Privy Council Appeal No. 102 *of* 1945

The Government of the Province of Bombay - - *Appellant*

v.

Hormusji Manekji - - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH JUNE, 1947

Present at the Hearing:

LORD THANKERTON
LORD DU PARCQ
SIR MADHAVAN NAIR

[*Delivered by* LORD THANKERTON]

This is an appeal from a judgment and decree of the High Court of Judicature at Bombay (N. J. Wadia and Sen J. J.) dated the 8th August, 1940, in a Letters Patent Appeal, confirming a judgment and decree of a single Judge of that Court, Wassoodew J. dated the 11th April, 1938, in the exercise of appellate jurisdiction, whereby a decree of the District Judge, Ahmedabad, dated the 8th October, 1934, was set aside, and the respondent's suit was, for the main part, decreed. The decree of the District Judge had confirmed a decree of the 1st Class Sub-Judge of Ahemedabad, dated the 24th October, 1933, under which the respondent's suit was dismissed.

On the 13th October, 1931, the respondent brought the present suit against the appellant praying for a declaration that the appellant was not entitled to recover from the respondent any assessment of certain land, of which the respondent was registered occupant, in excess of the amounts payable by him under agreements dated respectively the 25th July, 1906, the 13th February, 1915, and 21st December, 1924, for repayment of Rs.606-7-0 illegally levied from him in the years 1928 to 1931 inclusive, and for other relief.

The Subordinate Judge and the District Judge held that the suit was barred under section 4 (*b*) of the Bombay Revenue Jurisdiction Act, (Act X of 1876), and that the three agreements were cancelled by an order of the Governor in Council dated the 11th April, 1930, levying assessment at the full standard rate on the entire holding of the respondent as from 1927-1928, and that the Governor in Council was competent to pass such an order under section 211 of the Bombay Land Revenue Code 1879 (Bombay Act V of 1879), hereinafter referred to as " the Code."

The High Court on second appeal and on the Letters Patent appeal reversed the decision of the lower Courts on both points of law, and held that the 1924 agreement was unenforceable and duly cancelled by the appellant, but held that the 1915 agreement was still enforceable as regards buildings erected before 1920, that the full standard rate should not be applied to such buildings, and that the appellant should refund to the respondent any altered assessment or penalty levied in excess of that

stipulated in the agreement of 1915 in respect to buildings as they existed in 1920, the excess sum, if any, to be determined in execution.

The respondent is the owner and registered occupant of a plot of land measuring 7,744 square yards, being Survey No. 149 of Mouje Changispur in the North Daskroi taluk of the Ahmedabad Collectorate within the Ahmedabad Municipality. The plot had been used for agricultural purposes only up to 1904, in which year he erected an ice factory on part of it. He had applied to the collector under section 65 of the Code for permission to use the land for such a non-agricultural purpose, and permission was granted under section 67 on terms which were subsequently embodied in a formal agreement dated the 25th July, 1906. For reasons that their Lordships will shortly explain, this agreement was superseded, and need not be further examined.

In 1915 the respondent acquired Survey No. 150/A lying immediately to the north of Survey No. 149, for the purpose of extending his ice factory, He applied to the Collector for amalgamation of the two Survey Nos. and for permission to appropriate the amalgamated holding to non-agricultural purposes in accordance with a plan which shewed the buildings as proposed to be extended. A formal agreement embodying the permission and its conditions was executed between the Government through the Collector and the respondent on the 13th February, 1915, the material provisions of which are as follows—

> " Now it is hereby agreed between the Secretary of State and the applicant that permission to appropriate to non-agricultural purposes the plot of land indicated by the letters A B C D on the said site plan (which plot of land is hereinafter referred to as ' the said plot of land ') in the particular manner shewn in the said site plan, namely : —
>
> (*a*) an area of 2,161 sq. yards indicated by a red colour and the letters EFGHIJKLMNO for the purpose of a pagi room, bungalow, godown, factory, boiler house, smithy, tank and quarters.
>
> (*b*) an area of 56 sq. yards indicated by a yellow colour and the letters H P Q for the purpose of a stable and latrines.
>
> (*c*) an area of 9,883 sq. yards indicated by the uncoloured portion of the said plot for the purpose of an open compound only.
>
> shall be and is hereby granted subject to the provisions of the said Code, and rules and orders thereunder, and on the following special terms and conditions, namely:—
>
> 1. The applicant in lieu of the present assessment leviable in respect of the said plot of land shall pay to Government without deduction on the first day of January in each and every year an annual assessment of Rs.27 only during the fifty years commencing on the first day of August, 1903, and ending on the 31st day of July, 1953, and thereafter such revised assessment as may from time to time be fixed by the Collector under the said Code and rules and orders thereunder:
>
> * * * *
>
> 3. The applicant is hereby prohibited under the last paragraph of section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate it is hereinbefore granted to the applicant:
>
> Provided that: —
>
> (i) nothing in the above shall be deemed to prohibit the applicant—
>
> (*a*) from erecting or constructing, without such previous permission, in the portion (*c*) (i.e. appropriated for the purpose of an open compound only) boundary walls not exceeding four feet in height, garden-fountains, uncovered steps and similar structures, not being projections from a building such as verandahs, balconies, eaves or shop-boards;

