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dispose of it from the point where he dealt with the first head of the plaintiff's claim. If it becomes necessary to make a remand under s. 566 of the Civil Procedure Code or to exercise the powers conferred under s. 568, Civil Procedure Code, he will do so. The costs of this appeal will follow the result.

TYRRELL, J.—I quite concur. It seems to me that the law in s. 562 of the Civil Procedure Code assumes that there has been no trial, and that it authorizes a Court of first appeal to proceed with the trial. Now in the case before us, there has been a trial and a decree upon the merits in respect of a portion at least of the case.

Cause remanded.

FULL BENCH.

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November 12.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, Mr. Justice Tyrrell and Mr. Justice Mahmood.

ABDULLA (PLAINTIFF) *v.* MOHAN GIR AND OTHERS (DEFENDANTS).*

Act XVII of 1886 *(Jhánsi and Morar Act)—Legislative power of the Governor-General in Council—Indian Councils Act* (24 *and* 25 *Vic., c.* 67) *s.* 22—"*Indian territories* now *under the dominion of Her Majesty*"—"*Said territories*"—28 *and* 29 *Vic., c.* 17, *preamble*—32 *and* 33 *Vic., c.* 98, *s.* 1—*Construction of statutes.*

Act XVII of 1886 (the Jhánsi and Morar Act) is not *ultra vires* of the Governor-General in Council; and the town and fort of Jhánsi are subject to the jurisdiction of the High Court for the N.-W. Provinces in the same manner as the rest of the Jhánsi district.

The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian territories under the dominion of Her Majesty, no matter when such territories were acquired. His legislative powers are not limited to those territories which, at the date when the Indian Councils Act (24 and 25 Vic., c. 67) received the royal assent (*i.e.*, the 1st August, 1861), were under the dominion of Her Majesty. In the preamble to the 28 and 29 Vic. c. 17, and in s. 1 of the 32 and 33 Vic., c. 98, Parliament has placed this construction upon s. 22 of the Indian Councils Act.

Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature con-

* Second Appeal No. 1052 of 1887 from a decree of G. R. C. Williams, Esq., Deputy Commissioner of Jhánsi, dated the 4th April, 1887, reversing a decree of G. B. Crawley, Esq., Extra Assistant Commissioner of Jhánsi, dated the 5th January, 1887.

cerning the law does not make the law, yet it may be so declared as to operate in future. *The Postmaster-General of the United States* v. *Early* (1) referred to.

It must be presumed that the laws and regulations of the Governor-General in Council are known to Parliament. *Empress* v. *Burah* (2) referred to.

THIS was a reference to the Full Bench by Straight and Mahmood, JJ., of the question "whether the town and fort of Jhánsi are subject to the jurisdiction of this Court in the same manner as the rest of the Jhánsi district."

The suit in which the reference was made was instituted on the 16th August, 1886, in the Court of the Extra Assistant Commissioner of Jhánsi. It was brought to enforce an alleged customary right of pre-emption in respect of the sale of a house situate in the town of Jhánsi where the parties resided. The Court of first instance, on the 5th January, 1887, decreed the claim. On appeal by the defendants, the Deputy Commissioner of Jhánsi reversed the decree and dismissed the suit. The plaintiff presented a second appeal to the High Court.

The appeal came, in the first instance, before Mahmood, J., who referred it to a Division Bench. At the hearing before the Bench (which consisted of Straight and Mahmood, JJ.,) the question stated in the order of reference was raised. It involved the further question whether the Governor-General in Council had power to pass the Jhánsi and Morar Act (XVII of 1886) by virtue of the provisions of which civil and criminal jurisdiction was given to the High Court over the town and fort of Jhánsi and adjacent lands, or whether the Act was in excess of the powers conferred on the Indian Legislature by s. 22 of the Indian Councils Act, 24 and 25 Vic., c. 67.

The territories of the Raja of Jhánsi lapsed to the British Government on the death of the Raja without heirs male in 1853. From their annexation they formed part of the North-Western Provinces (3).

(1) Curtis' Reports of Decisions in the Supreme Court of the United States, p. 86.

