

(1927) 03 CAL CK 0030
In the Calcutta High Court

King-Emperor

APPELLANT

Vs

Rajah Probhat Chandra Baruah

RESPONDENT

Date of Decision : 14-03-1927

Acts Referred:

City of London Sewers Act, 1848 — Section 169
Income Tax Act, 1922 — Section 66(2)
Income Tax Act, 1961 — Section 2, 4

Citation : AIR 1927 Cal 432

Hon'ble Judges : Sunrawardy, J;Panton, J;Mukerji, J;C.C. Ghose, J;Buckland, J

Bench : Full Bench

Judgement

C.C. Ghose, J.—On the 12th March 1926 the Commissioner of income tax, Assam, referred to this Court for decision u/s 66(2) of the Indian income tax Act of 1922, the following questions:

I Whether the following sources of income are agricultural and therefore exempted from assessment to income tax u/s 4(3)(viii) of the Act.

(i) Jalkar or rents received from fisheries.

(ii) Ground-rent from land used for potteries.

(iii) Ground rent from land used as brick-fields.

(iv) Fees received from the tying up of boats against the assessee's land.

(v) Fees received from land used for storing purchase of crops (paiali).

(vi) Fees received from cart stands.

(vii) Punyaha nazar or nazar paid by fcdnant3 of agricultural holdings at the beginning of the zemindari year.

(viii) Nazar for petitions presented to the zemindar dealing with questions of succession, settlement and partition.

(ix) Ground-rent for permanent shops at hats and bazar³.

(x) Stall fees paid by temporary (daily) sellers at hats and bazars.

II. Whether income derived from such of the above sources as were not taken into consideration at the time of fixing the Jama at the Permanent Settlement is assessable for income tax purposes.

III. Whether having regard to the terms of the Permanent Settlement Regulation income derived from the above sources in permanently settled estates is liable to assessment to income tax.

2. This Reference came on for hearing before the late Chief Justice and Mr. Justice Rankin, as he then was, on the 21st May 1926, when the attention of the learned Judges having been drawn to the conflict of opinion, as disclosed in the judgments in the cases of *Probhat Chandra Barua Vs. Emperor*,⁴ and *Emperor Vs. Indu Bhusan Sarkar*, questions II and III were referred by the learned Judges to a Full Bench for decision. The case of *Probhat Chandra Barua Vs. Emperor*, was before a Division Bench, consisting of Mr. Justice Rankin and Mr. Justice Page. Mr. Justice Rankin held that income derived from fisheries and from *Sthaljat* (i.e., land used for stacking timber) was not "agricultural income" or income derived from land which is used for agricultural purposes, within the meaning of Sections 2 and 4 of the Income Tax Act, and that such income was liable to income tax, notwithstanding the Permanent Settlement Regulations of 1793. Mr. Justice Page held that such income was not assessable to income tax by reason of the Permanent Settlement Regulations. There being this difference of opinion between the two learned Judges, the opinion of the senior Judge Mr. Justice Rankin, prevailed u/s 36 of the Letters Patent.

3. The case of *Emperor Vs. Indu Bhusan Sarkar*, was before a Division Bench, consisting of Mr. Justice Cuming and Mr. Justice Page, and it was there decided that where income from fisheries lying within an estate was included in the assets upon which land revenue was assessed under the Permanent Settlement Regulations, incomes from such fisheries were not further liable to assessment under the Indian Income Tax Act.

4. The two questions referred to us are of very great importance, and we have had the advantage of hearing thereon Mr. Sircar, on behalf of the assessee, and Sir. Binode Mitter, on behalf of the Crown, at length. We desire to express our acknowledgments to them for the great assistance which they have rendered to us. Question I is not before the Full Bench but Mr. Sircar mentioned that his client contended that Items (v), (vii) and (viii) came within the definition of agricultural income in the Income Tax Act and were therefore exempted from assessment to Income Tax u/s 4(3)(viii) of the Act. This matter is not before us and it will have to be considered hereafter.

5. The case comes from the District of Goalpara in Assam which, including the Daro Hills but excluding the Eastern Guars, was originally part of the Extensive

Collectorate of Rungpore and as such formed part of the province of Bengal which by the Moghul Emperor's Firman of the 12th August 1765, was transferred to the East India Company. From 1765 to 1822 the old thanahs of Goalpara, Dhubri and Karaibari formed part of the Rungpore District, known as the Rangamati District. Under the provisions of Regulation X of 1822 these thanahs were cut off from Rungpore and formed into a separate district with head quarters at Goalpara (See Sir Edward Gait's History of Assam, Second Edition, p. 298; Baden-Powell's Land Systems of British India, Vol. III, p. 430; Sir. William Ward's Introduction to the Land Revenue Manual, Assam, 1905). It is not and cannot be disputed that the assessee's estates, in respect of which the present question has arisen, were settled under the Permanent Regulation of 1793. (See Sir William Ward's Introduction referred to above, p. liv; McNeil's Revenue Administration of the Lower Provinces of Bengal, page 44). On behalf of the assessee the case is put in this way: it is argued that it is clear that according to the engagement entered into at the time of the Permanent Settlement, the "Jama" then fixed cannot be altered. It was declared by the Governor-General-in-Council that the zemindars and other proprietors of land and their heirs would be allowed to hold their estates at such assessment for ever (See Regulation I of 1793, Section 4), and that the order fixing the amount of the assessment were to be considered irrevocable and not liable to alteration by any persons whom the Court of Directors might appoint to the administration of the affairs of the East India Company (Section 7). At the conclusion of the Permanent Settlement, the Governor-General-in-Council expressed his confidence that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, would exert themselves in the cultivation of their lands under the certainty that they would enjoy exclusively the fruits of their own good management and industry and that no demand would ever be made upon them for the augmentation of the public assessment in consequence of the improvement of their respective estates. It is pointed out that until the proclamation of the 22nd March 1793, relative to the limitation of the public demand upon the lands in Bengal, Behar and Orissa, i.e., the public demand upon each estate was liable to annual or frequent variation at the discretion of the Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each bigha of land in cultivation of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands and the public dues were either let in farm or collected by an officer of Government and the above-mentioned share of the landholder or such sum, as special custom or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury (See Preamble to Regulation 2 of 1793).

6. When the country came under British administration, two fundamental measures essential to the attainment of increase and improvements in

agriculture and consequently of the increase in the wealth of the country were decided upon namely, that the property in the soil was declared to be vested in the landholders and the revenue payable to Government from each estate was fixed forever (See Preamble to Regulation 2 of 1793). The object, therefore, of the Permanent Settlement of 1793 being to limit the public demand upon lands in the Provinces of Bengal, Behar and Orissa, the tax under the Indian Income Tax Act, call it by whatever name you like, is, it is argued an additional public demand upon the lands which were settled under the Permanent Settlement of 1793, and is, therefore, a violation of a positive statutory engagement made with the zemindars at the time of the Permanent Settlement. In other words, it is suggested that it is a breach of a promise made by Lord Cornwallis when the latter had exhausted the resources of language to assure the zemindars that the rate then assessed on their lands was irrevocably fixed for ever and that they should, in all future time, be "free from any further demand for rent, tribute or any arbitrary exaction whatsoever." It is further argued that the provisions of the Permanent Settlement of Bengal have in no way been repealed expressly or impliedly by the Indian income tax Act of 1922, and that, therefore, the generality of the words used in the charging sections of the income tax Act is inapplicable to zemindars whose lands lie in permanently settled estates, and with whom a binding engagement was entered into by the State in 1793. It is not suggested that zemindars as a body are immune from all taxation, but the contention is that they cannot be made to pay taxes on profits derived from lands in permanently settled estates, because such taxes are in reality additions to the burdens on land which were fixed in 1793 and which were to remain unalterable for ever. It is urged that the Permanent Settlement-Regulation of 1793 being an earlier statute on a special subject and the Indian income tax Act of 1922 being a subsequent enactment of a general nature, the Court will not hold that the earlier and special legislation has been indirectly repealed, altered or derogated from merely by force of general words used in the subsequent legislation, without any indication of a particular intention to do so. See *Seward v. Vera Cruz* [1884] 10 A.C. 59.

7. On all these grounds the assessee has contended before us that the answer to the third question referred to us should be in the negative", the question being slightly altered in manner following, namely whether having regard to the terms of the Permanent Settlement Regulation, income derived from land in permanently settled estates subject to the exemption provided by the Legislature is liable to assessment to income tax. The assessee has suggested the slight alteration indicated above in the third question, because his argument is that whether any particular items of income were or were not taken into consideration at the time of fixing the Jama at the Permanent Settlement, income derived from land in permanently settled estates subject as stated above is not and cannot be made liable to assessment to income tax.

8. On behalf of the Crown it has been strenuously contended before us by Sir Binode Mitter that there was no such promise made to the actual proprietors of

lands which were settled at the time of the Permanent Settlement of Bengal, Behar and Orissa as alleged on behalf of the assessee; that there are no words in Regulation 1 of 1793 or in the other Regulations promulgated in the same year from-which the inference can be legitimately drawn that there is a statutory obligation not to impose on holders of such lands any other tax whatsoever, that all that was decided in 1793 was that the Jama or revenue on lands should be treated as fixed for ever and, therefore, could not be enhanced or altered; that the legislature is competent to assess the income derived from land in permanently settled estates, subject to exemptions provided for by the legislature itself, to income tax; that the words used in the charging sections of the Indian income tax Act, 1922, are very wide and that they must include income from land in permanently settled estates, subject to the said exemptions; that the rule about a subsequent enactment of a general nature not being held to affect in any manner an earlier statute on a special subject cannot be pushed too far, inasmuch as the subject-matter of taxation under the later statute is different from the subject-matter of taxation under Regulation I of 1793, i.e., the subject-matters of taxation under Regulation I of 1793 and the Indian income tax Act, 1922, are financially and economically different, and that having regard to the express specification of certain exemptions only, the present assessee's claim must fail.

