Exh. D. 5 is a copy of the judgment in Civil Appeal No. 19 of 1940. In that case the main contest was whether collaterals exclude sisters as regards self-acquired property of the last male-holder. Finding that questions Nos. 54 and 59 of the Kangra District Customary Law applied to ancestral property the Court found that the case was governed by Act II of 1929 and the burden lay on the collaterals to prove that there was a custom to the contrary in their favour.

As stated above the *parties in the present case are admittedly governed by custom*, and that being so, it was for the defendant-appellant to establish that he, in the matter of succession, excluded the plaintiffs to the estate of Hira, deceased. That being so, evidence furnished by Exhs. D. 2 and D. 5 has no value. Even under the Mitakshra School of Hindu Law a sister was not in the line of heirs before Act II of 1929 expressly recognised sisters in the line of heirs amongst persons governed by Mitakshra School of Hindu Law. The evidence examined in this case, as shown above, is of no value, and in my opinion, the learned District Judge was right in finding that there was no real evidence in the case to show that amongst Rajputs in the Nurpur Tahsil of the Kangra District sisters as well as their issue exclude collaterals in succession to the estate of the last male-holder.

No other point arises in this appeal, which fails and is dismissed with costs.

MISCELLANEOUS CIVIL

Before Khosla and Kapur, JJ.

K. S. RASHID AHMED AS THE REPRESENTATIVE OF MRS. ZAFFAR MOHD.,—*Petitioner.*

versus

INCOME-TAX INVESTIGATION COMMISSION AND ANOTHER,—*Respondents.*

1950

Aug. 10

Civil Miscellaneous No. 259 of 1950.

Constitution, Article 226—Writs of Prohibition and Certiorari—*Whether can be issued—Taxation on Income (Investigation Commission) Act (XXX of 1947)—Sections*

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5, 8 and 9—Power of High Court to issue writ of Certiorari—Assessee belonging to U. P.—Assessment under Commissioner of Income-tax, U. P.—Investigation Commission located at Delhi—Proceedings for assessment under the jurisdiction of Allahabad High Court—Jurisdiction of Punjab High Court to issue writ for quashing proceedings of the Commission.

Held that the Punjab High Court had no jurisdiction to entertain the petitions for issuing writs of *certiorari* or prohibition against the Commissioners and authorized officials investigating into the cases of the petitioners. If complaint had to be made in regard to the proceedings taken against the petitioners, who described themselves as assessees, the only Court they could have gone to was the High Court at Allahabad and neither Article 225 nor 226 enlarged the territorial jurisdiction of the Punjab High Court, nor conferred jurisdiction on Punjab High Court in regard to matters over which it had no jurisdiction previously. The jurisdiction of the High Court was the same as it was immediately before the commencement of the Constitution.

Ryots of Garabandho v. *The Zamindar of Parlakimedi* (1), relied upon.

Held further, that section 9 of the Taxation on Income (Investigation Commission) Act bars the jurisdiction of any Court to scrutinize, except in the manner provided in subsection 5 of section 8, the acts or proceedings of the Commission or of any authorized official. Since the remedy provided by this Act cannot be said to be wholly illusory or inefficacious, the High Court should not interfere by issuing writ of *certiorari*.

Besant v. *Advocate-General of Madras* (2), *Allen* v. *Sharo* (3), *Sultan Ali v. Nur Hussain* (4), *Janda Rubber Works, Ltd.* v. *Collector of Bombay* (5), *Raleigh Investment Company, Ltd.* v. *Governor-General in Council* (6), relied upon.

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(1) I.L.R. 1944 (Mad.) 457 (P.C.)
(2) I.L.R. (1920) 43 Mad. 146 (159, 160).
(3) 2 Exchequer 352 (363).
(4) 1949 A.I.R. (Lah.) 131.
(5) 1950 A.I.R. (E.P.) 204.
(6) 74 I. A. 50.

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Petition under Article 226 and 227 of the Constitution of India praying that

(a) *A writ in the nature of prohibition be issued to the Commission and the authorised official directing them not to proceed with the investigations into the case of Mrs. Zaffar Mohd. No. 767.*

(b) *A writ in the nature of* certiorari *do issue for quashing proceedings, etc.*

D. CHAMAN LAL, M. L. PURI, S. L. PURI, K. S. THAPAR and T. N. SETHI, for Petitioners.

S. M. SIKRI, Assistant Advocate-General, for Respondents.

ORDER.