(2) I. L. R., 3 Calc., at p. 143; L. R., 3 App. Cas. at p. 907; L. R., 5 I. A. at p. 196; I. L. R., 4 Calc., at p. 183.

(3) Aitchison's Treaties, vol. ii, p. 190; Hunter's Gazetteer, vol. vii, p. 219; Whalley's Law of the Extra-Regulation Tracts, p. 306, *et seq.*

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By treaty dated the 12th December, 1860, the British Government ceded the town and fort of Jhánsi in full sovereignty to the Maharaja Scindia. The transfer was completed on the 1st April, 1861 (1).

By *kharita*, dated the 24th February, 1886, the British Government restored to the Maharaja Scindia the cantonment of Morar, in exchange for which His Highness, on the 10th March, 1886, made over in full sovereignty to the British Government the town and fort of Jhánsi (2).

By proclamation dated the 10th June, 1886, under the 28 and 29 Vic. c. 17, s. 4, the Governor-General in Council declared that the town and fort of Jhánsi should be subject to the Lieutenant-Governorship of the North-Western Provinces (3).

On the 17th September, 1886, the Jhánsi and Morar Act (XVII of 1886) received the assent of the Governor-General. The preamble to Part I of the Act recites, *inter alia*, the cession of the town and fort of Jhánsi to the British Government and their incorporation in the North-Western Provinces.

Section 2 enacts that "the town and fort of Jhánsi, and the lands which may be ceded to the British Government in accordance with the proposal referred to in the preamble to this Part, shall, in the case of the town and fort from the commencement of this Act, and, in the case of any of the lands, from the date of the cession thereof, be deemed to be part of the Jhánsi district."

Section 3.—"All enactments which, at the commencement of this Act, or at the date of the cession of any of the lands referred to in the last foregoing section, are or shall be in force in the Jhansi district and not in the town and fort of Jhansi or in those lands, shall then come into force in the town and fort or in those lands as the case may be."

Section 4.—"On and from the commencement of this Act, or the date of the cession of any of those lands, as the case may be, the

(1) Aitchison, vol. iii, pp. 262, 316; *N.-W. Provinces Gazetteer*, vol. i, p 439.

(2) "Administration of the N.-W. Provinces and Oudh, 1882-87," p. 124.

(3) *Gazette of India*, June 12th, 1886, Part I, p. 376.

town and fort of Jhánsi and the lands shall be deemed to form part of the district of Jhánsi mentioned in Part IV of the first schedule to the Scheduled Districts Act, 1874."

Among the enactments which at the commencement of the Act were in force in the Jhánsi district were the Jhánsi Courts Act (XVIII of 1867) and the Codes of Criminal and Civil Procedure. It was not disputed that the High Court had jurisdiction over the Jhánsi district generally.

The doubt raised at the hearing of the appeal in regard to the validity of Act XVII of 1886, and consequently in regard to the jurisdiction of the High Court in cases coming from the town and fort of Jhánsi, had reference to the terms of s. 22 of the Indian Councils Act, which (so far as they need be referred to) are as follows :—

"The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending or altering any laws or regulations whatever now in force or hereafter to be in force in *the Indian territories now under the dominion of Her Majesty*, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all Courts of justice whatever, and for all places and things whatever within *the said territories*, and for all servants of the Government of India within the dominions of Princes or States in alliance with Her Majesty, and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in any wise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council or the Governor or Lieutenant-Governor in Council of any Presidency or other territory for which a Council may be appointed with power to make laws and regulations under and by virtue of this Act."

It was suggested that the words here italicized limited the legislative powers of the Governor-General in Council to making

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laws and regulations for the Indian territories which, at the date when the Indian Councils Act received the royal assent (*i.e.*, the 1st August, 1861), formed part of the dominions of Her Majesty; and that he had consequently no power to pass an Act such as Act XVII of 1886, for the town and fort of Jhánsi which did not (after December, 1860) form part of those dominions until 1886.

