SUPREME COURT.

U HTWE (*alias*) A. E. MADARI (APPLICANT)

v.

U TUN OHN AND ONE (RESPONDENTS).*

†S.C. 1948 July 23.

[On appeal from the High Court.]

Constitution of Burma, ss. 25, 133, 150 and 222 (1)—Writs of certiorari and prohibition—Nature of such writs—Both deal with questions of jurisdiction—The principles on which and circumstances under which directions in the nature of these writs will be granted in Burma—City of Rangoon Municipal Act, ss. 25, 79 and 80—Municipal Corporation of the City of Rangoon (Suspension) Act, 1943, scope of—The principles on which the provisions of written constitution will be laid down.

Held : That the writ of prohibition is a judicial process issued out of a Court of superior jurisdiction and directed to an inferior Court from usurping a jurisdiction with which it is not legally invested or to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction.

The writ of *certiorari* is a writ issued by superior Court in the exercise of its superintending power over inferior jurisdiction and it requires judges or officers of such jurisdiction to certify or send proceedings before them to the superior Court for the purpose of examination as to their legality or giving more satisfactory effect to them.

[Short and Mellor's (2nd Edn.) "Order and Practice of the Crown Office", p. 252, followed.]

The word "Court" for the purpose of these writs will not only include civil and criminal Courts and ecclesiastical, maritime or military Courts but also includes persons or tribunals which are not Courts of Justice in the strict sense of the term, whenever such person or the tribunal has legal authority to determine questions affecting rights of the subjects and the duty to act judicially.

Rex v. *Electricity Commissioners*, L.R. (1924) 1 K.B. 171 at p. 205 ; *The King* v. *Legislative Committee of the Church Assembly*, (1927) 1 K.B. 411 at p. 415 ; *The King* v. *North Worcestershire Assessment Committee*, (1929) 2 K.B. 397 at p. 406 ; *Errington and others* v. *Minister of Health*, (1934) 1 K.B. 249 at p. 266 ; *Rex* v. *Boycott and others*, (1939) 2 K.B. 651 at p. 659, followed ;

The King v. *The London County Council*, (1931) 2 K.B. 215 at p. 243 the view of Lord Justice Scrutton, distinguished.

S. 150 of the Constitution should be read as a proviso to s. 133 and therefore in Burma a person or a body of persons may exercise limited powers of judicial nature even though such person or body of persons is not a judge or a

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* Civil Misc. Application No. 5 of 1948.

† *Present* : SIR BA U, Chief Justice, E MAUNG, J., and KYAW MYINT, J.

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court. When a person or a body of persons (first) having legal authority (secondly) to determine questions affecting the rights of subjects (thirdly) having the duty to act according to law and (fourthly) act in excess of his or their legal authority, those writs will be issued.

This is the principle on which Supreme Court will issue directions in the nature of writs of prohibition and *certiorari*.

Sections of the Constitution should not be interpreted in a narrow and technical manner but should on all occasions be interpreted in a large, liberal and comprehensive spirit. Constructions most beneficial to the widest possible amplitude of its powers should be adopted. The Constitution though written should be interpreted in such a way as will be subject to development through usage and convention.

Grey v. *Pearson*, (1857) 6 H.L.C. 106 ; *Henrietta Muir Edwards and others* v. *Attorney-General for Canada and others*, L.R. (1929) A.C. 124 at p. 136-137 ; *St. Catherine's Milling and Lumber Company* v. *The Queen*, L.R. (1888) 14 A.C. 46 at p. 50 ; *Brophy* v. *Attorney-General of Manitoba* L.R. (1895) A.C. 202 at p. 216 ; *British Coal Corporation* v. *The King*, L.R. (1935) A.C. 500 at p. 518 ; *James* v. *Commonwealth of Australia*, L.R. (1936) A.C. 578 at p. 614, followed.

The term "existing law" in s. 222 (*1*) of the Constitution, embraces any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of the Constitution by any Legislature, authority or person having power for what now forms the Union of Burma to make such law, Ordinance, Order, bye-law, rule or regulation and not inconsistent with the Constitution.