(*b*) from constructing, without such previous permission, wells or tanks in any part of such portion (*c*) that does not lie within a margin consisting of a strip 21 feet broad on the west and 10 feet on the other sides along and inside the perimeter of the said plot of land except as otherwise shewn on the plan;

(*c*) from appropriating, without such previous permission, to any non-agricultural purpose, other than that of a shop, a stable or a privy, to an extent not exceeding in total admeasurement 364 sq. yards, any part of such portion (*c*) that does not lie within the aforesaid margin; and

(ii) Where any such prohibited appropriation is permitted by the Collector, the applicant shall except in the case of an appropriation of any part of the land measuring 364 sq. yards and specified in sub-clause (*c*) of proviso (i) above, be liable to pay from the date of the appropriation in respect of the land so appropriated such enhanced assessment not exceeding Rs.3-9-10 per hundred sq. yards as the Collector may deem fit to impose, and in any such case the total amount payable under clause 1 of this agreement shall be modified accordingly."

It may be added that, under clause 5 of the agreement, the applicant undertook to erect and complete the buildings shewn in the plan within three years from the date of the agreement, and that, under clause 8, the Collector might, without prejudice to any other penalty to which the applicant might be liable under the provisions of the Code, or rules or orders thereunder, direct the removal or alteration of any building or structure erected contrary to clause 3 or 5 of the Agreement.

On the 21st September, 1920, the respondent submitted to the Collector a plan shewing the pulling down of a portion of the factory on the northern side and an extension, and asked that permission should be granted. On the 23rd October, 1920, the plan was returned duly approved, and it was stated that the former agreement and plans were regarded as cancelled. A fresh agreement appears to have been prepared, but it does not appear to have been executed.

In 1921 new rules were made under section 214 of the Code, and Rule 87 (*b*) thereof prescribed that on the assessment of land used for non-agricultural purposes a sanad should be granted in form M attached to the Rules. This superseded form A, which had been used in the agreements of 1906 and 1915.

On the 12th November, 1922, the respondent applied for permission to further extend the factory, and a plan shewing the proposed construction work was submitted with the application. After correspondence, the Collector on the 27th July, 1923, granted permission and approved the plan, and stated that he would be given a sanad in form M. The respondent demurred to this, and asked for form A, to which the Collector agreed on the 9th June, 1924. Thereafter an agreement was executed on the 21st December, 1924, in form A, in similar terms to the 1915 agreement, except that the proviso (i) (*c*) of clause 3 was struck out. Their Lordships do not trouble with this agreement, for both the appellant and the respondent accepted the finding of the High Court that it was unenforceable, as the Collector had no authority to act as agent of the Government in becoming a party to an agreement in the old form A.

On receipt of a circle-inspector's report that the respondent had been building on land not covered by the permission given to him and in a manner contrary thereto, as shewn in a plan attached to the report, the Collector, on the 23rd June, 1926, called upon the respondent for his explanation, which he submitted on the 6th December, 1926. On the 1st February, 1927, the Collector ordered the respondent to pay a penalty in respect of unauthorised erections on 269 sq. yards and to pay an altered assessment at half the standard rate on 118 yards and on 151 sq. yards at the full standard rate and gave other directions.

The respondent appealed to the Commissioner, who, by order dated the 30th April, 1927, rejected the appeal, and made a further order, vizt. (i) execution of the agreement in form A in 1924 after the Land Revenue Rules 1921 came into force was irregular, (ii) the agreement was broken, (iii) non-agricultural assessment was charged at reduced rates and concessions were allowed in respect of compound area though land was used for commercial purposes, i.e. ice factory. Reference was made to Government Resolution No. 6694 of 1924, dated 5th October, 1926, and the Collector was requested to issue orders for the levy of non-agricultural assessment at full rates and an issue of Sanad in form M was directed.

On the 12th May, 1928, the Collector informed the respondent that, under instructions from the Commissioner, his order dated the 9th June, 1924, was superseded by the following order,

(1) The agreement in form A of 1924 is broken. It is therefore cancelled and a new sanad in form M is ordered to be taken.