This led to the reference to the Full Bench of the question above stated. Several other cases, both civil and criminal, which raised the same question, were subsequently included in the reference. The Court, in view of the importance of the point raised, directed that notice should be given to the Government of India, so as to afford the Government an opportunity of being heard by counsel.

Mr. *A. Strachey*, for the Government of India, as *amicus curiæ*.—It will not be disputed that the Government of India has power to acquire territory by conquest or cession.

[STRAIGHT, J.—If the Governor-General in Council has power to cede territory, and to take other territory in exchange, it hardly seems going much further to say that he has power to make laws for the territory so acquired (1).]

That is what I shall contend. But in the first place, s. 22 of the Indian Councils Act cannot be construed as limiting the legislative powers of the Governor-General in Council to the territories which, when that Act was passed, were under the dominion of Her Majesty.

(1) See, in reference to this point, the observations of the Supreme Court of Calcutta in *Ouseley* v. *Plowden* (Bonnois. p. 145), decided in 1857 on the construction of the 3 and 4 Wm. IV, c. 85, s. 43 of which was worded in terms similar to those of s. 22 of the Indian Councils Act, 1861. The Court (following the opinion of Sir Barnes Peacock, then Law Member of Council), held in substance that the statutory powers of the Governor-General in Council of making war and contracting treaties carried with them by implication power to acquire territory by conquest or cession, and that the power to acquire territory by conquest or cession carried with it the power to govern such territory. See also *American Insurance Company* v. *Canter* (Curtis, 685; 1 Peters, 511), decided by the Supreme Court of the United States of America; Kent's Commentaries, vol. i, p. 432, *note*; Story's Constitution of the United States, vol. ii, pp. 166-170, 171; Gardner's Institutes, pp. 89-40.

The effect of s. 22 is recited in the preamble to the 28 and 29 Vic., c. 17, where the words used are "within the Indian territories under the dominion of Her Majesty," the word "now" being omitted (1).

Again, the 32 and 33 Vic., c. 98, s. 1, expressly gives power to the Governor-General in Council, after the 11th August, 1869, to make laws and regulations "for all persons being native Indian subjects without and beyond as well as within the Indian territories under the dominion of Her Majesty" (2). Here again the word "now" is omitted. See also the preamble.

These provisions amount to a legislative declaration by Parliament that the effect of s. 22 of the Councils Act is not to be limited by the word "now" to territories acquired by the Crown at any particular time, and that the Governor-General in Council may make laws for any part of British India whenever annexed. The 32 and 33 Vic., c. 98, s. 1, is more than a mere recital of existing law: it is a substantive enactment, and must be treated as making the law such as it declares it to be. Where a matter of fact or of law is recited in an Act of Parliament, the recital, though not conclusive, is very strong evidence that the fact or law is as stated. And even if a recital is incorrect as a statement of existing law, it may be so expressed as to operate as law in future. This is so even where only an opinion as to existing law, and not an intention to make new law, is expressed: *The Postmaster-General of the United States* v.

(1) "Whereas by an Act passed in the session holden in the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter sixty-seven, it was among other things enacted that the Governor-General of India in Council shall have power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all persons, whether British or native, foreigners or others, within the Indian territories under the dominion of Her Majesty, and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty; and whereas it is expedient to enlarge the said power by authorizing the Governor-General of India in Council to make laws and regulations for all British subjects of Her Majesty within the dominions of such Princes and States," &c.

(2) "From and after the passing of this Act, the Governor-General of India in Council shall have power at meetings for the purpose of making laws and regulations, to make laws and regulations for all persons being native Indian subjects of Her Majesty, Her heirs and successors, without and beyond as well as within the Indian territories under the dominion of Her Majesty."

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Early (1); Wilberforce on Statute Law, pp. 15, 16. This is the case with the 32 and 33 Vic., c. 98, s. 1, assuming even, for the sake of argument, that the construction which it placed upon s. 22 of the Indian Councils Act was erroneous. The difficulty arising from the use of the word "now" in that section has therefore been removed by later legislation.

