
(1920) 03 MAD CK 0045
In the Madras High Court

J.C.H. Fowler, Resquire, Trustee under Trust Deed Executed by the Rajah of Vizianagram APPELLANT

Vs

The Secretary of State for India in Council RESPONDENT

Date of Decision : 18-03-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1921 Mad 363 : 61 Ind. Cas. 852

Hon'ble Judges : William Ayling, J; Seshagiri Aiyar, J

Bench : Division Bench

Judgement

William Ayling, J.—This suit and appeal arise out of a conflict as to the ownership of the Eastern portion (247.28 sorts) of a Lanka in the

Godavari river which is claimed by the Raja of Vizianagaram (plaintiff and appellant) on the one hand and by Government (defendant and

respondent) on the other. Plaintiff claims it both by right of accretion to his undisputed Perugu Lanka which lies higher up stream, and as a

reformation on the site of a former Lanka belonging to him known as Pedda Lanka of his village of Kotipalli. Government also claim it both as a

reformation on the site of a former Lanka belonging to the Government village of Sanapalli, the property of Government, and also as a subsequent

accretion to the small portion of the same which alone was not submerged. The disputed Lanka admittedly began to be formed shortly after 1890;

and by 1894 a portion of it was occupied under lease by one B. Nagayya, as lessee from plaintiff. Claims began to be put forward to it by the

Government ryots of Sanapalli in 1896 alleging that it was the property of Government, and the controversy dragged itself out till 1905, when

Government took steps to levy prohibitory assessment under the provisions of

Act lit of 1905 Demands were issued in 1911 and this was followed by the present suit instituted on 30th July 1912.

2. The evidence is voluminous and has been discussed by the learned Subordinate Judge in its bearing on they claims above summarised, and on the other points arising in the case in a very elaborate and lengthy judgment, covering some 90 pages of printed matter. We have had the benefit of an exhaustive analysis of the case by the learned Advocate General on behalf of appellant and of the learned Government Pleader representing

Government and as a result I cannot but concur in the main conclusions arrived at by the Subordinate Judge.

3. The first question for decision is whether the disputed Lanka covers a part of the former site of Government old submerged Sanapalli Lanka, or

of plaintiff's similar Pedda Lanka of Kotipalli. Several plans of the locality prepared by professional officers of the survey department from time to

time have been filed by both sides the nature and value in evidence of which have been fully discussed by the Subordinate Judge who has dealt

with this question in Paragraphs 14 to 39 of his judgment. I agree with him in holding that by far the most valuable of these are the two Revenue

Survey plans Exhibits I and II prepared in 1862 of the Government Sanapalli Lanka and of the portion of plaintiff's Kotipalli Lanka adjoining it to

the west. These plans wore prepared in connection with the Revenue Survey of Sanapalli under Act XXVIII of 1860 in consequence of a

boundary dispute between that village and the adjoining Zemindari village of Kotipalli and a comparison of the two shows the boundary then

demarcated. There seems to be no doubt that this boundary was acquiesced in without question until the properties which it divided disappeared in

the course of submersion. This was not for many years even in 1887 nearly a third of the original area remained (vide Exhibits III and XXXIX).

There was orginally both before and. during suit a dispute as to the localisation of this boundary with reference to existing conditions, and two plans

were prepared, Exhibits VI and XXXII to demonstrate this. Fortunately it is now admitted by appellant that as found by the Subordinate Judge,

the suit land has been formed over the portion of what was demarcated according to these plans in 1862 as Sanapalli Lanka So that provided

these plans are correct (which is not admitted), the question of reformation must

be decided in favour of Government.

4. Can Exhibits I and II, then, be accepted as correct. I can see no ground for differing from the Subordinate Judge who has given reasons for

holding that they can. Not only was the boundary then surveyed and demarcated accepted without demur as long as the old Lankas remained in

existence but a study of the record in the case, and in particular of the plans in Exhibits VI and XXXII and Exhibits 43 to 52, shows that

throughout the controversy between the Collector and guardian of the Zemindari and the Collector of the District in 1901-1902, no question of its

correctness was raised. The first attempt to localise the boundary of 1862 shown in Exhibits I and II was made by the District Surveyor, who

prepared a plan, Exhibit 32, showing the disputed Lanka as lying on the Government side of the boundary line. The Collector and guardian in his

letter, Exhibit 59, took two grounds of objection. In the first place he contended that the principle of accretion prevailed over that of reformation.

In the second place he destined to accept the surveyor's plan, Exhibit 32 as correct consequence a fresh plan, Exhibit 6 was, prepared by the

estate and Government surveyors, which substantially agreed with the former one (Vide Exhibits 50 and 51,) This was accepted as corrects, and

was signed by the Collector and guardian, Mr. Gillman. A perusal of the latter's letter, Exhibit 52, shows that he simply fell back on his alternative

contention that the disputed Lanka was an accretion to the Kotipalli Lanka and, therefore, the property of the Zamindari, irrespective of the

question of reformation, He says, ""The spot in question is certainly an accretion to Kotipalli Lanka and I cannot make over the Lanka to

Government, because it was a reformation on the old site of Sanapalli Lanka, without a legal decision in a civil Court.

5. Even in Exhibit 57(a), a statement, filed by Mr. Gillman's successor in 1806 in connection with the proposed levy of penal assessment, the

accuracy of the plans of 1862 was not even inferentially called in question, nor was the reformation theory relied on by the Zemindari, This ground

was first taken in the notice of suit and in view of the keenness with which, as the record shows, the interests of the Zemindari were defended by

the officer in charge of it, this attitude is most signifcant.

6. It may be added that Exhibits I and II do not stand alone Exhibit tales with the

entries in the Diglott Register, Exhibit III, which was completed in 1865. The various Survey Numbers shown on the plan as forming part of Sanapalli Lanka are herein entered with full particulars as held by their respective pattadars. It is almost too much to suggest that this permanent register was prepared full of imaginary details, while the lands to which it relates were really held by a different set of Zemindari ryots; and that this pretence was still kept up even in Fasli 1304(1894), the Adangal account for (which Exhibit 100) still records the Survey Numbers of lands long since washed away.

