APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Oldfield.

1921, March 2.

THE CHIEF COMMISSIONER OF INCOME-TAX (BOARD OF REVENUE), MADRAS (RESPONDENT), APPELLANT,

v.

THE NORTH ANANTAPUR GOLD MINES, LIMITED (APPELLANTS), RESPONDENTS.*

Indian Income-tax Act (VII of 1918)—Sec. 51 (1) and sec. 52—Sec. 106 (2) of the Government of India Act, 5 and 6 George V, Chapter 61—Sec. 45 (h) of the Specific Relief Act (I of 1877)—English decisions on English Income-tax Act guides to interpret Indian Income-tax Act.

Where a person who was assessed to income-tax appealed to the Board of Revenue and the Board while dismissing the appeal refused to refer the matter to the High Court under section 51 of the Income-tax Act, though requested to do so,

Held that section 106 (2) of the Government of India Act, and section 52 of the Income-tax Act prohibited the High Court from entertaining any application under section 45 in the nature of a mandamus for the purpose of compelling the Revenue Board to refer the matter to the High Court under section 51 of the Income-tax Act; *Spooner* v. *Juddow* (1850) 4 M.I.A., 353, followed.

Issuing an order under section 45 of the Specific Relief Act in the nature of a mandamus is an exercise of "original jurisdiction" within section 106 (2) of the Government of India Act.

An application under section 45 of the Specific Relief Act against the Board is a "proceeding" within section 52 of the Income-tax Act. *Re Onward Building Society* [1891] 2 Q.B., 463, applied.

"Anything done" in section 52 includes "anything omitted to be done": *Jolliffe* v. *Wallasey Local Board* (1873) L.R., 9 C.P., 62, followed.

English decisions are not decisions of "foreign Courts" and as the Income-tax Act of India generally follows the lines of the English Income-tax Act, the decisions of English Courts on the latter Act are the best guides to the interpretation of the Indian Act.

The meaning of "unnecessary" in section 51 of the Income-tax Act considered.

APPEAL from the judgment of Mr. Justice KUMARASWAMI SASTRI passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court, in *In the matter of the North Anantapur Gold Mines, Ltd.*

*Original Side Appeal No. 1 of 1921.

The North Anantapur Gold Mines, Limited, which has its registered office in London, and whose profits are derived solely from the sale in Great Britain of gold mined in the Anantapur district, was assessed to income-tax by the Collector of Anantapur on an income of Rs. 2,13,134. The Company appealed to the Board of Revenue against the imposition of the assessment, principally on two grounds, namely, (1) that the Company was not a "person" within the meaning of section 33 of the Income-tax Act, and (2) that as the sale of gold took place entirely in Great Britain it had no "business connexion in British India" within the meaning of the Income-tax Act. After hearing arguments on both these points the Board of Revenue dismissed the appeal. Though requested by the assessee to refer the matter to the High Court under section 51 of the Income-tax Act, they declined to do so.

After this dismissal the Company filed an application on the Original Side of the High Court under section 45 of the Specific Relief Act for the issue of a writ of mandamus against the Revenue Board with a view to compel the Board to refer the question of the Company's liability to the High Court, under section 51 of the Income-tax Act. The matter was heard by Mr. Justice KUMARASWAMI SASTRI. On behalf of the Board the Government Pleader argued before His Lordship that the High Court had no jurisdiction to issue a mandamus in a matter concerning the collection of revenue and relied on section 106 of the Government of India Act in support of his position. His Lordship overruled this contention, and held on the strength of section 45 of the Specific Relief Act that the powers of the High Court to issue a mandamus in a proper case was not taken away, and he accordingly issued a writ of mandamus calling on the Revenue Board to state a case to the High Court under section 51 of the Income-tax Act, being of opinion that the case raised difficult questions of law.

Against this decision, the Revenue Board preferred this Appeal.