Kapur J.

KAPUR, J. A rule was issued to the Income-tax Investigation Commission constituted under Act 30 of 1947 and Mr. Rama Nand Jain, Authorised Official at the instance of K. S. Rashid and Son and others, to show cause why writs of *certiorari* and *prohibition* should not issue to quash the orders passed by the Commission.

The affidavit of K. S. Rashid Ahmad shows that the Central Government on the 31st of December 1947, referred the cases of K. S. Rashid and Son, K. S. Rashid Ahmad, Saeed Ahmad, Saeeda Begum and Mrs. Zafar Mohd to the Income-tax Investigation Commission for investigation and report. The partnership of K. S. Rashid and Son is stated to have started on the 5th of May 1948. Mrs. Zafar Mohd died on the 7th of January 1946, and it is alleged that that partnership was thereby dissolved, and on the following day a new firm came into existence which took over the assets and liabilities of the old partnership. The partners of this new firm, it is stated in paragraph 20 of the affidavit, were K. S. Rashid Ahmad, Saeed Ahmad and Saeeda Begum. A regular partnership deed was drawn up which has been registered under section 26 (*a*) of the Income-Tax Act.

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It is alleged Mr. Rama Nand Jain, the authorised official, started investigation into the affairs of the firm and the individual constituting the firm for the period subsequent to the 31st of March 1943, that being the date up to which the assessment of his firm had been completed. The returns for other assessment years have been filed but no decision has yet been given as to the liability of the firm for income-tax. The authorised official under section 6 (3) of the Taxation on Income (Investigation Commission) Act, 30 of 1947, hereinafter called the Act, inspected the books, prepared notes, and it is alleged, that an oral application was made to this officer asking him to give a copy of the notes to the petitioner, but it was not given. On the 13th of May 1948, first notice was issued to the partnership. On the 9th of April 1949, an application was made to the authorised official in which it was submitted that he could not investigate into anything beyond the 31st of March 1943, and that anything done beyond that date would be contrary to the provisions of section 5 of the Act. Fourteenth of April 1949, was fixed by the Commission to whom the authorised official seems to have sent the application made for hearing arguments in the case, but the affidavit states that no orders were passed on this application on the ground that the Commission was expecting some kind of amendment by an Ordinance, and the Act was amended by Ordinance No. IX of 1949, dated the 10th June 1949.

In paragraph 9 of the affidavit it is stated :

> "The assessees were not informed of any evidence contemplated to be considered against them nor were they apprised of any documents which the Commission proposed to consider against them."

An application for inspection of the file was made but was rejected, and then an application was made for certified copies of certain orders but these also were not given.

The inspection of the books of accounts, the affidavit says, was fixed for the 15th of July 1949, and the petitioners had to send for one Hidayat Ullah from Rawalpindi who, it is stated was conversant with their accounts, but he could not be of much assistance as it appears that his own affairs had to be enquired into and he quickly made an exit back to Pakistan.

The Commission on the 29th of October 1949, it is alleged, fixed the case for final hearing before them for the 22nd of November 1949, and the petitioners were required to produce evidence in support of their case. On the 14th of November 1949, the petitioners made an application to the authorised official that the petitioners had not been given the details of the matters in respect of which they were required to produce evidence " and the charges which they were required to meet ". This application, it is complained, has not yet been disposed of; K. S. Rashid Ahmad was examined by the Commission from the 22nd November to 26th November, 1949.

On the 16th of July 1949, an application was filed before the authorised official that the amendment of the Act by the Ordinance did not cover the period after the 31st of March 1943, and, therefore, he could not make any investigation in regard to that period but the account books were shown to him under protest. On the 7th September 1949, three applications are stated to have been filed. The copies of these applications were not filed before us, but it is stated one was with regard to the affairs of Mrs. Zafar Mohd. that no investigation could take place in regard to her as she was dead, the other was with regard to the affairs of Saeeda Begum that she being a new partner and not having been assessed before was not subject to the jurisdiction of the Commission, and the third that the new firm was not liable to have its affairs investigated into.