7. In fact the main ground on which we are asked to distrust Exhibits I and II is that they conflict with later plane prepared in 1895 and 1904,

which support, plaintiff's case. Such are Exhibits IV, F, E and VIII. The comparative value to be attached to these plans and to those of 1862 is

considered by the Subordinate Judge in Paragraphs 18 and 19 of his judgment and his conclusion seems to be reasonable. No imputation has to

be thrown on the professional skill or integrity of the officer who prepared these plans but over and above the scientific part of his business a

surveyor is always dependent on the information furnished him by others. Exhibit IV is the re-survey map of Sanapalli Lanka prepared in 1894.

The suit Lanka, which was then in process of reformation, is not included. It would be strange if it were. Re survey follows actual occupation and

at the time so much of the reformed Lanka as was capable of occupation was held by Nagayya as part of the Vizianagaram Zemindari. The

Subordinate Judge's remarks in Paragraph 18 of the judgment regarding this plan and Exhibit F are most pertinent though it may be noted that be

is slightly inaccurate in referring to Exhibit F, the survey plan of Kotipalli in 1805, as a re survey, This was the first real survey of the village, the

survey evidenced by Exhibit II having been only of a portion in connection with a boundary dispute. This, however is not vary material. In effecting

the survey of Kotipalli the surveyors would naturally follow the information furnished by the village officers and ryots of that village as regards new

Lankas in the river--(vide statement of plaintiff's witness No. 5 in cross-examination, page 304)--the more so as that information tallied with actual

occupation. The evidence, moreover shows beyond doubt that at the time Village Officers of Sanapalli were conspiring with the Zemindari officials

Vide Exhibits 14 and 15; and if defendant's witness 6 is to be believed, it was Sanapalli ryots who were the first lessees under Nagayya. It was

not till 1896 that information was first given to higher officers tending to show that the new Lanka was Government property (vide Exhibit 13).

8. The estate re-survey plan of 1904 (Exhibit E) naturally follows possession and still more so the river conservancy plan of the same date (Exhibit 8).

9. The argument that the Advocate-General has endeavoured to build on a comparison of numbers in Exhibits R and F series is also materially

weakened by the fact that there is ground for suspecting that about this time an organised attempt was made by Kotipalli people and Nagayya,

with the connivance of Sanapalli Village Officers, to secure the new Lanka for the Zemindari.

10. In connection with the attempt to show that the reformation took place over the site of a submerged "Pedda Lanka" (which simply means "big

Lanka"), it may be noted that the area of the Pedda Lanka in Fasli 1262, as appears from R series, was 38 puttis or 304 cores. This

approximately is the area (305.45) claimed for the estate in Exhibit 57(a). Exhibits E and E(3) show the area of the whole Pulugula Tippa block in

1904 as 532-069 acres, besides an additional 39 acres for No. 89A. This area is large enough to include the original Pedda Lanka, and the suit

area also.

11. I do not propose to discuss the oral evidence, which has been dealt with by the Subordinate Judge and is obviously of little real value on a

question of this kind. Nor is it necessary to discuss minor points, which are also disposed of in the judgment of the lower Court. In my opinion the

decision of the learned Subordinate Judge on Issues Nos. 2 and 4 is correct.

12. The Advocate General's next content on is this, Accepting it as proved that the suit Lanka is a reformation over the site of a submerged

Government Lanka, Government nevertheless cannot claim the benefit of the reformation theory, (a) because Government abandoned the former

Lanka at the time of its disappearance, (b) because the reformation theory can only be applied against, and not in favour of, the State.

13. The first ground has been to my mind adequately treated by the Subordinate Judge in Paragraph 41 of his judgment I do not think there is

anything in evidence which tends to show an intention on the part of Government to abandon its title to the (submerged lands. Some of the latter, (outside the present suit) in the case of which there was every prospect of an early reformation, were actually retained in the holdings of the pattadars, who continued to pay assessment even after submersion so as not to lose their title; Vide Exhibit Y. There would be nothing remarkable in the exclusion from the village accounts prepared for the purpose of revenue of other lands, the re appearance of which there was no reason to anticipate, and on which the ryots naturally did not choose to go on paying assessment. As a fact, however, some at any rate of the submerged lands continued to be shown in the Adangal as late as Fasli 1304 (Vide Exhibit 100) without particulars and with the simple note ""washed away by flood,"" Stress has been laid on the failure to include the lands subsequently reformed in the Settlement Register, Exhibit III. But as has been shown the higher officers of Government were for some years in the dark as to the facts of the reformation and although the re-settlement was introduced in Fasli 1309, the information on which it was based had been amassed some time before. As the Advocate-General admitted, the conduct of Government after reformation is of only secondary importance, as throwing light on their intention at the time of submersion and it has been sufficiently shown that the title of Government was asserted as soon as the true facts came to the knowledge of the higher officials. A reference, for instance, to Exhibits 29-31 shows that the collector addressed the Survey Department early in 1901 with a view to have the disputed Lanka included in the village map of Sanapalli Lanka: but this could not then be done, as the map had already been published.

14. The judgment of the Privy Council in Lopez's case (Lopez v. Muddun Mohun Thakoor) 13 M.I.A. 467, simply indicates the possibility of abandonment of his rights by an owner of submerged lands but such abandonment must surely in all cases be unmistakably established, and in this connection the learned Subordinate Judge has rightly relied on the remarks of Mookerji, J. in Ananda Hari Basak v. Secretary of state for India in council 3 C.L.J. 316. I consider that no abandonment has been proved

15. No authority has been quoted in support of the second proposition; and the judgment of the learned Judges of the Calcutta High Court in the

last mentioned case is clearly against it, The title of Government to the bed of a river is of a particular character, liable to be defeated by the operation of accretion for the benefit of a riparian owner. But where Government is itself a riparian owner, there is no reason why the process of accretion should not confer on it the same complete title to the land formed as it would in the case of any other riparian owner. Indeed I do not understand this to be denied. Why then should it be held that this complete and indefeasible title disappears with the subsidence of the lands in the case of Government only or that, as was alternatively put, there was a merger of title as if the larger title could merge in the lesser?.

16. On neither of the grounds suggested, can I hold that the title of Government to any land reformed over the site of the old sanapalli Lanka has been affected,

17. It is, therefore unnecessary to follow the Sub-Judge in his discussion of the process of accretion of the suit Lanka, The learned Advocate-

General has referred to certain remarks of mine in a recent case, *Secretary of State for India v. Rajah of Vizayanagaram* 40 Ind. Cas. 896, in

which I, with great diffidence, suggested that the rapidly changing character of the formation in Indian rivers might to some extent affect the

application of the reformation theory--or rather, as I intended to convey, that the question of how it was affected might deserve consideration.