9. These being the respective contentions of the parties the first question that arises is what was the nature and effect of the Permanent Settlement of lands under Regulation I of 1793 under which roughly speaking about 120,000 out of the whole area of 140,000 square miles of the Lower Provinces of Bengal were settled. Was it a settlement merely of the revenue derivable from land which was declared to be fixed and unalterable for ever, or was it, in addition to this a general absolution to holders of land under the Permanent Settlement, declaring their immunity from all further taxation in respect of profits derived from land? The answers to these questions must depend primarily and principally upon the language used in Regulation I of 1793 and in the connected Regulations; but to understand the nature of the transaction embodied in the Permanent Settlement of Bengal, Behar and Orissa it may be useful and indeed desirable to refer briefly to certain antecedent transactions which are matters of history. From the period of the Basil India Company's accession to the financial administration of Bengal, Behar and Orissa by the Dewany Grant of 1765, one settlement of land revenue only, that of 1772, was concluded by Warren Hastings for a term of five years; and this was made chiefly with farmers, to the exclusion of the hereditary landholders. With this exception the settlements of revenue, mal and sayer, were in general adjusted from year to year, in some instances with the landholders and in others with farmers, e.g., the settlements for 1777, 1778, 1779 and 1780. When the zemindars or landholders declined to enter into engagements in respect of the revenue demanded from them, the rents payable by the under tenants were collected immediately from them under what was known as khas management by the officers of Government, an allowance usually 1-10th of the

actual receipts from the lands, when held khas, being given to the dispossessed zemindar or landholder. It was a system which was described by the Court of Directors as inimical to the general prosperity of the country and a striking provision in Pitt's India Act of 1784 (24 Geo. III, C. XXV) declared that:

And whereas complaints have prevailed, that divers rajas, zemindars and other native landholders have been unjustly deprived of their lands, jurisdictions, and privileges, or that the tribute, rents, and services required to be by them, paid or performed for their possessions to the Company, are become grievous and oppressive; and whereas the principles of justice and the honour of this country require that such complaints should be forthwith enquired into and fully investigated and if founded in truth effectually redressed : Be it therefore enacted, that the Court of Directors shall forthwith take the said matters into their serious consideration, and adopt such methods for enquiring into the truth of the complaints as they shall think best adopted for that purpose; and thereupon give orders to the several Governments and Presidencies in India, for effectually redressing, in such manner as shall be consistent with justice and the laws and customs of the country, all injuries and wrongs which the rajas, zemindars and other native landholders may have sustained, and for the settling, upon principles of moderation, and justice according to the laws and constitution of India, the permanent. rules by which their tributes, rents and services shall be in future rendered and paid to the Company.

10. Thereafter enquiries and investigations followed, and in 1790-91 a complete code of regulations for the conclusion of a new-settlement of the land revenue for Bengal, Behar and Orissa was promulgated by Lord Cornwallis. The Decennial Settlement of 1790-1791 was made permanent by Regulation I of 1793.

11. The settlement embraced, roughly speaking, the tracts of the country now comprised in the divisions of Burdwan, the Presidency, Rajshahi, Dacca, Chittagong, Patna and Bhagulpur, exclusive of part of the Santal Pargannas. It also extended to Hazaribagh and Manbhum districts in the Chota Nagpur Division and to Jalpaiguri and Goalpara then forming part of the Rungpur Collectorate. Whether this arrangement was the one best adopted to obtain the greatest income with the least pressure and whether temporary instead of a permanent settlement would not have been more advantageous to all parties are questions which have given rise to much discussion; but they lie outside our province and are not germane to the present enquiry.

12. Prior to the Decennial Settlement the zemindar was in reality merely a head-receiver or collector of the Government land revenue from the under-tenants. He was never at any time the absolute proprietor of the estates held by him. There was no fixed principle governing the rate of rent, or the mode of its recovery from the under-tenants. This want of settled rules and practice led to extortion, fraud and concealment; and to remedy this unsatisfactory state of land management the Decennial Settlement was determined on and was as stated above eventually made perpetual. On the zemindars was thrown the onus of

paying the revenue they being considered persons of sub-stance. The punctuality of payment from the zemindars was enforced by the penalty of confiscation of their estates in case of delay but powers were given to the zemindars to collect from the ryots.

13. These being the circumstances leading to the Permanent Settlement of Bengal, Behar and Orissa, let us now turn to the language used in Regulation I of 1798 and examine whether there is any foundation for the contention that having regard to the bargain made at the time of the Permanent Settlement income derived from land in permanently settled areas is not assessable to income tax. It is, therefore, necessary to find out at the outset what was the precise language used by Lord Cornwallis in Regulation I of 1793 taken as a whole. The material provisions are as follows:

I. The following articles of the Proclamation relative to the limitation of the public demand upon the lands, addressed by the Governor-General-in-Council to the zemindars, independent talukdars, and other actual proprietors of land paying revenue to Government in the provinces of Bengal, Behar and Orissa, are hereby enacted into a Regulation, which is to have force and effect from the 22nd March 1793, the date of the Proclamation.

II. Article 1. In the original Regulations for the decennial settlement of the public revenues of Bengal, Behar and Orissa, passed for those provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the jama assessed, upon their lands under those regulations would be continued after the expiration of ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honorable Court of Directors for the affairs of the East India Company, and not otherwise.

III. Article II. The Marquis Cornwallis, Knight of the most noble Order of the Garter, Governor General-in-Council, now notifies to all zemindars, independent talukdars and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar and Orissa, that he has been empowered by the Honorable Court of Directors for the affairs of the East India Company to declare the jama, which has been or may be assessed upon their lands under the Regulation above mentioned, fixed for ever.

IV. Article III. The Governor-General-in-Council accordingly declares to the zemindars, independent talukdars and other actual proprietors of land with or on behalf of, whom a settlement has been concluded under the Regulations above mentioned, that at the expiration of the term of the settlement no alteration, will be made in the assessment which they have respectively engaged to pay, but that they, and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever.

V. Article IV. The lands of some zemindars, independent talukdars and other

actual proprietors of land having been held khas, or let in farm in consequences of their refusing to pay the assessment required of them under the Regulations above mentioned, the Governor-General-in-Council now notified to the zemindars, independent talukdars and other actual proprietors of land whose lands are held khas, that they shall be restored to the management of their lands upon their agreeing to the payment of the assessment which has been or may be required of them, in conformity to the Regulations above mentioned, and that no alteration shall afterwards be made in that assessment, but that they and their heirs and lawful successors shall be permitted to hold their respective estates at such assessment for ever and he declares to the zemindars, independent talukdars and other actual proprietors of land, whose lands have been let in farm, that they shall not regain possession of their lands before the expiration of the period for which they have been farmed (unless the farmers shall voluntarily consent to make over to them the remaining term of their lease, and the Governor-General-in-Council shall approve of the transfer), but that at the expiration of that period, upon their agreeing to the payment of the assessment which may be required of them, they shall be reinstated, and that no alteration, shall afterwards be made in that assessment, but that they and their, heirs lawful successors shall be allowed to hold their respective estate at such assessment for ever.

VI. Article V. In the event of the proprietary right in lands that are, or may become, the property of Government being transferred to individuals such individuals and their heirs and lawful successors shall be permitted to hold the lands at the assessment at which they may be transferred for ever.

VII. Article VI. It is well known to the zemindars, independent talookdars, and other actual proprietors of land, as well as to the inhabitants of Bengal, Behar and Orissa in general, that, from the earliest times until the present period, the public assessment upon the lands has never been fixed, but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates but that it has been the practice to deprive them of the management -of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the ryots. The Honorable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future case and happiness of the people, authorized the foregoing declarations; and the zemindars, independent talookdars, and other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

The Governor-General-in-Council trusts, that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they ""will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs or successors, by the present or any future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

14. The words "public assessment being fixed, under the certainty that they would enjoy exclusively" and "that no demand, would ever be made upon them "for an" augmentation of the assessment" were stressed by learned Counsel on behalf of the assessee and it was argued that the same principle which prevented an augmentation of the assessment ought equally to preclude the taxation of the landholders in respect of the rent or produce of their estates because, such taxation must necessarily prevent them from enjoying exclusively the fruits of their own good management and industry. No doubt, the words used by Lord Cornwallis in Regulation I of 1793, taken by themselves and apart from what has been called their historical setting, may lend a certain amount of colour to the contention put forward on behalf of the assessee; but in my view the settlement made in 1790-91 by Lord Cornwallis commonly called the " Decennial Settlement" differed in no respect from ah-ordinary settlement of land except that it was made for 10 years in place of being annual, as was then the practice. The Court of Directors approved in 1792 that, it should be made permanent and Lord Cornwallis issued a Proclamation fixing the 10 years" settlement for ever. The clear purport of the declaration, made in Regulation I of 1793 is, in my judgment, nothing more than this, viz., that the reassessment of the estates in question was for ever barred. In other words the land assessment then formed was to be considered the permanent and unalterable revenue of the territorial possessions of the East India Company in Bengal so that he discretion might be exercised by the Company"s servants in any case of introducing any alteration whatsoever. By Regulation XIX of 1793 it was stated that

by the ancient law of the country, the ruling, power is entitled to a certain proportion of the produce of every bigha of land (demandable in money or kind according to local custom), unless, he transfers his right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter.

15. As I read these words and the words used in Regulation I of 1793 along with the words use in Regulation VIII of 1793 which provided, that the assessment should be so regulated as to leave to the proprietors a provision for themselves arid families equal to about 10 percent, on the amount of their contribution to Government, the conclusion, to my mind, is irresistible that what was levied in 1793 was by virtue of a substantive and paramount title vested in the estate.