Preamble of Municipal Corporation of the City of Rangoon (Suspension) Act, 1943, cannot, according to well-settled rule of interpretation, restrict or extend the enacting part of the Act when the language and the object and scope of the Act are not open to doubt, and therefore the Act is still operative and the appointment of the 1st respondent according to the provisions of the Act continues.

When the Corporation produces a budget it will be presumed under s. 114 (*e*) of the Evidence Act that official acts have been property done and that copy of the budget has been submitted to the Government under s. 53 (*1*) (*3*).

Under ss. 79 and 83 of the City of Rangoon Municipal Act the Administrator who now represents the Corporation has legal authority to determine any question affecting the rights of the subjects and he has power to improse taxes on all the citizens of Rangoon. The Administrator has to act judicially, *i.e.*, according to law. According to s. 80 he can fix general, lighting and conservancy taxes at his own discretion and as regards water tax he can fix it at such reasonable rate as would cover the expenses incurred in connection with the supply of water to the City of Rangoon.

The exercise of power by the Administrator is not administrative or mechanical but of a judical nature. But if he exercises his discretion in a *bona fide* manner not influenced by extraneous or irrelevant considerations, and not arbitrarily or illegally, the Supreme Court will not interfere.

As the Administrator in fixing these rates of taxation has not acted illegally or arbitrarily his decision cannot be questioned.

The King v. *Board of Education*. L.R. (1910) 2 K.B. 165 at p. 178, referred to.

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P. K. Basu (with *E. C. V. Foucar*) for the applicant.

Kyaw Din for the respondent.

The judgment of the Court was delivered by

BA U, C.J.—This case raises a very important issue, the decision of which affects not only the applicant in this case but also a large body of tax-payers of Rangoon. We have, therefore, taken time to consider our decision.

The applicant, U Htwe *alias* A. E. Madari, is the owner of a house in Rangoon. Municipal taxes on his house and on other houses and lands in Rangoon liable to taxation have recently been doubled under the orders of the 1st respondent, U Tun Ohn, who is the Administrator of the Municipal Corporation of Rangoon. The 2nd respondent, N. B. Sen Gupta, is working under the 1st respondent as the Assessor of the Municipal Corporation.

The submission made by the applicant is that the 1st respondent, U Tun Ohn, has never had any authority or power to raise Municipal taxes, far less to double them. He therefore prays that a writ of *certiorari* may be issued to the two respondents, directing them to submit the proceedings resulting in the order raising Municipal taxes, and that the proceedings may thereafter be quashed.

The applicant further prays that a writ of prohibition may be issued, prohibiting the two respondents from levying taxes at an enhanced rate.

The Municipal administration of the City of Rangoon was before the war carried on under the City of Rangoon Municipal Act (hereinafter called the

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Municipal Act) by a body of persons composed of a certain number of elected representatives of the citizens of Rangoon and a few nominated persons. The body was named the Corporation. A few months after the outbreak of the war, when Burma was about to be overrun by the Japanese, the Government evacuated to Simla in India, where the then Governor issued a proclamation, dated the 10th December 1942, under section 139 of the Government of Burma Act, 1935, and assumed to himself all the powers vested by or under the said Act in the Legislature. In exercise of such powers, the then Governor of Burma passed an Act known as the Municipal Corporation of the City of Rangoon (Suspension) Act, 1943 (hereinafter called the Suspension Act), suspending the operation of the Municipal Act.

On the cessation of hostilities in 1945, the Governor returned to Rangoon, and on the 14th of November of the same year, the Governor, acting under the provisions of the Suspension Act, appointed some persons as Chairman and Councillors of the Corporation of Rangoon. The appointment of these persons was subsequently cancelled by another Notification, being Notification No. 474, dated the 22nd September 1947—Local Government (Administrative Branch) Social Services Department.

By Notification No. 475 of the same date, the 1st respondent, U Tun Ohn was appointed as the Administrator of the City of Rangoon Municipal Coporation.