It is clear, therefore, that the complaint of the petitioners contained in the four petitions Civil Miscellaneous No. 259 of 1950 by K. S. Rashid Ahmad,

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Civil Miscellaneous No. 260 of 1950 by K. S. Rashid and Son, Civil Miscellaneous No. 261 of 1950 by Saeeda Begum, and Civil Miscellaneous No. 262 of 1950 also by K. S. Rashid and Son (formed in 1946) is principally directed to orders passed before the 26th January 1950, when the Constitution came into force. The prayer in all of them is the same and is in the following words :—

"The petitioners, therefore, humbly pray to your Lordships that :—

(*a*) A writ in the nature of prohibition be issued to the Commission and the authorised official, directing them not to proceed with the investigations into the case of Mrs. Zaffar Mohd. No. 767.

(*b*) A writ in the nature of *certiorari* do issue for quashing proceedings.

(*c*) Such further direction or orders may be issued as your Lordships may deem necessary and proper.

(*d*) Alternately proceedings before the Commission be revised by your Lordships under Article 227 of the Constitution of India and such steps be taken as may ensure substantial justice."

These petitions were filed on the 13th of June. 1950, and the rule was issued on the 25th July 1950, after a report from the Investigation Commission had been called for.

Counsel for the respondents argued that this Court had no jurisdiction and, therefore, we should discharge the rule, that if the jurisdiction was there we should not interfere because there is a remedy provided in the Act itself, that the Act precluded the jurisdiction of his Court from interfering with the

orders of the Commission, and that at any rate as the orders complained of were passed before the Constitution came into force neither Article 226 nor Article 227 would be available to the petitioners. The counsel put the case in two ways, and according to him both the objections that he was raising were fatal to the case of the petitioners.

The lack of jurisdiction of this Court, so the counsel submitted, was because the petitioner, who was an assessee, belonged to U. P., and his assessment was under the Commissioner of Income-tax of that State, and that the mere fact that the location of the Commission is in Delhi within the jurisdiction of this Court or any order or orders have been passed by this Commission at Delhi would not confer jurisdiction over him. The submission was that any matter of assessment of income-tax would be enquired into by the Income-tax Officer, Meerut, and appeals, etc., would lie to authorities in the State of U. P., and if a case had to be stated it would be stated to the High Court at Allahabad.

That everything done or purporting to have been done under the Act by the Commission would be under the jurisdiction of the High Court at Allahabad was sought to be supported by section 8 of the Act which provides :

> " (2) After considering the report, the Central Government shall by order in writing direct that such proceedings as it thinks fit under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940) or any other law, shall be taken against the person to whose case the report relates in respect of the income of any period commencing after the 31st day of December 1938, and, upon such a direction being given, such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in section 34 of the Indian Income-tax Act, 1922 (XI of 1922), or

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section 15 of the Excess Profits Tax Act, 1940 (XV of 1940), or any other law and notwithstanding any lapse of time or any decision to a different effect given in the case by any Income-tax authority or Income-tax Appellate Tribunal.

(3) On direction being given under subsection (2), and not otherwise, a copy of the Report of the Commission, so far as it relates to the case of the person concerned, shall be furnished to him.

(4) In all assessment or reassessment proceedings taken in pursuance of a direction under subsection (2), the finding recorded by the Commission on the case or on the points referred to it shall, subject to the provisions of subsections (5) and (6), be final; but no proceedings taken in pursuance of such direction shall be a bar to the initiation of proceedings under section 34 of the Indian Income-tax Act, 1922 (XI of 1922).

(5) In respect of any order made in the course of proceedings taken in pursuance of a direction issued under subsection (2), the provisions of sections 30, 31, 33, and 33A of the Indian Income-tax Act, 1922 (XI of 1922) and the corresponding provisions of the Excess Profits Tax Act, 1940 (XV of 1940) shall not apply so far as matter declared final by subsection (4) are concerned; but the person concerned may, within 60 days of the date upon which he is served with a copy of such order, by application in the prescribed form accompanied by a fee of Rs. 100, require the appropirate Commissioner of Income-tax to refer to the High Court any question of law arising out of such order, and thereupon the provisions of sections 66 and 66A of the Indian Income-tax Act, 1922 (XI of 1922), shall as

far as may be apply with the modification that the reference shall be heard by a Bench of not less than three Judges of the High Court."