The Regulation of 1793, therefore, was so framed as to operate as an ample and complete guarantee that no resettlement of the estates referred to therein should ever take effect. But it seems to me that no guarantee was ever given that the proprietors of those estates should never, at any time, be called upon to aid in the relief of the future necessities of the Government of the land : see in this connexion the significant words used by Lord Cornwallis in the second clause of Article VII of Regulation I of 1793. The conclusion I have come to is, in my opinion, amply supported by the terms of : Regulation XIX of 1793 which he noted was passed on the same date, namely, the 1st May 1793, and which laid down the rules by which rent-free tenures should be held valid. In the case of a valid rent-free tenure Regulation XIX provides that no revenue at all should be demanded, just as Regulation I of 1793 provided that in the case of a permanently settled estate no additional revenue should at any time be assessed. Both these Regulations treated the same subject-matter, viz., revenue; and they treated in the same way namely by barring future assessment. Would it be or could it be contended that the proprietors or valid rent-free tenures held under Regulation XIX of 1793 were and are absolutely exempted from liability to contribute to the general taxation of the country. The answer to that question must, in my judgment, be in the negative in the clearest manner possible. When Lord Cornwallis spoke of the "public demand" being fixed and made permanent and being limited for ever, what is it that he meant? Lord Cornwallis held the view as is clear from the Regulations, that the true wealth of a Government lay in the growing wealth of its people and the fiscal system,, which must encourage the accumulation and enjoyment of capital in private hands, must in the long run be the one most profitable to the State. In this connexion I desire to adopt if, I may, as part of my judgment, a few words from the Despatch of the Secretary of State for India in Council dated the 12th May 1870, being the same Despatch from which my brother Page quoted a few extracts in his judgment in the case of *Prokhat Chandra Barua Vs. Emperor*, . The Duke of Argyll then observed as follows:

The great object and purpose of that settlement (the Permanent Settlement of Bengal, as clearly defined and described in Article VI, must govern our interpretation of its terms. That object, as this Article explains at length, was to be an end for ever to the practice of all former Governments of altering and raising the land taxes from time to time, so that the landholder was never sure for any definite period what proportion of the total produce of the soil might be exacted by the State. This uncertainty was to be set at rest for ever. The "public demand" was to be fixed and permanent.

16. Such was the promise and its scoria and object were clearly explained in the concluding exhortation addressed to the landholders that:

they exert themselves in the cultivation of their lands under the certainty that they would enjoy exclusively the fruits of their own good management and that no demand would ever be made upon them or that heirs and successor by the

present or any future Government for an augmentation of tip public assessment in consequence of the improvement of their respective estates.

17. These last words quoted by the Dulia of Argyll, I repeat, illustrate the whole force of the argument there is to be no increase of the "public demand" levied upon the zemindars in consequence of the improvement of their estates. The implication, further, is (although the Legislature is all powerful) that there cannot be without being guilty of a singular and signal breach of faith a "special tax" on zemindars with whom the Permanent Settlement was concluded, which would operate as an increase of the "public demand" levied upon zemindars in consequence" of the improvement of their estates; but, in my judgment, there was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a "general "tax upon incomes of all persons irrespective of the fact whether they are zemindars with whom "the Permanent Settlement was conclude or not. A "general" tax is no doubt a "public demand," but it is one which is levied upon a wholly different principle and in respect of a wholly different kind of liability; such a "public demand" is no doubt a demand made upon zemindars with whom the Permanent Settlement was concluded, but it is made upon them in company with other classes of the community and with no exclusive reference to the source from which their incomes are derived. On these grounds I am of opinion that the first contention urged before us on behalf of the assesses must fail, and it is accordingly-negated.

18. But assume that I am wrong in the conclusion to which I have come; it is then necessary to examine whether the words used in the charging sections of the Indian Income Tax Act, 1923, subject to the exemptions provided for by the Legislature itself, are sufficiently wide in support of the contention that income from the profits of land in permanently settled estates, subject to the said exemptions, is liable to be assessed to income tax. To start with, it is, in my opinion, unreasonable to hold that the Legislature in enacting the Indian income tax Act 1922 had not had its attention directed to the terms of Regulation I, 1793. The Permanent Settlement of Bengal, Behar and Orissa has been the subject of acute controversy ever since the days of Lord Dalhousie and the question of the immunity of zemindars in permanently settled area from taxation has been canvassed so often and at such length that to suggest that the Legislature, in enacting the Indian income tax Act, 1922, was unmindful of the Permanent Settlement, is to state a proposition which carries its own refutation. The position, therefore, is that the Legislature, with the full knowledge of the existence of the Permanent Settlement and with the further knowledge, with which it must be credited, that the precise point now raised had been raised in the past, had deliberately chosen, subject to the exemption of "agricultural income" (the other exemptions need not be considered in this case) to say that the Indian income tax Act 1922 shall apply to all income, profits or gain as described or comprised in Section 6 from whatever source derived, accruing or arising or received in British India or deemed under the provisions of this Act to

accrue, or to arise, or to be received in British India. In Section 6 it is provided that:

Save as otherwise provided by this Act the following heads of income, profits and gains shall be chargeable to income tax in the manner hereinafter appearing, viz., (i) Salaries, (ii) Interest on Securities, (iii) Property, (iv) Business, (v) Professional earnings, (vi) Other sources.

19. Sections 7, 8, 9, 10 and 11 define the heads of income referred to above other than "Other sources." Section 12 defines the expression "Other sources," and it runs as follows:

The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

20. As I read these provisions, it is abundantly clear that the Legislature, notwithstanding the solemn covenant, which, it is alleged, Lord Cornwallis entered into with zemindars in permanently settled areas, has deliberately included income from profits of land wherever situate, be the area permanently settled or non-permanently settled as being assessable to income tax. It may be that the Legislature has not said in the direct manner suggested by the assessee in the course of the argument that to the extent to which income from profits of land in permanently settled areas is assessable to income tax, the Permanent Settlement is repealed or abrogated or derogated from ; but on looking at the matter purely as a question of construction of the charging sections in the Indian income tax Act 1922 taking along with the exemptions, I am of opinion that the Legislature has said in the most direct manner possible and in clear and unambiguous language that the profits of land in India (by which expression I must include land in permanently settled areas) are, subject to statutory exemptions, assessable to income tax. But even if it be held that the Legislature has not directly said so, there is no escape from the conclusion that, by necessary implication, the Legislature has said that.

21. But it is said that the repeal or abrogation of the Permanent Settlement should have been in so many words and that the rule is that in the absence of such words the Court will not hold that the earlier legislation on a special subject has been in any way affected by the subsequent enactment of a general nature. Now, it is particularly important when one examines the nature of the contention herein put forward to keep in mind the subject-matters of the legislation in 1793; and in 1922. As I have already said, what Regulation I. of 1793 did was to fix the Jumma which had been assessed on the lands of zemindars and other actual proprietors for ever. The word "taxation" was not used or referred to in any way. The Indian income tax Act of 1922 has in no way increased the Jumma which was fixed in 1793. As has been said, the financial policy of 1793 was not and could not have been the same as the financial policy of 1922, and in these circumstances it is difficult to see how the rule referred to above can possibly

apply in the present case.

22. The general rule, no doubt, is that where two Acts are inconsistent or repugnant, the latest expression of the will of the Legislature must prevail, provided the Court is satisfied that the repeal of the prior enactment must flow from necessary implication. From this rule, it follows that if one statute enacts something in general terms, and afterwards another statute is passed on the same subject, the subsequent statute will usually be considered as repealing by implication the former statute. In certain cases again "special" Acts have been held impliedly to repeal a prior general Act. But in each case it depends on the particular terms of the statute in question. There is again the further rule that prior statutes are not to be held to be repealed by implication by subsequent statute if the two are repugnant in cases where the prior enactment is special and the subsequent enactment is general. In support of this last-mentioned proposition learned Counsel on behalf of the assessee has Quoted the well-known case of *Seward v. Vera Cruz* [1884] 10 A.C. 59, where Lord Selborne observed as follows:

Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words without any indication of a particular intention to do so.

23. There are numerous authorities laying down the same proposition in similar words and the guiding rule is that each enactment must be construed according to its own subject matter and its own terms. There is, however, a further proposition which has been recognized in several cases that the rule referred to above namely the rule in *Seward's* case [1884] 10 A.C. 59 must not be passed too far and that a general statute may repeal a particular statute if the subject matter of the two legislations is one and the same. The test also is : Are the provisions of a later Act so inconsistent with or repugnant to the provisions of an earlier Act that the two cannot stand together? In which cases, the maxim *leges posteriores priores contrarias abrogant* must apply. But where the Legislature passes a later Act without reference to an earlier Act and that earlier Act is one which has been in force for a long time and is therefore well known it seems reasonable and proper that we should try to construe the two Acts consistently if it is possible to do so. In this case, as I have already said, the subject matters of the two legislations are different; the later statute is on a subject which is financially and economically different from that dealt with in the statute of 1793; one deals with revenue assessed on lands, the other is a tax on profits; therefore in terms there is no contradiction see in this connexion *Nova Scotia Steel and Coal Co. v. Minister of Finance & Customs* [1922] A.C. 186. It is not therefore right and reasonable to allow the two enactments to stand side by side as not being inconsistent?

24. In my opinion it is not only desirable but necessary to see how the legislature

has interpreted or observed the fixity of public demand referred to or promised in 1793. I am not unmindful of the contentions which have been advanced by learned Counsel on behalf of the assessee in this connexion, namely, that in most of the previous statutes such as the Cess Acts referred to in the judgment of Mr. Justice Mullick in the case of Maharajadhiraj of Darbhanga Vs. Commissioner of Income Tax, there was a direct reference to land in permanently settled areas but I have in my mind are the present moment the various income tax Acts imposed in India since 1860. The income tax Act of 1860, which was for a period of five years only and which imposed a 3 per cent, tax made no distinction between agricultural income and non-agricultural income and it included income derived from land in India wherever situate. Such income was taxed directly. The Act of 1860, as I have said, ceased to operate in 1865. In 1867 it was again brought into operation and this time the Act excluded agricultural income. In 1869 what was known as the Certificate Tax Act was converted into a general income tax Act and it included agricultural income. Thereafter it appears that for some time there was no tax on incomes. In 1872 an Act was passed for imposing duties on incomes arising from offices, properties, professions and trades, to be in force for one year only. Section 21 of this Act is important. By that section it was provided that owners of lands or houses occupying the same should be chargeable in respect of the annual value thereof at 9-10 ths of the full rent at which such lands or houses were worth to be let for the year. It was further provided that the local Governments may with the sanction of the Governor General in Council prescribe for the whole or any part of the territories, subject to such local Government special rules for the assessment of income derived from land at an amount bearing a fixed proportion to the revenue assessed thereon. Then came in 1886 the income tax Act of that year and taxes on income were made permanent. The Act of 1886 (the legislature bearing no doubt in mind the fact that land from which agricultural income was derived was already subject to the payment of cesses under Act 10 of 1871) excluded agricultural income. It was described as an Act for imposing a tax on income derived from sources other than agriculture. It dealt with the question of land by way of exemption in Section 5, but subject to the exemptions prescribed in that Act, income from land wherever situate was assessed to income tax. Then followed the Act of 1918 and this with a slight alteration was followed by the present Act of 1922.