The Notification is in the following terms :

"Under sub-section (*1*) of section 2 of the Municipal Corporation of the City of Rangoon (Suspension) Act, 1943 (Act VIII of 1943), and in supersession of all previous appointments made under this section, the Governor appoints U Tun Ohn, who shall be designated as Administrator of the City of Rangoon Municipal Corporation, to exercise and discharge the rights

duties, powers and functions which, by the City of Rangoon Municipal Act (Burma Act VI of 1922), are vested in or imposed upon the Municipal Corporation of Rangoon."

The duties and powers of the Corporation vested in or imposed upon the Municipal Corporation of Rangoon are set out in section 25 of the Municipal Act, which, *inter alia*, runs as follows :

" The Corporation shall make adequate provision, by any means or measures which it is lawfully competent for it to use, for each of the following matters, namely :

(i) the construction or laying out of drains for effectually draining the City, and the maintenance, flushing and cleansing of all municipal drains ;

(ii) the erection in proper and convenient situations on municipal land of water-closets, closet accommodation, urinals and other conveniences for the public and the maintenance and cleansing of the same ;

(iii) the collection, removal, treatment and disposal of sewage, offensive matter and rubbish ;

(iv) the watering, scavenging and cleansing of all public streets in the City and the removal of all sweeping therefrom ;

(v) the management and the maintenance of all municipal water-works and the construction or acquisition of new works necessary for a sufficient supply of suitable water for public and private purposes ;

* * * *

(xx) the lighting of all public streets and municipal markets and of buildings vested in the Corporation ;

* * * * * "

To enable the Municipal Corporation to carry out these duties it was empowered by sections 79 and 80 of the Municipal Act to levy taxes. Before taxes could be imposed, the annual value of lands and buildings liable to taxation must, under section 91 of the Municipal Act, be assessed by an officer of the Corporation called the Commissioner, and the Commissioner

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must be appointed by the Corporation under section 27 of the same Act.

The 1st respondent U Tun Ohn, though fully empowered to do so, has not up-to-date appointed a Commissioner for the purpose of assessing the annual value of buildings and lands liable to taxation, but in spite of that, he issued a notice on the 23rd January 1948 announcing to the citizens of Rangoon that he would raise the Municipal taxes with effect from the 1st April 1948. That notice is in the following terms :

"Notice is hereby given that with effect from the 1st April 1948, property taxes on all buildings and lands within the Municipal limits of the City of Rangoon shall be levied at the following rates :

(a) *General Tax.*—At 14 per cent per annum of the annual value. This includes a fire brigade tax at 2 per cent.

(b) *Lighting Tax.*—At 3 per cent per annum of the annual value.

(c) *Conservancy Tax.*—

(i) At 17 per cent per annum on the annual value where it is at present levied at 8½ per cent.

(ii) At 13 per cent per annum on the annual value where it is at present levied at 6½ per cent.

(d) *Water Tax.*—

(i) At 13 per cent per annum on the annual value where it is at present levied at 6½ per cent.

(ii) At 6½ per cent per annum on the annual value where it is at present levied at 3¼ per cent.

* * * * * *"

In accordance with the new rate of taxation, demand notices have now been issued, and the applicant U Htwe is one of the tax-payers who have been asked to pay Municipal taxes at the enhanced rate. He therefore asks for reliefs, as stated above.

The question is whether a writ of prohibition and/or a writ of *certiorari* lies. Now, what is meant by a

writ of prohibition and what is meant by a writ of *certiorari*? These are two of the writs mentioned in section 25 (2) of the Constitution, by means of which this Court is empowered to protect and safeguard the person and property of the citizens of the Union. The Constitution does not, however, explain how and under what circumstances these writs are to be used. As these writs are borrowed from English law, the presumption is that, consistently with our Constitution, they must be used in the same way as they are used by English Courts of law. In English law, these two writs are two of the weapons which Courts of superior jurisdiction use for the purpose of keeping a check and control over inferior Courts. Both deal with questions of jurisdiction.