These remarks were entirely of an obiter nature: and had no practical application to a case like the present, In the case then under consideration

Lanka had been formed at the rate of something like 600 acres in a year, There is nothing to indicate the rate of formation of the old Sanapalli

Lanka but there is no reason to suppose that it was formed with any comparable rapidity and it certainly took from 25 to 30 years to disappear.

There is no reason why the reformation theory, so dearly recognised by their Lordships of the Privy Council in *Lopez's case* 13 M.I.A. 467 , as in

many later cases, should not be applied here.

18. I must, therefore, hold that the title of Government to the suit Lanka has been satisfactorily established and that it is not the property of the plaintiff.

19. It only remains to decide certain objections to the legality of the levy of penal assessment in the present case, with reference to the provisions

to Act III of 1905. The assessment levied is at penal rates for 10 Faslis (1310--1319) and amounts to a little less than Rs. 75,000.

20. The authority for the levy is Section 3(ii) of the Act (read with Section 5 as regards penalty). Appellant's first contention is that Section 3 is

inapplicable to anyone who was in occupation before the Act came into force. It is based on the use of the words "shall unauthorisedly occupy" in

the section, which, it is urged, should be taken to relate to occupation commencing after the Act. I can see no ground for such a narrow

interpretation, which, I think, could not possibly have represented the intention of the framers of the Act. It is no straining of the meaning of the

words "occupy" to read the phrase shall occupy as including "shall continue to occupy," Occupation of property is a term applied not only to (the

initial Act of taking possession but to subsequent retention (Vide the Century Dictionary) and I cannot think of a better exemplification of the latter

meaning than the well known scriptural passage occupy till I come. I have no hesitation whatever in rejecting this contention of appellants.

21. The second objection is more weighty. It is argued that the Act must not be given retrospective effect as would be done if the levy of

assessment for the faslis prior to 1905 were permitted.

22. I take it, the general law on the point cannot be more succinctly expressed than in 27 Halsbury, Section 305:

A Statute is prima facie prospective and does not interfere with existing rights unless it contains clear words to that effect, or unless, having regard

to its object, it necessarily does so. A Statute is not to be construed to have greater retrospective operation than its language renders necessary. It

is needless to recapitulate the numerous decided cases quoted in that volume, as authority for this exposition of the law.

23. It cannot be contended that the object of Act III of 1905 necessarily implies the power to levy assessment for faslis prior to its enactment but it

is contended by the Government Pleader that this power is clearly implied in the words "for the whole period of his occupation."

24. After giving the matter the best consideration in my power, I can only include that this contention is correct. "The whole period of occupation

clearly stretches from the moment when the occupation commenced to the moment when it ended and any practical difficulty involved in either

moment occurring in the middle of a fasli is provided for in the explanation to the section. The fact that the Act came into force in the interval does not affect the period.

25. I think the words are so free from ambiguity that they "clearly compel the Court to give" the construction contended for by the Government

Pleader to quote the words of Vaughan Williams, L.J., in *Smithies v. National Association of Operative plasterers* (1909) 1 K.B. 310, and in that

view it deems unnecessary to discuss the cases quoted on either side as instances of interpretation of other enactments.

26. Thirdly, it is contended that the Act authorises the levy of penal assessment for the fasli in which it is imposed. The only limitation imposed

by the Act is on the levy of penal assessment on assessed lands Section 5(1). In this case the land is treated as unassessed and penalty levied u/s

5(2).

27. This, however, brings us to the last objection. It is argued that the lands of the old Sanapalli Lanka prior to submersion were held on ryotwari

tenure: that in the absence of relinquishment by the ryots the latter retained the same interest in the lands after reformation and that this fact takes

the case out of the scope of the Act altogether. (Vide Section 2)

28. There is no doubt that this contention was not raised either in the notice of suit or in the plaint: and the Subordinate Judge was fully justified in

his remark (Paragraph 65 of his judgment) that it was not raised so fairly as to attract the attention of the defendant before the trial of the case

commenced. He has, however, allowed the point to be argued and has in Paragraph 66 of his judgment decided it against the plaintiff. The

Advocate-General argues that it is necessary for defendant to establish, in order to justify the legality of the assessment that the land on which it is

charged is the property of Government and that if a fact appears in evidence which is incompatible with its being so, he is entitled to take

advantage of it. The fact referred to is the statement in Exhibit 39, proved by defence witness No. 6 that the submerged lands were "deducted

from the ayakat without the consent, that is to say, the relinquishment of the ryote." Defendant has no doubt been materially prejudiced by

plaintiff's failure to take the point earlier. He was not prepared at the trial with evidence of relinquishment and the fact of relinquishment is one

which it becomes more difficult to prove as each year passes, records are destroyed, and evidence is more difficult to procure. If the lower Court had definitely declined to consider the point, I should have felt considerable hesitation in saying it was wrong. But as matters stand and as there is undeniably something to be said for the Advocate General's position in the matter I am inclined to think it is better to decide the point while acceding to the request of defendant for an opportunity of adducing fresh evidence on the question of relinquishment.

29. I would, therefore, call for a finding from the lower Court on the following issue:

Did the interests of the ryots holding the lands of the old Sanapalli Lanka, on which the suit Lanka is reformed, case and determine prior to the reformation?

30. Respondent should be at liberty to adduce fresh evidence, appellant being entitled to cross-examine any witnesses called by respondent.

31. Finding will be returned within one month after the end of the vacation.

32. Seven days are allowed for filing objections.

Seshagiri Aiyar, J.

33. The suit relates to a block of land known as the Pulugula Tippa Lanka in the bed of the Godavari river about 250 acres in extent. The

defendant, the secretary of State for India, directed the levy of penal assessment against the plaintiff, the Maharaja of Vazianagaram, in respect of

the suit land in March 1911. This suit is for a declaration of the plaintiff's right to the land and for an injunction restraining the defendant from

collecting penal assessment from him. The Subordinate Judge, in a judgment covering nearly one hundred pages, decided against the plaintiff. The

points for decision are these:

(1) Whether the lands in dispute were reformed in situ on property belonging to the Government known as the Sanapalli Lanka.

(2) Whether even if the site of the property originally belonged to the Government the defendant abandoned his rights thereto at the time when it began to be washed away by the floods.

(3) Whether the ryots of the Government are not the owners of the suit property and consequently the Government is not entitled to levy penal

assessment and

(4) Whether the levy of assessment for the whole or any portion of the period of 10 years is valid.