C. P. Ramaswami Ayyar, Advocate-General, with *C. Madhavan Nayar*, Government Pleader, for the appellant.—The High Court had no jurisdiction to issue a mandamus. The jurisdiction to decide on appeal whether an assessee was

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properly assessed is vested by the Income-tax Act entirely in the Board of Revenue. Section 51 of that Act gives the Board various powers after hearing the appeal; it might simply dismiss the appeal without referring any question to the High Court, or it might, if it thought fit, refer any difficult or doubtful question of law arising in the appeal for the decision of the High Court Such reference it could make either of its own accord or at the request of the assessee, if it considered such request not frivolous or vexatious. In this particular case the Board had considered all the points of law placed before it and had delivered a considered judgment dismissing the appeal. It had exercised its discretion vested in it under section 51. The Board being a special tribunal constituted for a special purpose by the Statute, its acts done in the exercise of its discretion could not be questioned in any Court of law either by a mandamus or in any other manner even if the decision were erroneous. He relied on the following cases: *The Queen* v. *Overseers of Walsall*(1), *Reg* v. *Allo Paroo*(2), *Sharpe* v. *Wakefield*(3), *Rex* v. *Port of London Authority. Ex parte Kynoch, Ltd.*(4), *Julius* v. *Lord Bishop of Oxford*(5), and *Prosad Chunder De* v. *Corporation of Calcutta*(6). The words "if it thinks fit" are interpreted in *Reg* v. *Allo Paroo*(2). When a discretion is vested in an authority it is not compelled to adopt one course any more than another: *Reg* v. *Cotham*(7) and *Rex* v. *The Justices of Kingston. Ex parte Davey*(8). "Discretion" is interpreted in *Sharpe* v. *Wakefield* (3). Only if there is a conscious refusal to exercise its discretion or if in the exercise of its discretion extraneous matters are taken into consideration a mandamus can issue, and a mere erroneous decision cannot be upset by a mandamus: *Rex* v. *Marshland Smeeth and Fen District Commissioners*(9), *The King* v. *The Justices of Monmouthshire*(10), *The King* v. *The Justices of Monmouthshire*(11), and *Clifton* v. *Furley*(12). Further, section 106 (2) of Government of India Act, 1915, prohibits

(1) (1878) 3 Q.B.D., 457.
(2) (1847) 5 Moo. P.C.C., 295, 300.
(3) [1891] A.C., 173.
(4) (1919) 1 K.B., 176.
(5) (1880) 5 App. Cas., 214.
(6) (1913) I.L.R., 40 Calc., 836.
(7) [1898] 1 Q.B., 802, 806.
(8) (1902) 86 L.T., 589.
(9) [1920] 1 K.B., 155, 164, 165.
(10) (1828) 8 B. & C., 137; s.c., 108 E.R., 994.
(11) (1825) 4 B. & C., 844; s.c., 107 E.R., 1273.
(12) (1862) 7 H. & N., 733; s.c., 158 E.R., 685.

interference by the High Court in any matter concerning revenue. The origin of the King's Bench's jurisdiction in revenue matters is shown in *Anonymous*(1). Section 8 of 21 George III, Chapter 70, shows the origin of section 51. So far as India is concerned, subsequent statutory provisions on the same subject are section 11 of 37 George III, Chapter 142; section 3 of 39 and 40 George III, Chapter 79; section 9 of 24 and 25, Vic., C. 14. *Venkata Runga Pillay* v *E.I. Co.*(2) quoted by the learned Judge does not touch this question: see *In the matter of Audhur Chundra Shaw*(3). *Spooner* v. *Juddow*(4) holds that even, where the East India Company's regulations have been violated by making a distraint of a wrong person's goods, Courts have no jurisdiction to remedy the injury; see also *Collector of Sea Customs* v. *P. Chithambaram*(5). I rely also on section 52 of the Income-tax Act and it relates also to the mufassal.