A writ of prohibition is explained in " Order and Practice of the Crown Office " by Short and Mellor (2nd edition), at page 252 as being a judicial writ or process issuing out of a Court of superior jurisdiction and directed to an inferior Court for the purpose of preventing the inferior Court from usurping a jurisdiction with which it is not legally invested, or to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction.

In the case of a writ of *certiorari*, it is explained as being the process by which the King's Bench Division, in the exercise of its superintending power over inferior jurisdiction, requires Judges or officers of such jurisdiction to certify or send proceedings before them to the King's Bench Division, whether for the purpose of examining as to the legality of such proceedings or for giving fuller or more satisfactory effect to them could be done by the Court below.

As these two writs deal with questions of jurisdiction, they are frequently sought after together. They sometimes overlap. Prohibition is used as a preventive,

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whereas *certiorari* is used as a cure. The former is asked for at an earlier stage of a proceeding so as to prevent an inferior Court from usurping a jurisdiction with which it is not entrusted, or to prevent it from acting in excess of the jurisdiction entrusted therewith. *Certiorari* is asked for when a proceeding is concluded, so that any mischief or injustice resulting therein may be redressed. As explained, these writs issue out of a Court of superior jurisdiction to inferior Courts.

Now, what is meant by a Court ? Having regard to a long series of English cases, there can hardly be any doubt that originally a Court, as used, was meant to mean a tribunal legally appointed to determine civil or criminal causes judicially. Subsequently, the meaning of the word " Court " was expanded so as to include not only civil or criminal Courts, but also ecclesiastical, maritime or military Courts ; *see* Halsbury's Law of England (2nd edition), Volume IX, page 830, and the cases quoted therein. Since then, the term " Court " has again been expanded so as to include not only the above-mentioned tribunals, but also other public bodies entrusted with quasi-judicial functions. What tribunal or body is to be deemed a Court so as to make it amenable to a writ of prohibition or a writ of *certiorari* is clearly and succinctly explained by Atkin L.J. as he then was, in the case of *Rex* v. *Electricity Commissioners* (1) as follows :

" It is to be noted that both writs (writ of prohibition and writ of *certiorari*) deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as Courts of Justice. But the operation of writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting

(1) L.R. (1924) K.B. 171, 205.

the rights of subjects, and having the duty to act judicially, acts in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

This has been accepted as laying down the law correctly, and has been followed in the following cases :

(i) *The King* v. *Legislative Committee of the Church Assembly.* Ex-parte *Hayne-Smith* (1) ;

(ii) *The King* v. *North Worcestershire Assessment Committee.* Ex-parte *Hadley* (2) ;

(iii) *The King* v. *The London County Council* (3) ;

(iv) *Errington and others* v. *Minister of Health* (4) ; and

(v) *Rex* v. *Boycott and others* (5).

It will be noticed that the phrase " having the duty to act judicially " is not explained. But in the case of *The King* v. *The London County Council* (4), Scrutton L.J. endeavoured to explain it, while explaining the term " Court ", as follows :

" There has been a great deal of discussion and a large number of cases explaining the meaning of 'Court.' It is not necessary that it should be a Court in the sense in which this Court is a Court: it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition ; and it is not necessary to be strictly a Court ; if it is a tribunal which has to decide rights after hearing evidence of the proposal and the opposition, it is amenable to the writ of *certiorari*."

It would appear from this as if the learned Judge of the Court of appeal took the view that unless there was a *lis inter partes* and the said *lis* was decided on evidence

(1) L.R. (1927) 1 K.B. 411, 415.
(2) L.R. (1929) 2 K.B. 397, 406.
(3) L.R. (1931) 2 K.B. 215, 243.
(4) L.R. (1934) 1 K.B. 249, 266.
(5) L.R. (1939) 2 K.B. 651, 659.

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neither a writ of prohibition nor a writ of *certiorari* would lie.

