

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Hayward.

GANESH MAHADEV JAMSANDEKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1918.

July 23.

Sea Customs Act (VIII of 1878), sections 167 (3), 182, 188 and 191—Attachment of silver ingots by Police—Inquiry by Customs clerk in absence of plaintiff—Sentence of confiscation and fine passed by the Collector of Customs merely on the report of the clerk—Civil suit by the plaintiff to recover value of silver confiscated and amount of fine levied—Jurisdiction of Civil Court to try the suit.*

A Sub-Inspector of Police, while conducting a search of the plaintiff's house for a criminal offence, found no incriminating articles but came across silver ingots, which he attached and sent over to a clerk in the Customs Department. The clerk suspected that the silver was imported into British India without payment of duty, made an inquiry in plaintiff's absence, and submitted a report to the Collector of Customs. The Collector, without taking any evidence himself and without hearing the plaintiff, passed an order confiscating the silver under the provisions of section 182, and fining the plaintiff in a sum of Rs. 1,000 under section 167 (3) of the Sea Customs Act, 1878. The plaintiff sued to recover the value of the silver confiscated and the amount of the fine levied; but the trial Court rejected the claim on the ground that it had no jurisdiction to hear the suit, as the Collector's decision was final under the provisions of section 182 of the Act. The plaintiff having appealed:—

Held, that the jurisdiction of the Civil Court to hear the suit was not ousted, if it appeared that there had been no legal adjudication of the matter by the Collector in accordance with the provisions of the Sea Customs Act, 1878.

FIRST appeal from the decision* of C. E. Palmer, District Judge of Ratnagiri.

Suit for declaration and consequential relief.

On the 20th March 1915, a Sub-Inspector of Police searched the plaintiff's house at Malvan, on a complaint of theft. He found no incriminating articles* during the search, but found silver ingots weighing about

* First Appeal No. 190 of 1917.

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150 lbs. He sent for a clerk in the Salt Department, and at his instance attached the silver. The attached silver was sent to a Sarkarkun, who held an inquiry and examined witnesses in the plaintiff's absence, and reported to the Collector of Customs that the silver in question was imported into British India without payment of duty. On receipt of the report, the Collector without hearing the plaintiff, ordered on the 24th April 1915 that the silver should be confiscated under section 182 and fined the plaintiff in a sum of Rs. 1,000 under section 167 (3) of the Sea Customs Act, 1878.

The plaintiff filed the present suit against the Secretary of State for India in Council and the Collector of Customs, for a declaration that the orders passed by the Collector of Customs as to confiscation and fine were illegal, and to recover the value of the silver and the amount of the fine. He alleged that the silver in question was purchased by him from a silver dealer in Bombay for the purposes of his factory at Malvan.

The defendants contended in their written statement that the silver in question was imported from Goa, a foreign port, and illegally landed without payment of duty at a place which was not a port; that the action of the Collector of Customs was not vitiated, even if it were shown that the search and seizure by the Police were contrary to law; and that the Collector's order was final under section 188 of the Sea Customs Act and that the Civil Court had no jurisdiction to entertain the suit.

One of the issues raised at the trial was: "6. Has the Court not jurisdiction for the reasons given in clause 4 of the defendants' written statement?" This issue was, by consent of the parties, tried first. The Court held that as the order passed by the Collector was final

under section 188 of the Sea Customs Act, 1878, the Civil Court had no jurisdiction to hear the suit.

The plaintiff appealed to the High Court.

A. G. Desai, for the appellant.—Section 188 of the Sea Customs Act is no bar to the maintainability of the present suit. The order passed is no doubt final, but it is only as regards the Revenue or Custom authorities: see Bombay Land Revenue Code (Bom. Act V of 1879), sections 129, clause 1, 129, clause 2; *Hari Bhanji v. Secretary of State for India*⁽¹⁾. Wherever the Legislature meant to prohibit suits altogether, it has said so expressly; see the Income-Tax Act, section 39; Forest Act, section 73; Khoti Settlement Act, section 22.

