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IN RE THE HINDU WOMEN'S RIGHTS TO PROPERTY ACT, 1937, AND THE HINDU WOMEN'S RIGHTS TO PROPERTY (AMENDMENT) ACT, 1938,

and

IN RE A SPECIAL REFERENCE UNDER SECTION 213 OF THE GOVERNMENT OF INDIA ACT, 1935.

[SIR MAURICE GWYER, C. J., SIR SRINIVASA VARADACHARIAR AND SIR JOHN BEAUMONT, JJ.]

The Hindu Women's Rights to Property Act, 1937 (Central Act No. XVIII of 1937), and the Hindu Women's rights to Property (Amendment) Act, 1938 (Central Act No. XI of 1938)—Whether applicable to agricultural land—Whether regulate devolution by survivorship of property other than agricultural land—Validity of Act—Meaning of "Property", "Devolution", "Succession" and "Survivorship"—Government of India Act, 1935, Seventh Sch., List II, entry No. 21, List III, entry No. 7; Ninth Sch., para. 68 (2)—Interpretation of Statutes.

The Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Rights to Property (Amendment) Act, 1938, (a) do not operate to regulate succession to agricultural land in the Governors' Provinces, and (b) do operate to regulate devolution by survivorship of property other than agricultural land.

The subject of devolution by survivorship of property other than agricultural land is included in entry No. 7 of List III of the Seventh Schedule to the Government of India Act, 1935.

No objection can be taken to the validity of an Act, on the ground only that it was introduced into the Legislature before, and received the Governor-General's assent after, Part III of the Constitution Act came into force, nor is it material that the powers of the Legislature changed during the passage of the Bill from the Legislative Assembly to the Council of State. The only date with which a Court is concerned is the date on which the assent of the Governor-General was given, and the question whether the Act was or was not within the competence of the Legislature must be determined with reference to that date and none other.

When a Legislature with limited and restricted powers makes use in an Act of a word of such wide and general import as "property", the presumption must be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other. The word "property" in the Hindu Women's Rights to Property Act must accordingly be construed as referring to property other than agricultural land.

There is a general presumption that a Legislature does not intend to exceed its jurisdiction.

A remedial Act seeking to remove or mitigate what the Legislature presumably regarded as a mischief ought to receive a beneficial interpretation.

SPECIAL REFERENCE.

This was a Special Reference made by His Excellency the Governor-General under s. 213 of the Constitution Act. The questions referred were:—

(1) Does either the Hindu Women's Rights to Property Act, 1937 (Central Act XVIII of 1937), which was passed by the Legislative Assembly on February 4, 1937, and by the Council of State on April 6, 1937, and which received the Governor-General's assent on April 14, 1937,

or the Hindu Women's Rights to Property (Amendment) Act, 1938 (Central Act XI of 1938), which was passed in all its stages after April 1, 1937, operate to regulate—

(a) succession to agricultural land?

(b) devolution by survivorship of property other than agricultural land?

(2) Is the subject of devolution by survivorship of property other than agricultural land included in any of the entries in the three Legislative Lists in the Seventh Schedule to the Government of India Act, 1935?

Sir Brojendra Mitter, A.-G. of India (*Asadullah Khan* with him) for the Government of India.—The Reference, taken as a mere matter of construction of the two Acts in question, presents little difficulty. The answer to question (1) (a) is 'No' in Governors' Provinces and 'Yes' in centrally

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administered areas. Schedule 7, List III, entry No. 7, of the Constitution Act excludes agricultural land in the Governors' Provinces: s. 100 (4). The answer to question (1) (b) is 'Yes'. In Indian legislative practice "survivorship" has always been included in the connotation of the word "succession". The answer to question (2) is 'Yes': List III, entry No. 7.

The words "operate to regulate" in the Reference, however, raise the more important question of the validity of the Acts. By reason of the curtailment of the powers of the Central Legislature by the Constitution Act, after the Bill had been passed by the Legislative Assembly, the Act of 1937 became different from what the Legislature had intended. When the Bill was passed by the Legislative Assembly, the intention was "to give better rights to women in respect of property" (see preamble). The word "property" in the body of the Act clearly meant all kinds of property, including agricultural land, for at that time the Central Legislature had power to deal with succession to all kinds of property. The Council of State passed the Bill without amendment. It is reasonable to infer that it intended to confirm what the Assembly did and that its own intention was not different from that of the other House. Does the fact that the powers of the Legislature had been curtailed in the meantime make any difference as to its intention? Did the Council of State intend to exclude agricultural land? It appears that in Act XXVI of 1937, when the Legislature intended to exclude agricultural land from the connotation of the word "property", it did so in express terms "save questions relating to agricultural land" (s. 2). But in Act XVIII of 1937, it retained the word "property" without any qualification. Nor did it introduce any qualification in the amending Act of 1938. Therefore, the word "property" should be given its natural meaning and full content without exclusion of agricultural land. The presumption that a Legislature does not intend to exceed its jurisdiction is rebutted by the undoubted intention of the Assembly to use the word in its natural wide sense and by the Council of State