34. In dealing with the first question, the statement filed in this Court by the learned Advocate General, who appeared for the plaintiff, should be

noticed. That statement is in these terms: ""The appellant admits that the suit land is formed on the site of what was claimed in Exhibit I to be part of

Sanapalli Lanka and does not dispute the accuracy of the plans Exhibit VII, VI and Exhibit 90 to that extent, but does not admit that Exhibit I is

correct in showing that it was part of Sanapalli Lanka."" In my opinion this statement does not in any way lessen the volume of work which has to

be gone through in order to arrive at a conclusion on Issue No. 2. While the statement concedes that the new Lanka has been formed in the place

mentioned in Exhibit I as being the site of the old Sanapalli Lanka, it disputes the main ground that the description in Exhibit I correctly describes

the site of the land. In considering this issue both the Advocate-General and the Government Pleader concentrated their attention upon showing

whether Exhibit I is more reliable than Exhibit E. Exhibit I is a Survey plan of the Sanapalli Lanka prepared in 1862 and Exhibit F is the plan of the

Kotapalli Lanka prepared in 1895. In my opinion the Subordinate Judge is right in holding that Exhibit I is correct and that Exhibit F is incorrect.

The correspondence between the plaintiff and the defendant, to which in the course of a very lucid presentation of the facts the learned Government

Pleader drew our attention, establishes that till very near the time of the suit, the correctness of the plan Exhibit I was not questioned by any

responsible person connected with the plaintiff's estate. I shall have to refer to the correspondence to some extent when dealing with the question

of abandonment and, therefore, I shall not at this stage say more. There is clear evidence that Exhibit I contains a correct description of the areas

then surveyed, Exhibit III prepared in 1866 gives the names of the ryots, the extent of their holdings in the Lanka and the assessment payable by

them, The extent given in that document would include the plot marked as Sanapalli Lanka in Exhibit I. There is another indication of the

correctness of Exhibit I in that a portion of the admitted Lanka belonging to the plaintiff has also been surveyed by this time. When we remember

that at the time of Exhibit 1 there was no machinery by which the Government could lend any of its officer to survey a private estate, it is clear that

Exhibit I was prepared with a view to settling disputes about boundary between the plaintiff and the Government. It was at a time when Act

XXVIII of 1860 was in force. The plan Exhibit I a that there must have been a dispute. Again Exhibits 29 and 55 also refer to some disputes

having existed at or about this time between the Vizianagaram Samasthanam and the Collector of Godavari. If there was a dispute and if an officer

was deputed to demarcate the boundary, the estate must have been represented at the time. Unless we are prepared to hold that from the year 18

2 the Government have been creating evidence of their title, the facts referred to above would show that Exhibit I contains a correct measurement

of the respective properties belonging to the plaintiff and the defendant in 1862.

35. As against Exhibit I the substantial argument advanced by the learned Advocate-General was that when in 1895 there was a survey (Exhibit F)

of kotipalli Lanka belonging to the plaintiff, the disputed portion was included within the boundary of the plaintiff's estate. As regards the weight to

be attached to Exhibit F and F2, the land register following upon the survey, I am in substantial agreement with the Subordinate Judge. I shall refer

only to one or two circumstances to show that Exhibit F cannot be relied upon. The correspondence beginning with Exhibit XI in July 1886

between the ryots of Sanapalli on the one hand and the Collector of Godavari on the other and also the correspondence between the Collector

and his subordinates prove that about the time of Exhibit F a determined effort was being made by plaintiff's men to corruptly induce the village

officials of Sanapalli to furnish them with details which would enable them to claim portions of Sanapalli as belonging to their estate. The assistant

karnam of Sanapalli was naught red-handed in the act of carrying information to the plaintiff's Samasthanam. He and the Village Munsif were

suspended and an enquiry was started, which disclosed a conspiracy to help the estate at the expense of the Government. Under these

circumstances, although it is not shown that the surveyor who prepared Exhibit F had been himself tampered with, one has to scrutinise very

carefully the plan and the information it contains. It is curious that the plan itself is not drawn to scale, although its general accuracy as regards the

locality surveyed is not seriously disputed. The main point relied upon by the appellant is that in the plan two numbers are entered, 87 and 88, in

the place where the present disputed Lanka is situated. There can hardly be any doubt that 87 and 88 refer back to the old Ajimash numbers

which belonged to the plaintiff's estate, but the question is as to whether the reference to the plot by numbers 87 and 88 was rightly done. The

surveyor had to depend for information upon the local Village Officers who, as I have said, were under the corrupt influence of the plaintiff's

estate officials. That is one reason why Exhibit F cannot be accepted as correct. Another reason is that Exhibit VI, which was a plan prepared in

the year 1892, after disputes had arisen between the plaintiff and the defendant, in the presence of surveyors belonging to both the contending

parties and signed by the then collector of Godavari on the one hand and by Mr. Gillman who represented the Samasthanam on the other, makes it

clear that Exhibit F was never seriously regarded by the plaintiff as containing a correct description of his property. The previous correspondence

and the plan Exhibit VI might be said to be almost conclusive on the question of the old site, but it is not necessary to go that length. They are a

very strong proof of the accuracy of Exhibit I and of the unreliability of Exhibit F.

36. The learned Advocate-General relied also upon Exhibits J and J(1). The boundaries given therein may in a rough way be said to include

portions at least of the Sanapalli Lanka in the property belonging to the plaintiff. But one cannot help saying that Exhibits J and J(1) prove too

much. If the descriptions of the boundaries are literally interpreted, they would include even the admitted portion of Sanapalli Lanka in the

plaintiff's Kotipalli Lanka. Exhibits J and J(1) are very inaccurately worded documents, and I agree with the observations of the Subordinate Judge

in Paragraph 16 of his judgment about the value to be attached to them.

37. Then some reliance was also placed upon the word "Pedda Lanka Pampu." It is curious that until very near the date of the suit the expression

"Pedda Lanka" does not seem to have been applied to the disputed locality. There was a Pedda Lanka belonging to the plaintiff's estate which is

not in dispute, but there is no reliable evidence that the property in suit was known as Pedda Lanka for any considerable time.

