petition, memorial or remonstrance. It follows that the respondent fails in his claim to arrears of pay.

Their Lordships will humbly advise His Majesty that the judgment and order appealed from should be varied by substituting, in place of the declaration made therein, a declaration that the order of August 10, 1940, purporting to dismiss the respondent from the Indian Civil Service was void and inoperative, and that the respondent remained a member of the Indian Civil Service at the date of the institution of the present action on July 20, 1942; that the order for a remit to the High Court should be set aside, and that otherwise the judgment and order should be affirmed. As prescribed by the Order in Council granting special leave, the costs of the respondent will be paid by the appellant as between solicitor and client. Their Lordships are not disposed to accede to the application made by the respondent during the hearing, at which he was represented by counsel, to be allowed the costs of his coming over to this country from India.

Solicitors for appellant: *Solicitors, High Commissioners for India and Pakistan.*

Solicitors for respondent: *John Bartlett & Sons.*

ALBERT WEST MEADS . . . . APPELLANT;

AND

THE KING . . . . . RESPONDENT.

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April 19

ON APPEAL FROM THE FEDERAL COURT OF INDIA

Court-martial—Not "criminal proceedings" within s. 270, sub-s. 1, of Government of India Act, 1935 (25 & 26 Geo. 5, c. 42)—Sanction of Governor-General not necessary—Charges of misapplication of army moneys—Not acts done in execution of duty as servant of Crown.

* *Present*: LORD SIMONDS, LORD NORMAND, LORD MORTON OF HENRYTON, LORD MACDERMOTT, SIR MADHAVAN NAIR and SIR JOHN BEAUMONT.

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The phrase "proceedings civil or criminal" in sub-s. 1 of s. 270 of the Government of India Act, 1935, indicates only the civil or criminal proceedings capable of being instituted under the ordinary law of the land, and does not include proceedings under the military law. The previous sanction of the Governor-General was not therefore necessary for the trial of the appellant, an army officer, by a Field General Court Martial on charges under s. 17 of the Army Act of fraudulently misapplying army moneys.

Even, however, if proceedings before a court-martial were "criminal proceedings" within s. 270, sub-s. 1 of the Act of 1935, that sub-section only applies to proceedings instituted against any person "in respect of any act done or purporting to be done in "the execution of his duty as a servant of the Crown in India," and the appellant could not justify the acts in respect of which he was charged—fraudulently misapplying money entrusted to his care as a public servant—as acts done by him by virtue of the office that he held.

Gill and Another v. *The King* (1948) L.R. 75 I.A. 41, applied.

Judgment of the Federal Court [1944] F. C. R. 355, affirmed.

APPEAL (No. 30 of 1945), by leave of the Federal Court of India, from a judgment of the Federal Court (November 20, 1944) which dismissed the appellant's appeal from a judgment of the High Court at Lahore (April 24, 1944) which dismissed the appellant's petition praying for a writ in the nature of habeas corpus for his release from imprisonment. The appellant had been sentenced by Field General Court-Martial to be cashiered and to undergo two years' imprisonment with hard labour.

The following facts and relevant statutory provisions are taken from the judgment of the Judicial Committee. The appellant was, at the date of his conviction by court-martial, an officer of His Majesty's Forces, holding the temporary rank of Major in the Royal Engineers. He had enlisted in the United Kingdom in October, 1939, and had subsequently been commissioned and posted to India in the Royal Engineers in 1940. At the time of the events which gave rise to his trial by court-martial the appellant was attached to a unit of the Indian Engineers. He remained, however, subject to the Army Act. He was charged before a Field General Court-Martial at Lahore on October 12, 1943, on four charges, framed under the Army Act. The first charge, under s. 17 of the Army Act, alleged

