 'Holder' and that the status he so acquired would continue throughout his life. The question at once arises whether he would remain 'the Holder' only so long as he remains owner of the estates, or whether he will cease to be the Holder' if he loses the estates in whole or in part, or whether on the other hand it was the intention of the Legislature that he would in no case lose his title as owner either to all the estates or any of them. It is clear to our minds that there are no words in the two Sub-sections or, for the matter of that, in the whole of the section, either expressly or by implication answering the questions. And yet the question has to be answered in order to make out whether the claim of title, if any, of persons other than Raja Jogendra or Bhairabendra to the properties or any of them would be barred by the declarations. We have therefore to travel outside Section 4 and try to collect the intention.

84. First, as to the circumstances attending the passing of the Act. Of these all that we have are the litigations, some of which had already come to an end and others which were pending. They by themselves do not throw much light, for nowhere in the Act are any of them referred to; and regarded as circumstances attending the passing of an Act they are at best equivocal for they leave us where we were, not enabling us to ascertain what exactly was the kind of mischief that was sought to be prevented or remedied by the Act.

85. The next thing to look into is the preamble. The decisions are quite clear that the preamble may always be referred to for the purpose of ascertaining generally the scope of the Act, where the enacting words are ambiguous: D. Bywater v. Brandling (1828) 7 B & C 643; Halton v. Cove (1830) 1 B & A D 538; Sussex Peerage Case (1844) 11 Cl & F 85; Crowder v. Stewart (1880) 16 Ch D 368; Commissioners of Income-Tax v. Pemsel (1891) A C 531; Fenton v. Thorley & Co. Ltd. (1903) A C 443; that the enacting words of the Act are not always to be limited by the words of the preamble and must in many instances go beyond it, and where they do so they cannot be cut down by reference to it: Salkeld v. Johnson (1848) 2 Ex 256; Pocock v. Pickering (1852) 18 Q B 789; Taylor v. Corporation of Oldham (1876) 4 Ch D 395; Overseas of Weat Ham v. Ides (1883) 8 A C 386; Powell v. Kempton Racecourse Co. (1897) 2 Q B 242; Fetcher v. Birkenhead Corporation (1907) 1KB 205, and that on the other hand, the preamble does not extend the provisions of the Act beyond what the enacting part of the Act contains: Basset v. Basset (1744) 3 Atk 203; Kinnaird v. Cory & Son (1898) 2 Q B 578; Walter v. Lane (1894) 1 K B 811. The mischief intended to be remedied by the scope and purview of the Act, as stated in the preamble, is:

Whereas it is expedient to declare and supplement the customary succession in the group of estates known as the Bijni Raj in Assam with a view to the prevention of disputes and the preservation of the Raj.

86. The legislature therefore aims at prevention of disputes and preservation of the Raj and with that object in view proceeds to declare and supplement that customary law of succession. Does it intend by the Act to prevent all kinds of disputes possible and to preserve the Raj from all attacks? The answer cannot be

in the affirmative; for it undertakes a legislation which covers only one particular branch of the law, namely the customary law of succession. As it is only the customary law of succession which the Legislature proceeds to declare and supplement, it is only such disputes and such attacks as may injure the Raj in the absence of such law that were meant to be settled or repelled. It follows therefore that the avowed object of the legislature in passing the enactment was to remedy a mischief due to the absence of a proper piece of legislation dealing with the succession to the Raj. Therefore the meaning of Section 4, which we have been trying to ascertain, of the declaration contained in its Sub-sections (1) and (2) is, according to the preamble, that the said Sub-sections purport to declare the title to the status of 'the holder of the Raj' as owner by right of succession of the entire entity of the group of estates, etc., as consituting the Raj, as distinguished from the title to the properties themselves. The words of the enactment, which are of doubtful import, are neither cut down nor extended if this meaning is attributed to them. Next we proceed to see what is the scope and purview of the Act and for that purpose we have to examine the other parts of the Act, other than the particular clause that we have to construe. Lord Moulton in National Telephone Co. Ltd. v. Post Master General (1913) A C 546 has observed:

While it is admissible to use the full title of an Act to throw light upon its progress and scope it is not legitimate to give any weight in this respect to the short title which is chosen merely for convenience, its object being identification and not description.

