REFERENCE UNDER THE INCOME-TAX ACT, 1922.

Before Courtney Terrell, C.J. and James, J.

1936.

September, 14.

RAJA BAHADUR SIR RAJENDRA NARAYAN BHANJA DEO

v.

COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.*

Income-tax Act, 1922 (*Act XI of* 1922), *section* 6—*Act, whether repeals, by necessary implication, prior statutes or engagements granting exemption from future taxation—Treaty between Sovereign power and assessee's ancestor providing for special exemption—assessee, whether can claim exemption from income-tax—Sovereign authority, inherent power of, to impose taxes notwithstanding previous engagements.*

If there be any earlier legislation or a treaty between the Sovereign power and the subject, for special exemption from future taxation, followed by the introduction by the Sovereign power, at a later date, of legislation which admittedly, but for the claim to the earlier exemption, applies to and includes the person who was originally exempted, it follows that by necessary implication the later statute repeals the earlier statute or other act under which the exemption is claimed.

Kutner v. *Phillips*(1), followed.

The Sovereign legislative authority has inherent power to impose taxes or alter the position of any subject of the State, notwithstanding any previous engagement which may have been entered into between the Sovereign power and the subject.

Where, therefore, the assessee claimed exemption from income-tax by virtue of an alleged Treaty Engagement entered into in 1803 by the predecessor-in-interest of the assessee

* Miscellaneous Judicial Case no. 9 of 1935. In re: Statement of case under section 66(3) of the Income-tax Act by the Commissioner of Income-tax, Bihar and Orissa, forwarded on the 20th August, 1935, regarding assessment of Income-tax on Raja Bahadur Sir Rajendra Narayan Bhanja Deo, Kt., O.B.E., of Kanika.

(1) (1891) L. R. 2 Q. B. 267.

with the East India Company, then the Sovereign power of the Country, the engagement being on the part of the Government, that

"no further demand however small shall be made on the said Raja or received from him as nazar supplies or otherwise."

Held, that, assuming in the assessee's favour that there was an earlier exemption, section 6 of the Income-tax Act, by imposing the tax on all persons in British India, without specified exception, repealed, by necessary implication, the provision of the earlier exemption, and, therefore, that the assessee's income was not exempt from taxation.

Probhat Chandra Barua v. *The King-Emperor*(1), followed.

Reference under section 66(*3*) of the Income-tax Act, 1922.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C. J.

Dr. K. P. Jayaswal, *G. C. Das* and *Mrs. Dharamshila Lal*, for the assessee.

Manohar Lal, for the Commissioner of Income-tax.

COURTNEY TERRELL, C. J.—The assessee for the year of assessment was a nobleman of this province. His estate is now included in the province of Orissa. He was assessed under the Indian Income-tax Act to pay tax on an income of Rs. 1,35,619. Out of this income the dispute between the assessee and the department is concerned with an aggregate sum of Rs. 21,171 comprised in four items of *sir* income, that is to say, income which is derived from his Rajaship over the Estate, the four items being in respect of fisheries Rs. 18,249, market rights Rs. 592, rights of ferry Rs. 1,884 and in respect of income derived from the sale of bones and hides Rs. 445. He claims to hold his estate by virtue of a Treaty Engagement entered into by his ancestor in the year 1803 with the

(1) (1930) L. R. 57 Ind. App. 228.

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British Government of that day. It was entered into at a time when the British were first engaged in subjugating Orissa. There is some reason to doubt the historical accuracy of the claim made by the assessee and a considerable part of the decision of the Commissioner of Income-tax is occupied with a partial refutation of that claim. To my mind to decide that question of historical accuracy is no part of our duty because for the decision of this case the claim made by the assessee in respect of the alleged treaty rights and privileges acquired by him may be assumed whether the claim be sound or not. By the Treaty in question the Raja of that day entered into obligation with the Government of the day by which he assumed certain specified duties towards the East India Company, then the Sovereign power of the country, and, amongst other duties, he undertook to pay to the Government an annual tribute of 84,840 Kahuns of Corees which was subsequently translated into Government currency at the rate of 20,408 Sicca Rupees per annum. On the part of the East India Company the engagement, it is said, was that

> "no further demand however small shall be made on the said Raja or received from him as nazar supplies or otherwise."

The assessment has been made upon the items of income, amongst others which I have set forth, under section 6 of the Income-tax Act as income from "other sources".

It is conceded and rightly conceded on his behalf that but for the historical claim to exemption made on his behalf, the income in question, if considered with relation to the Income-tax Act alone, is certainly taxable. Furthermore, it is conceded and also properly conceded that there is nothing in the Income-tax Act which excludes from taxation the income in question. The argument on behalf of the assessee is confined solely to this very simple point. It is pointed out that in the Income-tax Act there is no express reference to the Raja or to any one of the specified class to which he belongs and there is no

repeal of the Treaty relating to him which has statutory force. It is urged, therefore, that inasmuch as there is no specific repeal of the contractual or, if I may say so, the statutory relationship between himself and the Government, it follows that either the Income-tax Act in its general terms cannot, in the absence of such repeal, be held to apply to him or, on the other hand, that the Act in imposing upon him a taxation which it was solemnly agreed should not be imposed upon him is *ultra vires*.