25. It is argued that the main question now before us is whether having regard to the language of the Act of 1922 there is or is not an exemption of all income derived from permanently settled estates. I agree that that is the question to be solved; but in arriving at a solution of the question it is in my opinion permissible to us to consider how the legislature has hitherto regard the validity or otherwise to the contention put forward by the assessee. The point has been so exhaustively dealt with by Mr. Justice Rankin and by Mr. Justice Mullick in the two cases, one in this Court and the other in the Patna High Court and their conclusions have been laid down so clearly that I think it will be a work of

supererogation if I elaborate it further. I will content myself by quoting one passage only from the judgment of "Mr. Justice Rankin with which I respectfully agree. His Lordship observed:

An express exemption which is large enough to cover all permanently settled estates and which covers them to the full extent of agricultural purposes if not somewhat further cannot readily be taken as applying only to estates not permanently settled or as an addition to an; implied exemption of all permanently states estates for all purposes whatever.

26. The matter really comes back to this, viz., has the legislature in enacting the Indian income tax Act 1922, sufficiently expressed itself in declaring that income from land (by which expression I include revenue-free as well as revenue-paying lands is assessable to income tax. In my view the legislature has so expressed itself and it has expressed itself in a manner as to leave no room for doubt. Our attention has been drawn to the case of the Chief Commissioner of income tax of Madras v. The Zamindar of Singamputti AIR 1922 Mad. 325 where their Lordships had to consider the effect of the income tax Act, 1918, upon the Madras Regulation 25 of 1802 which declared:

that no alteration would be made in the assessment which the proprietors have engaged to pay but they and their heirs and lawful successors would be allowed to hold their estates ax such assessment for ever.

27. The Madras High Court held that there was no express modification or repeal of the exemption existing under the Madras Regulations in the Indian Income Tax Act of 1918 (the income tax Act of 1922 is substantially similar in terms to that of 1918 for the purposes of the present argument). It was further held that it was impossible to treat as a legal and effective abrogation of the exemption by the words of Section 3 of the Income Tax Act 1918. Their Lordships referred to the case of the Associated Newspapers Limited v. City of London Corporation [1916] 2 A.C. 429. What happened in that case was this. By Statute VII, Geo. III, Ch. 37 certain lands in the City of London reclaimed from the river Thames were declared to vest in the owners free from all taxes and assessments whatsoever. In 1848, i.e., about 80 years later, the City of London Sewers Act was passed, which imposed a new rate upon every occupier of a house or building within or partly within the City of London, whether such person shall be now liable in respect of such house or building to be assessed to the relief of the poor or be not liable in respect thereof by reason of such house or building being situate in any precinct or extra parochial place or otherwise, The House of Lords held that these words did not take away the express exemption granted by the earlier Statute.

28. This case has been discussed in the case of Pole-Carew v. Craddock [1920] 3 K.B. 109. There the facts were as follows. A ferry was established by and maintained under an Act of 1790, which was to be deemed to be a public Act and which contained a provision that the then proprietors or their respective heirs or

assigns shall not be rated or assessed for or towards the payment of any tax, rate or assessment whatsoever, parliamentary or parochial, for or in respect of the said ferry. The question arose whether the exemption granted by the Statute extended to parliamentary taxes in existence at the date of the Act and whether it included income tax which was first imposed subsequently to the passing of the Act of 1790. It was held that the exemption extended to parliamentary taxes whether in existence at the date of the Act or not and therefore it included income tax. Lord Sterndale in his judgment observed as follows:

I think it is laid down quite clearly that where there is an exemption from all rates, taxes and assessments, or all rates, taxes and assessments, whatsoever or whatever, if there is any difference, that exemption has to be looked at in connexion with the subject matter of the Act in which it is contained, and also in connexion with the context in which it occurs. It may be that when so looked at it may become necessary to limit the very wide terms in which the exemption is framed. An instance of that is to be found in the cases which have been decided upon the Act of Parliament which has been often under discussion, the Act of 7, Geo. 3, C. 37, which gave exemption to certain persons who reclaimed land from the river Thames for the purpose of the building of Blackfriars Bridge. The words of that exemption were "free from all taxes and assessment." It has been quite clearly laid down with regard to that exemption that it applies only to local taxation and in a great measure upon this ground, that the Act was in the nature of what has been sometimes called a bargain. It came into existence in these circumstances. The Corporation of London, who promoted the Bill, were anxious to get this land reclaimed, and they offered the persons who would do it, in the Act of Parliament. Looking at those circumstances and also at the context in which the words occurred, it was held that the Corporation could only have been offering an exemption from taxes which they had the power to impose, and that inasmuch as they had no power to impose what is called Imperial taxation or general taxation the exemption could not refer to such taxation. That is an instance on the one side.

To take an instance on the other side : in *Duke of Argyll v. Commissioners of Inland Revenue* [1913] 100 L.T. 893, where the exemption was from all taxes, it was held that that included all taxes of all descriptions, and from the subject matter it is difficult to see how the decision could have been otherwise. We start therefore with this : that in construing the exemption you have to look to a certain extent to the subject matter of the Act in which it is contained and to the context in which it occurs. But of course there is in this Act a very important difference in the language, and while you have to look at the circumstances and the context you must not omit to look also at the language. The language of the Act of 1790 is not "all rates, taxes and assessments" simply, but "any tax, rate of assessment whatsoever, parliamentary or parochial, for or in respect of the said ferry, etc." * * * It seems to me it is quite clear that the words "payment of any tax, rate or assessment whatsoever, parliamentary or parochial" mean what they say, that the exemption is not to be confined to parochial taxation or parochial

rating but extends to-general parliamentary taxation such as is defined in the cases t'o which I have referred, and such general parliamentary taxation includes the income tax.

29. His Lordship then referred to the case of the Associated Newspapers Ltd. v. The City of London Corporation [1916] 2 A.C. 429 and stated that as he understood the decision in that case, it did away entirely with the meaning which had been attached to the earlier cases, namely, the meaning that unless altered by express words, an exemption from taxation related only to present and not to future taxation. In the view I have taken of the words used in the Permanent Settlement Regulations of 1793, the two cases last cited have really no bearing. The language used in 1793 is very different from the language used in the old English Statutes referred to in the cases before the House of Lords and before the King's Bench Division. I desire to repeat again that before effect is given to contentions founded on the cases just referred to, it is very important that the exemption claimed should be looked at in connexion with the subject matter of the Act in which it is contained and also in connexion with the context in which it occurred. Indeed this has been emphasized by Lord Sterndale, and if the matter is looked at from this point of view, the present case would rather seem to be within the line of cases of which the case of Nova Scotia Steel & Coal Co. Ltd. v. Minister of Finance and Customs [1922] A.C. 176 is an example.

30. The language used in Regulation I of 1793 may not inaptly be compared with the language used in Section 4 of 23, Geo. II, C. 16, which ran as follows:

And it is hereby enacted by the authority aforesaid that all and every contributor and contributors upon this Act duly paying the consideration or purchase money at the rate aforesaid at or before the respective days or times in this Act before limited in that behalf for such annuity or annuities as aforesaid or such as he, she or they may appoint his, her or their respective executors, administrators, successors or assigns, shall have, received and enjoyed and be entitled by virtue of this Act to have received and enjoyed their respective annuity and annuities so to be purchased out of the moneys by this Act appropriated or appointed for payment thereof as aforesaid and shall have good and sure estates and interests therein for ever, subject only to the proviso or condition of redemption in this Act afterwards contained concerning the same; and that all the said annuities to be purchased on this Act and the principal moneys paid for the same and every of them during the continuance thereof shall be free from all taxes, charges and impositions whatsoever.

31. Now, the first English income tax Act was Mr. Pitt's Act in 1793, 5 years after Lord Cornwallis's proclamation, (incidentally it may be remarked that in 1793 income tax was not thought of anywhere in the British Empire not merely in India but not even in the British Islands), but nobody has ever contended that notwithstanding the provisions of the Loan Act referred to above, by which the English national debt was contracted, that in a general tax upon income the exemption referred to above was at all applicable. The case of the assessee is

nowhere near so strong. In one sense every form of taxation is income from land of whatever character it is or may be; but if it is indirect taxation of land, it is certainly not within the pledge which was given in 1793, assuming that on the words used the inference may be legitimately drawn that a pledge such as the assessee argues was given.

32. On all these grounds I am of opinion that income from land, subject to the exemptions in the income tax Act is liable to be assessed to income tax and that the answer to the third question subject to the said exemption is in the affirmative. The answer to the second question subject as stated above is also in the affirmative.

Buckland, J.

33. I concur.

Sunrawardy, J.

34. I have had the advantage of reading the judgment to be just delivered by my learned brother Mukerji, J., and I agree with him in his reasonings and conclusions.

Panton, J.

35. I agree in the judgment delivered by my learned brother Mr. Justice Ghose.

Mukerji, J.

36. The two questions referred to the Full Bench are:

II. Whether income derived from such of the above sources as were not taken into consideration at the time of fixing the Jama at the time of the Permanent Settlement is assessable for income tax purposes.