that the appellant, on or about April 22, 1943, when concerned in the care of public property, namely, Rs. 8089 As. 7, the imprest money of the company commanded by the appellant, had fraudulently misapplied the same. The third charge, also under s. 17 of the Army Act, alleged similarly that the appellant had fraudulently misappplied regimental property, namely, Rs. 871 As. 12 Ps. 9, being part of the regimental funds of the said company. The second and fourth charges were framed under s. 40 of the Army Act, and were alternative charges to the first and third charges, respectively, alleging neglect to the prejudice of good order and military discipline in that the appellant so negligently performed his duties as to suffer the said sums of money to be destroyed by fire. It would appear from the appellant's affidavits hereafter mentioned that there was no dispute that on April 22, 1943, the appellant had in his possession the two sums of money alleged in the charges, and that subsequently he was unable to produce them. His defence, on the facts, appeared to have been primarily that the whole of the money was destroyed in an accidental fire which occurred in a chest of drawers in the appellant's room on the night of April 22-23, 1943, owing to the overturning of a candle, while the appellant was temporarily absent from the room. On October 17, 1943, the court-martial found the appellant guilty on the first and third charges, and not guilty on the second and fourth charges, and sentenced him to be cashiered and to undergo two years' imprisonment with hard labour. The findings and sentence were reserved by the Commander, Lahore District, who had convened the court-martial. They were confirmed on November 23, 1943, by the General Officer Commanding-in-Chief, Central Command. The appellant was committed to prison to serve his sentence on November 30, 1943. On January 20, 1944, the appellant petitioned the High Court of Judicature at Lahore, under s. 491 and s. 561A of the Code of Criminal Procedure (Act V of 1898), praying that the superintendent of the Central Jail, Lahore, should be directed to produce the appellant, and the Adjutant-General in India should be directed to

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show cause why the appellant should not be set at liberty. By his amended petition, dated February 11, 1944, supported by two affidavits by the appellant, the appellant averred that his trial and conviction by Field General Court-Martial was illegal, on grounds which may be summarized as follows: (*a*) The alleged offence took place within the Area Command of Rawalpindi. The court-martial was, improperly, convened by the Commander of the Lahore District. (*b*) The appellant should have been tried by a General Court-Martial, consisting of five officers, and not by a Field General Court-Martial consisting of three officers. The reasons given by the Convening Officer for convening a Field General Court-Martial were not bona fide. (*c*) Under s. 270 of the Government of India Act, 1935, the previous sanction of the Governor-General was required before proceedings could be taken. Such sanction had not been given. (*d*) There was no evidence before the court-martial on which the appellant could have been found guilty. (*e*) The trial was against the provisions of the Army Act, rules of evidence and procedure, and the conviction was against natural justice. In substance and in law the prisoner did not have a trial at all. (*f*) It had been averred by the Prosecuting Officer before the court-martial, and so held by the court-martial, that there was no obligation on the prosecution to prove where the money went to; and that it was entirely for the appellant to substantiate his innocence.

The appellant's petition came before Blacker J., who referred to a Special Bench of the High Court the question whether s. 270 of the Government of India Act, 1935 (hereafter referred to as "the Act") was applicable to courts-martial held under the Army Act in respect of a British Officer attached to the Indian Army. Sub-sections 1 and 2 of that section were as follows:

"270.—(1.) No proceedings civil or criminal shall "be instituted against any person in respect of any act "done or purporting to be done in the execution of "his duty as a servant of the Crown in India or "Burma before the relevant date, except with the

"consent, in the case of a person who was employed "in connexion with the affairs of the Government "of India or the affairs of Burma, of the Governor- "General in his discretion, and in the case of a per- "son employed in connexion with the affairs of a "Province, the Governor of that province in his "discretion.

"(2) Any civil or criminal proceedings instituted, "whether before or after the coming into operation of "this part of this Act, against any person in respect of "any act done or purporting to be done in the execu- "tion of his duty as a servant of the Crown in India or "Burma before the relevant date shall be dismissed "unless the Court is satisfied that the acts complained "of were not done in good faith, and, where any such "proceedings are dismissed, the costs incurred by the "defendant shall, in so far as they are not recoverable "from the persons instituting the proceedings, be "charged, in the cases of persons employed in connexion "with the functions of the Governor-General in Coun- "cil of the affairs of Burma, on the revenues of the "Federation, and in the case of persons employed in "connection with the affairs of a Province, on the "revenues of that Province."

Sub-section 3 defined "the relevant date" and it was not disputed that April 22, 1943, was before the relevant date. At the hearing before the Special Bench the Advocate-General of India, who appeared for the Crown, conceded that proceedings before courts-martial were in the nature of criminal proceedings, that a court-martial could be properly described as a court, and that at the relevant date the appellant was "a ser- "vant of the Crown employed in connexion with the "affairs of the Government of India." He contended, however, that courts-martial were not "criminal pro- "ceedings" in the sense in which that phrase was used in s. 270 of the Act. The Special Bench accepted that contention, taking the view that the criminal proceedings referred to in s. 270 of the Act were proceedings in the ordinary criminal courts, and not proceedings in special courts which were the creation of military law. The appellant's petition was accordingly referred back

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to Blacker J., with the answer that s. 270 of the Act was not applicable to a court-martial held under the Army Act in respect of a British Officer attached to the Indian Army.