To deal with these two arguments, it is said that a specific exemption from taxation cannot be abrogated by general terms in a subsequent Act imposing taxation and that there must be a specific repeal of the exemption. Mr. Jayaswal endeavoured to find authority for this proposition of law but was unable to find anything which brought conviction to my mind. If there be any earlier legislation or a treaty between the Sovereign power and the subject for special exemption from future taxation followed by the introduction by the Sovereign power at a later date of legislation which admittedly, but for the claim to the earlier exemption, applies to and includes the person who was originally exempted, it follows that by necessary implication the later statute repeals the earlier statute or other act under which the exemption is claimed. Indeed one of the cases to which Mr. Jayaswal on behalf of the assessee referred expressly recognised this principle. In the case of *Kutner* v. *Phillips*(1) Lord Justice Smith, dealing with a somewhat similar argument although not in a taxation case, said:—

"It is admitted on the part of the applicant that there has been no express repeal of this section; but it is argued that, by reason of the legislation which has since taken place, and especially by reason of the provisions of the County Courts Act, 1888 (51 & 52 Vict. c. 43), it has been repealed by implication. Now

(1) (1891) L. R. 2 Q. B. 267, 271.

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a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim, 'Leges posteriores contrarias abrogant' applies" the quotation being from Coke's Institutes.

In this case if we are to assume in the assessee's favour that there was an earlier exemption from taxation, section 6 of the Income-tax Act, by imposing the tax on all persons in British India without specified exception, by necessary implication, repeals the provision of the earlier exemption.

As to the argument which, however, was not very seriously pressed, that in view of the earlier exemption and contractual relationship between the State and the assessee, the subsequent legislation imposing taxation in so far as it affected him was *ultra vires*, it cannot be contended that the legislation by the legislative authority in India in any way exceeded the powers under which the right of legislation was granted to the Indian legislature. In support of the supposed principle reference was made to the case of *Probhat Chandra Barua* v. *The King-Emperor*(1). In that case the assessee was a zamindar of Assam and on his behalf there was advanced an argument somewhat similar to the argument on behalf of the assessee in this case that by reason of the circumstances of the Permanent Settlement in Bengal the assessee was exempt from taxation upon certain non-agricultural income derived from his estate. It was claimed on his behalf that the Government had at the time of the Permanent Settlement entered into a binding engagement with his predecessor in title and with persons in like position that no taxation other than the fixed revenue should be demanded from the holder of his estate. It was urged by Mr. Jayaswal that their Lordships of the Privy Council, in deciding the case

(1) (1930) L. R. 57 Ind. App. 228.

did, it is true, come to the conclusion upon a construction of the Income-tax Act that there was no exemption of the assessee from the operation of the Act, but he said that their Lordships further went on to discuss the claim of fact made on his behalf that a solemn obligation had been entered into by the Government at the time of the Permanent Settlement that further taxation should not be levied and from the fact of this investigation by their Lordships of the Privy Council he suggested that had their Lordships found as a matter of fact that there had been such a prior obligation on behalf of the Government, then notwithstanding their Lordships' construction of the Income-tax Act, they would have held that the Act, however effective on other people, was not effective on the assessee in that case but I am unable, in perusing this judgment, to find any indication of any such opinion on the part of their Lordships. It may be that they discussed this matter with the motive possibly of seeing whether for the benefit of historical accuracy there had been anything in the nature of a breach of faith. I do not find, however, that that part of the decision had any direct bearing in the opinion of their Lordships on the ultimate question which they had to decide. The question of whether or not this income of the assessee is taxable is, to my mind, to be decided on consideration of two points only. First, whether the taxing clauses of the Act did or did not affect income of the kind in question, and it is not denied in this case that they do so affect the income in question, and, secondly, whether or not the specific income in question comes under the specified exemptions which are set forth in the Act. It cannot be contended that the income does come under any of those specified exemptions. That the Sovereign legislative authority has inherent power to impose taxes or alter the position of any subject of the State must be beyond question and that notwithstanding any previous engagement which may have been entered into between the Sovereign power and the subject. That this principle is clear has been

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amply manifested in the case, to take one example only, of the salary paid to His Majesty's Judges. There was certainly a solemn covenant entered into between the Government and His Majesty's Judges that their salary should be at such and such rate. There is equally no doubt that subsequent legislative enactment reduced that salary, notwithstanding the covenant that was in fact passed, and this enactment was perfectly valid. This was so both in England and in India. No question can, therefore, be entertained of any breach of covenant however gross, and in so saying I do not wish to commit myself in any way to the view urged on behalf of the assessee that there was in this case any covenant at all.

The question that was formulated for our decision was—

"Whether on the terms of the Kaoolnama, dated the 22nd November, 1803, the petitioner's income from his Kanika Raj are exempt from taxation under the Indian Taxation Act, 1922?"

I would answer this question in the negative and the assessee having failed must pay ten gold mohurs by way of costs in addition to the Rs. 100 which he has deposited.

JAMES, J.—I agree.

Order accordingly.

APPELLATE CIVIL.

1936.

August, 24, 27. September 15.

Before Varma and Rowland, JJ.

SHEIKH GHASIT MIAN

v.

THAKUR PANCHANAN SINGH.*

Hindu Law—decree against widow on the basis of hand-note—reversioners, whether liable—test—legal necessity, proof of, whether sufficient—frame of the suit.

* Appeal from Appellate Order no. 67 of 1935, from an order of J. A. Saunders, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 8th of December, 1934, affirming an order of Babu R. Ghosal, Additional Subordinate Judge, Hazaribagh, dated the 12th June, 1934.