(2) The buildings in these S. Nos. are used for commercial purposes. Altered assessment of Rs.171-8-0 at full standard rate is therefore ordered to be levied from the year 1927-28.

(3) The occupant should submit fresh plans called for in this office No. L.N.D. 631 dated 1-2-27.

On the 23rd July, 1928, the respondent appealed to the Commissioner, who rejected the appeal on the 5th December, 1928. On the 28th July, 1929, the respondent appealed to the Government. On the 11th April, 1930, the Governor in Council passed the following order, in the form of a resolution:—

" Resolution:—Government are advised that the procedure followed by the Commissioner in rejecting the petitioner's appeal and thus confirming the Collector's order, but at the same time directing the Collector to revise his own order and to issue a fresh order according to his instructions was improper. These proceedings are hereby cancelled, and Government are pleased to direct that non-agricultural assessment at the full standard rate shall be levied on the entire holding of the petitioner with effect from the year 1927-28 and that a sanad in form M appended to the Land Revenue Rules 1921 shall be issued.

The petitioner should be referred to the Commissioner, N.D. for a reply to his petition."

On the 28th October, 1930, the Collector informed the respondent of the purport of the said order, and requested him to submit plans shewing the existing buildings to enable the Collector to grant him a sanad in form M. In terms of the said order rates to the amount of Rs.702-7-0 were recovered from the respondent.

On the 13th October, 1931, the respondent brought the present suit, asking for the declaration already referred to, and repayment of Rs.606-7-0 as illegally levied from him.

The appellant, in the first place, maintains that the jurisdiction of the Civil Courts over the subject matter of this suit is excluded by section 4 (*b*) of the Bombay Revenue Jurisdiction Act 1876, which, so far as material, provides as follows,

" 4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:

* * * *

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorised by the Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

* * * *

Provided that, if any person claim to hold wholly or partially exempt from payment of land-revenue under—

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shewn in a public record, or of its having existed for a specified term of years, or

(*i*) an instrument or sanad given by or by the order of the Governor of Bombay in Council under Bombay Act No. II of 1863, section 1, clause first, or Bombay Act No. VII of 1863, section 2, clause first, or

(*j*) any other written grant by the British Government expressly creating or confirming such exemption, or

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of of 1827, Chapter X or under Act No. XI of 1852, which declares the particular property in dispute to be exempt,

such claim shall be cognisable in the Civil Courts."

The appellant maintains that the subject matter of the present suit is an objection to the amount, incidence or mode of assessment of land revenue, within the meaning of section 4 (*b*), but Sir Cyril Radcliffe, on behalf of the appellant, rightly conceded that the Civil Courts have jurisdiction to determine a question as to excess of the statutory powers conferred by the Code. In the opinion of their Lordships, such a question is raised in the present case, in so far as the respondent maintains that, in so far as the order of the Governor in Council of the 11th April, 1930, may be held to cancel any of the agreements of 1906, 1915 or 1924, it was not within the powers conferred by section 211 of the Code, under which the appellant sought to justify it. This aspect of the case does not appear to have been separately considered by any of the Courts below, but, in the opinion of their Lordships, it should logically be first considered. Section 211 of the Code, so far as material, provides as follows,

" 211. The Governor in Council and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

* * * *

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled, or reversed, he may pass such order thereon as he deems fit."

In order to appreciate the true nature of the agreements founded on by the respondent, it will be convenient to refer to certain sections of the Code (as amended down to 1913), viz. sections 48, 65, 66 and 67, the material provisions of which are as follows,

" 48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land—

(*a*) for the purpose of agriculture,

(*b*) for the purpose of building, and

(*c*) for a purpose other than agriculture or building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Governor in Council may prescribe.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

* * * *

65. An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector, on receipt of such application,

(*a*) shall send to the applicant a written acknowledgment of its receipt, and

(*b*) may, after due enquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of the receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognised except it be made by the occupant.

When any such land is thus permitted to be used for any purpose unconnected with agriculture it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

66. If any such land be so used without the permission of the Collector being first obtained, or before the expiry of the period prescribed by section 65, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part, and the occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of Government, direct.

* * * *

67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the Governor in Council."