The appellant's petition was then heard and determined by Blacker J., and judgment was given on April 24, 1944. The learned Judge said that the appellant's objection to his convictions could be divided into three groups: (1.) Objections to the jurisdiction of the court-martial. (2.) Want of the consent of the Governor-General under s. 270 of the Act. (3.) Objections to the conduct of the trial, that was to say, contentions that the procedure was such as to deny him justice, and that there was no evidence on which a conviction could be based. As regards the second objection, the learned judge held that he was bound by the judgment of the Special Bench referred to above, with which he agreed. As regards the third group of objections, the learned judge said: "With regard to the question of procedure "I have seen the record of the court-martial, and the "procedure adopted appears to me to be absolutely con-"sistent with all principles of natural justice . . . . "On the point whether there was evidence on which "the conviction could be based, there was considerable "argument before me regarding the powers of the High "Court to inquire into this question. I have, however, "been saved the labour of discussing these argumcnts "in this judgment, as the matter has also been decided "by the Special Bench, whose decision that this court "cannot inquire into the sufficiency of the evidence "is not only binding on me, but is one with which I "most respectfully concur. I have moreover perused "the evidence on which the convictions were based, "and I have found not only that there was evidence, "but that it certainly could not be called insufficient. "I can find no force, therefore, in the objections in the "third group." The learned judge also rejected the first group of objections, relating to the jurisdiction of the court-martial, on grounds which need not be set out. Accordingly he held that there was no substance in any of the objections taken by the appellant and that the custody in which he was detained was clearly

lawful. He, therefore, dismissed the petition and discharged the rule. He granted a certificate for leave to appeal to the Federal Court on the ground that the decision involved a substantial question as to the interpretation of s. 270 of the Act.

The appellant appealed to the Federal Court of India. In his amended petition of appeal he contended that the High Court's interpretation of s. 270 of the Act was erroneous. In a petition for leave to urge further grounds he sought leave to appeal on additional grounds, which were substantially the same as those which had been dealt with in the judgment of Blacker J. The appellant argued his case in person before the Federal Court. It appears from the judgment of that Court, and it was admitted by the appellant in arguing his case before their Lordships' Board, that in the Federal Court he only argued the question as to the true construction of s. 270 of the Act, although he was given an opportunity to raise any other matter on account of which he considered that the proceedings against him were invalid or his conviction unjustified. The Federal Court (Spens C.J., Varadachariar and Zafrulla Khan JJ.) dismissed the appeal, but granted leave to appeal to His Majesty in Council.

1948. March 15. The appellant, *A. W. Meads*, in person. The Army Act, to which I remained subject, definitely states that a soldier serving in His Majesty's forces abroad shall always be subject to the laws of the country where he may be serving, and the Government of India Act of 1935 protected all the officers as servants of the Crown while on duty in India —that is the true grammatical meaning of s. 270. That section can apply to army officers in respect of offences which can be tried either by a military or a civil Court. The judgment of the Federal Court stated that "in our judgment there is no halfway house. "Either all court-martial proceedings under the Army "Act are criminal proceedings within s. 270, sub-s. 1, "or no court-martial proceedings are. If all court-"martial proceedings under the Army Act are crimi-"nal proceedings, there is no way to escape from the "fantastic results which would follow from such a

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"decision . . . ." (1). It is submitted that there is a halfway house, and that although sanction is not required for all offences triable before a court-martial, such as the ordinary trivial affairs which might be tried by a battalion commander, sanction is required in respect of offences which are triable also in the ordinary criminal Courts. As to "fantastic results," there would be none. Further, the promulgating authority not having had the true facts before him was not in a position to promulgate my trial, and therefore it never has been promulgated and natural justice has been denied me.

Sir Walter Monckton K.C. and *Megaw* for the respondent. There are no doubt cases where the words "criminal proceedings" would include trials by court-martial, but for the purposes of s. 270 of the Act of 1935 a military court is not to be regarded as a court at all, though the offence to be tried might amount to a crime: *In re Clifford and O'Sullivan* (2) which was referred to in *Amand* v. *Home Secretary and Minister of Defence of Royal Netherlands Government* (3). It by no means follows, therefore, that wherever the expression "criminal proceedings" is found it necessarily includes court-martial proceedings or proceedings other than those of the ordinary criminal courts. The words "proceedings civil or criminal" in s. 270 of the Act of 1935 mean the ordinary civil and criminal proceedings which can be taken in accordance with the ordinary law of the land, and do not mean, or include, proceedings taken under the special code of military law prescribed by the Army Act. If the words "civil and criminal proceedings" in the section be ambiguous, the ambiguity is resolved by other portions of the Act so as to show that the words are not intended to include, and do not include, court-martial proceedings. The Federal Court were right in their view that there could not be a halfway house: s. 270 did not intend a division between sanction and non-sanction cases based on the offences, but a division based on proceedings and not on the particular incidence of a particular type of offence charged. Section 270, sub-s. 1, of the Act of 1935 has no application to

(1) [1944] F.C.R. 360.
(2) [1921] 2 A.C. 570, 579.
(3) [1943] A.C. 147, 159, 162.

court-martial proceedings held in India under the Army Act. Lastly, the appellant having been convicted of misapplication of money the language of s. 270 cannot apply, for the acts in respect of which he was found guilty were not acts done or purporting to be done by him in the execution of his duty as a servant of the Crown in India: *Gill and Another* v. *The King* (1).