This section, so it was submitted, showed that all assessment and reassessment proceedings which had to be taken in pursuance of a direction given under sub-section (2) will have to be taken by the Income-tax authority in Meerut, and except that the appeals provided under sections 30 to 30A of the Income-tax Act and the corresponding provisions of the Excess Profits Tax Act the matter would be exactly as if it was Income-tax Officer of Meerut who was acting, and under the provisions of sections 66 and 66-A of the Income-tax Act the case can be stated to the High Court at Allahabad and before a Bench consisting of three Judges.

In support of this part of his submission counsel for the Commission has relied on *Ryots of Garabandho* v. *The Zamindar of Parlakimedi* (1), where the Lord Chancellor, Viscount Simon, has discussed at great length the power of the High Court to issue writs of *certiorari* to quash the orders of a Board of Revenue sitting at Madras. The facts of that case were that under Chapter XI of the Madras Estates Land Act the Zamindar applied for the settlement of rent in respect of certain villages. The Government of Madras directed the Special Revenue Officer of the District to settle a fair rent. He made an order doubling the previous rents. An appeal was then taken to the Board of Revenue sitting at Madras and a single member of that Board reversed this decision and allowed an increase of only 12½ per cent. "The Zamindar appealed by way of revision to the Collective Board of Revenue from the decision of the single member" who set aside the order of the single member but decreased the rent ordered by the Special Revenue Officer from 100 per cent to 37½ per cent. The ryots then petitioned the Madras High Court for a writ of

(1) I.L.R. 1944 Mad. 457 (P. C.).

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certiorari to quash the order of the Collective Board of Revenue. The High Court held that a writ of *certiorari* could issue addressed to the Board of Revenue but dismissed the petition on the merits. An appeal was then taken to the Privy Council who discussed the jurisdiction of the High Court in its historical setting.

Two questions seem to have been raised before their Lordships :—

(1) A writ could issue to the Board of Revenue because of its location in Madras and the order being passed in Madras and, therefore, within the jurisdiction of Madras High Court in its original side or as the inheritor of the powers of the Supreme Court, and

(2) that the High Court could issue the writ under the powers granted to it by clause (8) of the Charter.

Their Lordships negatived both these grounds. It is not necessary for me to refer to the latter point because it does not arise in the present case.

With regard to the first point which I have referred to as having been raised before their Lordships the matter was put by Viscount Simon L. C. at page 496 in the following manner :

> " The Board of Revenue has always had its offices in the Madras Presidency, and in the present case the Collective Board, which made the order complained of, issued this order in the town. On the other hand, the parties are not subject to the original jurisdiction of the High Court and the estate of Parlakimedi lies in the north of the Province. "

His Lordship then referred to *Nundo Lal Bose* v. *Calcutta Corporation* (1), and observed :

> " The question is whether the principle of that case can be applied in the present case to the settlement of rent for land in Ganjam merely upon the basis of the location of the Board of Revenue, as a body which is ordinarly resident or located within the town of Madras, or on the basis that the order complained of was made within the town. If, so, it would seem to follow that the jurisdiction of the High Court would be avoided by the removal of the Board of Revenue beyond the outskirts of the town, and that it would never attach but for the circumstance that an appeal is brought to or proceedings in revision taken by the Board of Revenue. Their Lordships think that the question of jurisdiction must be regarded as one of substance and that it would not have been within the competence of the Supreme Court to claim jurisdiction over such a matter as the present by issuing *certiorari* to the Board of Revenue on the strength of its location in the town. Such a view would give jurisdiction to the Supreme Court, in the matter of the settlement of rents for ryoti holdings in Ganjam between parties not otherwise subject to its jurisdiction, which it would not have had over the Revenue Officer who dealt with the matter at first instance. "

Applying the principle of these observations to the present case it would appear that the jurisdiction of this Court could be avoided if the investigation was wholly carried out in Meerut where the petitioners reside and all orders were passed in that place or by the removal of the Investigation Commission from Delhi

(1) I.L.R. (1884) 11 Cal. 275.