38. There remains the last serious argument of the learned Advocate-General

based upon the identity of Ajimash numbers. As I said before, if the two numbers 87 and 88 had been correctly entered in Exhibit F, it would seem to follow that the property in suit before submersion belonged to the plaintiff. But, as I have stated already, I am not prepared to hold that these number are accurately entered in Exhibit F. There is internal evidence of a very cogent character in support of this theory. Exhibit R(1), which contains the original Ajimash numbers, shows a total of 38 putt is and odd as belonging to the plaintiff's Pedda Lanka. That would, converted into cores, give an extent of 304 and odd cares. Ajimash numbers 248 to 260 would cover this extent Exhibit which is the plan and Survey made in 1862, also shows 304 and odd acres as belonging to Kolipalli. Mr. Elwin, who was in charge of the plaintiff's estate in 1906, also claimed for the estate only 304 and odd acres. The defendant has never disputed the right of the plaintiff to this piece of property. What we find in Exhibit E, the estate survey, is that it includes about 562 cares. It is clear that this extent includes the present disputed portion, to which the estate had never any right and to which responsible officials of the plaintiff who administered his estate never seriously put forward a claim. Therefore, in tracing the Ajimash numbers 248 to 260, so much of the new Survey numbers 87 and 88, as would include 804 cares, must be allotted to the plaintiff's estate. Whatever there is in excess must belong to the defendant. If this portion is worked our, there can be no doubt that the plaintiff has absolutely no claim to the property in dispute.

39. There is only one other piece of evidence that need be referred to, and that is in connection with the lease given to one Mr. Barry by the plaintiff's Samasthanam. Exhibits 96 and 97 show that the property now in dispute was regarded by the plaintiff as having been formed on the site of the old Sanapalli Lanka. In fast in all the correspondence that passed between the agent of the Court of Wards representing the plaintiff's estate and the collector of Godavari it was never seriously put forward, until the time of the suit, that the property in dispute was formed on the site of the Pedda Lanka belonging to the plaintiff. The only ground advanced was that the disputed property accreted to the undisputed properly belonging to the plaintiff, but not that it was a reformation of the plaintiff's washed away property.

40. Therefore, I agree with the conclusion of the Subordinate Judge that the plot in dispute is on the site where the old Sanapalli Lanka existed.

The Subordinate Judge who heard the oral evidence has disbelieved the plaintiff's witnesses and has relied a great deal upon the evidence of

defendant's witness No. 4, the District Surveyor. After listening to the criticism of the learned Advocate General, I see no reason for differing from

the Court below on this question of the appreciation of oral evidence. The fact and figures given by defendant's witness No. 4 show that he is

speaking the truth No reason has been shown why his evidence should not be acted upon. My finding on the second issue is that the disputed

portion was formed in the bed of the river on the site of the old Lanka known as the Sanapalli Lanka belonging to the defendant. I shall deal with

the question of law which arises on this finding of fact later on.

41. I shall next take up the question of abandonment. There are two aspects of it one depending upon facts, the other upon law. Upon the facts the

contention for the appellant is that the Government has shown an un-mistakable intention to give up their rights to the reformed land when a portion

of the Lanka was washed away. It was said that in the subsequent Surveys this plot was not regarded either as land belonging to particular ryots

or as Poramboke land belonging to the Government. I do not think that this contention is well founded Exhibit III, which was largely relied upon,

only shows that the ryots gave up portions of their holdings when that began "to be submerged. Of the other hand, Exhibit Y shows that even in

cases where there had been a submersion some of the ryots still continued to pay the assessment Exhibit 100, which is the Adangal of 1891,

contains the Survey numbers of the washed away property, indicating that their ownership was never abandoned. Under Board's Standing Orders

Volume I Order XV, the Revenue Department has declared that even in cases of submerged lands the ownership is not given up. The present

Order XV is a reproduction of old orders based upon proceedings of the Board of Revenue extending to the seventies. It is clear from these facts

that the Government never intended to extend rights. The learned Advocate General argued that the fact that in 1894, at the time when the

reformation was almost complete, these properties were not regarded as Government property, is a ground for holding that there was an

abandonment when they were washed away. But when we find that when they existed in situ they were held by ryots belonging to the Government and as soon as they were reformed they were entered again as the property of the ryots, the onus of showing abandonment in the interval is strongly upon the plaintiff and I do not think that this has been satisfactorily discharged, Exhibit IV, the re-survey of Sanapalli in 1398, was relied on as showing that the washed away portion was not included within its boundaries, and Exhibit V, the Re-survey Register, was also relied upon for this purpose. I agree with the view taken of these two documents by the Subordinate Judge in Paragraph 23 of his judgment. In my opinion they do not show that there was any abandonment. The same remarks apply to Exhibit Till, the river Survey. After 1896 the Government was taking active steps to establish its right to the plot in dispute. Exhibits XI and XII show that there were complaints from the Sanapalli ryots against the encroachment by the plaintiff's renter. The endorsement of Mr. Brodie, the then collector of Godavari, on Exhibit XIII shows that an enquiry was directed. Exhibits XIV and Y relate to the intermediate stages. In Exhibit XV, which was a report from the Sub collector to the collector, the former says that the plot in dispute belongs to the Government and not to the Samasthanam. Thereupon the collector in Exhibit XVIII stated: As this Lanka land is very valuable, the Assistant Superintendent of Revenue Survey is re-requested to arrange to survey and to demarcate Sanapalli Lanka according to the old village plan and field books. This was in 1899. Thereupon the report of the District Surveyor was sent in, which is Exhibit XXVI. He makes it abundantly clear that the whole of the disputed portion belonged to the Government. His evidence as defendant's witness No. 4 shows that the Zamin officials were also present when he made the Survey. Exhibit XXXII is the plan sent up by him. All these papers having been considered by Mr. Rici¹/₂ the then Sub-collector, he passed proceedings (Exhibit 43) on the 20th September 1901 that steps should be taken to levy penal assessment. Apparently these proceedings were communicated to the collector in charge of the plaintiff's estate who was at that time Mr. Phillip?. Mr. Phillips wrote to the Sub collector (see Exhibit 44) that it would be unfair to levy penal assessment without further enquiry, that the ryots of the estate had been in possession and that as the estate itself was not a party to the proceedings passed by Mr. Brodie,

there should be a reconsideration of the whole matter. This letter was addressed to the Sub-collector, who suggested that the communication

should be sent to the collector direct. Thereupon a communication similar to Exhibit 44, namely Exhibit 46, was addressed to the collector. Mr.