[EDGE, C. J.—If s. 22 of the Councils Act were read literally there might be this result, that territory which, on the 1st August, 1861, when the statute received the royal assent, was under the dominion of Her Majesty, but which was subsequently ceded to a foreign power, would still be a territory within the description, and the Governor-General in Council might make laws for it though it had ceased to be part of British India or to belong to the Crown.]

The agreement contained in the treaty of the 12th December, 1860, for the cession of the town and fort of Jhánsi to Scindia was not completely given effect to until the 1st April, 1861. If the transfer had been delayed for another four months, the territory would have fallen within the terms of s. 22.

The argument based on the preamble to the 28 and 29 Vic., c. 17, and s. 1 of the 32 and 33 Vic., c. 98, is much strengthened by a consideration of the objects of those statutes. By s. 22 of the Councils Act, the Governor-General in Council was authorized to make laws for all servants of the Government of India in native States. The 28 and 29 Vic., c. 17, s. 1, enlarged this power by extending it to all British subjects in native States, whether servants of Government or otherwise; and by s. 2 this provision is to be read as part

(1) Curtis' Reports of Decisions in the Supreme Court of the United States, p. 86. The effect of this decision is stated in Wilberforce, at p. 16. The question was whether a particular class of suits would lie in the circuit courts of the United States; and the jurisdiction was based on an enactment which provided that the district (or state) courts should have cognizance of such suits "concurrent with the circuit courts of the United States." Marshall, C. J., (at p. 91 of the report) said:—"It is true that the language of the section indicates the opinion that jurisdiction existed in the circuit courts rather than an intention to give it; and a mistaken opinion of the legislature concerning the law does not make the law. But if this mistake is manifested in words competent to make the law in future, we know of no principle which can deny them this effect. The Legislature may pass a declaratory Act, which though inoperative on the past may act in future. This law expresses the sense of the Legislature on the existing law as plainly as a declaratory Act, and expresses it in terms capable of conferring the jurisdiction."

of s. 22 of the Councils Act. Under the Councils Act itself, therefore, the Governor-General in Council can, to the extent stated, make laws having force in *(e.g.)* the State of Gwalior.

Further, the 32 and 33 Vic., c. 98, s. 1, authorized him to make laws for all native Indian subjects at places beyond as well as within the Indian territories of Her Majesty. To this extent he can make laws having force in Afghanistan or Persia.

Hence, if the Governor-General in Council cannot legislate for portions of territory ceded by or conquered from native or foreign States, Parliament must have intended that cession or conquest should, *pro tanto*, diminish his powers; that he should have greater extra-territorial than intra-territorial authority. Upon this supposition, he can make laws having force in Hyderabad, or even in China or Japan, which he cannot make for parts of Bombay and the Panjab. Upon the same supposition, although Parliament trusted him to make laws for Bengalis in the town of Jhánsi, or for Englishmen in Mandalay in 1885, it no longer trusts him to make laws for the same persons when, in 1886, the same places have become wholly subject to his executive government. By bringing certain territory within the limits of British India, the powers of the Indian Legislature over that territory are abolished. And if such territory should again be ceded to a Native State, or otherwise cease to form part of British India, the powers of the Indian Legislature over it would *ipso facto* revive. Parliament can never have intended that s. 22 of the Councils Act should be construed in a manner which involves these results.

[STRAIGHT, J.—You can reduce the idea to an absurdity. Suppose the case of a piece of land in British India which juts out into a Native State, and a part of that State, on which ten or a dozen squatters, who are British subjects, are settled, projects into British territory. An exchange of the two pieces of land is effected. Is it reasonable to suppose that the Governor-General in Council cannot without an Act of Parliament passed for the purpose, legislate for the handful of squatters, for whom he could undoubtedly legislate before the exchange?]

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An intention so unreasonable cannot be attributed to Parliament unless it is expressed in unequivocal language.

[EDGE, C. J.—Between the passing of the Indian Councils Act in 1861 and the passing of the 32 and 33 Vic., c. 98, did not legislation by the Governor-General in Council take place for territories acquired during the same period?]