R. N. Aingar for respondent.—Unless the application to refer is unnecessary or frivolous the point must be referred if it is necessary for the decision of the case: see section 51 (3). Even if there is a discretion vested, a mandamus can be issued if the limits of the discretion have been exceeded; *Rex* v. *Board of Education*(6) holds that if jurisdiction is declined on a wrong construction of the Act, then a mandamus will lie; see also *Leslie Williams* v. *Haines Thomas Giddy*(7) and *The Queen* v. *Vestry of St. Pancras*(8). The words "frivolous or unnecessary" are copied from the English Income-tax Act II of 1915 (5 and 6 George V, Chapter 89), sections 41 and 42 where the words are "frivolous or vexatious or one already decided:" *Smidth & Co.* v. *Greenwood*(9), *Sharpe* v. *Wakefield*(10). Section 106 of the Government of India Act has been repealed by section 51 of the Income-tax Act. Moreover, this matter does not come before the High Court in its "Original jurisdiction" within the meaning of section 106, as this comes under section 45 of the Specific Relief Act. This matter may be said to come before

(1) (1793) 1 Anst., 205; s.c., 145 E.R., 846.
(2) (1803) 1 Strange, 153; s.c., 5 Indian Decisions, 80.
(3) (1873) 11 B.L.R., 250. (4) (1850) 4 M.I.A., 353.
(5) (1876) 1 Mad., 89, 108, 115, 117. (F.B.). (6) [1910] 2 K.B., 165, 179.
(7) (1911) 21 M.L.J., 641 (P.C.); s.c. [1911] A.C., 381.
(8) (1890) 24 Q.B.D., 371, 375. (9) [1920] 3 K.B., 275.
(10) [1891] A.C., 173.

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the High Court also in its revisional jurisdiction: *Chappan* v. *Moidin Kutti*(1) which follows *Nilmoni Singh Deo* v. *Taranath Mukerjee*(2). Section 50 of the Specific Relief Act abolished the old writ of mandamus, for which section 45 is a substitute. The old writ of mandamus was issued by the Supreme Court but this is by the High Court. This does not concern "revenue" *directly*, or *immediately* within the meaning of section 106: *Venkata Runga Pillay* v. *E. I. Co.*(3), *Hari Banji* v. *The Secretary of State for India*(4).

The right is conferred by section 51 and the remedy is by section 45, Specific Relief Act; compare words "may" and "shall" in section 51. Section 131 (3) of Government of India Act empowers a repeal or modification of section 106.

A. Krishnaswami Ayyar (*amicus curiae*) for a similar assessee —Any point that arises on the facts of a particular case must be referred to the High Court because it is relevant and therefore "necessary" for the decision of the case. The Board is not a Court of construction, for then the provision for reference to the High Court will be unnecessary: *Board of Education* v. *Rice*(5), *Rex* v. *Board of Education*(6), *Melbourne Tramway and Omnibus Co.* v. *Fitzroy Corporation*(7) and *The Queen* v. *Boteler* (8). "Necessary" in section 51 does not mean "necessary" in the Board's opinion but "necessary for the disposal of the case:" *R.* v. *Cotham*(9), *Rex* v. *Stepney Corporation*(10), *The Queen* v. *Vestry of St. Pancras*(11), *Julius* v. *Lord Bishop of Oxford*(12) does not touch the point.

"Unnecessary" in clause (2) means "does not arise in the case"; see *Reg* v. *Mayor and Corporation of Newcastle-on-Tyne*(13), as to limited discretions.

"Frivolous" means abusive of the process of Court: *Young* v. *Holloway*(14), *Dyson* v. *Attorney-General*(15) and *Attorney-General* v. *North Metropolitan Tramways Company*(16). The jurisdiction of High Court which is invoked under section 106 is

