Mohammad Yakub Khan - - - - - - *Petitioner*

v.

The King-Emperor - - - - - - - *Respondent*

FROM

A COURT MARTIAL HOLDEN AT CALCUTTA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, UPON PETITION FOR SPECIAL LEAVE TO APEAL, DELIVERED THE 20TH JANUARY, 1947

Present at the Hearing:

LORD THANKERTON
LORD PORTER
LORD SIMONDS
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD THANKERTON]

The jurisdiction of the Judicial Committee of the Privy Council is purely statutory, resting on the Judicial Committee Act of 1833 and the amending Acts. The material provision is in Section 3 of the Act of 1833, which reads as follows: " All appeals or complaints in the nature of appeals whatever, which either by virtue of this Act, or of any law, statute or custom, may be brought before His Majesty or His Majesty in Council from or in respect of the determination, sentence, rule or order of any Court, judge or judicial officer, and all such appeals as are now pending and unheard, shall from and after the passing of this Act be referred by His Majesty to the said Judicial Committee of His Privy Council, and such appeals, causes and matters shall be heard by the said Judicial Committee, and a report or recommendation thereon shall be made to His Majesty in Council for his decision thereon " as therein provided.

Where it is sought to bring an appeal from an Order of a Court established under the provisions of an Act framed long after the Act of 1833, the competence of the appeal must be determined by the test laid down by Lord Cairns in *Théberge and Another* v. *Laudry*, reported in 2 Appeal Cases, page 102, at page 108, where Lord Cairns says this: " In other words their Lordships have to consider, not whether there are express words here taking away prerogative, but whether there ever was the intention of creating this tribunal with the ordinary incident of an appeal to the Crown." Applying this test, their Lordships are clearly of opinion that the Indian Army Act intended the findings of a Court Martial as and when confirmed by the proper confirming officer, to be final, subject only to the power of revision for which this Act provides. There is no room for an appeal to His Majesty in Council consistently with the subject matter and scheme of the Act.

Their Lordships will, therefore, humbly advise His Majesty that the Petition should be dismissed.

(2/47) (55970r) Wt. 8013—5 30 2/47 D.L. G. 338

In the Privy Council

MOHAMMAD YAKUB KHAN

v.

THE KING-EMPEROR

DELIVERED BY LORD THANKERTON

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