If, however, it be held that the Sea Customs Act prohibits suits, we contend that the Act is *ultra vires* of the Indian Legislature. The Governor-General in Council derives his power to legislate by virtue of section 22 of St. 24. & 25, Vic. c. 67 read with St. 21 & 22, Vic. c. 106, section 65: see also St. 5 & 6, Geo. V, c. 61, section 32. A suit like the present could have been filed against the East India Company (see Regulation VI of 1814, section 4 and Act I of 1892, section 14); it can, therefore, be filed against the Secretary of State for India. See also, *Secretary of State v. Moment*⁽²⁾; *The Peninsular and Oriental Steam Navigation Company v. The Secretary of State for India*.⁽³⁾

The suit will lie against the Customs Collector also. There is nothing in the Sea Customs Act to prohibit the suit, though other Acts do contain such a prohibition: the Bombay District Police Act (Bom. Act IV of 1890), section 80; the City of Bombay Police Act (Bom. Act IV of 1902), section 140; the Salt Act (VI of

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(1) (1879) 4 Mad. 344.

(2) (1912) 15 Bom. L. R. 27

(3) (1861) 5 Bom. H. C. R. Appx. Ap. 1.

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1890), section 61; see also *Chabildas Lallubhai v. Municipal Commissioner, Bombay*⁽¹⁾; *Nemi Chand v. Secretary of State for India*⁽²⁾.

Further, we submit, that as there has been no "adjudication" as such by the Customs authority, we can maintain the present suit in a Civil Court. The procedure followed here finds no warrant or justification for it in the Sea Customs Act. The evidence was taken in our absence and we were given no opportunity to cross-examine the evidence for the prosecution or to offer any evidence in defence.

S. S. Patkar, Government Pleader, for respondent No. 1:—The Customs Collector acts judicially under section 182 of the Sea Customs Act. His decision is final under section 188; and cannot therefore be challenged in another Court. When the Legislature provides a special tribunal for adjudication of certain claims, then the jurisdiction of ordinary tribunals to adjudicate upon those claims is by implication excluded: see Maxwell on the Interpretation of Statutes, p. 156; *The Queen v. Collins*⁽³⁾; *Balvant Ramchandra v. Secretary of State*⁽⁴⁾; *Bhaishankar v. The Municipal Corporation of Bombay*⁽⁵⁾; *La kshman v. Antaji*⁽⁶⁾ and *Ramachandra v. The Secretary of State*⁽⁷⁾. If the Civil Courts have no jurisdiction ordinarily to entertain a suit like the present, they cannot have it on the allegation that the plaintiff was given no opportunity of placing his case before the Customs authorities.

C. A. V.

HEATON, J.:—The plaintiff's suit was dismissed by the District Judge of Ratnagiri on the ground that the

(1) (1871) 8 Bom. H. C. R. (O.C.J.)
85 at p. 92.

(2) (1907) 34 Cal. 511.

(3) (1876) 2 Q. B. D. 30 at p. 35.

(4) (1905) 29 Bom. 480 at p. 503.

(5) (1907) 31 Bom. 604.

(6) (1900) 25 Bom. 312.

(7) (1888) 12 Mad. 105.

Court had no jurisdiction to entertain it. The plaintiff has appealed to us.

We have before us only the plaint, the written statement and the judgment of the District Judge, and as the question is one of jurisdiction and the facts have not been determined, we have for the purpose of our decision to assume the truth of the facts stated in the plaint and then determine whether the Courts have jurisdiction or not.

The plaintiff's cause of action, to put it briefly, is that some silver belonging to him of considerable value was seized and confiscated by the Customs authorities and that he was subjected to a penalty of Rs. 1,000 and that these things were done under the cover of sections 167, 182, 188 and 191 of the Sea Customs Act (VIII of 1878). The plaintiff says these things were wrongfully done.