(1) (1899) I.L.R., 22 Mad., 68 (F.B.).
(2) (1883) I.L.R., 9 Calc., 295 (P.C.).
(3) (1850) 1 Strange, 153.
(4) (1882) I.L.R., 4 Mad., 344, 354.
(5) [1911] A.C., 179.
(6) [1910] 2 K.B., 165, 179.
(7) [1901] A.C., 153, 161.
(8) (1864) 4 B. & S., 959; s.c., 122 E.R., 718.
(9) [1898] 1 Q.B., 802.
(10) [1902] 1 K.B., 317.
(11) (1890) 24 Q.B.D., 371.
(12) (1880) 5 App. Cas., 214, 222.
(13) (1889) 60 L.T. (N.S.), 963, 965.
(14) [1895] P., 87, 90.
(15) [1911] 1 K.B., 410, 420.
(16) [1892] 3 Ch., 70.

not "original" but appellate or supplemental; see *Maharaja Birendrakishor Manikya Bahadur* v. *Secretary of State for India* (1). See section 106 (2) and articles 11 and 12 of Letters Patent as to the various jurisdictions of the High Court. This is like a reference under the Stamp Act, section 57; otherwise section 57 would have to be held as repealed by section 106. Section 106 (2) is an exception to section 106 (1) which refers to sections 11 and 12 of the Letters Patent.

C. P. Ramaswami Ayyar in reply—Section 106 is not repealed either expressly or by necessary implication. Section 106 (1) last portion preserves to the High Court all the jurisdiction of the Supreme Court, which was purely "original" and never appellate; last portion of section 106 is not considered in *Maharaja Birendra Kishor Manickya Bahadur* v. *Secretary of State*(1). "Satisfied" in section 51 means "satisfied" according to the Board and not according to the Court: see *Duke* v. *Rameswar Malia*(2), *Stockton and Darlington Railway Company* v. *Brown*(3), *Harward* v. *Guardians of the poor of the Hackney Union and Frost Relieving Officer*(4), *Wilkinson* v. *Hull, etc., Railway and Dock Company*(5), and *Jones* v. *Robson*(6). "Necessary" in section 51 means necessary in the opinion of the Board; for that relates to the previous words therein, viz., "when a question has arisen." "Frivolous" means "petty," "trivial," "paltry," "trumpery" or "futile." "Necessary" means "indispensable."

WALLIS, C.J.

WALLIS, C.J.—This is an Appeal from an order passed by KUMARASWAMI SASTRI, J., under section 45 of the Specific Relief Act directing the Chief Commissioner of Income-tax to make a reference to the High Court under section 51 of the Indian Income-tax Act, 1918, and raises questions of importance as to the jurisdiction of the High Court to make such an order. The case has been very fully argued before us by the learned Advocate-General for the appellant, by Mr. Aingar for the respondent, and we also heard Mr. A. Krishnaswami Ayyar for other persons who have applications of a similar nature pending.

The powers conferred on a High Court by section 45 of the Specific Relief Act are in lieu of the power to issue the writ of

(1) (1920) 25 C.W.N., 80, 84, 85.
(2) (1899) I.L.R., 26 Calc., 811, 818.
(3) (1860) 8 H.L. Cas., 246.
(4) (1898) 14 T.L.R., 306.
(5) (1882) 20 Ch.D., 323, 331.
(6) [1901] 1 K.B., 673.

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mandamus inherited from the Supreme Court which is taken away by section 50, and clause (*h*) of the proviso makes it clear that the section does not authorize the making of

"any order which is otherwise expressly excluded by any law for the time being in force."

The Advocate-General contended that the order under appeal is excluded by section 106 of the Government of India Act, 1915, and also relied on the provisions of section 52 of the Indian Income-tax Act which apparently were not brought to the notice of the learned Judge. The Government of India Act is a consolidating statute which in section 106 has re-enacted the prohibition which was expressly imposed upon the Supreme Court of Bengal in 1780, after the well-known conflict with Warren Hastings, and was applied by reference to the Supreme Courts of Madras and Bombay when they were erected in the early part of the last century. The prohibition as contained in section 8 of the East India Company Act, 1780, was in the following terms:

"The said Supreme Court shall not have or exercise any jurisdiction in any matter concerning the revenue or concerning any act or acts ordered or done in the collection thereof according to the usage and practice of the country or the regulations of the Governor-General in Council,"

and a very wide construction was put upon the section by the Privy Council in *Spooner* v. *Juddow*(1). This prohibition never applied to the Company's Courts and when the Supreme Court and the Sudder Courts were superseded by the High Courts under the Act of 1861 and the Letters Patent issued pursuant thereto, a question arose in *Collector of Sea Customs* v. *P. Chithambaram*(2) as to whether the prohibition still attached to the High Court in the exercise of the original jurisdiction conferred upon it. MORGAN, C.J., thought it did. INNES and KERNAN, JJ., thought it did not, though for different reasons. The framers of the Government of India Act, 1915, were obviously of the same opinion as MORGAN, C.J., as they treated the prohibition as still in force and re-enacted it in section 106 of the Government of India Act as follows:

"The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue or concerning any

(1) (1850) 4 M.I.A., 353. (2) (1876) I.L.R., 1 Mad., 89 (F.B.).

Act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force."

The only difference is that whereas the Act of 1780 said that the Supreme Court should not have or exercise any jurisdiction, the new Act says the High Court has not and may not exercise any original jurisdiction in any matter concerning the revenue.

Now, the issuing of the writ of mandamus to secure the performance of a public duty where no adequate remedy existed by action or otherwise was, it seems to me, clearly an exercise of original jurisdiction. It was a proceeding originating in the Court issuing it, and might be directed in a proper case to any class of public officer, executive or judicial. It must also be regarded as having been within the original jurisdiction of the Supreme Court because that Court had no appellate jurisdiction. Similarly, I think that the substituted jurisdiction to issue orders under section 45 of the Specific Relief Act is original jurisdiction. It may in terms be directed to any person holding a public office, and to any corporation, as well as to any inferior Court of Judicature. The nature of the jurisdiction exercised is the same in each case, and must, in my opinion, be considered an exercise of original jurisdiction. If this be so, I am unable with great respect to agree with the learned Judge that in making the order prayed for, we should not be exercising original jurisdiction "in a matter concerning the revenue." The case appears to me to come within the plain meaning of the section and this was not very seriously disputed. The learned Judge has referred to some observations of Sir Thomas Strange in *Venkata Runga Pillai* v. *E.I. Co.*(1), but his attention does not appear to have been called to the very wide interpretation put upon the section by the Privy Council in *Spooner* v. *Juddow*(2).

As already observed, the effect of the proviso to section 45 was to leave old statutory restrictions in full force. This, however, was not one of the statutory provisions which the Indian Legislature was prohibited from altering under the Indian Councils Act, 1861, and section 131 (3) of the Government of India Act, 1915, and the fifth schedule thereto, expressly recognizes the power of the Indian Legislature to repeal or alter

(1) (1803) 1 Strange, 153.

(2) (1850) 4 M.I.A., 353.

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the provisions of section 106. Now, these provisions have been to some extent altered by section 51 of the Indian Income-tax Act, 1918, which obviously confers jurisdiction on the High Court to proceed on a reference from a revenue authority under the provisions of the section. That section not only enables the Revenue authority to make a reference to the High Court but requires it to do so "unless it is satisfied that the application is frivolous or that the reference is unnecessary."

The question then is whether we have any jurisdiction to issue any order to the Chief Revenue Authority under section 45 of the Specific Relief Act with a view to enforcing the due discharge of the duty imposed upon it by the section, and in dealing with this question we have to consider, not only section 106 of the Government of India Act but also the provision of section 52 of the Income-tax Act itself, which provides that no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act. That an application for an order under section 45 of the Specific Relief Act against the Chief Revenue officer is a proceeding against him within the meaning of the section appears to be settled by the high authority of BOWEN and KAY, L.JJ., in *In Re Onward Building Society*(1), where an application against a liquidator of a company directing him to register shares was held to be within the prohibition in section 87 of the Companies' Act against proceeding with any "suit, action or other proceeding against the company." Lord Justice BOWEN said:

"The question whether a proceeding under section 35 is a proceeding against the company appears to me to admit of but one answer, viz., that it is. That section gives a summary mode of enforcing rights which might have been prosecuted by a suit in chancery or possibly by an action for a mandamus at common law. It would be impossible to say that if the circuitious proceeding would have been a proceeding against the company, that the compendious one is not so also."