III. Whether having regard to the terms of the Permanent Settlement Regulation income derived from the above sources in permanently settled estates, is liable to assessment to income tax.

37. The "above sources" referred to in these questions are : (i) Jalkar or rents received from fisheries, (ii) Ground-rent from land used for potteries, (iii) Ground-rent from land used as brickfields, (iv) Fees received from the tying up of boats against the assessee's land, (v) Fees received from land used for storing purchases of crops (paiali), (vi) Fees received from cart stands, (vii) Punyaha nazar or nazar paid by tenants of agricultural holdings at the beginning of the zemindari year, (viii) Nazar for petitions presented to the zamindar, dealing with questions of succession, settlement and partition, (ix) Ground-rent for permanent shops at hats and bazars and (x) Stall-fees paid by temporary (daily) sellers at hats and bazars.

38. To answer these questions it is necessary to appreciate the true nature and effect of the settlement that was meant by the Permanent Settlement. This, no

doubt, has to be gathered primarily from the Regulation dealing with it, viz., Regulation I of 1793, but there are expressions used in that Regulation, to realize the exact import and significance of which reference must be made to some of the other Regulations that were passed at the same time and a brief survey also of the history of event³ that led up to them is more than necessary; e.g., such expressions as the following : "the limitation of public demand upon the land" (Section 1);

the jama assessed upon their lands under the Regulations would be continued after the expiration of ten years and remain unalterable for ever (Section 2, Article 1);

to declare the jama which has been or may be assessed upon their lands under the Regulations abovementioned, fixed for ever (Section 3, Article 2);

at the expiration of the term of the Settlement, no alteration will be made in the assessment, which they have respectively engaged to pay but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever (Section 4, Article 3);

they and their heirs and lawful successors shall be allowed to hold their respective estates at such assessment for ever" (Section 5, Article 4.)

Such individuals and their and lawful successors shall be permitted to hold the lands at the assessment at which they may be transferred for ever (Section 6, Article 5);

from the earliest times the public assessment upon the lands has never been fixed and the zemindars, independent talukdars or other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country. (Section 7, Article 9);

for the limitation of the public demand upon the lands the not income and consequently the value (independent of any increase of rent obtainable by improvement) of any landed property...will always be ascertainable by a comparison of the amount of the fixed jama assessed upon it (Section 10, Article 9)

39. Up to 1793 no general code of law had been enacted for India ; rules and orders were passed from time to time, but no systematic code was framed. Regulation I of 1793 was passed on the 1st May 1793 and on the same day 47 other Regulations were passed. The Regulation consisted of the proclamation of Lord Cornwallis of the 22nd March 1793 and was made law from that date. The proclamation was addressed to the

zemindars, independent talookdars and other actual proprietors of land paying

revenue to Government in the provinces of Bengal, Behar and Orissa.

40. The opening words of Regulations XIX and XXXVII of 1793 and the first paragraph of Regulation II of 1793 explain the basis of the Permanent Settlement:

By the ancient law (Custom perhaps would have been a better word) of the country the ruling power is entitled to a certain proportion of the produce of every bigha of land (demand-able in money or kind according to local custom). Unless it transfers its right thereto-for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable-to the public whilst he continues to discharge the latter

41. Regulation XIX of 1793) Section 1; see also-preamble to Regulation XXXVII of 1793 and

s being the two fundamental measures essential to the attainment of it the soil has been declared to be vested in the landholder; and the revenue payable to Government from each estate has been fixed for ever

42. Regulation II of 1793, Section 1. What is this "public demand" or "revenue" that was intended to be limited or fixed for ever, and what was the "jama" or "assessment" that was so fixed?

43. When by virtue of the grant of the Diwani in 1765 the task of administering the land and the revenue devolved upon the Company's servants they found it too difficult for them to perform They had been previously occupied solely in pursuit of trade and had very little opportunities of acquiring the requisite knowledge and experience, and accordingly they were placed in an extraordinary position. They followed for some time with little or no change the system of administration which had obtained before. It would be tedious to set out the changes that were introduced as regards the machinery of collection or the supervision that was to be exercised in that behalf, between then and the time of the the Permanent Settlement, and this need not be done for our present purposes. It is noteworthy that in 1769 a letter of instruction was issued to the Supervisors who were just then appointed to superintend the Indian Officers employed throughout the country in collecting the revenue and administering justice, - a memorable document setting forth with remarkable perspicuity and scrupulous care the duties that they had to discharge, chief amongst which was to hold some elaborate enquiries. The two main objects of these enquiries so far as land-revenue was concerned, were to fix the amount of what the zemindar received from the ryot as his income or emolument, and to secure to the ryot, after he had supplied the legal dues of the Government the enjoyment of the remainder. The task was too much for those by whom it was to be performed and the enquiries were looked upon with suspicion by those for whose benefit they were meant. Accordingly the directions were countermanded and minute

scrutinies were prohibited. The condition of the country was as unhappy as ever, and notwithstanding the Great Famine of 1770 and the consequent mortality and the decrease of cultivation, the standard of collection of revenue was maintained; may it rather improved in consequence of violence and oppression and imposition of assessment on existing ryots to cover the loss that had been sustained by reason of the death or absconsion of others. In 1771 the Court of Directors sent out instructions to stand forth as the Dewan and by the Agency of the Company's servants to take upon themselves the entire care and management of the revenues. From 1765 to 1771, with the exception of the 24 Pergannas, Burdwan, Midnapore and Chittagong, the other districts were left under Indian management. Behar had been settled for a term of years, but the settlement for the revenue, mal and sayer in Bengal and Orissa had up to this time been from year to year. These settlements were made in some instances with landholders; in others with farmers; or when the former declined to engage for the revenue and no adequate proposal was made by the latter the rents payable by the under tenants used to be collected by the officers of Government under khas management. This fluctuating system was impolitic and fraught with evil. The old assessment at which revenue was collected was found to be too much for the country to bear and accordingly in 1772 measures were adopted with a view to make a quinquennial settlement of Bengal and Orissa. This settlement was made for the most part with farmers, as it was thought that the real value of the country could be better ascertained by letting it out in farm for a term of years to the highest bidder. Speculators, having no idea of the real capabilities of the country and incited by hopes of making the same large profits as could be reaped under the old system which was not particularly keen about punishing extortion or oppression, intervened and readily-agreed for sums which eventually they were unable to pay. Experience thus showed the quinquennial settlement to be a mistake. In 1776 the Governor-General in Council submitted to the Court of Directors for approval a scheme for making up settlements with the zemindars but it was not approved for certain "weighty reasons." In 1777 and thereafter annual settlements were again made under the orders of the Court of Directors, preference being now given to zemindars, whenever they were willing to a reasonable assessment.

44. In 1784 Statute 24, Geo. III, C. 25, was passed by the British Parliament, Section 39 of which required to give orders

for settling and establishing upon principles of moderation and justice, according to the laws and constitution of India the permanent rules by which the tributes, rents and services of the rajas, zemindars, polygars, talookdars and other native holders should be in future rendered and paid to the United Company.

45. In obedience to those requirements orders were transmitted two years later to the Government of India for making inquiry into the condition of the landholders and other inhabitants residing under their authority and for the establishment of permanent rules for the settlement and collection of the

revenue and administration of justice founded on the ancient laws and usages of the country, so as

to fix a permanent revenue on a review of the collections of former years, and that the settlement should in every practicable instance, be made with the zemindars, rules being at the same time made for maintaining the rights of other classes according to the usages of the country,

46. and they sent orders for a decennial settlement in the first instance with a view to be made permanent on their approval. On receipt of these orders most careful local enquiries, were again made, in order to obtain all possible and available information as to the past and present state of the country. The nature, extent and scope of these enquiries and the nature of the settlement that was made by the Decennial Settlement may best be gathered from what Mr. Harrington says about them in his Analysis of the Bengal Regulations, Vol. II, pp. 174 to 177. He says thus:

On receipt of these instructions the most particular local enquiries were set on foot, to obtain, all possible information of the former and present stats of the several districts; the condition of the landholders and tenants of every description; their rights under the Moghul Government before its decline; the laws and usages which had since prevailed in settling the rents payable by the ryots, dependent talukdars, and other under-tenants, to the zamindars, independent talookdars, and other superior landholders; what new impositions and exactions had been introduced under the Company's administration; what rules were required for securing the inferior occupants and immediate cultivators of the soil against oppression and extortion; and generally, what measures should be adopted to remedy existing defects and abuses in the adjustment and collection of the land rents; as well as in the gunge, haut, bazar, and other duties levied under the general denomination of Bayer. Detailed accounts of the assessment, and actual collections, in past years were also procured; with every other document which appeared material for determining a standard revenue for future years, such as the orders of the Court of Directors prescribed, and the landholders might be able to pay without distressing their tenants; and the voluminous reports of the Collectors, Board of Revenue, and other public officers, upon the inquiries made by them, were abridged and brought forward in a collective view, by a Member of the Government eminently distinguished for his talents, knowledge and experience; whose minute on the settlement of Bengal, recorded the 18th June 1789, was subsequently noticed by the Court of Directors as a comprehensive and masterly dissertation, which not only exhibited and methodized the mast material parts of the reports from the Collectors of the Bengal province, but afforded new and important communications from himself; supplying, in various respects, what they wanted; delineating with great clearness the past financial system and history of Bengal; examining with candour those points in it which have been subjects of controversy; investigating with patient judgment the best system for the country; the difficulties which may

attend it; the means of obviating them; and in fine, proposing from the whole a set of regulations for carrying into execution the orders of the Court respecting the decennial settlement so as to secure justice both to the Government and to the subject; and to prevent, in future, those abuses, which either exist or may be apprehended, in the detail of the collection. On consideration of this document, with the papers which accompanied it, and a further minute from the same Member of Government, on the settlement of Behar recorded 18th September 1789, the Governor-General in Council passed the rules, afterwards incorporated with amendments...in Regulation VIII of 1793.... The primary rule directs that a new settlement of the land revenue shall be concluded or a period of ten years to commence with the Fussily, Villaity, and Bengal year 1197, for Behar, Orissa, and Bengal respectively." And by the succeeding rule it is at the same time, notified to the proprietors of land, with whom the settlement may be concluded, that the assessment fixed by the decennial settlement will be continued after the expiration of the ten years and remain unalterable for ever; provided such continuance shall-meet with the approbation of the Honourable Court of Directors, but not otherwise.