There are two ways in which the question of jurisdiction can be looked at. The first is a very general way which involves a consideration of the judgment of the Privy Council in the case of *The Secretary of State for India v. Moment*⁽¹⁾. The question which would then arise is this: supposing the Sea Customs Act excludes the jurisdiction of the Civil Courts, is that enactment to that extent *ultra vires* of the Indian Legislature? The second way of looking at the matter is particular and turns entirely on the special facts to be proved. The question raised by this way of looking at the matter is this: Does the Sea Customs Act really exclude the jurisdiction of the Civil Courts in this particular case?

The first and more general view need not really occupy our consideration, because unless the plaintiff

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can show that the Courts have jurisdiction on the particular facts alleged, he cannot succeed whatever view be taken. Of course unless there is something in the law to prevent it, a plaintiff, whose property—and in this case property of considerable value—has been seized and confiscated by a Customs-official and from whom has been extracted a heavy fine, must have a right of action on the ground that these things have been wrongly done. The answer to this on behalf of the defendants who are the Secretary of State for India and the Collector of Customs is this: They say that for the purpose of confiscating property on the ground that customs duty has not been paid on it and of exacting a penalty, a Special Tribunal has been set up by the Sea Customs Act, and that as this is so, the jurisdiction of the ordinary Courts is excluded. The general proposition of law here implied cannot, I think, be disputed, and in support of it I will only mention the case of *Balvant Ramchandra v. Secretary of State for India*⁽¹⁾ and the cases therein referred to. As instances in which the principle has been applied, I mention the case of *Lakshman v. Antaji*⁽²⁾ and the case of *Ramachandra v. The Secretary of State*⁽³⁾. I need not labour this point, because it was conceded on behalf of the plaintiff that where such a Special Tribunal is provided by law, the jurisdiction of the Civil Courts is excluded if the Special Tribunal has acted according to law. There can, I think, be no doubt that such a Special Tribunal is provided by the Sea Customs Act. Section 167 speaks of offences and penalties and gives a long list of them. Section 187 provides that all offences against this Act, other than those cognizable under Section 182 by officers of Customs, may be tried summarily by a Magistrate. Section 182 provides that all

⁽¹⁾ (1905) 29 Bom. 480 at p. 503.⁽²⁾ (1900) 25 Bom. 312.⁽³⁾ (1888) 12 Mad. 105.

except a very small number of the offences mentioned in section 167 are to be disposed of by Customs officers. The exact words are "such confiscation or penalty may be adjudged." Then follows a classified statement of jurisdiction conferring powers on Customs officers not dissimilar to, though more limited than those of First, Second and Third Class Magistrates. Then section 188 provides that there shall be an appeal and that every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final. The power of revision conferred by section 191 is conferred on the Local Government. We have here then very clearly indicated a Special Tribunal, and it is a Special Tribunal for adjudging confiscations or penalties or both against a person who is alleged to have committed an offence. It seems to me that where this Tribunal operates, especially as the order of the appellate authority is stated to be final, a suit in the ordinary Civil Courts will not lie to set aside the order of the Special Appellate Tribunal. At the same time Government authorities cannot, to use a colloquial expression, have it both ways. They cannot have absolute immunity from civil suits and at the same time disregard the provisions of the Sea Customs Act. If the Special Tribunal has operated as provided by the Act, well and good. But if there has in fact not been a decision by such a Tribunal arrived at in the manner provided by the Act, then the Tribunal has not operated and the bar to a suit does not exist. The general nature of the proceedings of the Tribunal is indicated by the use of the word "adjudge" especially as it is used in connection with what is described as an offence. We have, therefore, to consider whether the Customs-officer has really adjudged the confiscation and the penalty, in other words, we have to consider whether there has been an adjudication. Now the plaintiff alleges that the officer

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who claims to have adjudged the confiscation and the penalty never himself took the evidence of the witnesses; that he never saw the plaintiff who may be described as the person accused or heard what he had to say; that the person who did take the evidence was a subordinate official; that he took it in the absence of the accused who had no opportunity of cross-examining the witnesses: and that the accused was not given any opportunity of adducing evidence in his own favour. As I began by saying, we must for the purposes of the argument, take these facts to be true, although it may be, when the case comes to be inquired into, it will be found that they are not true. Now assuming them to be true, it seems to me quite clear that there never was an adjudication of the kind contemplated by the Sea Customs Act. I will not attempt to define what such an adjudication should be beyond this; that it must be a fair hearing of both sides. Nor will I attempt to say whether, if some of the plaintiff's allegations be found to be true and others untrue, there was or was not an adjudication. I merely assume that all that the plaintiff says is true and then say that if this be so, there never was an adjudication such as is contemplated by the Act. On this assumption, therefore, there has never been a disposal of the matter by the Tribunal set up by the Sea Customs Act and therefore the jurisdiction of the Civil Courts has not been ousted.