KAY, L.J., also uses language showing that he regarded an application for a mandamus as a proceeding against the company. Consequently, independently of section 106 of the

(1) [1891] 2 Q.B., 463.

Government of India Act, section 52 of the Income-tax Act prohibits among other things any application against the Chief Revenue Authority under section 45 of the Specific Relief Act in respect of "anything done by him in good faith." That the words "anything done" in an Act of this kind include also anything omitted to be done is also well settled: See *Jolliffe* v. *Wallasey Local Board*(1) and *The Queen* v. *Williams*(2) and the provision in section 3 (2) of the General Clauses Act, 1897, that "words which refer to acts done extend also to illegal omissions."

There is no suggestion of any want of good faith on the part of the Chief Revenue Commissioner in the present case, and therefore the present proceeding is, in my opinion, prohibited by the express terms of section 52 of the Act itself. The effect of section 52 is to extend to subordinate Courts and to the High Court in the exercise of its appellate jurisdiction the prohibition imposed upon the High Court in the exercise of its original jurisdiction by section 106 of the Government of India Act as regards acts done by the revenue authority in good faith. Further, as at present advised, I am not satisfied that there are any sufficient grounds for holding that the effect of section 51 is to partially repeal section 106 even to the limited extent of allowing the High Court to exercise original jurisdiction when there are allegations of bad faith. It is, however, unnecessary to decide this question.

Much argument has been addressed to us as to the nature of the duty imposed on the Chief Revenue Authority and as to the meaning of the words "frivolous" and "unnecessary." In particular it has been argued that unless he is satisfied that the application is frivolous he is bound to make the reference unless the point in his opinion either does not arise or has already been decided. The ordinary legal meaning of the word "necessary" as appears from Stroud's Judicial Dictionary is "reasonably required for the disposal of the case," and I am not satisfied that it was intended to use the word in the section in any more restricted sense. In England, the assessee can ordinarily claim to have a case stated as of right, but 5 and 6 Geo. V, Ch. 89, section 42, dealing with the excess profits tax, provides that the

(1) (1896) I.L.R., 2 C.P. (2) (1884) 9 App. Cas., 418, 433.

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Commissioners "unless they are of opinion that the application is frivolous or vexatious or relates to a matter already decided by the Board of Referees" shall refer the case to a Board. I think it is very likely that this part of section 51 was modelled on that section, and that the legislature substituted the word "necessary" with the intention of giving the Revenue Authority a wider discretion.

As regards this particular case, I will only say that while the Commissioner has rightly based his decision on the language of the Indian section, which differs materially from the corresponding section of the English Act, he has fallen into error in supposing that in *Imambandi* v. *Mutsaddi*(1) the Privy Council deprecated the practice of referring to English decisions which are the basis of so much of our law in India. The decisions in question were American decisions and were correctly described as foreign, an adjective which is inapplicable and would certainly not have been applied by the Privy Council to the decisions of the English Courts. As regards income-tax, the Indian Act generally follows the lines of the English Act, and where the provisions are similar English decisions are the best guide to their meaning. The Revenue authority no doubt may not always find it easy to apply them, and that is one reason why the Act empowers and requires it to make a reference to the High Court in appropriate cases. The Appeal must be allowed and the application dismissed with costs throughout.

OLDFIELD, J.—I agree with the judgment just delivered and as regards the application of section 106, Government of India Act, 1915, have nothing to add.

