

MST. ATIQA BEGUM AND OTHERS

1941.

Apr. 17.

v.

THE UNITED PROVINCES AND OTHERS.

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

*Federal Court—Leave to appeal to Privy Council—
Practice—Government of India Act, 1935, s. 208
(b).*

An applicant for leave to appeal to His Majesty in Council must satisfy the Court that the matter is one of importance and that there is really a substantial question to be determined: *Valin v. Langlois* (1879) 5 App. Cas. 115 applied.

APPLICATION for leave to appeal to His Majesty in Council.

This was an application for leave to appeal under s. 208 (b) of the Constitution Act, from the Judgment of the Court in *The United Provinces v. Atiqa Begum*, reported [1940] F. C. R. 110.

Shiva Prasad Sinha (*Prem Mohanlal Verma* and *Lakshmi Saran* with him) for the applicants.

Dr. Narayan Prasad Asthana, A.-G. of the *United Provinces*, (*Sri Narain Sahai* with him) for the opposite party.

The Judgment of the Court was delivered by VARADACHARIAR J.—This is an application asking for leave, under s. 208 (b) of the Constitution Act, to appeal to His Majesty in Council, from a decision of this Court given in December last (1). The constitutional question raised in the case related to the interpretation of s. 292 of the Constitution Act.

In the special circumstances described in the Judgment in that case, the Government of the United Provinces had to direct remission of rent for certain years in the zamindaris in the United Provinces; and when the validity of the remission was successfully

(1) (1940) F. C. R. 110.

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questioned in judicial proceedings in the High Court, the United Provinces Legislature passed the impugned Act (No. XIV of 1938), entitled the United Provinces Regularization of Remissions Act, 1938. The validity of this enactment was in turn questioned by the present applicants when the matter was pending before the High Court at Allahabad; and a Full Bench of the High Court held that this Act was *ultra vires* the Provincial Legislature on various grounds. One ground on which alone all the three learned Judges who constituted the Full Bench agreed was that s. 292 of the Constitution Act precluded Legislatures in India from enacting any law with retrospective effect, so as to affect rights accrued before the date of the enactment. The tenant affected by the decree of the High Court did not appeal to this Court, but the Government of the United Provinces, which had taken steps to get itself impleaded as a party just before the case was finally disposed of by the High Court, preferred the appeal to this Court.

At the hearing of the appeal objection was taken to the maintainability of the appeal by the United Provinces Government, on the ground that there was no decree against the Government and that the Government was not a proper party to the litigation at all. On the merits, the conclusion of the learned Judges of the High Court that the Act contravened the limitation imposed upon the Legislature by s. 292 of the Constitution Act was contested on behalf of the appellant, but it was sought to be supported on various grounds by the learned counsel who appeared for the plaintiffs-respondents. This Court, by a majority, held that the appeal was competent; and it unanimously held that the impugned Act was *intra vires* the Provincial Legislature and that s. 292 of the Constitution Act did not on its true construction deprive Legislatures in India of the power to pass legislation with retrospective effect. It is against this decision that the applicants now seek to appeal to His Majesty in Council.

The amount of the disputed remission is very small, not even a hundred rupees; and even as to

that amount, this Court did not (for the reasons given in the Judgment) disturb the *decree* passed by the High Court in the petitioners' favour. The application for leave is supported on three grounds: (1) that the constitutional question involved is of general public importance; (2) that the impugned enactment, namely, Act XIV of 1938 of the United Provinces Legislature, affects the claim of the zamindars of the United Provinces as a body to a large amount of rent remaining in arrears; and (3) that the decision of the majority of this Court on the question of the right of the United Provinces Government to maintain the appeal to this Court is open to criticism.

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It is true that the learned Judges of the Allahabad High Court interpreted s. 292 of the Constitution Act as depriving Legislatures in India of the power to legislate with retrospective effect. But, with all deference to them, this Court is unable to hold that there is room for such serious doubt on the point as to justify it in holding that that is a substantial question on which leave to appeal to His Majesty in Council is to be granted. When dealing with an application of this kind, the Court must be satisfied that the matter is one of importance and that there is really a substantial question to be determined: *Valin v. Langlois* (1). As observed by the Judicial Committee in that case, "it is not to be presumed that the Legislature of a Dominion has exceeded its powers unless upon grounds really of a serious character". After giving anxious consideration to the arguments advanced in support of the High Court's view, this Court unanimously came to the conclusion that s. 292 of the Constitution Act could not reasonably bear the construction sought to be put upon it by the plaintiffs. It will be observed from the Judgment of the Court that many other questions which would have been relevant to the decision of the case had to be left open in the special circumstances in which this Court had to deal with the case. If therefore the matter is to be permitted to go on appeal to His Majesty in Council at all, it will be much more satisfactory that

(1) (1879) 5App. Cas. 115.

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In considering the extent of interest indirectly affected by the United Provinces Act XIV of 1938, it must be pointed out that the operation of that Act was only temporary, as it sought to regularize certain remissions of rent which according to the opinion of the High Court in another case had been granted in violation of certain provisions of the then existing Rent Act. Those sections in the Rent Act have themselves been repealed by another Act of the United Provinces Legislature passed in the year 1938, and the question is hardly likely to arise in the same form in respect of claims for rent accruing due after 1938. Claims to rent accrued due before 1938 can hardly be enforced in any future litigation, as nearly three years have now elapsed. The Court asked for information whether any large number of suits relating to rent accrued due before 1938 and likely to be affected by Act XIV of 1938 were pending; but no specific information on the point was available. Reference has been made in paragraph 13 of the petitioners' petition to certain circumstances bearing upon the indirect consequences of the decision of this Court, but even there no information on the above question is available. It cannot therefore be said that any decision to be obtained from Their Lordships, if this appeal should be permitted to go to them, is likely to have a material bearing upon future litigation and that in that sense the question is of general public importance.

The only other point raised is the procedural question as to the maintainability of the appeal to this Court by the United Provinces Government. That is a matter of importance only to the clients in the particular case and as this Court did not, even while entertaining the appeal, disturb the decree of the High Court in the plaintiffs' favour, it is not possible to accept the contention that this procedural question

is one which will justify the grant of leave to appeal.
The application is accordingly dismissed. There will
be no order as to costs.

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Application dismissed.

Agent for applicants: *T. K. Prasad.*

Agent for the opposite party: *G. Sahay.*