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to Ghaziabad. In my opinion, therefore, according to the *dictum* of Lord Chancellor Viscount Simon, the objection raised by the respondent would be well-founded and this Court would not have jurisdiction over the matter now before the Commission.

In reply to this part of the argument the petitioners submitted that their Lordships held that the jurisdiction of the High Court was excluded because there was an absolute prohibition against the jurisdiction being exercised in any matter of revenue and because under the proviso to Article 225 of the Constitution any restriction on the jurisdiction of the High Court in regard to matters of revenue had now been taken away. I am unable to agree with this submission. In *Rathnamala Pattamahadevi* v. *Ryots of Mandasa* (1), the Madras High Court issued a writ of *certiorari* against the Board of Revenue in regard to enhancement of rent. No such objection was taken to the jurisdiction of the High Court in that case. Ramesam, J., said at page 595 :—

> "In my opinion, therefore, provided the case is a proper case for issuing a writ, there is no objection in issuing a writ of *certiorari* in respect of proceedings of the Board of Revenue under Chapter XI of the Estate Land Act."

Considering the eminent counsel who were appearing in that case if such an objection had been open to the parties, I have no doubt that it would have been raised and I am equally certain that it would have been adjudicated upon. Their Lordships of the Privy Council have referred to the above-mentioned *Mandasa case* at page 468 of the report and do not seem to have approved of the rule laid down there, but that was not on the ground that the matter there was one concerning revenue but on other grounds.

That this Court would have no jurisdiction in regard to the matter before the Commission is also clear

(1) I.L.R. (1933) 56 Mad. 579.

from the wording of Article 225 of the Constitution which provides :

> " Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :
>
> Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction. "

This Article provides, therefore, that the jurisdiction of this High Court is the same as it was immediately before the commencement of this Constitution. If any complaint had to be made in regard to proceedings taken against the petitioner who describes himself as an assessee in paragraph 9 of his affidavit, the only Court he could have gone to was the High Court of Allahabad and neither Article 225 nor Article 226 enlarge the territorial jurisdiction of this Court, nor has it conferred jurisdiction on this Court in regard to matters over which this Court had no jurisdiction previously. Article 226 which confers on this Court the power to issue writs in the nature of *certiorari* and prohibition is as follows :

> " 226. (1) Notwithstanding anything in Article 32, every High Court shall have power,

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throughout the territorties in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

"(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

Article 225 defines the jurisdiction of this Court and Article 226 confers authority or powers to be exercised within the jurisdiction given in Article 225.

I must, therefore, hold that this Court has no jurisdiction to entertain the petitions which the petitioners have brought for the issue of writs of *certiorari* and prohibition.

The next point taken by Counsel for the respondents was that the Act is a piece of special legislation dealing with special cases and it has provided specific remedies under the Act and even if the Court has the jurisdiction it should not issue any writ because the Legislature contemplates the aggrieved citizen to have recourse to the remedies provided under the Act, and the remedy provided is equally efficacious. In support of this argument he relies on section 8 of the Act which I have quoted *in extenso* at another place. In subsection (5) of section 8 any question of law which arises can be stated to the High Court and will be heard by three Judges, and this, it is submitted, is the remedy provided by the Act. Counsel relied on a judgment of Panckridge, J., in

Thin Yick v. *Secretary of State* (1), where the learned Judge observed :—

> " It is a well-known principle that where a statute creates a duty or imposes a liability and prescribes a specific remedy in case of neglect to perform the duty or discharge the liability, no remedy can be taken but the particular remedy prescribed by the statute. "

In *The Queen* v. *The County Court Judge of Essex and Clarke* (2) Lord Esher observed at page 707 :—

> " The ordinary rule of construction therefore applies * * * that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which can be pursued. "

In a recent case *Sultan Ali* v. *Nur Hussain* (3), a Full Bench of the Lahore High Court has held to the same effect. Reference was also made to a judgment of their Lordships of the Privy Council in *Raleigh Investment Company, Ltd.* v. *Governor-General in Council* (4), where section 67 of the Income-tax Act was considered and observations were made which seem to support the contention of counsel for the respondent. In *Janda Rubber Works, Ltd.* v. *Collector of Bombay* (5), this Bench held in a case under Bombay Evacuees (Administration of Property) Act that a special remedy provided is the only one available in the case of special Acts, but without deciding this matter there is no doubt that a remedy is open to the petitioners and in view of that it is not necessary for this Court to issue a writ of *certiorari* or prohibition or both, and it cannot be said that that remedy given under section 8 (5) is wholly illusory or is not