The alternative ground, on which the judgment under Appeal has been supported, is that under section 51 (1), Act VII of 1918, the making of the reference asked for is in the words of the proviso to section 45, Specific Relief Act, "clearly incumbent" on the Chief Revenue Authority, against whom an order under the latter section is claimed; and it is thus necessary to consider the wording of the former closely, since it is on it and not on any general rule as to the duties imposed by other statutes in different or wider terms on public officers or public or associated bodies that our conclusion must rest; so far moreover as the

(1) (1918) L.R., 45 I.A., 73.

numerous well-known cases which have been laid before us, require adherence to the principles of natural justice and an honest exercise of the discretion conferred, whatever the nature of the duty to be performed or the procedure to be employed, they are not in point, because their requirements were clearly fulfilled in the present case, the Commissioner of Income-tax, the authority concerned, having, as his order shows, heard counsel and having dealt adequately with the English decisions relied on.

It accordingly is not material that after distinguishing those decisions, he, further, in order to fortify his position, relied on the reference to foreign decisions in the judgment of the Judicial Committee in *Imambandi* v. *Mutsaddi*(1), as justifying a general refusal to follow those of the English Courts. In doing so he was perhaps influenced by the interpretation placed on that reference in one of the judgments in *Seeni Nadan* v. *Muthusamy Pillai*(2). But in view of the context and of the practice of the Judicial Committee I agree that the word "foreign" cannot have been used by it in the sense proposed and that the decisions of English Courts must, subject to all necessary exceptions, continue to afford guidance in India. In particular, where, as in the present case, a new statute expressed in exacter language, and it would appear administered in a stricter manner, than the former law is in question, the assistance afforded by English authorities on the construction of what are due allowances made for different wording and local conditions in many respects similar statutes, cannot safely be rejected; and further, as in cases in which a reference to this Court is found necessary that assistance will presumably be accepted here, the same foundation must be adopted for our decisions and those of the revenue authorities, if a consistent system of income-tax administration is to be reached.

To return to the section, decisions directly relevant to its construction have not been cited; and their absence is natural because the right conferred by it on the assessee corresponds with nothing in the previous Indian Income-tax Act and there is, so far as we have been shown, no provision in any other statute in the same or equivalent terms by which any similar duty is imposed. We have therefore in the absence of anything

(1) (1918) L.R., 45 I.A., 73. (2) (1919) I.L.R., 42 Mad., 821 (F.B.).

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to modify, anything to alter, anything to qualify the language to construe it in its ordinary and natural sense—vide *Vestry of St. John Hampstead* v. *Cotton*(1); and the construction proposed before us by the assessee seems to be inconsistent with our doing so. The material part of section 51 (1) runs:

"The Chief Revenue authority shall refer any question on the application of the assessee unless it is satisfied that the application is frivolous or that a reference is unnecessary";

and it is with the latter alternative that we are directly concerned. For the assessee before us contends that "unnecessary" means only "unrelated to any issue arising necessarily in the course of assessment" and that the Court is to determine whether the issue in question is of that nature. There are two fundamental objections to this which I think are valid; firstly, that it refuses effect to the requirement that the Revenue authority shall be satisfied, substituting as the test of the necessity for the reference that this Court shall be so; and secondly, that it restricts the meaning of "unnecessary" inconsistently with the ordinary use of the word. On the first of these, there is no reason for assuming that, frivolous applications excepted, this Court has been given unrestricted jurisdiction, where previously it had none; on the second, it is the reference not the determination of the question referred which is described as unnecessary, and there is no reason for excluding from the class of questions under contemplation those which the Revenue authority in fact does determine unaided. Shortly, the assessee's argument would be justified if the section simply made a reference obligatory, unless it were unnecessary; and it could, if that had been the intention, have easily been worded in that way with a provision for an absolute right to appeal or to have a case stated. On the other hand if we leave to the Revenue authority which is entrusted with the assessment the duty of deciding whether and to what extent it requires assistance in making it, we give full effect to each part of the language employed. Accepting the latter alternative, I concur in allowing the Appeal and in the order proposed.

Solicitors *Messrs. Grant and Greatorex* for appellant:

Solicitors *Messrs. Brightwell and Moresby* for respondent:

N.R.

(1) (1888) 13 App. Cas., 1, 6.