87. And in the same case there is an observation of Lord Parker, which is important and should be borne in mind when examining the other parts of the enactment. He said:

It does not appear to me to be consonant with sound principles of construction to cut down the plain meaning and effect of one section of an Act because if this meaning and effect be given to the section certain provisions of another section might be otiose.

88. The short title is, 'The Bijni Succession Act, 1931;' the full title is, 'An Act to Regulate the Succession in the Bijni Raj.'

89. The full title must not be neglected or disregarded and it may be some guide to the meaning: Per Williams, J. in Smith v. Preston (1836) 2 Hr & W 9; per Lord Denman, C.J. in Hinton v. Dibbin (1842) 2 Q B 646: per Coleridge, J. in Blake v. Midland Railway Company (1852) 18 Q B 93; per Willes, J. in Kenrick & Co. v. Lawrence & Co. (1890) 25 Q B D 99; per Chitty, J. in East and West India Dock Co. v. Shaw Savill & Albion Co. (1888) 39 Ch D 524; per Kekewich, J. in Attorney General v. Marget Pier & Harbour Co. (1900) 1 Ch 749; per Lord Macnaughten in Fenton v. Thorley & Co. Ltd. (1903) A C 443. The full title and preamble have been often used to determine the scope and the purview of the Act and the object of the Legislature: see e.g. Per Jessel M.R. in Griffiths Carr v. Griffith (1879) 12 Ch D 655; Dartford Rural Council v. Bexley Heath & Co. Ltd. (1898) A C 210. They as well as the rest of the enacting part of the statute are to be all taken together: Brett v. Brett (1826) 3 Add 210. Both the preamble and the full title plainly indicate that it is the succession to the Raj with which the Act is concerned. This is not a case in which there is any conflict, either real or apparent, as between the preamble and the enacting part that is before us for construction. Now let us examine the other parts of the enactment. Section 5 speaks of the persons entitled to nominate; Section 6 of confirmation of nomination and the effect of the confirmation; Section 7 provides for appointment in case of failure of nomination; Section 8 states that publication in the Gazette of a nomination confirmed or an appointment made is conclusive of such nomination or appointment. All these sections deal with succession to the Raj.

90. Section 9 is very important. It makes provision for administration of the Raj when there is no holder; for it says, 'pending the confirmation of the nomination or pending the appointment, as the case may be, of the next holder;' that is to say, it speaks of a period during which there is no holder. It also speaks of an 'Incoming Holder.' Can it be suggested that when there is no holder there is nobody who has title as owner to the estates, etc., comprising the Raj? The answer clearly is, No. The meaning is that so long as there has been no confirmation of a nomination made, or no appointment made of anybody giving him the status of a holder, the estates etc., are not without an owner and the title to them rests with somebody, that is to say, with the true owner, whoever he may be, and it is only their administration that is provided for by the section. This, in our opinion, removes the

doubt that we felt as to the meaning of Section 4, Sub-sections (1) and (2), and makes it plain that the expression 'Holder of the Raj' or 'Holder' was not intended to exclude the title of anybody on any ground other than succession to the Raj, the rules as to which are laid down in the Act. Proceeding to consider the different clauses of Section 10 we find that they unmistakably show that it is possible that at some time or other the properties, the whole of them or in part, may have passed to outsiders by transfer made in contravention of the provisions of Sub-section (1) of that section, a transfer which is declared void by Sub-section (2) of that section, and yet the holder remains the holder notwithstanding such transfer. Sub-section (3) of Section 10 provides that in the case of a transfer made in contravention of Sub-section (1) any holder would be competent to institute a suit for recovery of the property transferred within 12 years from the date of death of the transferor, or if on such death he is subject to any disability then within three years from the cessation of such disability, whichever of the two is the lenger period.

91. The extent to which Limitation Act is intended to be affected by this Act is thus expressly specified in Section 10, Sub-section (3). It is important to notice that according to the provision contained in Section 10, the holder of the Raj is given a special period of time within which he may sue for recovery of properties transferred by the previous holder in contravention of the law, and if no such suit is commenced within that period the transferee who was holding under such void transfer cannot be defeated thereafter. In the circumstances last mentioned, the holder remains the holder but the title to the transferred properties comes to be in the transferee. The status and the title are then in two different persons. The savings contained in Section 11 need not be detailed, but they are of importance as specifying the extent to which the general law is intended to be affected. Section 12 deals with succession-fee, and Section 13 with the power to frame rules relating to nominations, confirmation of nomination, temporary administration when there has been no nomination or confirmation of nomination or no appointment, and succession fees, and generally to carry out the purposes of the Act.