The appellant replied. Admittedly, a man cannot misapply in the course of his duty, but I say that there was no evidence of misapplication. The prosecuting officer alleged that the money was drawn for pay and was not so used, and that therefore, whether it was burnt or not, it was misapplied; that was his case. In the ordinary courts that could not possibly have happened. If it was sought to charge me with misapplication they must prove it, but they said that there was no need for it. I say that the position was entirely different, and that there has been no misapplication. I did not have the opportunity of defending an ordinary misapplication case. I was never tried for misapplication, but for carrying money for pay and not using it for pay. I could not use it for pay if it was burnt.

April 19. The judgment of their Lordships was delivered by LORD MORTON OF HENRYTON, who stated the facts and statutory provisions set out above and continued: Before this Board the appellant argued fully and clearly the question as to the true construction of s. 270 of the Act. He opened his argument by saying that he did not rely on the other objections to the jurisdiction of the court-martial which he had argued before Blacker J. He did, however, seek to raise, by an "application for permission to urge further grounds," a number of matters relating to the facts of the case and the conduct of the proceedings before the court-martial. Their Lordships did not think it right to allow the appellant to argue matters which he had elected not to argue before the Federal Court and on which, in consequence, that court had given no

(1) (1948) L.R. 75 I.A. 41.

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decision. It is obvious, however, that if this application had been granted, the appellant would have been faced with a very difficult task, having regard to the observations of Blacker J., already quoted. The result is that the only question now arising for decision is whether s. 270, sub-s. 1, of the Act applies in the present case. If the sub-section does apply, the court-martial which convicted the appellant had no jurisdiction to try him, since the consent of the Governor-General was not obtained, and his conviction cannot stand. If the sub-section does not apply, the present appeal must fail. The first matter to be considered is whether proceedings before a court-martial are "proceedings civil or "criminal" in the sense in which these words are used in s. 270, sub-s. 1. Clearly proceedings before a court-martial are not "civil proceedings," but it is conceded that they may well come within the description of "criminal proceedings" in a suitable context. Their Lordships, however, agree with the view of the Federal Court that in s. 270, sub-s. 1, the phrase "'proceedings "'civil or criminal' indicates only the civil or cri- "minal proceedings capable of being instituted under "the ordinary law of the land" and does not include proceedings under the military law. The courts in India gave several reasons for this view. It will be sufficient to refer to two of them, although the others are of some weight. The first is based on the language of sub-s. 2 of s. 270. Clearly the phrase "civil or cri- "minal proceedings" in that sub-section must bear the same meaning as the like phrase in sub-s. 1, and in sub-s. 2 the phrase cannot be construed as extending to courts-martial. As the Special Bench pointed out, the provision for the dismissal of proceedings "unless "the court is satisfied that the acts complained of were "not done in good faith," if applied to proceedings under the Army Act, would render it practically impossible to maintain discipline. Further, it could hardly have been intended by the legislature that, when a charge before a court-martial was dismissed, the costs should be recovered "from the person instituting the "proceedings," nor would there appear to be any means of executing any such order for payment of costs.

Secondly, the necessity for speedy punishment is stressed by the preamble to the Army Act, but if s. 270, sub-s. 1, applies to court-martial proceedings, the trial would inevitably be delayed. Nor does the difficulty end there, for if s. 270, sub-s. 1, applies to court martial proceedings, it would seem that it must equally apply to proceedings before a commanding officer, in which he is empowered to award summary punishments. It is inconceivable that the legislature intended such proceedings to be delayed until the consent of the Governor-General had been obtained.