Yes. See Act XIX of 1867, relating to the district of Darjeeling, including a portion conquered in 1864 (1); Act XXII of 1868, for mauza Kheria, ceded by the Maharana of Dholepur in 1866 (2); and Act XVI of 1869 for the Bhutan Duars, acquired by conquest and cession from the Rajas of Bhutan, under treaty dated the 11th November, 1865 (3). Many subsequent Acts have dealt with territories acquired since 1861 (4).

All laws and regulations passed by the Governor-General in Council must be laid before both Houses of Parliament: 3 and 4 Wm. IV., c. 85, s. 51; compare 53 Geo. III, c. 155, s. 66. Parliament must be presumed to have knowledge of such laws and regulations: *Empress* v. *Burah* (5), per Sir Richard Garth, C.J., in the High Court of Calcutta, and Lord Selborne in the Privy Council. It has treated the legislation of the Governor-General in Council for territories acquired subsequently to 1861 as valid, both by leaving such legislation undisturbed, and by using language in the 28 and

(1) Aitchison's Treaties, vol. i, pp. 151, 159, 165; Hunter, vol. iv., pp. 131-132.

(2) Aitchison, vol. iii, p. 183.

(3) Preamble; Aitchison, vol. i, pp. 151-152, 162, 165.

(4) *E.g.*, Acts VIII of 1874 and I of 1882, for the Eastern Duars (part of the Goalpara district), acquired under the treaty of the 11th November, 1865, and Shillong (Khasia and Jaintia Hills), acquired by cession on the 10th December, 1863; the Scheduled Districts Act (XIV of 1874) for the tract between the railway station at Satna and the eastern boundary of the Jabalpur district, ceded by the Maharaja of Rewah in 1863 (see s. 10, and Aitchison, ii, 410, 427), Little Aden, purchased in 1868, the Bengal Duars, the Nicobar Islands, Shillong, the Eastern Duars, Nong-bah (in Assam), and Morar Cantonment; The Laws Local Extent Act (XV of 1874); Act IX of 1879 (Nicobar Islands); Acts X of 1880 and XIII of 1883, for lands ceded by the Nawab of Bahawalpur in 1879 and 1882, and annexed to the Multan district; Act XX of 1886 (Upper Burma Laws Act), XV of 1887, and XVIII of 1888 for Upper Burma; Act XV of 1888, for the Shan States.

See also s. 2 (8) of the General Clauses Act, I of 1868 (which was passed prior to the 32 and 33 Vic., c. 98), defining "British India" as "the territories for the time being vested in Her Majesty by the Statute 21 and 22 Vic., c. 106."

(5) I. L. R., 3 Calc. at p. 143; L. R., 3 App. Cas., at p. 907; L. R., 5 I. A., at p. 196; I. L. R., 4 Calc. at p. 183.

29 Vic., c. 17, and 32 and 33 Vic., c. 98, which is only consistent with the supposition that such legislation was not *ultra vires*. [He also referred to the 39 and 40 Geo. III, c. 79, s. 20.]

[He was then stopped.]

None of the counsel or pleaders appearing in the cases to which the reference applied desired to contend that the Court had not jurisdiction.

The following judgment was delivered by the Full Bench :—

EDGE, C. J., and STRAIGHT, BRODHURST, TYRRELL and MAHMOOD, JJ.—The question raised by the reference in these cases to the Full Bench is whether the town and fort of Jhánsi are subject to the jurisdiction of this Court in the same manner as the rest of the Jhánsi district, or, in other words, whether the Governor-General in Council had power to legislate for the town and fort of Jhánsi and to pass Act XVII of 1886. The question appeared to us of such importance that we considered it advisable to give notice to the Government that it had been raised, as also to afford the Government an opportunity to instruct counsel to assist us to elucidate the question which, in the opinion of the majority of the Court as then advised, was by no means free from doubt and difficulty. With this object the Government instructed Mr. *Arthur Strachey* to appear as *amicus curiæ*, and we think it only right to say that we are very much indebted to him for the great pains with which he prepared himself for the very able argument which he has addressed to us.