This view of the learned Judge may be correct so far as English law is concerned but it may not be in consonance with the provisions of our Constitution. Under section 133 of the Constitution, justice throughout the Union shall be administered in Courts established by the Constitution or by law and by Judges appointed in accordance therewith. The proviso to this section is section 150 of the Constitution.

Under section 150, any person or a body of persons, though not a Judge or a Court in the strict sense of the term, can be invested with power to exercise limited functions of a Judicial nature. When so invested, that person or body of persons, when determining questions affecting the rights of the citizens of the Union, must do so, as provided by section 16, according to law. If it did not, it would at once render itself amenable to the jurisdiction of this Court, as provided in section 25. Therefore, when Atkin L.J. used the phase "having the duty to act judicially" we must in relation to the Constitution construe it as "having the duty to act according to law." This is in consonance with what Lord Selborne said in *Mackonochie* v. *Lord Penzance* (1). The learned Lord Chancellor said :

"It was contended that the sentence of suspension of the 1st June 1878, was contrary to two statutes of the realm (3 & 4 Vic. C. 86, and 53 Geo. 3, C. 127); and if it could be made out, the prohibition was thus rightly granted."

The view of Lord Esher as expressed in *The King* v. *The Local Government Board* (2) is in a way to the same effect. In that case, learned Master of the Rolls said :

"My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that

(1) L.R. (1881) 6 A.C. 424, 431. (2) 10 Q.B.D. 309, 321.

wherever the Legislature entrusts to any body of persons other than to the superior Court the power of imposing an obligation upon individuals, the Court ought to exercise as widely as they can power of controlling those bodies of persons if these persons admittedly attempt to exercise powers beyond the powers given to them by an Act of Parliament."

In the latest case on the subject, *Rex* v. *Archbishop of Canterbury* (1), the present Master of the Rolls Lord Greene, quoted, apparently with approval, the submission made by the Counsel for the applicant as follows :

"Here is a piece of legislation with statutory force which may deprive an owner of property, to wit, the Patron, of some of his rights in respect of that property, and wherever a person or a body of persons is given the power to deprive a person of, or to affect, his rights, there is a statutory obligation to act in a quasi-judicial manner, with all the consequences which that implies.'

Such being the state of the law, if we paraphrase the test as laid down by Atkin L.J. we get it as follows :

"There must be a person or a body of persons (first) 'having legal authority,' (secondly) 'to determine questions affecting the rights of subjects' and (thirdly) 'having the duty to act according to law' (fourthly) 'act in excess of his or their legal authority'."

Now, does this case fulfil these conditions ?

The learned counsel for the applicant presents his case in two aspects. The first is that, having regard to the definition of "existing law" as given in section 222 (*1*) of the Constitution, the Suspension Act ceased to be in force with effect from the 4th January 1948, when Burma became a sovereign independent Republic, and, consequently, U Tun Ohn also ceased to be an Administrator of the Municipal Corporation on and from that date. All acts and things done by him after that date are null and void.

(1) L.R. (1944) 1 K.B. 282, 291.

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"'existing law', as explained in section 222 (*1*) of the Constitution, means any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person in any territories included within the Union of Burma, being a Legislature, authority, or person having power to make such law, Ordinance, Order, bye-law, rule or regulation."

Stress is laid by the learned counsel for the applicant on the words "by any Legislature, authority or person in any territories included within the Union of Burma."

Therefore, according to the learned counsel for the applicant, any law, Ordinance, Order, bye-law, rule or regulation, even if made by a competent authority but if not made in any of the territories included within the Union of Burma, must be treated as being no longer in force. If this submission were to be followed to its logical conclusion, the result would be only startling and disastrous. All the Acts, to take only a few, such as the Penal Code, the Transfer of Property Act, the Contract Act, the Succession Act and the Age of Majority Act, passed by the Indian Legislature before the separation of Burma from India in 1937 must be treated as being no longer in force. The result would be chaos in the economic and social life of the country. When this was pointed out to him, the learned counsel for the applicant said with his usual adroitness that as Burma was part of India when those Acts were enacted, they must be deemed to have been enacted in a territory included within the Union of Burma. That is not what section 222 (*1*) of the Constitution, on the learned counsel's reading can be made to say. What it says, if he is right, is that no Act, etc., passed by any competent authority in any territories which do not now form part of the Union of Burma is of the body of "existing Law."