47. Then followed that memorable controversy between Lord Cornwallis and the Members of his Government in which he put forward cogent arguments for fixing "the Government demand" as the first measure necessary to be adopted to afford an opportunity to the landholder "of increasing his profits by the improvement of his lands." He was of opinion that the potta regulations and a general reservation of the right of the Government to interfere for the protection of the ryots and the prohibition of new abwabs and such other small remedial measures would sufficiently protect the ryots and that the views of his opponents did not warrant the postponement of a measure which he deemed best calculated to promote the substantial interest of the Company and of the British nation as well as the happiness and prosperity of the natives of India.

48. The Court of Directors, on examining the materials placed before them were strongly in favour of a Permanent Settlement and signified their approval of Decennial Settlement being made permanent. They wrote back to that effect, expressing their intention in these words:

It being our intention in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right, as Sovereigns, of being the guardians and protectors of every class of persons living under Government etc.

49. The Decennial Settlement was there upon made permanent by the proclamation dated the 22nd March 1793, and subsequently enacted into Regulation I of 1793, as already stated. As regards the effect of the Permanent Settlement, in so far as its broad features are concerned as affecting the relations between the State, the zamindar and the ryot, two radically distinct views are sometimes taken. The advocates of one view say that before the Permanent Settlement there was a declaration by Government that it was necessary to secure the ryots in the perpetual and undisturbed possession of

their lands, that of the three parties concerned, viz., the State, the zamindars and the ryot, the ryot's was the dominant right, that is to say he was proprietor and the demand upon him was that of the State for a gross amount limited by custom and this was specifically limited by the Regulation of 1793, out of which the State remunerated the zamindar; that the State was not the proprietor of the soil, its rights were limited by custom to the money value of a specific proportion of the produce of the land, and the authors of the Permanent Settlement limited it further by enactments which, if carried out according to the intention of the legislature, would have given the same immunity to the ryot as is enjoyed by the zamindars, against enhancement of rent from a rise of prices; and that the so-called proprietary right of the zamindars was a very limited one, and it was so greatly restricted that it was not dominium but servitue - a rent charge or strictly speaking a revenue charge upon property which belonged to another and which the zamindars had no power of turning to any use without buying it from the other who was the proprietor. The advocates of the other view maintain that there was no well-defined customary law, no known or settled rates of rent in existence in 1793; that the legislation of 1793 left the right of the cultivator of the soil as indefinite and undefined as they were before; that the Government deliberately refrained from undertaking the difficult task of defining these rights and contented themselves with reserving a general power of interference in case of oppression; that the property in the soil which had never before been formally declared to be vested in the landholder was declared to be vested in them; and that the revenue payable to Government from each estate was fixed for ever.

50. The rights and duties of the zemindars in so far as they were declared by the Permanent Regulations may be matters of doubt. Whether when the English Settlement was originally established in India they were owners of the soil subject only to a tribute to Government as was the opinion of the Lord Chancellor in *Freeman v. Freeman* [1828] 1 M.I.A. 305 or whether they had only certain restricted proprietary rights in the revenue which may fairly be considered rights in the produces of the soil and so in the soil itself, may be a matter of controversy. Whether by the mere description and enumeration of the classes to be settled with and by the recital of such settlement (e.g. the Regulations of the 23rd November 1792, Reg. II of 1793, and Reg. VIII of 1793) it was intended to take away the rights of the actual cultivators and possessors of the soil and vest them in the zemindars may be a debatable question, though it seems to be now settled that a settlement with a person for the purposes of revenue does not establish any proprietary right in the land in favour of the person settled with, if he did not already possess that right, but is made with Government only as to their claim to their revenue *Juggut Mohini Dassee v. Mt. Sakheemoney Dassee* [1871] 14 M.I.A. 289. Whether the rights of the cultivators of the soil were left as uncertain or unsettled as before, or whether they were sufficiently protected in accordance with the original intention of the Court of Directors or of Lord Cornwallis himself are matters on which there may be two opinions. Opinion is also divided on the question of the justice, expediency or equities of the

measure. The fact, however, that the Government limited its own demand upon the zamindar in so far as that demand related to the income that was derivable from the lands is a matter which can scarcely be doubted or disputed. The true view of this fixity of assessment is this : In the time of the Moghul and Mahomedan Governments the share of the State was uncertain, and so was the share of the zamindar ; the Permanent Settlement fixed and made certain the former, but left the latter as uncertain as ever. The zemindars thus came to know to a penny what they had to pay to the State at all future times. The second part of Section VII, Article VI of Reg. I of 1793, runs in these words:

The Governor-General in Council trusts that the proprietors of lands sensible of the benefits conferred upon them by the public assessment being fixed for ever will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry and that no demand will ever be made upon them or their heirs or successors by the present or any future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

51. No words can be clearer; no promise more definite. If language has any meaning, the declaration means that whatever may be the income or profits of the zamindar by reason of his having improved his estate the same will not be further touched or taxed.

52. But was the public assessment not to be augmented in any way in future? The answer must be sought for in the declaration itself and the declaration answers it in this way : It could be augmented in any way, so long as the method adopted did not mean to take away a portion of this income or profits qua such income or profits. Indeed there are the clearest possible indications within the Regulations themselves to the effect that nothing was further from the minds of the authors of the Permanent Settlement than to forgo for ever the right to impose taxes or cesses for ever. It is necessary therefore to examine the sources from which this augmentation was contemplated.

53. The right of establishing Sayer or internal duties was expressly reserved by Section VIII, Art VII, Clause (2) of Reg. I of 1793 and it was expressly stated that one of the consequences which the Government expected from retaining the privilege in its own hands was a future opportunity of augmenting the revenue in that way.

54. The Regulations upon this subject were re-enacted in Regulation XXVII of 1793. This Regulation purported to re-enact with alterations and modifications the rules passed by the Governor-General in Council on the 11th June and on subsequent dates, for the resumption and abolition of the Sayer, or internal duties and taxes throughout Bengal, Behar and Orissa, and for adjusting and paying the deductions and compensations directed to be granted to the proprietors and farmers of estates paying revenue to Government and the holders of property exempt from the payment of revenue to Government on

account of the duties and taxes abolished. The Rules for the resumption of the Sayer passed on the 11th June 1790 were re-enacted in Section 2 of this Regulation. By these Rules the right of the zemindars to collect the Sayer was taken away, compensation being given for the loss thus caused to them, and the revenue derived from these collections was consequently excluded in assessing the jama at the time of the Decennial and Permanent Settlements. The Rules for the abolition of the Sayer passed on the 28th July 1790 were enacted in Section 4 of this Regulation. This section enacted:

The privilege of imposing and collecting internal duties has been resumed from the land-holders, and taken exclusively into the hands of Government for the purpose of reforming abuses in these collections, and thereby affording benefit to the commerce of the country, as well as general ease to its inhabitants. For the more effectual attainment of these objects the Governor-General in Council has now resolved that all duties, taxes and other collections coming under the denomination of Sayer (with the exception of the Government and Calcutta customs, the duties levied on pilgrims at Gaya and other places of pilgrimage, the abkari or tax on spirituous liquors which is to be collected agreeably to former orders, the collections made in the gunges, bazirs and hauts situated within the limits of Calcutta, and such collections as are confirmed to the landholders, and the holders of gunges, bazars and hauts, by the published resolutions of the 11th June 1790, namely rent paid for the use of land or for houses, shops or other buildings erected thereon, or for orchards, pasture ground or fisheries, sometimes included in the Sayer under the denomination of phulkar, bunkar and jalkar) whether made by Europeans, or natives either on their own or the public account, in the gunges, bazars hauts or other places within the provinces, be forthwith abolished, and that the compensation to be made in consequence be regulated by as average of the net produce stated in the past accounts, for as many years as they can be procured not exceeding ten (excluding therefrom such collections as have been prohibited by Government) and be adjusted, with regard to the collections in malguzarri and lakheraj lands respectively, according to the principles already laid down in the resolution of the 11th June 1790.

55. It was thus made clear that rent paid for the use of land, or for houses, shops or other buildings erected thereon or for orchards, pasture ground or fisheries, sometimes, included in the Sayer, under the denomination of phulkar, bunkur or jalkar was not Sayer within the meaning of the Regulations.

56. That the right to a taxation generally was not given up is amply clear upon other materials, but it is equally clear that the income or profits derivable from the lauds was not to be taxed as such. Lord Cornwallis' minute of the 3rd February 1790 which was sent in circulation on the 7th and recorded on the 12th also shows beyond the shadow of a doubt that the Government of 1789-1793 contemplated and expected that the improved condition of all classes would enable the expenses and requirements of Government to be provided by other

forms of taxation. He said:

There is this further advantage to be expected from a fixed assessment in a country subject to draught and inundation that it affords a strong inducement to the landholders to exert himself to repair as speedily as possible the damages which his lands may have sustained from these calamities; for it is to be expected that when the public demand upon his lands is limited to a particular sum he will employ every means in his favour to render them capable of again paying that sum and as large a surplus for his own use".... "The maxim that equality in taxation is an object of the greatest importance, and that in justice all the subjects of a State should contribute as nearly as possible, in proportion to the income which they enjoy under its protection does not prove the expediency of varying the demand of Government upon the lands; on the contrary, we shall find that, in countries in which this maxim is one of the leading principles in the imposition of taxes, the valuation of the land on which they are levied is never varied. In raising a revenue to answer the public exigencies, we ought to be careful to interfere as little as possible in those sources from which the wealth of the subject is derived. Agriculture is the principal source of the riches of Bengal; the cultivator of the soil furnishes most of the materials for its numerous manufactures. In proportion as agriculture declines, the quantity of these materials must diminish, and the value of them increase, and consequently the manufactures must become dearer, and the demand for them be gradually lessened. Improvements in agriculture will produce the opposite effects. The attention of Government ought therefore to be directed to render the assessment upon the lands as little burdensome as possible this is to be accomplished only by fixing it. The proprietor will then have some inducement to improve his lands; and as his profits will increase in proportion to his exertions, he will gradually become better able to discharge the public revenue. By reserving the collection of the internal duties on Commerce, Government may at all times appropriate to itself, a share of the accumulating wealth of its subjects, without their being sensible of it. The burden will also be more equally distributed; at present, the whole weight rests upon the landholders and cultivators Of the soil.

