

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Secretary of State for India in Council v. J. Moment, from the Chief Court of Lower Burma (P.C. Appeal No. 51 of 1912); delivered the 10th December 1912.*

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PRESENT AT THE HEARING :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY THE LORD CHANCELLOR.]

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This Appeal raises the question whether the Government of India could make a law the effect of which was to debar a Civil Court from entertaining a claim against the Government to any right over land. The question is obviously one of great importance. The proceedings out of which the appeal arises related to an ordinary dispute about the title to land, in the course of which there emerged a claim to damages for wrongful interference with the Plaintiff's property. The only point which their Lordships have to decide is whether Section 41 (b) of the Act IV. of 1898 (Burma), was validly enacted. A majority of the Judges of the Chief Court of Lower Burma have held that it was

not, and the Secretary of State appeals against the Judgment.

The Section enacts that no Civil Court is to have jurisdiction to determine a claim to any right over land as against the Government. In the Court below it was held that this enactment was *ultra vires* as contravening a provision in Section 65 of the Government of India Act, 1858, that there is to be the same remedy for the subject against the Government as there would have been against the East India Company.

Their Lordships are satisfied that a suit of this character would have lain against the Company. The reasons for so holding are fully explained in the Judgment of Sir Barnes Peacock, C.J., in *The Peninsular and Oriental Company v. The Secretary of State for India* reported in the Appendix to Vol. 5 of the Bombay High Court Reports, and the only question is whether it was competent for the Government of India to take away the existing right to sue in a Civil Court. This turns on the construction of the Act of 1858, and of the Indian Councils Act of 1861. Their Lordships have examined the provisions of the Acts of 13 Geo. III., c. 63, and 3 & 4 Wm. IV, c. 85, to which reference was made in the course of the argument, but these statutes do not appear to materially affect the argument.

The Act of 1858 declared that India was to be governed directly and in the name of the Crown, acting through a Secretary of State aided by a Council, and to him were transferred the powers formerly exercised by the Court of Directors and the Board of Control. The property of the old East India Company was vested in the Crown. The Secretary of State was given a quasi-corporate character to enable him to assert the rights and discharge the liabilities devolving on him as successor to the

East India Company. The material words of Section 65 enact that " the Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company." Section 66 is a transitory provision making the Secretary of State in Council come in place of the Company in all proceedings pending at the commencement of the Act, without the necessity of a change of name. Section 67 is also a transitory provision making engagements of the Company entered into before the commencement of the Act binding on the Crown and enforceable against the Secretary of State in Council in the same manner and in the same Courts as they would have been in the case of the Company had the Act not passed.

By Section 22 of the Indian Councils Act of 1861 the Governor-General in Council is given power to make laws in the manner provided, including power to repeal or amend existing laws, and including the making of laws for all Courts of Justice. But a proviso to this Section enacts that there is to be no power to repeal or in any way affect, among other matters, any provision of the Government of India Act, 1858.

Their Lordships are of opinion that the effect of Section 65 of the Act of 1858 was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company. They think that the words cannot be construed in any different sense without reading into them a qualification which

is not there, and which may well have been deliberately omitted. The Section is not, like the two which follow it, a merely transitory Section. It appears, judging from the language employed, to have been inserted for the purpose of making it clear that the subject was to have the right of so suing and was to retain that right in the future, or at least until the British Parliament should take it away. It may well be that the Indian Government can legislate validly about the formalities of procedure so long as they preserve the substantial right of the subject to sue the Government in the Civil Courts like any other defendant, and do not violate the fundamental principle that the Secretary of State, even as representing the Crown, is to be in no position different from that of the old East India Company. But the question before their Lordships is not one of procedure. It is whether the Government of India can by legislation take away the right to proceed against it in a Civil Court in a case involving a right over land. Their Lordships have come to the clear conclusion that the language of Section 65 of the Act of 1858 renders such legislation *ultra vires*.

It was suggested in the course of the argument for the Appellant that a different view must have been taken by this Board in the case of *Vasudev Sadashiv Modak v. The Collector of Ratnagiri*, 4 Indian Ap. 119. The answer is that no such point was raised for decision.

Their Lordships will humbly advise that the Appeal should be dismissed with costs.

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In the Privy Council.

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THE SECRETARY OF STATE FOR  
INDIA IN COUNCIL

v.

J. MOMENT.

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DELIVERED BY  
THE LORD CHANCELLOR.

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