As long ago as 1857, Lord Wensleydale pointed out in the case of *Grey* v. *Pearson* (1) as follows:

"In construing wills and, indeed, statutes and all written instruments, the grammatical and ordinary sense of words has to be adhered to unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no farther."

This rule of interpretation has stood the test of time and still holds good. In the case of the interpretation of a Constitution, we must interpret it not only to avoid absurdity or inconsistency, but we must interpret it in such a way as to make it most beneficial to the widest possible amplitude of its powers.

In *Henrietta Muir Edwards and others* v. *Attorney-General for Canada and other* (2), the Lord Chancellor, Lord Sankey, said:

"The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits. The object of the Act was to grant a Constitution to Canada. 'Like all written constitutions it has been subject to development through usage and convention': Canadian Constitutional Studies, Sir Robert Borden (1922), p. 55.

Their Lordships do not conceive it to be the duty of this Board—it is certainly not their desire—to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation so that the Dominion, to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces to a great extent, but within certain fixed limits, are mistresses in theirs. The Privy Council, indeed, has laid down that Courts of law must treat the provisions of the British North America Act by the same methods of construction and exposition which they apply to other statutes. But there are statutes and statutes; and the strict construction deemed proper in the case, for example, of a penal or taxing statute or

(1) (1857) 6 House of Lords Cases 106. (2) L.R. (1929) A.C. 124, 136-137.

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one passed to regulate the affairs of an English parish would be often subversive of Parliament's real intent if applied to an Act passed to ensure the peace, order and good Government of a British Colony : *see* Clement's Canadian Constitution, 3rd edition, 347.

The learned author of that treatise quotes from the argument of Mr. Mowet and Mr. Edward Blake before the Privy Council in *St. Catherine's Milling and Lumber Company* v. *The Queen* (1) : 'That Act should be on all occasions interpreted in a large, liberal and comprehensive spirit, considering the magnitude of the subjects with which it purports to deal in very few words.' With that their Lordships agreed, but as was said by the Lord Chancellor in *Brophy* v. *Attorney-General of Manitoba* (2), the question is not what may be supposed to have been intended, but what has been said."

The same Lord Chancellor quoted the above observations in *British Coal Corporation* v. *The King* (3) and added—

"Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted."

This principle of interpretation of a Constitution was followed by Lord Wright M.R. in *James* v. *Commonwealth of Australia* (4) where the learned Master of the Rolls said—

"It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered, as the years go on, relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning."

In the light of these observations and taking the provisions of the Constitution one with the other, we

(1) L.R. (1888) 14 A.C. 46, 50.
(2) L.R. (1895) A.C. 202, 216.
(3) L.R. (1935) A.C. 500, 518.
(4) L.R. (1936) A.C. 578, 614.

are of the opinion that the reasonable interpretation of the term "existing law" in section 222 (*1*) of the Constitution, embraces any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power for what now forms the Union of Burma to make such law, Ordinance, Order, bye-law, rule or regulation and not inconsistent with the Constitution. This interpretation will not only remove an absurdity but will produce a result most beneficial to the community as a whole.

Next, it is contended by the learned counsel for the applicant that even if his interpretation of the words "existing law" is incorrect, the Suspension Act is no longer in force, because the preamble of the Act says that the Act is to remain in force "during the present emergency." "The present emergency", according to the learned counsel, means the last World War. But what is meant by "present emergency" is not defined or explained anywhere in the Suspension Act. It is a well-settled rule of interpretation that the preamble cannot either restrict or extend the enacting part when the language and the object and scope of the Act is not open to doubt. The enacting part of the Suspension Act does not say how long the said Act is to remain in force. Having regard to the language of the preamble, there can hardly be any doubt that the Act was intended to be a temporary Act. But, though it might have been intended to be a temporary Act, it must be regarded to be still in force as its period of life is not fixed anywhere in the enacting part of the Act.