refraining from making any change. If the Council of State had a different unexpressed intention, then, the two Houses were not *ad idem*. The rule that a Court may not look at the proceedings of a Legislature to find out its intention, cannot apply to a case where the powers of the Legislature are changed during the passage of a Bill. In such a case it is the duty of the Court to find out the real intention of the Legislature from its proceedings, and not to presume an intention by the test of legislative competency at a later date when the Act was completed. If both the Houses had passed the Bill before the 1st April 1937 and the Governor-General's assent came later, could it be said that the Legislature intended to use the word "property" in the limited sense of property other than agricultural land? Looking at the object of the Act, which was "to give better rights to women in respect of property" it is extremely unlikely that the Legislature intended to exclude agricultural land in a predominantly agricultural country and thereby largely frustrate the object of the Act. Again, in some respects, the Act, on a true interpretation, made the position of a widow governed by the Mithila school worse than under the ordinary law. Under the ordinary law, she takes her husband's moveables absolutely, whereas under this Act she takes only a widow's interest: *Sureshwar Misser* v. *Maheshrani Misrain*(1). The Act is thus prejudicial to the Mithila widow, which might be counterbalanced by her getting a share in her husband's entire property including agricultural land. Further, a widow getting a share of her husband's property under the Act, would probably forfeit her right to maintenance. It is unreasonable to suppose that the Legislature intended to deprive her of a share in her husband's agricultural land also. In the majority of cases, there would be nothing left for her to inherit, if agricultural land was intended to be excluded. From all these circumstances, the true position is that although the Legislature intended to give the widow a share in all her husband's property in all parts of British India, the effect of the changes made by the Government of

(1) (1920) 47 Ind. Ap. 233.

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India Act was that that intention was largely defeated, except in centrally administered areas. In other words, the Act of 1937 is a different enactment from what the Legislature intended. In such a case the whole Act is invalid, see *Rex* v. *Commonwealth Court of Conciliation and Arbitration*(1), *Owners of S. S. Kalibia* v. *Wilson*(2), *British Imperial Oil Co., Ltd.* v. *Federal Commissioner of Taxation*(3), *and Vacuum Oil Co. Pty., Ltd.,* v. *Queensland [No. 2]*(4).

Sir Alladi Krishnaswami Ayyar, A.-G. of Madras, (*N. Rajagopala Iyengar* with him) and *Dr. Narayan Prasad Asthana, A.-G. of the United Provinces,* (*Sri Narain Sahai* with him) were also heard by the Court.

Sir Alladi Krishnaswami Ayyar.—It is now practically conceded that the expression "succession" in entry No. 7 of List III includes "survivorship". The Provinces are interested only in that question. The word "succession" used in the Constitution Act was also used in the previous Government of India Acts, *cf.* s. 112 of the Act of 1919. It could not have been the intention of Parliament to give a more restricted meaning to the entry now. In the previous Government of India Acts and in the various Acts and Regulations providing for their personal law being applied to Hindus in matters of succession, the expression has been used in the widest and most comprehensive sense. "Succession" must therefore include "survivorship". The expression occurring in conjunction with "inheritance" leads to the inference that it includes "survivorship". Inheritance and survivorship have been designated as two modes of succession: *Katama Natchiar* v. *The Rajah of Shivagunga*(5). The Judicial Committee calls them two modes of devolution or succession: *Chowdhry Chintamun Singh* v. *Mussamut Nowlukho Konwari*(6), *Raja Jogendra Bhupati Hurri Chundun Mahapatra* v. *Nityanund Mansingh*(7);

(1) (1910) 11 Com. L. R. 1.
(2) (1910) 11 Com. L. R. 689.
(3) (1925) 35 Com. L. R. 422.
(4) (1935) 51 Com. L. R. 477.
(5) (1863) 9 Moo. Ind. Ap. 539
(6) (1875) 2 Ind. Ap. 263.
(7) (1890) 17 Ind. Ap. 128.

also *Baijnath Prasad Singh* v. *Tej Bali Singh*(1). In the cases decided under the Succession Certificate Acts there are some High Court decisions holding that a person claiming by survivorship is not a "successor"; but these cases are of no assistance in determining the import of the expression in a constitutional enactment. Under the Hindu law there is authority for the view that even in regard to self-acquired property a son takes it as unobstructed heritage, though during the father's lifetime he has no alienable interest: *Venkateswara Pattar* v. *Mankayammal*(2); Mayne's Hindu Law, 10th Edition, pp. 348-351. To construe "devolution" and "succession" in a narrow sense would render the power almost nugatory. It must therefore be held that the expressions are comprehensive enough to include survivorship.

The next question is whether the Hindu Women's Rights to Property Act has been validly enacted. The Bill was passed by the Legislative Assembly constituted under the Government of India Act, 1919, and by the Council of State after the Act of 1935 came into force and assented to by the Governor-General under the Government of India Act, 1935. Not having received the assent before the 1st April 1937, it is not an "existing Indian law" within the definition of the expression in s. 311, which alone is preserved by s. 292. If it is not "an existing Indian law", the only other Central Indian law known to the Government of India Act, 1935, is a Federal law. This cannot fall within that description, because it was not passed by the Legislative Houses constituted under the Act of 1935. There is no third type of law known.