Castlestuart Stuart, who had by this time assumed charge of the Godavari District, passed orders upon this communication to the effect that there

should be a re-survey in the presence of the estate officials. This was on the 21st November 1901, Exhibit 48 is the communication addressed to

the Samasthanam in pursuance of the proceedings of Mr. castlestuart Stuart. In answer to this communication Mr. Phillips wrote, vide Exhibit 49,

asking for a new Surveyor. The instructions to the Surveyor are contained in Exhibit 49(a). Thereupon a detailed Survey was made, at which the

estate surveyor was present and the report Exhibit 50 was sent by the Government Surveyor who is also defendant's witness No. 4, to the

Tahsildar with a view to its being forwarded to the collector. Exhibit VI to which I have already referred was the plan which accompanied the

report of the Surveyor It was signed by Mr. Gillman on behalf of the plaintiff's estate Exhibit 51 is from the collector of Godavari to the collector

and guardian of the Vizianagaram Samasthanam, informing the latter that the spot had again been localized and a correct plan prepared. Paragraph

2 of the letter says: From the plan it appears that the extent of the lands in dispute is found to be 247 acres 28 cents, and it is the old Lanka of

Sanapalli once washed away by the river and now reformed in its old place. This is the plan prepared in the presence of all the parties and

subsequently signed by you also. Paragraph 3 says: "I request that you will be so good as to let me know if you still press your claim to it as an

accretion to your Lanka and demand an enquiry under the Boundary Marks Act." The reply to this is Exhibit 52, in which a distinct admission is

made that the land, although reformed on the site of the old Sanapalli Lanka, is still an accretion to the Kotipalli Lanka. The collector in charge of

the plaintiff's estate then suggested that the decision of a civil court regarding the ownership of the land should be obtained before further

proceedings were taken. Thereupon the collector resolved upon levying penal assessment, leaving it to the plaintiff to establish his right, if any, in a

civil Court. A perusal of this correspondence makes it clear that the estate officials admitted that the land was reformed on the site of the old

washed away Sanapalli Lanka and that the only claim advanced by them was on the ground that the land was an accretion to their Pedda Lanka. It

is impossible to hold, after the vigilance and care exercised by the Government in asserting its rights to this reformed Lanka, that it abandoned its

rights thereto. I am not ignoring the suggestion of the learned Advocate General that in all this correspondence subsequent to 1896 there is no

indication that there was no abandonment prior to that date. But it requires very-strong evidence to show that a person, asserting his rights so

strenuously as has been done in this case and who had done no Act to indicate that he ever intended to give up his rights to the property, should be

regarded as having abandoned his claim. My finding on this question is that as a matter of fact the defendant never abandoned his rights to the

property by reason of its having been washed away.

42. The next argument on this subject was that even if the defendant had no intention of abandoning the law would presume that he abandoned his

rights. The learned Advocate-General's contention, as I understood him, may be stated thus. The Godavari is a tidal and navigable river and

consequently it is the property of the Government, The Government is the owner of v its bed. Therefore, ordinarily any formation in the river and

would belong to the Government unless there has been a grant of the property or there has been an accretion to the property of a riparian land

owner This right of superior domain possessed by the Government is an all-embracing right and the right possessed by the riparian land owners

must be taken to be an invasion of such a right. Consequently where a former site which belonged to the Government is washed away the

Government must be deemed not to have reserved any right to that property by the principle of reformation but to have relied upon their larger

right of claiming any property that may be formed within the bed of the river. In fact the contention was that this inferior right of claiming reformed

land must be taken to have been merged in the superior right of domain which as owner of the bed of the Godavari the Government is entitled to,

Mookerjee, J., in a very elaborate judgment in *Ananda Hari Basak v. Secretary of State for India* 3 C.L.J. 316 , has held that this principle of

merger is not sound. The learned Judge there points out that the theory that Government is a trustee for the public when land is formed on the bed

of a river and that the trust is abandoned the moment the land disappears, is not supportable on principle I respectfully agree with that conclusion

In a sense no doubt all properties acquired by the Government are acquired by it as representing the people. But the Government has a dual

capacity. It has got to protect its rights against a portion of the public which claims the property adversely to the general public represented by the

Grown In this capacity the Government is entitled to all rights which private owners can exercise, In my opinion the proper way of looking at the

functions of the Government is to regard it as possessing the superior right of domain in respect of properties formed on the bed of a river and also

as being entitled, when the rights of a portion of the public come into conflict with the general sovereign rights, to claim the privileges which would

belong to a private owner in asserting those rights Neither *Lopez v. Muddun Mohun Thakoor* 13 M.I.A. 467 , nor *Srinath Roy v Dinabandhu Sen*

25 Ind. Cas. 467, is in conflict with this proposition, I, therefore, hold that there is no reason for holding that there is a presumption of

abandonment against the Government when a portion of its property in the bed of the river is washed away by flood.

43. On the question whether the property, if formed on an old site, would belong to the owner of that old site, I see no reason for not applying the

principles enunciated by English lawyers in this country. It is true that the conditions in India are somewhat different. The rivers in this country have

heavy floods and sometimes wash away large pieces of settled land during the flood season. I agree with the conclusion come to in *Secretary of*

State for India v. Rajah of Vizayanagaram 40 Ind. Cas. 896 , on this question. *Srinivasa Aiyangar, J.*, has discussed this question at some length

and I am satisfied, for the reasons given by him, that the principle of reformation is as applicable to tidal and navigable rivers in India as to

formations in sea or in the beds of slower rivers in England, In a very recent case, *Basanta Kumar Roy v. Secretary of State* 40 Ind. Cas. 337 : 21

C.W.N. 642, the Judicial Committee of the Privy Council applied, with regard to the formation of lands in the bed of the Ganges, the English Law

as to accretion. I do not see why the principle of reformation should also not be applied under similar circumstances.

44. As regards the third question there was some discussion at the Bar as to what actually happened before the Subordinate Judge. I unreservedly

accept the statement of the learned Advocate General that he argued the question that the land being the property of the ryots, the Government was not competent to levy penal assessment, and that the plaintiff had acquired a right by prescription to the suit property. Upon the question of adverse possession it is said that there is Issue No, 9, but on looking into the pleadings with care, I do not think the contention, that the plaintiff acquired a prescriptive title against the ryots, was intended to be included in that issue. The Subordinate Judge has not dealt with it in that light.