92. The whole Act appears to us to be entirely consistent with the preamble and the short title and none of the provisions contained in the sections carry the object

of the Act beyond that which is declared by the preamble and denoted by the short title. In our judgment it must be held that the Act is confined to the succession to the Raj, and any title other wise than on the basis of succession which anybody may have to the properties of the Raj or any portion thereof appears to us clearly to be outside the scope and purview of the enactment. And we are of opinion that the only title that Sub-sections (1) and (2) of Section 4 purport to declare, and the only title which Section 8 speaks of, is title as holder of the Raj on the basis of succession, either by nomination or by appointment and no title based on any other ground. Any other view would, in our opinion, be inconsistent with the words of Section 4 of the Act, read along with the context, the scheme and the intent of the Act. It follows that suit No. 84 of 1930 in which the plaintiffs claim is based upon, an alleged title acquired by adverse possession even though that claim is in respect of the properties which constitute the Bijni Raj as defined in the Act, but does not concern any question of status as the holder of the Raj or any question of succession is not barred by the Act. It also follows, that suit No. 164 of 1930 in which the plaintiffs' claim is solely based on their alleged right of succession to the Bijni Raj is hit by Section 4, Sub-sections (1) and (2) and cannot succeed. In dismissing suit No. 84 the Subordinate Judge has said:

It is apparent that in view of Section 4 (1), Bijni Act, there could be no question of acquisition of title by Abhoyeswari by adverse possession; for, in the first place, she had not completed 12 years' possession before 28th September 1895 from which the title of defendant 1 was declared by the section to commence, and secondly Abhoyeswari must be deemed to have abandoned her alleged adverse possession by the very fact of her nominating defendant 1 to the succession of Bijni Raj on that day.

93. In our judgment the title which was declared by Section 4 of the Act is the title to succession based upon the nomination as made on 28th September 1895, and had nothing to do with any title based on adverse possession that might have accrued to any other person and, therefore, the declaration contained in Section 4 of the Act did not affect such title. The question whether Rani Abhoyeswari, by the nomination that she made, abandoned her adverse possession or should be deemed to have done so, or whether she completed the requisite period of

adverse possession at all or in any manner is a question of fact which will have to be tried on evidence adduced by the parties and is not a pure question of construction of the provisions of the Act. So far as Section 9 of the Act has any bearing on the question, we are clearly of opinion that the enactment contained in it is expressly prospective in its language. The Subordinate Judge has held that suit No. 84, in so far as it concerns properties situated outside the province of Assam, may proceed because the plaintiff's claim in that suit is based on adverse possession and he has also observed that this was conceded by the Advocate. General. As in our judgment the Bijni Succession Act does not affect a claim based on adverse possession, the Judge's reason applies to the whole of the claim in suit and the whole suit will now proceed inspite of the Act. In connexion with both the suits the learned Judge has also observed:

As Section 4 (1) is an enacting and operative part of the Act the defendants (meaning plaintiffs), for reasons already stated, cannot be allowed to question the fact or the date of nomination of defendant 1 for succession to the Raj. They cannot also be allowed to prove, as against Section 4 (1) of the Act, the alleged custom or Kulachar of succession as put forward in their plaint. The conclusion is, therefore, that by expressly declaring the title of the defendant 1 with effect from 28th September 1895 the Act by necessary intendment and implication and nonetheless effectively imposed insurmountable bar to the present suits.

94. These observations in so far as they lay down that the plaintiffs in the two suits are debarred from questioning the correctness of the declaration contained in Section 4 of the Act are undoubtedly correct. But while the plaintiffs in Suit No. 164 by being so debarred are precluded from establishing the only ground on which their alleged title rests, the plaintiff in Suit No. 84 whose alleged title rests on adverse possession on the part of Rani Abhoyeswari does not necessarily stand in need of proving or disproving any of the matters which are covered by the declaration, but if he does require to go into any of those matters he also is barred to that extent.