Incomplete legislation, in the form of a pending Bill, is not within the saving clause of s. 292. The Existing Laws Act, 1937, and the language of s. 292 itself favour the conclusion that if the legislative process is not completed by assent prior to 1st April 1937, its efficacy is not preserved. It is therefore submitted that the Bill lapsed on the repeal of the Government of India Act, 1919. The new

(1) (1921) I. L. R. 43 All. 228. (2) (1935) 69 M. L. J. 410.

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Legislature constituted under the Act of 1935 is one endowed with absolutely different powers. Section 317 cannot be read as preserving the continuity for this purpose.

If the enactment were construed as a valid Federal law it is certainly invalid as to agricultural land and cannot operate to regulate the succession to or devolution of such property.

If the enactment fails as to a part, the question next arises whether the invalid part is severable from the valid portion. As regards the test of severability, the American subjective test "would the Legislature have passed this truncated enactment" is not one that has been adopted by the English cases. To embark upon the theory as to what the Legislature would have done is not a correct method of approaching the problem. If on analysing the Act a single scheme is disclosed and the valid and the invalid portions are interwoven into it, then the two portions cannot be separated and the whole enactment must be pronounced invalid. An application of the test adopted in the Australian cases would lead to the conclusion that the valid and the invalid portions of the enactment in question are inseparable.

The cases in which Courts have cut down the territorial operation of enactments where a wider construction would have led to the legislation being *ultra vires*, are distinguishable from cases of invalidity arising from the subject-matter not being within the competence of the Legislature and may not be of much assistance in the present case,—*vide* Wynes: Legislative and Executive Powers in Australia, p. 46.

There is one other point to consider in dealing with the subject under the scheme of the Government of India Act. Though inheritance is a single scheme, the Legislature seems to proceed on the footing that it is possible to treat it in two parts: that is, succession in regard to agricultural land and succession in regard to non-agricultural properties, whereas the law of succession under the Hindu

law is single and entire in its character both in relation to agricultural and non-agricultural property. The only safe test is to examine the particular provisions of the Act. Does the Act disclose a single scheme, or is it possible to give effect to it in part? See *Owners of S. S. Kalibia* v. *Wilson*(1), *Vacuum Oil Co., Pty. Ltd.* v. *Queensland* [*No. 2*](2), *Shyamkant Lal* v. *Rambhajan Singh*(3), *Att.-Gen. for Manitoba* v. *Att.-Gen. for Canada*(4), In re *the Initiative and Referendum Act*(5), and *Toronto Corporation* v. *York Corporation*(6). Applying that test, the entire enactment might be regarded as invalid.

Dr. Narayan Prasad Asthana.—In my statement of the case, I submitted that the Provinces were interested in the Reference to the extent whether the Act encroached on the Provincial field and whether "succession" included "survivorship".

Three views have been held about the validity of the Hindu Women's Rights to Property Act. One view is that the Act was entirely invalid. In some cases in Madras and the United Provinces it had been contended that the assent given by the Governor-General on 16th April 1937 was invalid inasmuch as the functions and powers of the Central Legislature had undergone a vast change after 1st April 1937. The second view is that the Act was entirely valid. The High Court of Allahabad has held the Act as valid because the functions and powers of the Central Legislature were continued after April 1, 1937, under s. 317 of the Government of India Act. The third view is that the Act was valid in some respects and invalid in others. My submission is that the Act passed by the Central Legislature is a distinct encroachment on the powers of the Provincial Legislature. The *powers* of the Central Assembly and its juridical existence expired on April 1, 1937, when the new Act came into force, although the *personnel* of the House remained unchanged. When on 6th April 1937, the Council of State was considering the Bill passed by the

(1) (1910) 11 Com. L. R. 689.
(2) (1935) 51 Com. L. R. 677.
(3) [1939] F. C. R. 193, at p. 213.
(4) [1925] A. C. 561.
(5) [1919] A. C. 935.
(6) [1938] A. C. 415.

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Assembly on 4th February 1937, it was considering something which was not a proper Bill. Consequently, the Bill was never considered by the two Chambers of the Legislature and it could not, therefore, have received the valid assent of the Governor-General on 16th April 1937. The Council of State was considering the Bill in a mistaken belief or, it may be, negligently, without realising that its powers under the new Act did not extend to agricultural property. This was possible because only a few days had passed after the new Government of India Act had come into force, and no one thought of the substantial curtailment of the powers of the Central Legislature. I made the point clear by quoting s. 65 of the old Act and ss. 100, 316 and 317 and entries No. 21 of List II and No. 7 of List III of the Seventh Schedule, and the Ninth Schedule of the Government of India Act, 1935.

My answer, therefore, to question No. (1) (a) is:

"If the Act is held to be valid, then it cannot regulate succession to agricultural land. The reply is in the negative so far as the Governors' Provinces are concerned, as it amounts to distinct encroachment on the powers of the Provincial Legislature".