By a treaty dated the 12th December, 1860, the British Government ceded the town and fort of Jhánsi in full sovereignty to the Maharaja Scindia. The transfer was completed on the 1st April, 1861. On the 10th March, 1886, the Maharaja Scindia, in exchange for the cantonment of Morar, made over in full sovereignty to the British Government the town and fort of Jhánsi. On the 1st August, 1861, the Indian Councils Act, 1861 (24 and 25 Vic., c. 67), received the Royal assent. The difficulty has arisen by reason of the wording of the twenty-second section of that Act which, so far as

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is material, is as follows :—"The Governor-General in Council shall have power of meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing amending, or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all Courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of Princes or States in alliance with Her Majesty, and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any Presidency or other territory for which a Council may be appointed with power to make laws and regulations under and by virtue of this Act," &c.

It was contended that on the true principle of construction as applied to that section, the words "the said territories" in that section were limited by the preceding words "Indian territories now under the dominion of Her Majesty." If it had not been for the subsequent legislation of the Imperial Parliament taken in conjunction with the subsequent legislation of the Governor-General in Council, to which Mr. *Strachey* has drawn our attention and to which we shall refer, we would have felt ourselves constrained to hold that the Governor-General in Council had exceeded his jurisdiction in passing Act XVII of 1886, inasmuch as the town and fort of Jhánsi were not, on the 1st August, 1861, an Indian territory or Indian territories under the dominion of Her Majesty.

We have, however, to see whether the Imperial Parliament has not, by its legislation, subsequent to the 1st August, 1861, put a wider construction upon s. 22 of the Councils Act, 1861, which excludes the narrower construction of the wording of the section to which

we have referred, and whether the Imperial Parliament has not conferred more extensive legislative powers on the Governor-General in Council than were apparently conferred by s. 22 of the Indian Councils Act, 1861. On the 9th May, 1865, the Act 28 and 29 Vic., c. 17, received the Royal assent. There is a recital in the following terms :—"Whereas by an Act passed in the session holden in the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter sixty-seven, it was among other things enacted that the Governor-General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons whether British or native, foreigners or others, within the Indian territories under the dominion of Her Majesty, and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty; and whereas it is expedient to enlarge the said power by authorizing the Governor-General of India in Council to make laws and regulations for all British subjects of Her Majesty within the dominions of such Princes and States."

That recital taken in conjunction with the fact, of which we must presume the Imperial Parliament was aware, that in 1864 a portion of the district of Darjeeling had been acquired by conquest and had then first become part of Her Majesty's dominions in India, shows that the Imperial Parliament construed in 1865, s. 22 of the Indian Councils Act as if the words 'the said territories' in that section were not limited to the Indian territories which, on the 1st August, 1861, were under the dominion of Her Majesty. On the 11th August, 1869, the Act of the Imperial Parliament, 32 and 33 Vic., c. 98, received the Royal assent. In the preamble to that Act it is recited that whereas doubts have arisen as to the extent of the power of the Governor-General of India in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty, and whereas it is expedient that better provision should be made in other respects for the exercise of the powers of the Governor-General in Council. That recital in our opinion assumes that no doubts had arisen as to

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the power of the Governor-General in Council to make laws binding upon the native Indian subjects of the Crown within the Indian territories under the dominion of Her Majesty, no matter when such territories had been acquired. By s. 1 of 32 and 33 Vic., c. 98, it was enacted that—"From and after the passing of this Act the Governor-General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons being native Indian subjects of Her Majesty, Her heirs and successors, without and beyond as well as within the Indian territories under the dominion of Her Majesty."

The Imperial Parliament in that section assumed that the Governor-General in Council had power to make laws binding upon the native Indian subjects of the Crown within the Indian territories under the dominion of Her Majesty, and in that sense interpreted s. 22 of the Indian Councils Act, 1861. Such an interpretation is inconsistent with a construction of s. 22 of the Indian Councils Act, 1861, which would limit the powers of the Governor-General in Council to making laws binding upon all persons, whether native Indian subjects or others, within the territories which, on the 1st August, 1861, were under the dominion of Her Majesty. It could not have been the intention of the Imperial Parliament that, *quoad* the power of the Governor-General in Council to legislate for native Indian subjects within the Indian territories under the dominion of Her Majesty, a different construction should be put upon s. 22 of the Indian Councils Act, 1861, to that which should be put upon that section, *quoad* the power of the Governor-General in Council to legislate for persons other than native Indian subjects within the Indian territories under the dominion of Her Majesty.