57. Almost contemporaneously with the Permanent Settlement on the 6th March 1793 Lord Cornwallis wrote to the Court of Directors:

We think this a proper opportunity to observe, that if, at any future period the public exigencies should require an addition to your resources, you must look for this addition in the increase of the general wealth and commerce of the country; and not In the augmentation of the tax upon the land. Although agriculture and commerce promote each other, yet in this country, more than in any other, agriculture must flourish, before commerce can become extensive. The materials for all the most valuable manufactures are the produce of its own lands. It follows therefore that the extent of its commerce must depend upon the encouragement given to agriculture; and that whatever tends to impede the latter, destroys the two great sources of its wealth. At present almost the whole

of your revenue is raised upon the lands; and any attempt to participate with the landholders in the produce¹ of the waste lands would (as we have said) operate to discourage their being brought into-cultivation; and consequently prevent the augmentation of articles for manufacture or export.. The increase of cultivation (which nothing but. permitting the landholders to reap the benefit of. it can affect) will be productive of the opposite consequences. To what extent the trade and manufactures of this country may increase under the very liberal measures which have been adopted for enabling British subjects to convey their goods to Europe at a moderate freight, we can form no conjecture. We are satisfied, however, that it will far exceed general expectation; and the duties on the import and export trade (exclusive for any internal duties which it may? in future be thought advisable to Import) that may hereafter be levied, will afford an ample-increase to your resources without burdening the people or affecting in any shape the industry of the country.

58. In 1811 the Court of Directors said:

It was indeed irrigated at the period of the establishment of the Bengal Settlement that in proportion as the effects naturally to be expected; from an enlarged and liberal policy were developed, in proportion as the land was improved, activity given to commerce and as the people were enriched, our Government would be able, by means of taxation on the necessities or luxuries of life not only to indemnify itself for the sacrifices it had made, and for any contingents loss which it might sustain from the depreciation of money but that our revenue might be made to advance in equal proportion with the prosperity of the country and that both would go on flourishing in rapid progression.

59. Thus at the time and within 20 years of the Permanent Settlement the source of such fresh taxation" was clearly indicated. The italics in the extracts given in the above three paragraphs are mine.

60. A reservation of a right to impose further tax on the income or profits of the land which was given to the zemindar as the fruits of his own labour cannot be gleaned from any quarter. Whether a portion is taken as revenue and another under the head of income tax, both are demands of the State, and when, in assessing the revenue, a guarantee was given of its fixity and a declaration was made that the balance will not be altered at any time, to impose a further tax on the; income or profits, does away with that; fixity and alters that which was guaranteed to be unalterable. The question: whether the income or profits now made was then taken into account or the sources from which they are now made were in those days unknown or not in existence does not affect the matter, in view of the preamble to Regulation II of 1819 and the preamble as well as Section 31 Clause (2) of Regulation VIII of 1819.

61. The argument that it was only the revenue payable by the lands and not the entire demand of the State for all income or profits referable to the estates was fixed by the Permanent Settlement loses sight of the fact that income or profits

from fisheries were taken into account. The object of the Settlement in exempting from further burden income which had already paid toll to the State in the shape of land revenue was primarily to protect and improve agriculture, as that then was the chief source of income, and the exemption of agricultural income from the operation of the income tax Act perhaps indicates a continuity of policy on the part of the legislature in that respect. This, to my mind, is the inwardness of the doubt expressed by the learned Judges who constituted the Full Bench in the case of the Chief Commissioner of income tax, Madras v. Zamindar of singampatti AIR 1922 Mad. 325 as to the meaning of "agricultural income." The words of the Settlement however are clear enough as indicating an intention to leave untouched for all times to come the surplus that the landholder will be able to derive as income or profits from the lands of his estate.

62. It may not perhaps be right as a matter or method of construction in order to construe the income tax Act 11 of 1922 to put it side by side with Regulation I of 1793 without taking into account the events that have happened during and the changes that have been wrought by the long years that separate the two enactments, but such a comparison is not altogether without its purpose. If the income tax was sought to be levied upon permanent settlement zemindars, while Regulation I of 1793 was yet in sight would it not have been understood as having taken away from the fixity of the State demand and altered the income and profits the unalterable character of which the Regulation had assured.

63. The above, in my opinion, is the relation between the two enactments, but we are yet on the threshold of the enquiry. It is not disputed that the legislature has absolute right to abrogate, modify or destroy any right or privilege, even if it be of its own creation. What we have then to consider is whether the legislature has done so, expressly or by necessary implication, in this particular case.

64. As a guide to the construction of this Act, to argue on the basis of other Acts e.g., the Zemindari Dak Cess Act, the Road Cess Acts, the Public Works Cess Act, the Embankments Act the, Drainage Act, the Bengal Municipal Act, the Court of Wards Act, the Village Choukidari Act, the Court-fees Act, the Stamp Act, the Bengal Settled Estates Act, the Probate Act and the like-enactments relating to what is said to be direct or indirect taxation is, I say with all respect, to argue on the strength of a palpably false analogy; so long as the absolute privilege of the legislature to which I have referred is not disputed. These legislations, most if not all of them, may be justified as imposing taxes in return for services rendered, facilities offered or benefits conferred. In some of them reference is made to "land" or the income or profits arising or derivable therefrom as affording a basis for calculating the amount of the imposition. In others the imposition is, no doubt, an additional burden on the lands, or viewed in another way forms a deduction from the income or profits of the lands, but the language that is used leaves no doubt as to the intention that the imposition should operate as such. If justly or unjustly these enactments have been passed and the intention to interfere with the zemindar's income or profits from the lands

permanently settled with him is clear, what help does it afford us in construing Act 11 of 1922? In my opinion it is of very little consequence if the legislature has put a different meaning on "the fixity of public demand" from what it obviously bears or chose to violate the fixity more than half a century after, if it be established that it has done so.

65. A consideration of the earlier enactments relating to income tax is perhaps more profitable. To turn then to the earlier enactments. In Act 32 of 1860, Section 1 provided that

there shall be collected and paid for and in respect of the property and profits mentioned in the several schedules.

66. Schedule I ran in these words:

For and in respect of the property in and profits arising from, all lands and houses in India.

Schedule 2 ran thus:

For and in respect of the annual profits arising to any person residing in India from any kind of property whatever whether situate in India or elsewhere....

67. The Rules applicable to Schedule 1 are contained in Part VII and they expressly refer to lands permanently settled (vide Rules 1 and 4). This Act remained in force from the 1st of July 1860 to the 1st of August 1865. There can be no question that this Act referred to "All lands and houses in India" "any kind of property...in India," and the rules provided for computing the assessment on permanently settled lands. The next important Act to which reference need be made is Act 8 of 1872. The Preamble says:

For the purpose of imposing duties on income, arising from offices, property, professions or trade.

68. The mode of assessment is differently provided for as regards "Duties on offices"-(Part II) "Duties on profits of Companies" (Part III), Duties on interest on Government Securities (Part IV). while Part V deals with "All other income." Section 16 says:

A yearly duty of two pies for every rupee shall be levied upon all incomes of one thousand rupees per annum or upwards, not chargeable under Part II, Part III or Part IV of this Act.

69. Section 21 says:

Owners of land or houses occupying the same shall be chargeable in respect of the annual value thereof at nine-tenths of the full rent at which such lands or houses are worth to be let for the year.

70. Then follows a provision for making special rules for calculating the assessment, when the income is derived from land-paying revenue. This Act

made all incomes including those derived from lands assessable to tax and there is no reason to suppose that it intended to exclude permanently settled lands. This Act remained in force for one year only. To take Act 2 of 1886 next. In this Act a marked departure is noticeable; the Preamble states:

Whereas it is expedient to impose a tax on income derived from sources other than agriculture.

71. The charging section is Section 4. The exceptions are mentioned in Section 5 in which "land" is mentioned by way of exception and it points to the sources of income as specified in the first column of the Second Schedule. This schedule is divided into four parts. Part I relates to Salaries and Pensions; Part II, profits of companies, Part III, interest on securities and Part IV, other sources of income not included in Part I, Part II, or Part III, of the schedule," The provisions of the Act relating to mode of assessment and collection say nothing as to revenue whether temporarily or permanently settled. The word "lands" does not come in at all as a source of income unless it comes under "any source" in Part IV.

72. The language of Act 7 of 1918 need not be separately considered as it is repeated with but slight alteration in Act 11 of 1922. The structure of this Act again is radically different from the Acts of 1860 and 1872 and there are also points of difference between it and the Act of 1886. The Preamble is neutral. It states, "whereas it is expedient to consolidate and amend the law relating to income tax and Super Tax" and the schedule of enactments repealed refers to the Act of 1918, and the amending Acts of 1919 and 1920. "Total income" is defined in Section 2(15) as meaning total amount of income, profits and gains from all sources, to which the Act applies computed in the manner laid down in Section 16. If one looks for the sources to which the Act applies one finds a negative in the eight classes of income specified in Section 4, Sub-section (3) as being the income to which the Act does not apply. The affirmative is found in the charging section which is Section 4. That section says:

Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in Section 6 from whatever source derived, accruing, arising or received in British India or deemed under the provisions of this Act to accrue or arise or to be received in British India.