The case, therefore, must be remanded to have it determined in the first instance whether there has or has not been an adjudication. If there has not, the Civil Court has jurisdiction. If there has been an adjudication, I think the Civil Court has not jurisdiction.

The substantial ground on which the plaintiff bases his suit is: that there has not been an adjudication and that is the only ground that we need in this case seriously consider.

There is a trivial claim for damages apart from the claim on account of confiscation and the claim on account of the fine imposed. For these damages the persons personally responsible would, according to the plaintiff's statement, be persons who are not made defendants in the suit, and the plaint which we have read very carefully does not seem to me to make out a case in the matter of these damages against the Secretary of State, and I think therefore that this portion of the claim must be disregarded.

This case has been wrongly decided on a preliminary point. Therefore it must be remanded to be heard *de novo*. But the issues will have to be reframed, and the only substantial issue is whether there has been an adjudication such as is provided by the Act. If there has, the suit should be dismissed. If there has not, the order of confiscation and fine should be set aside; and the property confiscated or its value, and the amount of fine, with interest in both cases, ordered to be returned to the plaintiff. The Court should consider only the proceedings taken by the Customs-authorities. It should not go into the question of the legality of the actual seizure of the silver, because that is a matter irrelevant to this suit. The only matters relevant on the plaint and the facts stated therein are whether the Customs-authorities, not the people who seized the silver, made an adjudication as provided by the Act. We have been unable to find that any rules have been framed by the Chief Customs authority as provided by section 9 of the Act, regulating the procedure and proceedings of the Customs authorities in the adjudication of confiscations and penalties. If such rules have been framed, they should be produced. If they have not, it may be that their absence will make the decision on the matter in dispute more difficult than otherwise it would be. Nevertheless the matter will

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have to be decided. My learned brother has quoted passages from judgments in English cases which should help the lower Court in arriving at a decision.

In my opinion the decree of the lower Court should be set aside as erroneously decided on a preliminary point and the case remanded as I have stated.

Costs of this appeal should be costs in the suit.

HAYWARD, J.:—I concur. I do not understand the learned pleader for the appellant seriously to press the somewhat indefinite and vague claim for Rs. 17 "compensation for pain and mental anxiety and bodily troubles and hardship and loss caused by the unjust and illegal acts of the officers and servants of Government". It might prove an interesting study in human nature to enter upon an enquiry into this demand but it seems to me the temptation ought to be resisted on the principle "*de minimis non curat lex*" and our attention ought to be focussed solely on the really substantial claim for the recovery of the Rs. 1,000 fine and nearly Rs. 5,000 worth of bar silver alleged to have been wrongfully confiscated by the Executive Officers of Government purporting to act under the authority of the Sea Customs Act.

Now the appellant's claim in that respect was that the seizure of the silver was made in an illegal manner; that the question whether the silver had or had not been improperly imported without payment of duty was wrongly decided; that he had not been given a fair hearing; and that the order of fine and confiscation was therefore passed illegally under section 167 of the Sea Customs Act. The respondent's defence was that there had been no illegal seizure, that the silver had been improperly imported without payment of duty, and that the order of fine and confiscation had been legally passed by the Collector of Customs under section 182 and had become final upon confirmation by the

Commissioner and Government under sections 188 and 191 of the Act and was therefore beyond the jurisdiction of the ordinary Civil Courts.

