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months. Mr. *Pathak* says that on the return of the findings he should be permitted to take the plea, if necessary, that "the debentures even if valid will not prevail against the plaintiff decree-holder because they have not matured and crystallised." This permission is given to him. It is expected that the particulars of fraud or collusion will be supplied by defendant No. 1 to the plaintiff and the plaintiff will indicate the grounds on which the validity of the debentures is questioned.

Before Justice Sir Edward Bennet and Mr. Justice Verma

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JANAK DULARI (PLAINTIFF) *v.* SRI GOPAL AND OTHERS (DEFENDANTS)*

Government of India Act, 1935, *section* 317; *schedule IX—Continuance of powers of Indian legislature notwithstanding repeal of the former Act—Hindu Women's Right to Property Act (XVIII of* 1937)*—Validity—Bill passed by legislature before* 1*st April*, 1937, *and assent of Governor-General given after that date—Government of India Act*, 1919, *section* 68*—"Bill"—"Act"*.

Section 317 and the ninth schedule of the Government of India Act, 1935, provide that the provisions of part VI of the Government of India Act of 1919 in regard to the Indian legislature should continue to have effect notwithstanding the repeal of that Act by the Government of India Act of 1935. The provisions in regard to Federal legislature, contained in part II of the Government of India Act of 1935, have not yet been brought into force by proclamation under section 320; and the provision made in section 317 and the ninth schedule of the Act is intended to continue the validity of the functions of the existing Indian legislature until the bringing into operation of part II of the Act.

So, the Hindu Women's Right to Property Act, XVIII of 1937, which was passed as a bill by the Indian legislature before 1st April, 1937, and to which the assent of the Governor-General was given after that date, which was the date on which part III of the Government of India Act of 1935 came into force, is a perfectly valid Act.

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*First Appeal No. 255 of 1938, from a decree of B. N. Tankha, Civil Judge of Bareilly, dated the 19th of August, 1938.

As laid down in section 68 of the Government of India Act, 1919, which has been continued in operation by schedule IX of the Government of India Act of 1935, an enactment is a "bill" when passed by the Indian legislature and becomes an "Act" when assent is given to it by the Governor-General.

Messrs. *P. L. Banerji* and *S. N. Katju*, for the appellant.

Dr. *S. N. Sen* and *Mr. G. S. Pathak*, for the respondents.

BENNET and VERMA, JJ.:—This is a first appeal by Mst. Janak Dulari the plaintiff whose suit has been dismissed on a preliminary issue of law. Mst. Janak Dulari claimed that she was entitled to one quarter share of the family property which had been held by her husband who died on 26th July, 1937. She claimed this alternatively, either on the ground that her husband died possessed of this one quarter share as his separate property, or that, if the family was not proved to have been divided, the plaintiff was under Act XVIII of 1937 entitled to have this one quarter share. The written statement pleaded that "Act XVIII of 1937 was in no way valid and enforceable. It had not been validly passed by the legislature. The Government or the legislature had no power to enforce such an Act." For some reason not stated no issue was framed on the question of whether the husband of the plaintiff died joint or separate. An issue was framed, "Whether the Act XVIII of 1937 was not validly passed by the legislature and is unenforceable and not binding upon defendants Nos. 1, 2 and 4."

In the court below the plaintiff apparently relied on section 292 of the Government of India Act, 1935, as applying to this Act, the Hindu Women's Right to Property Act (Act XVIII of 1937). It was pointed out on behalf of the defendants that Act XVIII of 1937 was passed by the Indian legislature before 1st April, 1937, the date on which part III of the Government of India Act of 1935 came into force, and that the assent of the Governor-General was given to this bill on 14th April,

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1937, after the 1st of April, 1937. It was therefore argued for the defence that this Act was not a law in force immediately before the commencement of part III of the Government of India Act and therefore that section 292 did not apply to Act XVIII of 1937. The court below accepted this argument and held that Act XVIII of 1937 was not valid and therefore dismissed the suit of the plaintiff.

In this first appeal Mr. *Banerji* for the appellant has not based his argument on section 292 of the Government of India Act, 1935, but he has based it on the provisions of section 317 of that Act and the ninth schedule to that Act. There is only a brief mention in the judgment of the court below: "Nor does section 317 too of the Government of India Act, 1935, help her in any way", and there is no mention at all of the ninth schedule of that Act. Therefore the point now raised has not been considered by the court below.

Under the Government of India Act of 1919, Part VI, section 63 onwards dealt with Indian legislation and the powers of the Indian legislature. It is for the defence to show that those powers have terminated and that the legislature did not have power to pass this Act XVIII of 1937. It is true that section 321 of the Government of India Act, 1935, states that the Government of India Act shall be repealed to the extent specified in the third column of the tenth schedule and that the tenth schedule does provide for the repeal of the Act including the part VI. But there is another section of the Government of India Act of 1935, section 317, which provides as follows:

"(1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, in the ninth schedule to this Act (being certain of the provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to

have effect notwithstanding the repeal of that Act by this Act: Provided that nothing in the said provisions shall affect the provisions of the last but one preceding section."