(1) I.L.R. 1939 (1) Cal. 257.
(2) (1887) 18 Q. B. D. 704 (707).
(3) 1949 A.I.R. (Lah.) 131. (E. B)
(4) (1946-47) 74 I. A. 50.
(5) 1950 A.I.R. (E.P.) 204.

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efficacious as was submitted by counsel for the petitioners.

It was then submitted that this Court cannot give relief to the petitioners because of section 5 (3) and section 9 of the Act. Section 5 (3) says :—

> "5 (3) No reference made by the Central Government under subsection (1) at any time before the 1st day of September 1948, shall be called in question, nor shall the sufficiency of the material on which such a reference has been made be investigated in any manner by any Court."

And section 9 is as follows :—

> "9. *Bar of Jurisdiction.* No act or proceeding of the Commission or any authorised official shall be called in question in any manner by any Court, and no suit, prosecution or other legal proceeding shall lie against the Crown or any Commissioner or any other person for anything in good faith done or intended to be done under this Act."

The argument is that where the Legislature intended that anything done under the Act should not be subject to the scrutiny of the Courts it specifically says so and in this case that is what the Legislature has done, and it was submitted that power of *certiorari* cannot be exercised because of the existence of section 5 (3) and section 9 of the Act. Reliance was placed on the observations of their Lordships of the Privy Council in *Besant* v. *Advocate-General of Madras* (1), at pages 159 and 160, and in *Allen* v. *Sharp* (2), at page 363. In the former Lord Phillimore said :—

> "But assuming that the power to issue the writ remains, and that it might be exercised notwithstanding the existence of procedure by

(1) I.L.R. (1920) 43 Mad. 146 159, 160).
(2) 2 Exchequer 352 (363).

way of revision, section 22 of the Indian Press Act has still to be considered.

'22. Every declaration of forefeiture purporting to be made under this Act shall, against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on such application as aforesaid and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.'

"As to this section it was contended on behalf of the appellant that as the writ of *certiorari* was not in terms said to be taken away, the right to it remained notwithstanding the very express but still general words of this Section.

"However that might be according to English Law, where there is no such revision procedure as in India, their Lordships see no reason for narrowing the express words of the Indian Act. *Certiorari* according to the English rule is only to be granted where no other suitable remedy exists. If the order of the magistrate were a judicial order, it would have been made in the exercise either of his civil or his criminal jurisdiction, and procedure by way of revision would have been open.

"Even were it to be said that the order was of that quasi-judicial kind to which *certiorari* has sometimes been applied in England or in India, the Press Act may quite reasonably have intended to take it away, and there is no reason why full effect should not be given to its language."

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In the latter case, *Allen* v. *Sharp* (1) at page 363 Parke, B., made the following observations :—

"On a careful consideration of these acts of Parliament, they seem to me to differ from the statute of Elizabeth, as to poor-rate (42 Eliz. c. 2), and that the legislature intended that the assessment of the assessors appointed by the commissioners should be final and conclusive, unless appealed from, in the first place, to the commissioners, and further, if necessary, to the judges of the superior Courts. It would be singular if there were no such provision ; for, what a flood of litigation would follow, if every subject of the Crown, who was dissatisfied with the judgment of the assessors, had a right to dispute the propriety of their assessment in an action against the collectors. Actions would be innumerable, juries would have to decide on facts without end, judges on law, and cases would be carried to the highest tribunal, when the exigencies of the State required a speedy determination. Without referring to the statutes, I should say, *a priori,* that the object of the legislature was to make the decision of the assessors final and binding, unless disputed in the manner pointed out. On reading the statutes, I come to the same conclusion. By the 9th section of the 43 Geo. 3, c. 99, the commissioners are to meet and appoint assessors, who are to bring in their certificates of assessments verified on oath; and the assessors are thereby 'required, with all care and diligence, to charge and assess themselves and all other persons chargeable with the said duties.' If the language had been, 'to charge and assess all such persons as they honestly and *bona fide,* after due care and deligence, believed to be chargeable,' their