As to question No. (1) (b), my reply is in the affirmative. From the definitions of the words "survivorship" and "devolution" given in law dictionaries, particularly Black's Law Dictionary, I submit that a certain property devolves, whereas a certain person succeeds. The difference is only this much and no more; for, otherwise the sense of the two words was the same, namely, that the property descends from the deceased to his heirs. "Succession" as used in entry No. 7 of List III includes "survivorship" as well as "devolution" which occurs in entry No. 21 of List II. Reading the two entries together, the words are used in identical sense. The word "devolution" includes "succession by survivorship" in a joint Hindu family, otherwise it would amount to ignorance on the part of the framers of the Government of India Act of well-known principles of the Hindu law. Hindu law also recognizes survivorship between co-widows and the daughters.

My answer to question No. (2) is also in the affirmative in view of my reasoning given above.

Cur. adv. vult.

The Opinion of the Court was delivered by

GWYER C. J.—This is a Special Reference which His Excellency the Governor-General has been pleased to make to the Court under s. 213 of the Constitution Act. The questions referred are:—

(1) Does either the Hindu Women's Rights to Property Act, 1937 (Central Act XVIII of 1937), which was passed by the Legislative Assembly on February 4, 1937, and by the Council of State on April 6, 1937, and which received the Governor-General's assent on April 14, 1937, or the Hindu Women's Rights to Property (Amendment) Act, 1938 (Central Act XI of 1938), which was passed in all its stages after April 1, 1937, operate to regulate—

(a) succession to agricultural land?

(b) devolution by survivorship of property other than agricultural land?

(2) Is the subject of devolution by survivorship of property other than agricultural land included in any of the entries in the three Legislative Lists in the Seventh Schedule to the Government of India Act, 1935?

There being no "opposite party" properly so called to this Reference, it was not considered necessary or useful to serve any parties with notice of the Reference. But, as the Court desired to hear the various possible viewpoints presented and argued, it suggested to the Advocate-General of India the desirability of inviting brief statements from the Advocates-General of the Provinces, containing the point of view that each of them wished to present and arguments in support thereof. The Advocate-General of India has filed a statement on behalf of the Government of India, and he has also placed on the file statements from the Advocates-General of

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seven of the Provinces. As the Court further intimated that besides hearing the Advocate-General of India it would be prepared to hear two more counsel, the Advocates-General of Madras and the United Provinces appeared and took part in the argument. The Court is indebted to all the learned counsel for the assistance which they have afforded it.

The doubts which have led to the Reference arise from the fact that the Bill which became the Hindu Women's Rights to Property Act, 1937 (Central Act No. XVIII of 1937), which for convenience is hereafter referred to as Act No. XVIII, was passed by the Legislative Assembly of the Indian Legislature on the 4th of February, 1937, that is, before Part III of the Constitution Act came into operation and at a time when the powers of the Legislature were plenary, but was passed by the Council of State only on the 6th of April, 1937, that is, after Part III had come into operation, and received the Governor-General's assent only on the 14th of April, 1937. After the 1st April, 1937, the Central Legislature was precluded from dealing with the subjects enumerated in List II of the Seventh Schedule to the Constitution Act, so far as the Governors' Provinces were concerned. Laws with respect to the "devolution of agricultural land" could be enacted only by the Provincial Legislatures (entry No. 21 of List II), and "wills, intestacy, and succession, save as regards agricultural land" appeared as entry No. 7 of List III, the Concurrent List. Act No. XVIII, read with the amending Act of 1938 (Central Act No. XI of 1938), endeavoured to improve the position of Hindu widows in two classes of case: (a) where by the operation of the principle of survivorship the widow is excluded from enjoyment of the share of her husband in property which he held jointly with other coparceners; and (b) where, even apart from the rule of survivorship, the widow is excluded from claiming any share in her husband's estate by reason of the existence of sons, grandsons or great-grandsons of the deceased who under the law take in preference to the widow. Provision is also made for securing a share to a widow even in cases where her husband had pre-deceased the last male

owner [s. 3 (1), first proviso]. The Act purports to deal in quite general terms with the "property" or "separate property" of a Hindu dying intestate, or his "interest in joint family property"; it does not distinguish between agricultural land and other property and is therefore not limited in terms to the latter. It may be mentioned that some aspects of the questions now referred have already been discussed in one or two cases [see, for instance, *Janak Dulari* v. *Sri Gopal*(1)], on the assumption that the Bill had been passed even by the Council of State before the new Constitution came into force. From the dates given in the present Reference it will be seen that this assumption is not correct. It may be added that the validity and operation of the amending Act of 1938 (Central Act No. XI of 1938) call for no separate discussion, since it does not enact any independent provisions, but merely makes some amendments in the Act of the previous year.