The agreement of 1924 being admittedly out of the case, their Lordships will confine their attention to the agreements of 1906 and 1915. In both cases the respondent required to apply under section 65 for permission to use agricultural land for a non-agricultural purpose, as in 1915 the respondent had acquired the adjoining Survey No. The permission in both cases was given under section 67, the terms or conditions being embodied in an agreement, the subject of assessment being strictly defined by a plan shewing the authorised buildings and the area assessed, and the assessment being one sum in respect of the unit of assessment in the condition as regards buildings prescribed by the contract. There was a limited power, where previously permitted by the Collector, to appropriate for any purpose other than that for which permission was granted by the agreement, and for an enhanced assessment not exceeding a prescribed rate

per hundred square yards, the total amount of the assessment being modified accordingly. Admittedly, the Collector had a complete discretion as to the granting of any such further permission.

The 1906 agreement was clearly superseded by the 1915 agreement, for not only did it deal with a subject of assessment which had been altered as regards the authorised buildings, but the new subject of assessment—again in one sum—included part of Survey No. 150/A, the two areas being amalgamated. In other words the previous unit of assessment under the 1906 agreement no longer existed. It remains to deal with the agreement of 1915, and it is crucial to consider the effect of the respondent's unauthorised building as shewn on the plan which accompanied the circle-inspector's report in June, 1926, and in the plan Exhibit 80, dated in 1929, and the respondent's evidence. Their Lordships are bound to accept the statement of the District Judge that " the plaintiff himself admitted that he has put up structures on prohibited portions and has put structures in contravention of the agreements of 1906 and 1915." Wassoodew J., in the High Court, made the following decree,

> " For the reasons stated in the accompanying judgment, the Court grants a declaration to the plaintiff as prayed for in paragraph 2 (A) of the plaint, viz., that the Secretary of State is entitled to levy from him only non-agricultural assessment under the agreement of 13th February, 1915, on the land built upon out of Survey Nos. 149 and 150/A of Mouje Changispur alias Mithakhali in pursuance of that agreement. The Court grants an injunction that the full standard rate shall not be applied to the buildings erected by the plaintiff before 1920 under the terms of the agreement of 1915 and directs that Government shall refund to the plaintiff any sum either by way of altered assessment or penalty levied in excess of that stipulated in the agreement in respect to the buildings as they existed in 1920. The excess sum, if any, shall be determined in execution. As to buildings erected after 1920 the plaintiff is not entitled to any declaration, Government being entitled to levy such altered assessment as may be leviable in accordance with law."

That decree was confirmed in the Letters Patent appeal. Their Lordships feel bound to express their difficulty in appreciating how such a decree can be reconciled with the established facts of the case, apart from the question whether it correctly states the legal position.

The agreement of 1924, and the permission thereby granted, being out of the case, it is correct to say that no permissions for alterations or extensions have been granted since those granted prior to 1920. The plan annexed to the 1915 agreement has not been forthcoming, but the plan submitted by the respondent with his application on the 21st September, 1920, for permission for alterations on the factory shews the 1915 plan with the proposed alterations in red. It is Exhibit 20. A comparison of this plan with (1) Exhibit 23, being the plan submitted by the respondent which was annexed to the abortive agreement of 1924, and (2) Exhibit 80, a plan dated the 22nd October, 1929, which the respondent accepted in his evidence on the 27th September, 1933, as shewing the then state of the building, demonstrates beyond all question the very material changes that have been made by the respondent by demolition, reconstruction and extension on the unit of assessment, which was the subject matter of the 1915 agreement. This is more than confirmed by the statement by the respondent, under cross-examination, as to his operations as shewn by a comparison of Exhibit 23 and Exhibit 80. In short, it is impossible now to identify the buildings erected under the agreement of 1915.

Further, their Lordships are unable to agree that the agreement of 1915 can survive the alterations which the respondent himself has made, and which are such that, in the opinion of their Lordships, he has so altered the subject of assessment that the agreement of 1915 is not capable of being applied to it. Their Lordships can find no justification under the Code for splitting up the assessment which is on the land into two parts, applying to

the same land, each part being calculated according to a different mode of assessment. Their Lordships are of opinion that the respondent, by his unauthorised alterations and extensions in 1920 and subsequent years has so altered the subject matter of the 1915 agreement that it has become useless and unenforceable.