Moreover, the point that the plaintiff has become the owner of the property as ryot ware holder, by having prescribed for that right against the Government ryots of Sanapalls, has not been taken in the grounds of appeal, apparently by inadvertence. It is true that the materials, which are necessary for deciding whether if the property belonged to the ryots, the Government can levy penal assessment, would also be sufficient to dispose of this question of adverse possession. If I had to decide the question entirely on considerations of justice and on the principle of avoiding multiplicity of suits I would have allowed this question of adverse possession to be argued, because no fresh facts would be necessary. But having regard to the repeated pronouncements of the Judicial Committee that where a point is not specifically pleaded and considered by the Courts below the Appellate Court should not for the first time discuss it, I agree with my learned colleague that we should not allow the learned Advocate-General to argue the question of adverse possession.

45. As regards the question whether the property belonged or belongs to the ryots and consequently it is not open to the Government to levy penal assessment, the position is this. The defendant claimed the property as his own. The plaintiff contested this right, and he came to the Court with the case that the property belonged to him and that the defendant should not levy penal assessment. In the view taken by the Sub-ordinate Judge he failed to prove his right to the property. At the same time it cannot be doubted that he is entitled to show that the property does not belong to the defendant. The plaintiff, by failing to prove the property to be his, will be denied relief (1) prayed for in Paragraph No. 12 of his plaint. But if he can establish a *jus tertii*, he is entitled to relief (2) contained in the same paragraph. It is well established that in proceeding to levy penal assessment the

onus is upon the Government to show that the property belongs to it. It was pointed out in *Madathapu Ramaya v. Secretary of State for India* 27

M. 386, that the right of levying penal assessment cannot be exercised unless the Government is the owner of property reference may also be

made to *Ayyaparaju v. Secretary of State* 25 Ind. Cas. 894 , and *Kambhampali Venkatasubbiah v. Secretary of State* 16 Ind. Cas. 589 , for the

proposition that the burden of establishing that the property belongs to the Government would under similar circumstances lie on the Government.

That being the position, it is open to the plaintiff to point to materials piled before the Court during the course of the trial as derogating from the

defendant's right. At the same time it must not be denied that the defendant is entitled to claim that he should have full opportunities of meeting such

a case, In the course of the trial this opportunity was claimed, but in the view taken by the Subordinate Judge he considered it unnecessary to give

further opportunities to him. As regards this in my opinion he is wrong. I do not agree with the learned Government Pleader in his extreme

contention that as this right of objecting to the penal assessment was not specifically stated in the notice of suit which is Exhibit 63, given by the

plaintiff, it is not open to him to argue the point. All that Section 80 of the CPC requires is that the Government should be notified of the particular

cause of action which is the basis of the suit The cause of action which necessitated the plaintiff filing the suit was the levy of the penal assessment.

Every ground on which it is open to the plaintiff to attack that levy need not be stated in the notice required by section 80, In *Secretary of State*

for India v. *Perumal Pillai* 24 M. 279 , this view has been taken by this Court. In *Ezra v. Secretary of State* 30 C. 36, it was held that where fresh

facts arose in the course of the suit after the filing of the plaint, the Government is not entitled to further notice. I am in entire agreement with the

propositions laid down in these cases and I, therefore, hold that it is open to the plaintiff to substantiate his case that the Government is not

competent to levy penal assessment because the property did not belong to it. I, therefore, agree with my learned colleague that the issue proposed

by him should be remitted for trial.

46. Now I come to the last question. The learned Advocate-General divided his argument into three branches.

(1) That Act III of 1905 should not be applied to any person who has been in possession before the Act came into force, although he continues to

be in possession subsequent to the Act as well

(2) That under the Act no penal assessment can be levied for more than a year and

(3) That under any circumstances the levy in respect of the period ending with the passing of Act III of 1905 is wrong.

47. As regards the first point reliance was placed upon the words in the preamble, for checking unauthorized occupation, and also upon the

language in Section 3 which speaks of any person who shall unauthorizedly occupy any land. I do not think that these words are enough to exclude

cases of a continued occupation which began before the passing of the Act. In my opinion there is nothing wrong in construing the words shall un-

authorizedly occupy as meaning shall be in possession unauthorizedly. The contention of the learned Advocate-General will lead to this--that if a

person ceases to occupy before the Act came into force and again reoccupies after the Act passed, he would be within the mischief of the Act, but

if he is bold enough to continue in occupation all the time, he is outside its scope. I do not think this contention is well-founded. I agree that the

general principle is that no Act should be read as being retrospective unless there is clear language to indicate such an intention. But that principle

would not warrant the conclusion that even in respect of occupation subsequent to the Act there must be a re-entry if a trespasser is to be

proceeded against.

48. Nor do I agree with the learned Advocate General in regard to his second contention. The words in Clause (1) of Section 3 enable the

Government to levy full assessment for the whole period of occupation. It is true that the penal assessment is to be recovered as land revenue. But

the fact that the term "arrears of land revenue" would apply only to cases of assessment falling due within the fasli, is not a reason for importing into

the construction of Act III of 1905 the same idea. The language of Section 7, that the assessment and penalty shall be deemed to be land revenue,

must be read along with Section 3 Clause (2), which empowers the Government to levy the assessment for the whole period of occupation

subsequent to the Act. After all, although there can be no district within the fasli

even in respect of land revenue, it cannot be argued that it cannot be recovered for more than one fasli. I, therefore overrule the second contention as well.

49. As regards the third contention, I think the learned Advocate-General is right before dealing with this question, it is necessary to refer to the

antecedent state of the law when Act III of 1905 was passed. I take the principle of the Full Bench ruling in *Madathapu, Ramaya v. Secretary of*

State for India 27 M. 386, to be that the theory of penal assessment proceeds on the basis that the property belongs to the defaulter and that the

penalty is imposed for some transgression on his part in respect of his holding and that consequently, there can be no penal assessment against a

trespasser, whatever may be his liabilities in a Criminal Court or in a suit for ejectment By Act III of 1905, the Government took power to levy

penal assessment on trespassers who squat upon properties belonging to the Government. Section 2 declared what such properties are. Now,

these being the circumstances which preceded legislation, the question is whether there are words in the Act which would enable the Government

to claim penal assessment in respect of an occupation in respect of which it was illegal to have levied penal assessment. In my opinion, there must

be a clear and distinct declaration in the Act to render legal what was pronounced to be illegal before the Act was passed. Are there such words in

Section 3 of the Act and are they not capable of being construed as affecting only obligations since the Act came into force the latter

construction is permissible, there can be no doubt that Courts are bound to interpret the law as speaking only for the future and not for the past. It

was argued by the learned Government Pleader that the provision in Section 3, Clause (1), for levying an assessment for the whole period is

tantamount to a declaration that the Act is retrospective. There are some retrospective provisions in this Act. For example, Section 2 is one