The ninth schedule to which reference is made in section 317(1) sets out the provisions for the Indian legislature contained in section 63 onwards of the Government of India Act of 1919. Apparently the section and the ninth schedule provide that the provisions of part VI of the Government of India Act of 1919 in regard to the Indian legislature should continue to have effect notwithstanding the repeal of that Act by the Government of India Act of 1935. We are unable to read any other meaning into these provisions. The language is particularly clear and not open to any doubt whatever in our opinion, and we cannot conceive that Parliament in enacting section 317 and the ninth schedule of the Government of India Act of 1935 could have used language that could be more clear and definite.

Dr. *Sen* for the respondents has, however, advanced the argument that the Act XVIII of 1937 was passed as a bill by the legislature before the 1st of April, 1937, when the new Government of India Act, part III came into force, and the assent of the Governor-General was given on 14th April, 1937, after the new Government of India Act came into force. He argues therefore that section 317 and the ninth schedule cannot apply to Act XVIII of 1937. We asked him to explain what there was in the wording of section 317 and the ninth schedule which would not apply to the present case of Act XVIII of 1937 and he was quite unable to specify any wording in section 317 or the ninth schedule which would not apply. We may note that the provisions in regard to Federal legislature are contained in part II of the Government of India Act, 1935, and those provisions have not yet come into force as there has not yet been any proclamation bringing them into force under

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section 320, sub-section (1). Therefore no Federal legislation has as yet been brought into force as part of the law of India and under the provisions of the Government of India Act, section 317 and the ninth schedule, the law in regard to the Indian legislature contained in the Government of India Act of 1919 has all along continued to be the law for British India. It was natural that the framers of the Act should provide for such a course as it was not intended to bring part II of the Act into force until a proclamation was made under section 320. It appears to us that the provision made in section 317 and the ninth schedule is intended to continue the validity of the functions of the Indian legislature. Dr. *Sen* has not been able to show that there is any defect in the wording of section 317 or in the ninth schedule which fails to carry out that obvious intention.

Some reference was made to the question of whether this enactment, Act XVIII of 1937, was an Act when passed by the legislature and before assent. The provisions of section 68 of the Government of India Act of 1919, which appear continued in schedule 9 of the Government of India Act, 1935, are quite clear and the enactment is a bill when passed by the Indian legislature but does not become an Act until the assent is given by the Governor-General.

For these reasons we hold that the Act XVIII of 1937 is a perfectly valid Act and that the plaintiff is entitled to rely on it in the present case as a perfectly valid Act. We therefore allow this first appeal and we reverse the finding of the court below on issue No. 1, and as the court below has not disposed of the remaining issues we remand this suit for disposal by the court below on the remaining issues. As this plea of invalidity was taken by defendants 1, 2 and 4 we direct that they shall pay the costs of this appeal to the plaintiff appellant.

Dr. *Sen* for the respondents asked that this Bench should certify that the case involved a substantial question of law as to the interpretation of the Government

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of India Act or orders in Council made thereunder in accordance with the provisions of section 205(1) for such certificates. As Dr. *Sen* has failed to show us any justification in section 317 or the ninth schedule for the argument which he put forward, we cannot say that this question was a substantial question of law and therefore we regret that we cannot grant the respondents the certificate under section 205(1).

Before Justice Sir Edward Bennet and Mr. Justice Verma

RAM KAILASH KUNWARI (PLAINTIFF) *v.* ISHWAR SARAN AND OTHERS (DEFENDANTS)*

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Civil Procedure Code, order XLIV, rule 1, *provisos—Pauper appeal—Notice to proposed respondent—Object of notice—No right to be heard on the legality or correctness of the decree appealed from—"Perusal".*

On an application under order XLIV, rule 1, of the Civil Procedure Code to be allowed to appeal as a pauper, the proposed respondent to whom notice has been issued has no right whatever to be heard at any stage of the proceedings under order XLIV, rule 1 on the merits of the proposed appeal, i.e. as to whether the decree appealed from is or is not contrary to law or otherwise erroneous or unjust. All that he can argue is on the question of whether the appellant is or is not a pauper.

The word "perusal" in the proviso to rule 1 of order XLIV implies that the matter is not to be the subject of argument by counsel and that there is no right of counsel to argue. At the most it may be argued that the court may, if it desires, obtain the assistance of counsel, but the court is not bound to hear counsel on the point.

The addition, by rules framed by this High Court, of a further proviso to rule 1 of order XLIV, in the following terms, "Provided further that no application under this rule shall be allowed unless a notice of the application has been given to the proposed respondents", does not imply that the notice shall entitle the respondents to argue the matters referred to in the proviso to rule 1. Order XXXIII, rule 6, read with the concluding portion of order XLIV, rule 1, provided for the giving of such notice.

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*Application in First Appeal No. 227 of 1939.