The appellant, conscious of the difficulties just mentioned, sought to meet them by contending that the sub-section did not apply to all proceedings under the Army Act, but only to proceedings in respect of acts on which charges under the ordinary criminal law could be based. In their Lordships' view it is quite impossible to read any such qualification into the sub-section. They agree with the view expressed by the learned Chief Justice in the Federal Court that "there "is no halfway house. Either all court-martial pro- "ceedings under the Army Act are criminal proceed- "ings within section 270 (1.) or no court-martial pro- "ceedings are. If all court-martial proceedings under the "Army Act are criminal proceedings"—within s. 270 (1.)—"there is no way to escape from the fantastic "results which would follow from such a decision" (1). It is unnecessary to elaborate this matter further, as there is another reason why this appeal could not succeed, even if proceedings before a court-martial "were criminal proceedings" within s. 270, sub-s. 1. That sub-section only applies to proceedings instituted against any person "in respect of any act done or pur- "porting to be done in the execution of his duty as a "servant of the Crown in India or Burma" before the relevant date. On February 17, 1948, the judgment of this Board was delivered in Privy Council Appeal No. 57 of 1947 (*Gill and Another* v. *The King* (2)). In that case the appellant had been charged with accepting or conspiring to accept bribes, and the following passage from the judgment is relevant in the present

(1) [1944] F.C.R. 360.

(2) (1948) L.R. 75 I.A. 4

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case: "The Federal Court has not expressed an opi-
"nion on the necessity of a sanction under s. 197 of the
"Code, but, as the High Court has expressed the view
"that such a sanction was in this case necessary and
"on this much-vexed question the Board has heard
"full argument, their Lordships think it right to ex-
"press their own view.

"In the first place, their Lordships find it impos-
"sible, at least in relation to an offence of this charac-
"ter, to distinguish between s. 270 and s. 197. The
"words in s. 270 'in respect of any act done or pur-
"'porting to be done in the execution of his duty as a
"'servant of the Crown' appear to them to have pre-
"cisely the same connotation as the words in s. 197,
"sub-s. 1, 'any offence alleged to have been committed
"'by him while acting or purporting to act in the dis-
"'charge of his official duty.' It is idle to speculate
"why a change of language was made. But, if a tem-
"poral meaning is not given, as in their Lordships'
"view it clearly should not be given, to the words in
"s. 197 'while acting, etc.,' it is in their opinion im-
"possible to differentiate between the two sections.
"In the consideration of s. 197 much assistance is to
"be derived from the judgment of the Federal Court
"in *Hori Ram Singh* v. *The Crown* (1), and in parti-
"cular from the careful analysis of previous authorities
"which is to be found in the opinion of Varadachariar
"J. Their Lordships, while admitting the cogency of
"the argument that in the circumstances prevailing
"in India a large measure of protection from harassing
"proceedings may be necessary for public officials,
"cannot accede to the view that the relevant words
"have the scope that has in some cases been given to
"them. A public servant can only be said to act or to
"purport to act in the discharge of his official duty, if
"his act is such as to lie within the scope of his offi-
"cial duty. Thus, a judge neither acts nor pur-
"ports to act as a judge in receiving a bribe, though
"the judgment which he delivers may be such an act:
"nor does a Government medical officer act or purport
"to act as a public servant in picking the pocket of a

(1) [1939] F.C.R. 159.

" patient whom he is examining, though the examina-
" tion itself may be such an act. The test may well
" be whether the public servant, if challenged, can
" reasonably claim that, what he does, he does in virtue
" of his office. Applying such a test to the present case,
" it seems clear that Gill could not justify the acts in
" respect of which he was charged as acts done by him
" by virtue of the office that he held. Without further
" examination of the authorities their Lordships, find-
" ing themselves in general agreement with the opinion
" of the Federal Court in the case cited, think it suffi-
" cient to say that in their opinion no sanction under
" s. 197 of the Code of Criminal Procedure was needed."

In the present case, it is equally clear that the " appellant could not justify the acts in respect of " which he was charged," i.e., acts of fraudulently misapplying money entrusted to his care as a public servant, " as acts done by him by virtue of the office " that he held." For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Solicitor for respondent: *Solicitor, High Commissioner for India.*

RAMGARH STATE

v.

THE PROVINCE OF BIHAR

1948

March 29,
April 13.

[SIR HARILAL KANIA C.J., SIR FAZL ALI and PATANJALI SASTRI JJ.]

Government of India Act, 1935 (as adapted by India Provisional Constitution Order, 1947), ss. 6, 204—Federal Court—Original civil jurisdiction—" Acceding State ", meaning of—Suit for declaration that a State is entitled to be an Acceding State—Maintainability—Proviso to s. 204 (1)—Construction.

No State can properly be described to be an Acceding State within the meaning of s. 204 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, unless the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof. The mere fact that a State has expressed its willingness to be an Acceding State and is prepared to sign an Instrument of Accession at any time it is required to do so is not sufficient to bring it within the definition