Of the questions referred, Question (2) will in effect be answered by the views to be expressed in the course of the discussion of Question (1); and it is therefore not separately considered. In the statements filed before the hearing and in the course of the arguments, the following contentions were raised with respect to Question (1):—

(i) That Act No. XVIIII was never properly passed at all, in view of the stage at which it was taken up and dealt with by the Council of State and the Governor-General.

(ii) That the Act was in any view *ultra vires* the Indian Legislature, so far as its operation might affect agricultural land in the Governors' Provinces.

(iii) That if the Act should be held to be only in part *ultra vires*, it would not on the authorities be permissible to sever the good from the bad, so as to allow it at any rate to operate in respect of property other than agricultural land in the Governors' Provinces.

(1) I.L.R. [1939] All. 912

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(iv) That even if it were permissible to uphold the Act to a limited extent, the provision in s. 3 (2) relating to the interest of the deceased in Hindu joint family property would be *ultra vires* the Indian Legislature, on the ground that the mention of "succession" in entry No. 7 of List III of the Seventh Schedule does not include or authorize legislation in respect of the benefit which accrues to the members of a Mitakshara joint Hindu family under the rule of survivorship.

In addition to the constitutional points above summarized, a suggestion was made on the construction of the Act that it does not provide for the devolution of any property by survivorship nor confer on the widow a right by survivorship, though it gives her the same interest in the joint property as her deceased husband had. This does not seem to be tenable. It is true that s. 3 of the Act does not use the word "survivorship", and it may be that the widow taking a share under the Act does not become a coparcener with the other sharers; but there can be no doubt that in the cases in which it gives to the widow of a deceased coparcener a right to a share in the joint property which she did not possess under the pre-existing law it takes away to that extent the benefit of the rule of survivorship which would have accrued to the remaining coparceners. The Reference must therefore be dealt with on the footing that so far as its effect goes, the Act does legislate "with respect to" the law of survivorship. It can make no difference for this purpose whether the measure confers on one person a benefit by way of survivorship or takes away from another the benefit of survivorship.

On the first contention, the Court is satisfied that no objection can be taken to the validity of the Act on the ground only that it was introduced into the Legislature and passed by the Legislative Assembly before Part III of the Constitution Act came into force. Part XIII of the Constitution Act contains

certain provisions entitled "Transitional Provisions", which are to apply "with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation". It is then enacted by s. 317 that the provisions of the Government of India Act, 1919, set out (with certain amendments consequential on the passing of the Constitution Act) in the Ninth Schedule, are to continue to have effect, that is, during the transitional period, notwithstanding the repeal of the earlier Act by the Constitution Act. Among the provisions thus continued are the provisions of the earlier Act relating to the Indian Legislature; and it is clear that the Indian Legislature which was in existence immediately before the coming into force of Part III of the Act was continued in existence after that date, and was in all respects the same Legislature, though its legislative powers were no longer as extensive as they had previously been.

One of the provisions included in the Ninth Schedule is that a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both Chambers either without amendment or with such amendments only as may be agreed to by both Chambers. It is common ground that the Hindu Women's Rights to Property Bill was agreed to without amendment by both Chambers of the Indian Legislature, and as soon as it received the Governor-General's assent, it became an Act [Ninth Schedule, para. 68 (2)]. Not until then had this or any other Court jurisdiction to determine whether it was a valid piece of legislation or not. It may sometimes become necessary for a Court to inquire into the proceedings of a Legislature, for the purpose of determining whether an Act was or was not validly passed; for example, whether it was in fact passed, as in the case of the Indian Legislature the law requires. by both Chambers of the Legislature before it receivd the Governor-General's assent. But it does not appear to the Court that the form, content or subject-matter of a Bill at the time of its introduction into, or of its consideration by, either Chamber of a Legislature is a

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matter with which any Court of law is concerned. The question whether either Chamber has the right to discuss a Bill laid before it is a domestic matter regulated by the rules of the Chamber, as interpreted by its Speaker, and is not a matter with which a Court can interfere, or indeed on which it is entitled to express any opinion. It is not to be supposed that a legislative body will waste its time by discussing a Bill which, even if it receives the Governor-General's assent, would obviously be beyond the competence of the Legislature to enact; but if it chooses to do so, that is its own affair, and the only function of a Court is to pronounce upon the Bill after it has become an Act.

In the opinion of this Court therefore it is immaterial that the powers of the Legislature changed during the passage of the Bill from the Legislative Assembly to the Council of State. The only date with which the Court is concerned is April 14th, 1937, the date on which the Governor-General's assent was given; and the question whether the Act was or was not within the competence of the Legislature must be determined with reference to that date and to none other.