assessment would, beyond all question, be final. But though the statute does not, in express terms, say that the assessment shall be conclusive, yet I find, on referring to the 30th section of the 43 Geo, 3, c. 161, which enables the assessors to assess persons who neglect or refuse to deliver lists, it is enacted that every such assessment 'shall be final and conclusive upon the person thereby charged, who shall not be at liberty to appeal therefrom, unless such person shall prove that he or she was not at his or her dwelling-house or place of abode at the time of delivery of such notice, nor between that day and the time limited for delivering such lists as aforesaid to the assessor, nor unless such person shall allege and prove some other excuse for not having delivered his or her list, as the commissioners shall, in their judgment, think reasonable and sufficient.' In that special case, the legislature has expressly made the assessment final and conclusive; and unless the party can bring himself within the exception, he has no opportunity of appealing. That being so, if a party, who has an opportunity of appealing, does not avail himself of it, it would be reading the acts very inconsistently to say that he is not equally bound by the assessment."

The observations of their Lordships of the Privy Council seem to show that full effect has to be given to the words used in the section, and as section 9 bars the jurisdiction of any Court to scrutinize except in the manner provided in subsection (5) of section 8 the acts or proceedings of the Commission or of any authorised official, this Court should not issue a writ of *certiorari*, and this argument of counsel must, in my opinion, prevail. Counsel for the petitioners argued that as the Constitution had come into force later section 9 must be held to have been repealed to that extent. It is not necessary for me to decide that matter.

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Their Lordships of the Privy Council were considering a case where the words were similar, and as the law to be administered by this Court as provided in Article 225 is the same as it was immediately before the Constitution came into force, it cannot be said that the *dictum* of their Lordships of the Privy Council has become inapplicable.

Lastly counsel submitted that as all these orders which were the subject-matter of complaint and which the petitioners seeks to get quashed are of a date anterior to the 26th of January 1950, the date on which the Constitution came into force, the petitioners cannot avail themselves of the remedy given by Article 226. They rely on a judgment of the Calcutta High Court in *Rishindra Nath* v. *Rai Saheb Sakti Bhusan Ray* (1), where it was held :

> "Article 227 of the Constitution does not empower the High Court to interfere with an order which was a final order passed at a time before the Constitution came into force and when the High Court had no power to interfere with such an order."

It was also held that there were no express words in Article 227 which gave the High Court the right to interfere with a right in existence at the time of the passing of the Constitution. Reference was there made to *Delhi Cloth and General Mills Company, Limited* v. *Income-Tax Commissioner, Delhi* (2), where at page 425 the following passage occurs :—

> "The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in *The Colonial Sugar Refining Co.* v. *Irving* (3), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect at-

(1) 54 C. W. N. 793.
(2) 54 I.A. 421 (425).
(3) 1905 A. C. 369.

tributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment."

On the basis of this it was contended that at the time when the orders were passed, there was no power in this Court to interfere with them and they had become final. The reference made to the Tribunal under section 5 (1) was shielded against any scrutiny or interference of the Civil Courts at least by section 5 (3) of the Act, and even if that shield had been removed by Article 226 with regard to subsequent orders this matter had become final and, therefore, this Court has no jurisdiction to interfere. I am inclined to agree with this submission, but on the material now before me I would not like to express any final opinion.

In the result, I am of the opinion that the rule issued in these various petitions should be discharged. The respondents will have their costs in all these petitions which I assess at Rs. 250 for each petition.

KHOSLA, J.—I agree.

Khosla J.

CIVIL MISCELLANEOUS

Before Harnam Singh and Kapur, JJ.

JAGAT RAM,—*Petitioner,*

versus

GAGNA AND OTHERS,—*Respondents.*

1950

Nov. 2nd

Civil Miscellaneous No. 80|C of 1950.

Constitution of India—Article 133—Order refusing leave to appeal in forma pauperis—*Whether a "Judgment, decree or final Order" within the meaning of the Article—Civil Procedure (Act V of 1908)—Order XLIV, rule I, Proviso—Requirements thereof—Whether fulfilled.*