Section 15 is another. It is a well-known canon of construction that no Act shall be read as retrospective except in so far as it is absolutely, clear

upon the language of the Act. I need only refer to *Smithies v. National Association of Operative Plasterers* (1909) 1 K.B. 310 , *Bourke v. Nutt*

(1894) 1 Q.B. 725 : 40 W.R. 679, *Reg v. Griffiths* (1891) 2 Q.B. 145 , In *Maxwell's* book on the Interpretation of Statutes, page 350, all the

authorities are collected, and the principle has been clearly explained. The learned Government Pleader referred us to Volume 27 of Halsbury's

Laws of England, page 159. The principle therein enunciated, that a Statute does not interfere with existing rights unless having regard to its object

it necessarily does so, cannot apply to the present case. I am not satisfied upon the construction of Section 3 that the language necessarily compels

us to hold that the Act is retrospective. A construction consistent with the theory that the Act must be taken to be prospective can be applied to

the language of Section 3(1). The whole period of occupation referred to in that clause must be taken to be the period of occupation subsequent to

the passing of the Act. If that construction is adopted, the Act can be regarded as prospective and at the same time as giving the Government a

right to levy a consolidated assessment in respect of occupation for more than a year after the coming into operation of the Act. I may also refer to

the observations, of Buckley, L.J, in *West v. Gwynne* 80 L.J. Ch. 578, wherein he points out that an Act must prima facie be taken to speak from

the date of its passing legislation is for the future and not for the past. That is a rule of law, which cannot be seriously disputed. Moreover, the

construction contended for by the learned Government Pleader would go against the second portion of Section 15. By that section, if a suit was

pending in a Civil Court and a decree was eventually given against the Government by declaring the levy of assessment, illegal and ordering their

refund, the Act will not disturb that decision. If it be held that u/s 3(1) it was open to the Government to levy penal assessment even with regard to

previous occupation, though there may be a suit pending, and a decree may be passed by virtue of that provision, that decree would be rendered

nugatory. On the whole, after considering the matter fully, I have come to the conclusion that the Government is not entitled to levy penal

assessment in respect of the occupation by the plaintiff prior to April 1905, when Act III of 1905 came into force. I would, therefore, modify the

decree of the Subordinate Judge to this extent. The question of costs will be dealt with after the return of the finding.

50. The papers will be laid before the learned Chief Justice for orders u/s 98 of the CPC regarding the following question, which we propose to

refer to the opinion of a third Judge, namely:

Whether it is competent to the Government under Act III of 1905 to impose penal assessment in respect of the period of occupation before the Act came into force?

51. This appeal came on for hearing on the 21st August 1919, before Sir Abdur Rahim, K.T., Officiating Chief Justice, for expression of opinion on the point of law referred by the order of the Division Bench, dated the 21st February 1918.

52. The Advocate General, for the Appellant.--An Act should not be read as being retrospective in the absence of express words. Act III of 1905

simply declares the liability to penal assessment in respect of unauthorised occupation from the date of the Act, and not before. The Act is enacted

for "checking" unauthorised occupations. The levy of penal assessment before the Act was declared illegal. *Madathapu Ramaya v. Secretary of*

State for India 27 M. 386, *Pamulapati Ankinudu v. Secretary of State for India* 28 M. 312, In the Act itself the liability is on persons who shall

unauthorisedly occupy any land which is the property of Government.

Abdur Rahim, Offg. C.J.,

53. Supposing the words were to be in unauthorised occupation, etc.?

54. That would make the least difference. *Athlumney In re, Wilson, Ex parte* (1898) 2 Q.B. 547, "Has been" must be read as being the same as

has been after the passing of the Act". Any law which imposes new disabilities ought to be construed as prospective only. The right acquired is

new. See also *Bourke v. Nutt* (1894) 1 Q.B. 725 158 J.P. 572. When the Act is penal, the rule of construction is all the more strict *Reg. v.*

Griffiths (1891) 2 Q.B. 145, To give retrospective operation to a Statute would amount to a deprivation of a defense. *Rex v. Chandra Dharma*

(1905) 2 K.B. 335, and *Smithies v. National Association of Operative Flatterers* (1909) 1 K.B. 310.

55. Further, Section 15 of the Act makes a saving as to pending suits on the date of the Act. If the Act could be read as retrospective, the

Government could conveniently levy assessment in respect of the entire period before and after the Act, and the saving in Section 15 would

obviously become meaningless even if decrees were passed. *Reid v. Reid* (1886) 31 Ch. D. 402, Even clear words connoting a retrospective effect

ought to be construed very strictly. *Lauri v. Renad* (1892) 3 Ch. D. 402.

Abdur Rahim, Offg. C.J.

56. Reid v. Reid (1886) 31 Ch. D. 402, is also a case of vested rights as Athlumney, In re, Wilson, Ex parte 13 M.I.A. 467 .

57. The principle is, however, clearly set forth. Sharp v. chant (1917) 1 K.B. 77, Hickin, In re, Public Trustee v. Hoars (1917) 2 Ch. 278,

Landon County Council v. Aylesbury Dairy Co. (1898) 1 Q.B. 106 , Bradford Union v. Clerk of the Peace for Wilts (1867) 3 Q.B. 604 : 18 L.T.

514 , Young v. Adams (1898) A.C. 469.

58. The principle has been followed in India for instance, u/s 13 of the Madras Estates Lind Act. Venkata Perumal v. Ramudu 27 Ind. Cas. 688:

followed in Govind Boss v. Gurram chinnappa Naidu 27 Ind. Cas. 869. Muhammad Bukth v. Ajman Reja 32 Ind. Cas. 701. (Wakf Validating

Act); Muhammad Abdussamad v. Qurban Husain 6 Bom. L.R. 238 . (Oudh Estates Act).

59. Section 13 and Section 15 are reconcilable with the general scheme of the Act and the word checking in the preamble, only if they are

construed as having reference to the period commencing with nuncio the date when the Act comes into force.

60. The Government Pleader for the respondent. The preamble and the wording of the Act do set forth that the object of the Legislature was to

give the Act retrospective effect. See also the observations in (Madathapu Ramaya v. Secretary of State for India 27 M. 386 . ""Occupy"" in

Section 3 means ""be in occupation"" and not Commence to occupy occupation terminating before the Act does not, therefore, come within