73. The section therefore refers only to Section 6 which instead of definitely exhausting all the sources of income, merely says:

Save as otherwise provided -by this Act, the following heads of income, profits and gains, shall be chargeable to income tax in the manner hereinafter appearing; (i) Salaries, (ii) Interest on securities, (iii) Property, (iv) Business, (v) Professional earnings, (vi) other sources.

74. Ordinarily one should have expected profits from lands to come under the head of property but Section 9 which provides for the mode of assessment of property clearly limits it to buildings or lands appurtenant thereto. Income or

profit from lands, permanently or temporarily settled therefore must come, if at all under the head of "other sources." Why then should not "other sources" include only those sources as are taxable, and why should the expression be taken as comprising the income or profits of all lands irrespective of whether they are taxable or not. The policy of the short lived measures of 1860 and 1872 need not necessarily have been continued in 1886 and for the matter of that there is nothing to indicate a continuity of policy from even 1886 to 1922. We are not permitted to speculate as regards the policy or the intention of the legislature. What we find for certain is that the Act of 1922 does not make all persons taxable, nor all lands taxable, nor all income taxable nor again all sources or all other sources taxable.

75. To this view two objections are possible. One is the difficulty created by the definition of "agricultural income" as contained in Section 2 Sub-section (1) which includes such income from permanently as well as non permanently settled estates. This difficulty, however, is more apparent than real because if income or profits from permanently settled estates were meant to be kept outside the purview of the Act the definition will cover only such land as is assessed to land revenue and is not permanently settled. The other difficulty is as regards income from Lakheraj or revenue-free lands. But is this a difficulty? A review of the law relating to Lakheraj grants of which the foundation is Reg. 19 of 1793 is to be found in the case of Hurryhur Mookhopadhya v. Madub Chunder Baboo [1871] 14 M.I.A. 152. If these lands have been exempted from revenue for ever the Act will not apply to them, that is all. There is no equity about the tax and no equitable consideration can come in on the question of construction of a taxing statute.

76. Canons of construction laid down in authoritative decisions to which our attention has been drawn are very difficult of application in particular cases, they depend upon so many considerations; but it is just as well to refer to some of them here.

77. One of the cases upon which reliance has been placed on behalf of the assessee is Associated News Paper Ltd. v. Corporation of the City of London [1916] 2 A.C. 429. In that case what happened was this. Section 51 of 7 Geo. III C. 37 vested the lands reclaimed from the river Thames under the provisions of the statute in the owners of the adjoining lands and wharves, free from all taxes and assessments whatsoever. Section 169 of the City of London Sewers Act, 1848 enacted that every Sewer rate and consolidated rate should be levied upon every occupier of any house or building in the city, Whether such person shall be now liable in respect of such house or building to be assessed to the relief of the poor or be not liable to be assessed to the relief of the poor in respect thereof by reason of such house or building being situate in any precinct or extra parochial place or otherwise.

78. The House of Lords held that the exemption granted by 7 Geo. III, C. 37, though limited by the context to local as distinguished from Imperial taxes

extended to all local taxes and assessments whether present or future except so far as any Act imposing a new tax qualified or repealed the exemption. It was held that the words " free from all taxes and assessments whatsoever " were not repealed by the words of the Act of 1848. It was observed that in *London Corporation v. Netherlands Steamboat Co.* [1906] A.C. 263, the same statute was construed as not repealing the exemption contained in some statutes of 1812 and 1813. It was thus held that it is competent to the legislature to withdraw or modify such an exemption by a subsequent enactment, but that it could only be done expressly and not in general terms or by implication. The cases of *Kutner v. Phillips* [1891] 2 Q.B. 267; *Thorpe v. Adams* [1871] 6 C.P. 125. *Attorney General v. Horner* [1884] 14 Q.B.S. 254; *Barker v. Edger* [1898] A Q.C. 748 have been cited in support of the maxim *Generalia Specialibus non derogant* and as illustrative of the principle that a repeal by implication is only effected when the provisions of the later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together in which case the maxim *Leges posteriores contrarias abrogant* applies, and unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied. Reference has been made to *In Re Smith's Estate*, *Clements v. Ward* [1837] 35 Ch. D. 589 and *Fitzgerald v. Champneys* [1861] 2 J. & H. 31 in the latter of which cases Sir W. Page Wood, V.C. observed:

In passing the special Act the Legislatures had their attention directed to the special case which the Act was meant to meet and considered and provided all the circumstances of that special case; and having done so they are not to be considered by a general enactment passed subsequently and making no mention of any such intention, to have intended to derogate from that which by their own special Act, they had thus supervised and regulated.

79. The words of Lord Coke in *Foster's* case [1615] 11 Co. Rep. 866 have been referred to:

It must be known that for as much as Acts of Parliament are established with such gravity, wisdom and consent of the whole realm, for the advancement of the common wealth they ought not by any can strain 3d construction out of the general and ambiguous words of a subsequent Act, to be abrogated.

80. There are two other cases upon which the assessee specially relies. One is *Garmett v. Bradley* [1877] 3 A.C. 944 in which Lord Blackburn said:

There is another rule which has been laid down, which I think is a good rule if it is properly applied namely that where there has been a particular rule established either by custom or by statute, where there is some particular law standing, and a subsequent enactment has general words which would repeal that particular custom, if they were taken in all their generality, yet nevertheless the first particular law is not to be repealed unless there is a sufficient indication of intention to repeal it. It is not to be repealed by mere general words; the two

may stand together; the first the particular law standing as an exceptional proviso under the general law.

81. The other case is *Pole Carew v. Craddock* [1920] 3 K.B. 109. In this case a ferry was established by and maintained under an Act of 1790 (30 Geo. III C. 61) which was deemed to be a public Act and contained a provision that the then proprietors or their respective heirs or assigns

Shall not be rated or assessed for or toward the payment of any tax rata or assessment whatsoever, parliamentary or parochial for or in respect of the said ferry.

82. It was held that; the principle of *Associated Newspapers Limited v. City of London* [1916] 2 A.C. 429 applied to Imperial taxes and that the exemption granted by the Statute extended to Parliamentary taxes whether in existence at the date of the Act or not, and therefore included Income Tax, although that tax was first imposed subsequently to the passing of the Act of 1790.

83. On behalf of the Crown the most important of the cases cited is *Nova Scotia Steel & Coal Co. Ltd. v. Minister of Finance and Customs* [1922] A.C. 176. In this case under an agreement with the Government confirmed by a Statute of 1910 the Company paid a tax on each ton of ore exported by them and were exempt from paying any further charge or tax "upon or in respect of the said ore". By the Business Profits Act 1917 annual tax was imposed on the net profits of businesses. On the question of exemption by reason of the agreement of 1910, it was held that the tax upon the profits was not a tax upon or in respect of the ore exported. It was pointed out that in general a tax on profits and an export tax on commodities are different imposts, financially and economically and cannot be identified even by the indefinite expression "in respect of." *Mersey Docks v. Cameron, Jones v. Mersey Docks* [1864] 1 H.L.C. 443, has been referred to but there is hardly any room for the application of that principle here. The case of *Attorney General v. Exeter Corporation* [1911] 1 K.B. 1092, has also been referred to but Hamilton J., while referring to Foster's case [1615] 11 Co. Rep. 566 and the other cases in support of the maxim *Generalia specilibus non derogant* held that the maxim was inapplicable to the case before him.

84. On a consideration of the authorities referred to above the conclusion I have come to is that there is a clear distinction between *Nova Scotia Steel & Coal Co. Ltd. v. Minister of Finance and Customs* [1922] A.C. 176 and the case here. The immunity in that case extended only up to the exportation of the ore and by the general words "in respect of" could not extend further that is to say to such profits as would be derived by business on it. This is pointed out in the decision itself. In the present case all income or profits that the zemindar derived from his permanently settled estate was exempted from further taxation as such income or profits for ever. The two enactments, in my judgment, are not necessarily inconsistent or repugnant to each other and in the words of Lord Blackburn I venture to think that the Permanent Settlement Regulation 1 of 1793 may very

well stand as an exceptional proviso under the Income Tax Act 11 of 1922.

85. The effect of this conclusion, it has been pointed out, will have far reaching consequences as it will follow that royalty on mineral permanently settled tracts will not be taxable. I am not so sure that this will necessarily follow : the royalty may be viewed in quite, a different light and in any case the zamindar's right to the minerals under the Permanent Settlement has yet to be authoritatively decided See Secretary of State v. Jyoti Prashad Singh AIR 1926 P.C. 41.

86. There is a further consideration which has weighed with me in arriving at the opinion that I have formed. The case of Chief Commissioner of income tax, Madras v. Zamindar of Singampatti AIR 1922 Mad. 325, was decided by a Full Bench of the Madras High Court so far back as February 1922. I do not think it makes any difference that there was a Sanad in that case as the Sanad did not profess to go beyond the Regulation, viz. 25 of 1802. The law so far as that Presidency is concerned must be taken to have been settled then. In January 1924 the law so far as the province of Behar and Orissa is concerned was settled much in the same way. The income tax Act which is an all India enactment has been amended so recently as in 1926 (Act. 24 of 1926) and yet no attempt has been made to get rid of those decisions. It is said that a provision for an appeal has now been made; but does that meet the point? It is hardly reasonable to suppose that a fiscal enactment has been left neglected in that way.

87. For the reasons given above I regret I am unable to share in the view taken by my learned brother C.C. Ghose, J. I would, though not without a good deal of hesitation, answer question 3 in the negative in respect of all the ten items which in my opinion are income or profits derivable from or referable to the lands. In view of this answer to question 3, question 2 does not arise. I One word more I desire to add. The income tax Act, like other statutes, must be read according to the ordinary and natural construction of the words with only such aid as is afforded from within the four corners of the Statute itself read as a whole, and my conclusions are based on the Statute itself, though to test their correctness, I have been guilty of digression somewhat unpardonable.