It is convenient to consider the second and third contentions together, *viz.*, that the Act was beyond the competence of the Indian Legislature, so far as its operation might affect agricultural land in the Governors' Provinces; and that, if it were held to be in part beyond the competence of the Legislature, its provisions were not severable, so that it could not even affect property other than agricultural land. No doubt if the Act does affect agricultural land in the Governors' Provinces, it was beyond the competence of the Legislature to enact it: and whether or not it does so must depend upon the meaning which is to be given to the word "property" in the Act. If that word necessarily and inevitably comprises all forms of property, including agricultural land, then clearly the Act went beyond the powers of the Legislature; but when a Legislature with limited and restricted powers makes use of a word of such wide and general import, the presumption must surely be that it is using it with reference to that kind

of property with respect to which it is competent to legislate and to no other. The question is thus one of construction, and unless the Act is to be regarded as wholly meaningless and ineffective, the Court is bound to construe the word "property" as referring only to those forms of property with respect to which the Legislature which enacted the Act was competent to legislate; that is to say, property other than agricultural land. On this view of the matter, the so-called question of severability, on which a number of Dominion decisions, as well as decisions of the Judicial Committee, were cited in the course of the argument does not arise. The Court does not seek to divide the Act into two parts, *viz.*, the part which the Legislature was competent, and the part which it was incompetent, to enact. It holds that, on the true construction of the Act and especially of the word "property" as used in it, no part of the Act was beyond the Legislature's powers.

There is a general presumption that a Legislature does not intend to exceed its jurisdiction: see cases cited in Maxwell on the Interpretation of Statutes (8th Ed.), p. 126: and there is ample authority for the proposition that general words in a statute are to be construed with reference to the powers of the Legislature which enacts it. "It seems to me", said Lord Esher M. R. in *Colquhoun* v. *Heddon*(1), "that, unless Parliament expressly declares otherwise, in which case, even if it should go beyond its own rights as regards the comity of nations, the Courts of this country must obey the enactment, the proper construction to be put on general words used in an English Act of Parliament is, that Parliament was dealing only with such persons or things as are within the general words and also within its proper jurisdiction, and that we ought to assume that Parliament (unless it expressly declares otherwise), when it uses general words, is only dealing with persons or things over which it has proper jurisdiction". Where the expression "personal estate" occurred in a Victorian statute imposing duties on the estates of deceased persons it was held by the Judicial Committee that it must be

(1) (1890) 25 Q.B.D. 129, at p. 134.

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construed as referring only to such personal estate as the colonial grant of probate conferred jurisdiction on the personal representatives to administer, whatever the domicile of the testator might be, that is to say, personal estate situate within the Colony, in respect of which alone the Supreme Court of Victoria had power to grant probate: Their Lordships thought that "in imposing a duty of this nature the Victorian Legislature also was contemplating the property which was under its own hand, and did not intend to levy a tax in respect of property beyond its jurisdiction". And they held that "the general expressions which import the contrary ought to receive the qualification for which the appellant contends, and that the statement of personal property to be made by the executor under s. 7 (2) of the Act should be confined to that property which the probate enables him to administer": *Blackwood* v. *The Queen*(1). In the well-known case of *Macleod* v. *Att.-Gen. for New South Wales*(2), the Legislature of New South Wales had enacted a law providing that "whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage takes place, shall be liable to penal servitude for seven years". The appellant, who had during the lifetime of his wife married another woman in the United States of America and had in a New South Wales Court been convicted of bigamy under the provisions of this law, contended that the Court had had no jurisdiction to try him for the alleged offence, since the Act under which he was tried, according to its true construction, was limited to offences committed within the jurisdiction of the local Legislature by persons subject at the time of the offence to its jurisdiction; and that upon any other construction the Act would be *ultra vires*. Lord Halsbury, delivering the Judgment of the Judicial Committee, observed that if Their Lordships construed the statute as it stood and upon the bare words, any person, married to any other person, who marrried a second time anywhere in the habitable globe, was amenable to the criminal jurisdiction of New South Wales, if he could be

(1) (1882) 8 App. Cas. 82, at p. 98. (2) [1891] A.C. 455.

caught in that Colony. "That seems to Their Lordships", he continued, "to be an impossible construction of the statute: the Colony can have no such jurisdiction, and Their Lordships do not desire to attribute to the Colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a Colony, and, indeed, inconsistent with the most familiar principles of international law. It therefore becomes necessary to search for limitations, to see what would be the reasonable limitation to apply to words so general; and Their Lordships take it that the words 'Whosoever being married' mean 'Whosoever being married, and who is amenable, at the time of the offence committed, to the jurisdiction of the Colony of New South Wales' " (at p. 457). And again in a later passage: "It appears to Their Lordships that the effect of giving the wider interpretation to this statute necessary to sustain this indictment would be to comprehend a great deal more than Her Majesty's subjects; more than any persons who may be within the jurisdiction of the Colony by any means whatsoever: and that, therefore, if that construction were given to the statute, it would follow as a necessary result that the statute was *ultra vires* the Colonial Legislature to pass. Their Lordships are far from suggesting that the Legislature of the Colony did mean to give to themselves so wide a jurisdiction. The more reasonable theory to adopt is that the language was used subject to the well-known and well-considered limitation, that they were only legislating for those who were actually within their jurisdiction, and within the limits of the Colony" (at p. 459). The principle is the same for all law-making bodies with limited powers: "Now it is true that a by-law must be, as a general rule, consistent with the principles of the common law; that if it violates those principles it is bad, and it follows that if it is capable of two constructions, one of which would make it bad and the other good, we must adopt that construction which will make it consonant with the principles of the common law": *Collman* v. *Mills*(1).