Between the 1st August, 1861, and the 11th August, 1869, not only had territories in India been acquired, but legislation by the Governor-General in Council for such territories had taken place. In 1864 part of the district of Darjeeling had been acquired by conquest, and on the 8th March, 1867, Act XIX of 1867, which applied to the district of Darjeeling, including the part of that district which had been acquired by conquest in 1864, was passed

by the Governor-General in Council. In 1866 Mauza Kheria had been ceded to the British Government by the Maharana of Dholepur, and on the 10th September, 1868, Act XXII of 1868, which related amongst other things to the administration of civil and criminal justice in mauza Kheria, was passed by the Governor-General in Council. In 1865 the Bhutan Duars were acquired by conquest and cession, and on the 23rd July, 1869, Act XVI of 1869, relating to that territory, was passed by the Governor-General in Council. It was obligatory by statute to lay before both Houses of Parliament copies of all laws and regulations made by the Governor-General in Council. Consequently, prior to the passing by the Imperial Parliament of the 32 and 33 Vic., c. 98, it must be assumed that that obligation had been complied with, at least so far as Act XIX of 1867 and Act XXII of 1868 were concerned. We must presume that Act XIX of 1867 and Act XXII of 1868 "were known to and in the view of the Imperial Parliament" when the 32 and 33 Vic., c. 98, was passed. A similar presumption in respect of the legislation in India prior to the passing of the Indian Councils Act, 1861, was made by Sir Richard Garth, C.J., and subsequently by their Lordships of the Privy Council in the case of *Empress* v. *Burah* (1). We should not overlook the fact that the Imperial Parliament has not interfered with any of the numerous legislative enactments of the Governor-General in Council which were passed between 1867 and 1886 inclusive, in relation to Indian territories which were not, on the 1st August, 1861, under the dominion of Her Majesty, and which since the 1st August, 1861, have been acquired by conquest or cession.

Even if the interpretation which has been put by the Imperial Parliament on s. 22 of the Indian Councils Act, 1861, was erroneous, we are of opinion that that interpretation has been so declared by the Imperial Parliament as to make it obligatory upon us to adopt it in this case. In the case of *The Postmaster-General of the United States* v. *Early* (2), the Supreme Court of the United

(1) I. L. R., 3 Calc., at p. 143; L. R., 3 App. Cas., at p. 907; L. R., 5 I. A., at p. 196; I. L. R., 4 Calc., at p. 183.

(2) Curtis' Reports of Decisions in the Supreme Court of the United States, p. 86.

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States decided that though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future. Whether the word "now" was intentionally or by inadvertence introduced into [illegible]22 of the Indian Councils Act, 1861, it is difficult to say. To hold that the Governor-General in Council has not power to legislate except in respect of Indian territories which were on the 1st August, 1861, under the dominion of Her Majesty, would, as has been pointed out by Mr. *Strachey*, lead to anomalous results which the Imperial Legislature must have foreseen and could not have intended. If we were to construe that section strictly, we would have to hold not only that the Imperial Parliament gave power to the Governor-General in Council to legislate in relation to all Indian territories which were on the 1st August, 1861, under the dominion of Her Majesty, irrespective of the question whether at the date of the legislation by the Governor-General in Council such territories had or had not ceased to be under the dominion of Her Majesty, but that a long series of legislative enactments of the Governor-General in Council, although *ultra vires*, had in effect been treated by the Imperial Parliament as *intra vires*.

In the result we are of opinion that the Governor-General in Council had power to pass Act XVII of 1886, and that the town and fort of Jhánsi are subject to the jurisdiction of this Court in the same manner as the rest of the Jhánsi district.

Govt. Press, N.-W. P. & O.—P.D.