95. It has been argued on behalf of the contesting respondents in these appeals that if the interpretation that we have indicated above is to be accepted, then the

intention of the legislature would be frustrated because the legislature aimed at the preservation of the Raj, and it would then be open to any person to attack it from outside and injure it. The answer to this argument is that the legislature for reasons of its own has not provided for all possible or conceivable contingencies and, at any rate, for no contingencies other than such as arose or would arise on the ground of succession to the Raj.

96. There remain now to consider a few special arguments which have been advanced to us by Mr. Gunada Churn Sen and Mr. J.N. Sen in connection with Appeal No. 205 of 1933. Mr. Gunada Churn Sen, appearing on behalf of the appellants in that appeal, while adopting all the arguments of Mr. Das has submitted a special contention with regard to the two items of property which lie outside the territorial limits of the Province of Assam. He has argued that his client's title (i.e. of the plaintiffs in Suit No. 164) to those properties at any rate are unaffected by the Bijni Succession Act inasmuch as the Act being an Act of the Assam Legislature has no force outside the Province of Assam. Now, it is a general presumption that the legislation of a country is territorial and that the Legislature does not intend to exceed its jurisdiction. But the scheme of the Act may be such as to affect properties outside the territorial limits of jurisdiction of a particular legis-lature and this generally happens when the legislation is intended to act through a person who is within such jurisdiction. In Maxwell on Interpretation of Statutes, Edn. 7, p. 123, the law is thus expressed:

The state has a right to impose its legislation on its subjects, natural and naturalised, in every part of the world; and on such matters as personal status or capacity it is understood always to do so; but with that exception, in the absenco of an intention clearly expressed or to be inferred either from its language or from the object, subject matter, or history of the enactment, the presumption is that Parliament does not design its statute to operate on its subjects beyond the territorial limits of the United Kingdom. They are, therefore, to be reap usually, as if words to that effect had been inserted in them.

97. In the Bijni Succession Act there is no definition of its Local Extent. On the other hand the scheme of the Act is such as would plainly indicate that the Bijni

Raj consists of a group of estates in Assam (See preamble and schedule) with other properties moveable and immoveable, wherever situate, as additions and accretions to the said group of estates: See Section 2, Clause (1); and that the entire Bijni Raj is intended to be dealt with by the Act in so far as the status of its 'Holder' as concerned. The nature of the enactment which purports to lay down the customary law by which the succession to the Raj is to be governed indicates that the intention of the Legislature is to treat the subject matter as lying within the territorial limits of the Province, moveable and immoveable properties appertaining to the subject matter but lying outside the province being regarded as 'additions and accretions'. The assumption of this position is probably also historically correct; in any event, there is nothing to suggest the contrary. In such circumstances we think we should hold that the Act applies to the status of the Holder of the Raj wherever the proporties appertaining to the Raj may be situate, and that the Assam Legislature did intend the Act to operate even outside the territorial limits of the Province of Assam and was within its authority in legislating on that footing.

98. Mr. Sen has next argued that the items of properties situated outside the province of Assam are not 'additions' or 'accrotions' within the definition of 'Bijni Raj' or 'Raj' as contained in Section 2, Clause (1) of the Act; but that those words are to be understood as implying such interests other than proprietary rights as the interest of a tenant or a sub-tenant in alluvial accretions, encroachments, etc. We do not find any justification for putting such a narrow meaning upon the words. He has also contended that there is nothing to show that the items of properties lying outside the province of Assam were not acquired by one or other of the previous Rajas of Bijni, and that if they were so acquired they would not be covered by the definition referred to above. It may be pointed out here that no question was raised by the plaintiffs in their additional statement in the Court below that such properties were not 'additions' or 'accretions' within the meaning of the Act or that the Act did not apply to them. But in any case there does not seem to us to be any substance in this objection, because any previous Raja would come within the expression 'Holder of the Raj' or 'Holder' as defined in the Act. If that be so then acquisitions that may have been made by Raja Kumud Narain or Raja Amrita Narain must have been made by them in their capacity as 'the Holder' as defined. In the

definition of 'the Bijni Raj' or 'the Raj' the expression used is 'may have been or may hereafter be made from time to time' an expression which embraces the past, the present and the future. Besides, there are in the said definition the words, 'by or on behalf of the Holder.' It may be repeated that the claim of these plaintiffs is based entirely on an alleged right of succession and a title by adverse possession or on any other footing finds no place (vide para. 19 of the plaint in Suit No. 164).