Having formed this view, their Lordships are clearly of opinion that the order, or resolution, of the Governor in Council dated the 11th April, 1930, even if it impliedly treated the agreements as broken or cancelled, did no more than recognise the true position of the agreements in law, and was not *ultra vires* of the Governor in Council, acting under section 211 of the Code. That question having been thus resolved, it is then necessary to consider whether the jurisdiction of the Civil Court as to any further question on the merits is excluded by section 4 (*b*) of the Bombay Revenue Jurisdiction Act 1876. On this point Wassoodew J. says, " On the principal question it seems to me that section 4 (*b*) of the Revenue Jurisdiction Act (X of 1876) cannot operate as a bar to these proceedings. In effect the plaintiff has sought for a declaration that certain agreements between the parties as to the levy of assessment on his land were binding upon Government. He did not directly question the legality of the orders of Government on any other ground or their power to levy full standard rates upon conversion of agricultural holding if the agreements did not operate as a bar. In terms he is asserting a right independently of the question of the legality of Government's right to recover altered assessment. Now such a suit could not be described as a suit objecting to the amount or incidence of any assessment of land revenue authorised by Government, or to the mode of assessment, or to the principle on which such assessment is fixed, within the meaning of clause (b) of section 4." The learned judge relied on two cases, *Lakshman* v. *Govind*, (1903) 28 Bom. 74 and *Damodar Mahadev Bhonde, etc.* v. *Kashinath Sadashiv*, etc., A.I.R. 1923 Bom. 79. In the Letters Patent Appeal, Sen J., in whose judgment N. J. Wadia J. concurred, quotes a passage from the judgment of Chandavarkar J, in *Lakshman's* case as follows, " In one sense no doubt whenever an Inamdar sues an occupancy tenant to recover land revenue according to the survey rates and the tenant resists the claim on the ground that he has acquired a right as against the Inamdar to pay rent or revenue at a permanently fixed rate, he may be said to object to the amount or incidence of land revenue authorised by Government. But it is an objection which does not hit the amount of incidence directly; that is its indirect effect, which is not what the first head of clause (*b*) having regard to its language, was intended to strike at. The objection must be ' to the amount or incidence of any assessment of land revenue ' itself and as such." Sen. J. then proceeds, " And his Lordship held in that case that an objection to come within the heads of clause (*b*) of section 4 must be an objection which reached them directly, i.e. an objection to them *per se* which admitted the liability to pay land revenue on the part of the objector but quarrelled with its amount or incidence or the validity and effect of the notification of survey settlement as *by themselves* objectionable, not because some other right affected them or made them inapplicable to the particular case. This reasoning was followed by Shah Acting C.J. in his judgment in *Damodar* v. *Kashinath*. Both the cases might have come more appropriately under section 5 of the Bombay Revenue Jurisdiction Act rather than under section 4. But section 5 is really an exception or a proviso to the provisions of section 4." The learned Judge was unable to distinguish the facts in the present case from those in *Lakshman's* case and held that the reasoning adopted in *Lakshman's* case applied to the present case, which therefore was not a suit of any of the descriptions to be found in section 4 (*b*) of the Bombay Revenue Jurisdiction Act.

The legal position of the agreements having been determined by their Lordships in relation to the question of *ultra vires* in a way which deprives the respondent of any reliance on them, the whole basis of the respondent's suit has gone, but their Lordships feel bound to dissociate themselves from the narrow construction of section 4 (*b*) of the Bombay Revenue Jurisdiction Act of 1876 which has been adopted by the High Court in the present case, and expressed in the two cases referred to.

It is a familiar principle of statutory construction that where you find in the same section express exceptions from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject matter of the exceptions would have come within the operative provisions of the section. There are four exceptions in the proviso to section 4, which are clearly general exceptions to the operative provisions of the section. If the construction adopted by Chandavarkar J. in *Lakshman's* case and adopted by the High Court in the present case be correct, these exceptions were unnecessary, and they are stronger instances for the application of that construction, for respondent's agreements are contracts fixing the amount of land revenue to be paid; they are neither matters of title to, nor matters of tenure of, the land. Neither the present respondent, nor the defendants in the two Inam cases, claimed to come within the proviso to section 4, but section 5 was held applicable in the Inam cases, and their Lordships express no opinion as to section 5. Their Lordships are of opinion that, apart from the question of *ultra vires*, the respondent's claim, as set out in the plaint, based on the agreements, did constitute objections to the amount or incidence of assessments authorised by Government within the meaning of section 4 (*b*) of the Bombay Revenue Jurisdiction Act 1876, and that the jurisdiction of the Civil Court was thereby excluded.

Their Lordships will, accordingly, humbly advise His Majesty that the appeal should be allowed, that the judgments and decrees appealed from should be set aside, and that the suit should be dismissed. In accordance with the undertaking given, the appellant will pay the respondent's costs of this appeal. The respondent will pay the appellant's costs in all the Courts in India.

(57957) Wt. 8013—20 170 6/47 D.L. G. 338

In the Privy Council

THE GOVERNMENT OF THE PROVINCE OF BOMBAY

v.

HORMUSJI MANEKJI

DELIVERED BY LORD THANKERTON

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