The second aspect of the case is presented as follows: "Here is a citizen of Rangoon who is to be deprived of a portion of his property, to wit, a certain

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sum of money to be paid as municipal-taxes. Before the Administrator can call upon the applicant to make payment of a certain sum of money by way of municipal-taxes, he must go through certain procedure as laid down in the Municipal Act. First of all, he must appoint a Commissioner to assess the annual value of lands and buildings liable to taxation. Next, he must prepare a Budget containing estimated income and estimated expenditure under various Heads, and the Budget must be prepared before the financial year to which it relates. If any budget grant is found insufficient in the course of the financial year to meet the expenditure under any given Head, appropriation can be made from other Heads, and if that is found insufficient again, then the Corporation (now the Administrator) can sanction forthwith any measure which may be necessary for adjusting the year's income to the expenditure. In the present case, the Administrator has not appointed a Commissioner, and he has not prepared a Budget for the financial year 1947-48. Therefore his act in raising municipal-taxes in the middle of the financial year is illegal and *ultra vires.*"

If the facts, as stated by the learned counsel for the applicant, are correct, then the case as presented by him will require serious consideration. In submitting his case, the learned counsel for the applicant has entirely overlooked one important point, and the point is the date of the appointment of the 1st respondent, U Tun Ohn, as Administrator of the Municipal Corporation. U Tun Ohn was appointed as Administrator only on the 22nd September 1947. Before that, there was an interim Corporation appointed under the Suspension Act. U So Nyun was the Chairman of that interim Corporation. It is not in dispute that U So Nyun was the Commissioner of the Municipal Corporation long before the war, and that he was neither removed,

dismissed, nor suspended either before the war, or during the war, from his appointment. Therefore, U So Nyun remained as Commissioner when he was appointed as Chairman of the interim Corporation. For that reason, the then Governor, when appointing U So Nyun as Chairman of the Council of the interim Corporation, said that U So Nyun was to act as Chairman of the interim Corporation in addition to his duties as Municipal Commissioner, interim Corporation of Rangoon ; *see* Notification No. 30, dated the 14th November 1945, of the Social Services Department.

Therefore, if any assessment was to be made, and if any Budget was to be prepared, U So Nyun must have done all that. In fact, the learned counsel for the respondent submits that U So Nyun did prepare the Budget for the financial year 1947-48 and submitted copies of it, as required by section 73 (*1*).(iii) of the Municipal Act, to the Government. He has produced a copy of the Budget for our inspection. Having regard to section 114, illustration (*e*), of the Evidence Act, we have no doubt in our mind that the submission made by the learned counsel for the respondents is correct. In that case, the Administrator could increase Municipal taxes, as he had done, in the course of the financial year when he found that the income of the Corporation was not sufficient to cover its expenditure.

We feel that there has been a confusion of thoughts in this case over the question of assessment and taxation. Assessment and taxation are two different things, though they are linked together. Different considerations arise in dealing with these two matters. What applies to the questions of assessment does not necessarily apply to the questions of taxation. In dealing with the question of the power of taxation, we must refer

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to sections 79 and 80 of the Municipal Act. They are as follows :

"79. (*1*) For the purposes of this Act, taxation shall be imposed as follows, namely :

(*a*) property taxes, and

(*b*) a tax on vehicles.

(*2*) In addition to the taxes mentioned in sub-section (*1*), the Corporation may, with the previous sanction of the Governor (now the President), impose any other tax.