(1) [1897] 1 Q.B. 396, at p. 399.

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In *D'Emden* v. *Pedder*(1), the High Court of Australia held that they would not be justified in assuming that a State Parliament intended general words in an enactment to have an application which would conflict with the constitution of the Commonwealth: "It is, in our opinion, a sound principle of construction that Act of a sovereign legislature, and indeed of subordinate legislatures, such as a municipal authority, should, if possible, receive such an interpretation as will make them operative and not inoperative..... It is a settled rule in the interpretation of statutes that general words will be taken to have been used in the wider or in the more restricted sense according to the general scope and object of the enactment" (at pp. 119, 120).

There is this also to be said. The underlying purpose of Act No. XVIII is plainly stated in its preamble: "Whereas it is expedient to amend the Hindu Law to give better rights to women in respect of property". It is therefore a remedial Act seeking to remove or to mitigate what the Legislature presumably regarded as a mischief; and as such it ought to receive a beneficial interpretation: "If the enactment be manifestly intended to be remedial, it must be so construed as to give the most complete remedy which the phraseology will permit": *Gover's Case*(2). It may well be that the Indian Legislature, if it had been able to pass the Act while it still possessed plenary powers, would have desired that the "better rights" which it sought to give to Hindu women should extend to agricultural land as well as to other property; but it cannot be supposed that when, after restriction of its powers, it passed an Act with the above preamble, it did not intend to make the enactment as effective as it was within its power to make it. It was contended before the Court that the passing of the Act with a restricted effect might result in some cases in a widow being deprived of advantages which she possessed under the pre-existing law. The examples adduced by the Advocate-General of India were by no means conclusive, and it should not be assumed that the Court

(1) (1904) 1 Com. L.R. 91. (2) (1875) 1 Ch. D. 182, at p. 198.

accepts the contention; but even if it were true that an Act intended to be remedial, though possibly limited in scope, was found in a small minority of cases to prejudice rather than to benefit those whom it was intended to help, this would be no reason why the Court should not adopt the construction which is on the whole best calculated to give effect to the manifest intention of the Legislature.

The Court has already pointed out that the question is one of the construction of the Act, that is to say, of ascertaining its true meaning, and that the construction which has commended itself to the Court leaves no room for the application of the principle of non-severability of subject-matter. It should not however be thought that the Court has overlooked cases cited to it in which the same words have been applied in an Act to a number of purposes, some within and some without the power of the Legislature, and the whole Act has been held to be bad. If the restriction of the general words to purposes within the power of the Legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the Legislature intended the general words which it has used to be construed only in the narrower sense: *Owners of S. S. Kalibia* v. *Wilson*(1); *Vacuum Oil Co. Pty. Ltd.* v. *Queensland [No. 2]*(2); *Rex.* v. *Commonwealth Court of Conciliation and Arbitration*(3); *British Imperial Oil Co. Ltd.* v. *Federal Commissioner of Taxation*(4). If the Act is to be upheld, it must remain, even when a narrower meaning is given to the general words, "an Act which is complete, intelligible, and valid and which can be executed by itself": Wynes: Legislative and Executive Powers in Australia, p. 51, citing *Presser* v. *Illinois*(5). These words appear to the Court apt to describe Act No. XVIII.

(1) (1910) 11 Com. L.R. 689. (3) (1910) 11 Com. L.R. 1.
(2) (1935) 51 Com. L.R. 677. (4) (1925) 35 Com. L.R. 422.
(5) (1886) 116 U.S. 252.

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if construed as the Court has thought right to construe it, that is to say, even when a narrower meaning is given to the general words which the Legislature has used.

It remains to deal with the fourth contention, that is, with regard to the import of the term "succession" in entry No. 7 of List III and of the word "devolution" in entry No. 21 of List II. The question raised is whether these words which *primâ facie* imply the passing of an interest from one person to another can include the change which takes place under the Mitakshara law in the extent of the interest possessed by the male members of a joint Hindu family in the joint property when one of these members dies. Borrowing a term from the English law, this change has been described as the operation of the principle of survivorship. But the note of caution sounded by Lord Dunedin in *Baijnath Prasad Singh* v. *Tej Bali Singh* (1), as to the use of the terms "coparcenery", and "coparceners" in relation to a Mitakshara joint family is equally applicable to the use of the terms "joint-tenancy" and "survivorship"; for the incidents associated with joint ownership under the Mitakshara law are not identical with those known to the English law of joint-tenancy. There is however this degree of resemblance between the *jus accrescendi* and the effect of the death of one of the owners of joint family property under the Mitakshara law, that in a sense there is only an extinction of the deceased person's interest, and the shares of the survivors,—whose pre-existing interest extended over the whole property,—are increased only because of the diminution in the number of sharers. The argument therefore is that words like "devolution" and "succession" cannot be held to include cases where the deceased person's interest does not pass to another but is merely extinguished or lapses. There are at least two answers to this argument.