It seems to me, in that respect, that the legality or otherwise of the manner of seizure is irrelevant. It is not the manner of seizure but the improper importation without payment of duty which is the legal justification of fine and confiscation under section 167 of the Sea Customs Act. It seems to me further that the question whether the silver was improperly imported without payment of duty is one that has been specially reserved for adjudication by the Special Tribunals established for that special purpose by sections 182, 188 and 191 of the Act and that that question is therefore excluded from the cognizance of the ordinary Civil Courts on the principles laid down in the cases of *Lakshman v. Antaji*⁽¹⁾, *Balvant Ramchandra v. Secretary of State*⁽²⁾ and *Bhaishankar v. The Municipal Corporation of Bombay*⁽³⁾. But it seems to me nevertheless that the question whether there has been a legal adjudication in accordance with the provisions of the Act is not a question excluded from the cognizance of the ordinary Civil Courts. If there has been no legal adjudication, then the order of fine and confiscation was *ultra vires* of the provisions of the Act and resulted in an ordinary wrong cognizable by the ordinary Civil Courts on the general principles underlying section 9 of the Civil Procedure Code. It is unnecessary to consider here the ruling of the Privy Council in the case of *The Secretary of State v. Moment*⁽⁴⁾, as the former question has no reference to the liability of the Secretary of State and the latter question has not been excluded by the Act contrary to the provisions of section 32 of the Government of India Act, 1915.

(1) (1900) 25 Bom. 312.

(2) (1907) 31 Bom. 604.

(3) (1905) 29 Bom. 480 at p. 503.

(4) (1912) 15 Bom. L. R. 27.

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The real question, therefore, to be determined in this litigation is whether there has or has not been a legal adjudication in accordance with the provisions of the Act. That will involve determining, after evidence has been recorded, what was the exact method adopted for the purpose of the adjudication and whether that method was in accordance with the express or implied provisions of the Act. It is possible that some express procedure has been laid down by rules framed under the Act. But, if not, regard should be had to the following remarks of Lord Loreburn L. C. in the case of *Board of Education v. Rice*⁽¹⁾ :

"Comparatively recent Statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

These remarks were quoted with approval by Viscount Haldane L. C. in the case of *Local Government Board v. Arlidge*⁽²⁾, in which he said (at p. 132) :

"When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such

(1) [1911] A. C. 179 at p. 182.

(2) [1915] A. C. 120 at pp. 132, 133, 138.

tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times, it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary, if it is to be capable of doing its work efficiently."

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And again (at page 133) :—

"The result of its inquiry must, as I have said, be taken, in the absence of directions in the Statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

Lord Shaw also said in the same case (at page 138) :—

"When a central administrative board deals with an appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a Statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated: and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are *ex necessitate* those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure or forms of pleading."

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If it should be determined upon these principles that there has been a legal adjudication in accordance with the provisions of the Act, then the suit should be dismissed as outside the jurisdiction of the Civil Courts. If it should, on the other hand, be determined that there has been no legal adjudication in accordance with the provisions of the Act, then the order of fine and confiscation should be declared *ultra vires* and a decree should be passed for refund of the fine and restoration of the confiscated property in exercise of the ordinary jurisdiction of the Civil Courts. It has been argued before us that liability for the wrong or tort, if any, committed by the Collector of Customs would not extend to the Secretary of State as the correctness of the decision of Sir Barnes Peacock in the case of *The Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*⁽¹⁾ has been doubted by Sir Lawrence Jenkins in the case of *Shivabhajan v. Secretary of State for India*⁽²⁾. But it does not seem to me that those cases have here any application, as the liability in those cases depended solely on the conduct of the subordinate servants, while here it depends largely on the appropriation of the property for the benefit of the Secretary of State. There would appear no room for doubt in these circumstances as to the liability of the Secretary of State under section 32 of the Government of India Act, 1915.

The suit must, therefore, in my opinion be remanded as proposed for trial on the issues above indicated and in the light of the above remarks under Order XLI, Rule 23, Civil Procedure Code.

Decree set aside.

R. B.

⁽¹⁾ (1861) 5 Bom. H. C. R., Appx. A. p. 1

⁽²⁾ (1904) 28 Bom. 314.