80. (*1*) The following taxes shall, subject to the limitation hereinafter provided, be levied on buildings and lands, and shall be called 'Property Taxes', namely:

(*a*) a general tax of not more than 12 per cent of their annual value, to which may be added a fire brigade tax at such percentage not exceeding two per cent of their annual value as will, in the opinion of the Corporation, suffice to provide for the expenses necessary for fulfilling the duties of the Corporation arising under clause XVI of section 25 ;

(*b*) a lighting-tax at such percentage of their annual value as will, in the opinion of the Corporation, suffice to provide for lighting the public streets, municipal markets and buildings vested in the Corporation ;

(*c*) a conservancy-tax at such percentage of their annual value as will, in the opinion of the Corporation, suffice to provide for the collection, removal and disposal, by Municipal agency, of all sewage, offensive matter and rubbish and for efficiently constructing, maintaining and repairing municipal drains for the reception and conveyance of such matter ; and

(*d*) a water-tax at such percentage of their value as the Corporation shall deem reasonable with reference to the expense of providing a water-supply for the City: provided that the Corporation may direct that the water supplied for any domestic or non-domestic purpose to any buildings or lands separately assessed to water-tax shall be paid for by measurement at such rates and on such terms and conditions as it may deem reasonable and no water-tax shall be levied on

any buildings or lands in respect of which such direction has been made.

* * * * "

What is clear from these two sections is that the Administrator has legal authority to determine any question affecting the rights of subjects, in that he has power to impose taxes on all the citizens of Rangoon and make them pay these taxes. Therefore, in so far as the first two conditions of the test as laid down by Atkin L.J. are concerned, they are fulfilled. Then the question is—In determining these questions, has the Administrator got to do it judicially, *i.e.* according to law? What is clear from section 80 of the Municipal Act is that it is entirely left to the Administrator, so far as General, Lighting and Conservancy Taxes are concerned, to fix them at his own discretion.

Even in the case of the imposition of the Water Tax, the Legislature has in its wisdom thought it fit to leave it to the Administrator to fix it at such a reasonable rate as would cover the expenses incurred in connection with the supply of water to the City of Rangoon.

It may, therefore, be fairly argued that, since the Administrator has to fix these rates of taxation in his discretion, he should be treated as an administrative officer, performing an administrative duty imposed on him by statute for the benefit of the community. His act is, therefore, more of a mechanical rather than of a judicial nature and is, therefore, not open to scrutiny or examination by this Court. The answer is that, a discretion which is demonstrably groundless or exercised in ignorance or at random, is not, in the eyes of the law, a discretion at all, but mere caprice. It must be the exercise of his faculties by a reasonable man, resulting in such action as a reasonable man might

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have adopted, though not necessarily that which another impartial critic would have adopted. Or, to use the language of Farwell L.J. as used in *The King v. Board of Education* (1), "If the Tribunal has exercised a discretion entrusted to it *bona fide*, not influenced by extraneous or irrelevant considerations, and not arbitrarily or illegally, the Courts cannot interfere." In other words, a Tribunal entrusted with the exercise of quasi-judicial functions, would not be acting according to law, if it acted arbitrarily or illegally or was influenced by extraneous or irrelevant considerations.

We must, therefore, see whether the Administrator in fixing these rates of taxation acted illegally or arbitrarily or was in any way influenced by irrelevant or extraneous considerations.

What is clear from the papers placed before us is that the Administrator, before he fixed the present rates of taxation, consulted all the Heads of the Departments under his control and called for their reports, and only after having considered them, he fixed the present rates of taxation. It cannot therefore be said that the Administrator took extraneous or irrelevant matters into account. Even though we might not agree with him as to how these rates of taxation should be fixed, since he has come to an honest decision after considering all the matters relevant to the purpose in hand, we cannot substitute our discretion for his.

For all these reasons we discharge the rule *nisi* and dismiss the application with costs: ten gold mohurs.

In conclusion, we may point out that this Court, having been constituted by the Constitution as a protector and guardian of the rights of the subjects, will

(1) L.R. (1910) 2 K.B. 165, 178.

not hesitate to step in and afford appropriate relief whenever there is an illegal invasion of these rights. Whether this Court will do so or not in cases where there is a right of appeal, or where there is an equally beneficial, convenient and effectual mode of relief available to an aggrieved party, is a matter which we do not propose to discuss in this case.

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