Whatever may be the position under the English law, the theory of extinction does not exactly describe the position which arises on the death of a

(1) (1921) I.L.R. 43 All. 228.

member of a Mitakshara joint family. The result of a long course of decisions is that certain legal acts continue to operate on the interest of the deceased member even when what is ordinarily spoken of as the rule of survivorship is taking effect. Thus, if a creditor obtains a decree against a member of a joint family and during the latter's life-time attaches his undivided interest in the family property, the creditor will be entitled to proceed against that interest to the extent necessary for the satisfaction of his claim even after the property has survived to the other members by reason of the death of the judgment-debtor. In some of the Provinces there have also been decisions recognising a right of voluntary alienation in each joint owner, in respect of his undivided share, when the alienation is for value; and, if in this part of the country a member creates a mortgage over his undivided share, such mortgage has been held to be operative even after the death of the mortgagor. According to several decisions of the Madras High Court, the alienation by a member of his undivided share does not disrupt the joint status and yet the rights of the purchaser have been held not to be defeated by the death of the alienor, though no suit for partition be instituted during his life-time. Results of this kind are wholly inconsistent with the theory of extinction or lapse, and even more so when the deceased happens to be the father of the survivors. It was recognised as early as *Nanomi Babuasin* v. *Modhun Mohun*(1), that the application of the theory of the son's "pious obligation" to pay the father's debts has practically resulted in the *pro tanto* extinction of the son's independent rights in the family property; and s. 53 of the Civil Procedure Code provided that to the extent to which joint family property remained liable for the father's personal debts even after his death, it "shall be deemed to be property which has come to the hands of the son as his legal representative"

It is equally important to remember that neither in their ordinary grammatical significance nor by a long continued use in a technical sense have the words "devolution" and "succession" acquired a

(1) (1886) I.L.R. 13 Cal. 21.

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connotation that would preclude their application to describe the operation of the rule of survivorship as above explained. Eminent text-writers and Judges have used one or the other of these terms to include the accession of rights which takes place on the death of one of the members of a Mitakshara joint family. Many enactments of Parliament and of the Indian Legislature have used the words "inheritance" and "succession" in juxtaposition, justifying the inference that succession is either another category from or a wider category than "inheritance" (see some of these enactments referred to in Ilbert's Government of India, Chapter IV, and in Mulla's Hindu Law, 9th Edn. pp. 4-5). If in these enactments "succession" should be held not to include the principle of survivorship, it would be difficult to say what else that word is meant to refer to and in any other view the continued administration of that part of the Hindu law by the British Indian courts could not have been provided for, because there are no other appropriate words in those provisions. Such being the position as to the meaning of the words, it is permissible to add that it is difficult to conceive of any reason why in framing Lists II and III Parliament should have thought fit to take away the law of survivorship from the jurisdiction of the Indian Legislatures, and there is no justification for attributing oversight either, when, as above explained, the language employed may properly be held to comprehend the law of survivorship as well.

A line of cases in the High Courts dispensing with the production of a succession certificate when title to a "debt" is claimed by survivorship may seem to support the restricted interpretation of the word "succession" (cf. *Sheetalchandra Datta* v. *Lakshimanee Dasee*(1). But taking this class of decisions as a whole they must be understood to rest not so much on the connotation of the word "succession" as on the meaning of the expression "effects of the deceased person" and on the reason of the rule relating to the production of a succession certificate in support of the claim to a "debt" *primâ facie* due

(1) (1935) I.L.R. 63 Cal. 15, at p. 16.

to a deceased person. (See *Vairavan Chettiar* v. *Srinivasachariar*[1]). In any event, the two enactments not being *in pari materia*, such observations as may be found in these cases in support of the limited interpretation of the word "succession" cannot be held to be sufficient to override the cumulative effect of the considerations referred to above.

In one or two instances, eminent writers have employed language suggesting that "devolution" may comprehend cases of survivorship but not the word "succession" (see Mayne's Hindu Law, 10th Edn., para. 270), but it is difficult to find any basis for this distinction. "Devolution" may be wider in scope than "succession" in the sense that the former is not restricted to the result of a "death" (see O. 22, r. 10, C. P. C.), but that is immaterial for the present purpose; and, as already stated, eminent Judges have used both the terms in a sense that will include the operation of the principle of survivorship.

The Court is therefore of opinion that the answers to the questions comprised in the Special Reference are as follows:—

(1) The Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Rights to Property (Amendment) Act, 1938,—

(*a*) do not operate to regulate succession to agricultural land in the Governors' Provinces; and

(*b*) do operate to regulate devolution by survivorship of property other than agricultural land.

(2) The subject of devolution by survivorship of property other than agricultural land is included in entry No. 7 of List III, the Concurrent List.

[1] (1921) I.L.R. 44 Mad. 499.

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The Court will report to His Excellency accordingly.

Agent for the Government of India: *K. Y. Bhandarkar.*

Agent for the A.-G. of Madras: *Ganpat Rai.*

Agent for the A.-G. of the United Provinces: *G. Sahay.*