99. Mr. J.N. Sen, as already stated, appeared in Appeal No. 205 of 1933 on behalf of the respondent, Maharaj Kumar Prince Victor Nityendra Narayan, who was the defendant 5 in the suit. The prince, as a defendant in the suit and a respondent in the appeal has been impleaded as represented by a Trustee in bankruptcy in London. He was impleaded as a party defendant as he had purported to purchase the Raj by a conveyance from Uday Narain dated 14th February 1922. The plaintiffs challenged this conveyance alleging,

that at the time of the sale-deed the said Kumar Uday Narain Deb was seriously ill and hard pressed for money. The said Maharaj Kumar Prince Victor Nityendra Narain had the said deed executed in his own favour by exercising undue influence and coercion.

100. The trustee in Bankruptcy did not appear or contest the suit and has not entered appearance in the appeal. In the bankruptcy proceedings the Prince has been finally discharged. When the appeal came on for hearing he applied to be added as a party respondent for himself, so that he may support the appellants, the plaintiffs, in their contentions in so far as they are directed against the decree dismissing the suit. To this application two objections were taken on behalf of the other respondents. One is that the decree dismissing the suit is a decree in favour of the Prince, and in as much as he is not adversely affected but rather benefited by the decree he cannot claim to be added in order to help the plaintiffs in carrying on the suit further as against himself; and the other is that the order of discharge in the bankruptcy proceedings had not the effect of restoring to him the title to the estate which had vested in the Trustee on the adjudication order; in other words, that he has no right, title or interest in the properties, such as would entitle him to come in the appeal as a party in his own right and as apart from a party

represented by the Trustee. So far as the first of these objections is concerned we do not see much force in it, for the Prince having been made a party to the suit and being a party to the decree has the right to show, even as a respondent in the appeal and even though the effect of setting aside the decree be to re-open the suit as against him, that the decree was wrongly passed. And as regards the second objection it would, we think, be sufficient to say that the application of the Prince was not for striking off the Trustee in bankruptcy from the record but only for getting himself added as a respondent in order to enable him to support the appellant. Very wide powers are given to the Court to add a party to a suit or an appeal and the addition, if permitted, will not be taken to decide any question of title to the properties as between him and the trustee or the creditors. In such circumstances, we have allowed the Prince to be added as a party respondent without prejudice to the right of any body in the properties involved in the suit. Mr. J.N. Sen, on behalf of the Prince while purporting to support the appellants by adopting the arguments of Mr. Das, has put forward only one additional contention. It is this that the legislature had no authority to make any enactment which had the effect of forfeiting or confiscating one man's properties for the benefit of another and that in any event it can exercise no such power unless adequate provision is made by it for compensation to the party injured. He has sought to support this contention by reference to certain decisions, amongst which reference may be made to London and North Western Railway Company v. Evans (1893) 1 Ch 16 and Attorney General v. De Keyser's Royal Hotel Ltd. (1920) A C 508. We have noticed the contention but only for the purpose of rejecting it; the legislature in the present enactment has passed no provision forfeiting or confiscating the property of any person; it has merely declared a rule of succession which according to it, is the customary law, and has only supplemented that law where, in its view, it needed supplementing.

101. Mr. Bose appearing on behalf of Bhairabendra in Appeal No. 171 of 1933 has pressed the cross-objection which his client has preferred in that appeal. The cross-objection relates to the items of properties with regard to which the claim of the plaintiff in the suit out of which that appeal has emerged has been held not hit by the Act. The cross-objection has not been filed in the shape of a crossobjection which the Code contemplates. But as the grounds are contained in a petition of

Bhairabendra filed in Court within the time allowed by law for filing cross-objections, we have allowed the petition to be treated as a petition of cross-objection. In the view that we have taken of the effect of the Act on the whole suit, the cross-objection must be dismissed.

102. The result of our judgment is: (1) that Appeal No. 171 of 1933 will be allowed and the decree of the Court below in the suit to which it relates being set aside the suit will be remanded to that Court for trial on the issues not yet dealt with, and will after such trial be disposed of; the costs of the Court below will abide the final decision of the suit in that Court, but the costs of this appeal shall be payable by respondent 1 to the appellant; and (2) that Appeal No. 205 of 1933 will be dismissed with costs, respondent 1 being entitled to his costs from the appellants. No further orders for costs are made. The applications are rejected.

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