

APPELLATE CIVIL.

Before Jenkins C., and N. R. Chatterjea J.

FORBES

v.

SECRETARY OF STATE FOR INDIA.*

1914

May 21.

Income Tax—Executor's liability to income tax—Suit, maintainability of, for declaration of non-liability to tax—Collector, jurisdiction of, to assess income tax—Income Tax Act (II of 1886)—Contract Act (IX of 1872) s. 72.

Income accruing to an executor under the will of a testator is 'income' as defined in s. 3, clause (5) of the Income Tax Act, 1886, and is liable to be taxed under the Act.

It is the Collector's duty to determine what persons are chargeable in respect of sources of income other than salaries and pensions, profits of companies and interest on securities.

A suit brought by an executor of an estate for a declaration that as executor he was not liable to pay income tax in respect of any income of the estate and that the collector, in realizing the sums paid to him, acted without jurisdiction, and for a decree for the amount so paid with interest, does not lie.

Payment of income tax by the executor of an estate, under protest, on the ground that as executor no tax was payable by him, may be regarded as paid under coercion within the meaning of s. 72 of the Contract Act, *Kanhaya Lal v. National Bank of India, Ltd.* (1) referred to.

SECOND appeal by A. H. Forbes, the plaintiff.

In the suit which gave rise to this appeal, the plaintiff, Mr. A. H. Forbes, as executor to the estate of

* Appeal from Appellate Decree, No. 1084 of 1912, against the decree of T. C. Mukerjee, District Judge of Purneah, dated Feb. 26, 1912, confirming the decree of Sashi Bhusan Banerjee, Munsif of Purneah, dated July 14, 1911.

(1) (1913) I. L. R. 40 Calc. 598 ; L. R. 40 I. A. 56.

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the late Mr. A. T. Forbes, sued the Secretary of State for India in Council for refund of Rs. 814-4-4 realized from him by the Collector of Purneah as income tax assessed under Act II of 1886 in respect of taxable income accruing to the estate. The plaintiff also claimed Rs. 97-4-11 as compensation at 12 per cent. per annum in lieu of interest.

So far back as 1891, the plaintiff as such executor was assessed with income-tax, but the assessment was cancelled by the Commissioner on the 29th April, 1892, on appeal preferred by the plaintiff, and the Commissioner's order was upheld by the Board of Revenue. In November, 1908, the plaintiff was again called upon by the Collector of Purneah to pay Rs. 286 and odd as income tax on taxable income accruing in respect of the said estate. The plaintiff filed an objection, urging that the question as regards his liability as executor to pay the tax had already been finally decided by a competent tribunal and could not be re-opened. The objection was, however, disallowed. There was an appeal to the Commissioner against that order but with like result, and the tax assessed was levied.

The Secretary of State for India in Council in defence contended, *inter alia*, that the suit was not maintainable, that the order of the Commissioner exempting the plaintiff from income tax was incorrect and based on an erroneous interpretation of law, and that the Collector of Purneah and the Commissioner of the Bhagalpur Division were not acting as Judicial Officers when passing orders under Act II of 1886.

The Munsif held the suit to be maintainable, but dismissed the suit, holding that the plaintiff was liable to be assessed with income tax and that the orders of the Collector and Commissioner were not judicial orders.

On appeal, the District Judge upheld the Munsif's judgment.

The plaintiff thereupon filed this Second Appeal.

Babu Mahendra Nath Roy (with him *Babu Jogendra Nath Mukherji*), for the appellant. An executor is not personally liable: see Income Tax Act, ss. 4, 20, 21, 22, 23, 33. A refund is allowed when a testator dies in the midst of a year. Even as a trustee, he was not liable. The practice of the income-tax office on this point is warranted by the Act and is in my favour. From 1821 to 1912, the Board has never realized. The Collector has no jurisdiction to assess income tax. My client is therefore entitled to recover.

The executor may get income not assessable.

Mr. S. P. Sinha (with him *Babu Ram Charan Mitra, the Senior Government Pleader*), for the respondent.

[JENKINS C. J. Do you wish to say anything on s. 39?]

Yes. The Collector has jurisdiction to assess on persons chargeable. The only remedy against his action is appeal. If he assesses anything but income, he acts beyond his jurisdiction: see section 14. If he assesses the person who derives income, he acts properly. If he says I assess A, though I believe B is chargeable, it is not: *Attorney-General v. London County Council* (1), per Lord Macnaghten.

[JENKINS C. J. See *Secretary of State for India v. Fahamidannissa Begum* (2)].

Section 39 is a bar to a suit.

[N. CHATTERJEA J. What do you say to *Kamesh-war Pershad v. The Chairman of the Bhabua Municipality* (3)?]

(1) [1907] A. C. 131, 135. (2) (1889) I. L. R. 17 Calc. 590.

(3) (1900) I. L. R. 27 Calc. 849.

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There it was clearly without jurisdiction. The words are, moreover, different between the provisions of the Income Tax Act and the Bengal Municipal Act.

The Collector shall determine who is chargeable. The civil courts have no jurisdiction to determine this. That it is income is assumed in the plaint itself: see section 49 of the Income Tax Act. The words are "accruing to a person" and not "belonging to." The Act makes stringent provisions for finality of revenue authorities. No provision of law is to be presumed to be inequitable.

The argument that the Collector has no jurisdiction to find the person chargeable, but has jurisdiction only as regards the amount chargeable, finds no support from the Act. On the contrary, it is said the Collector *shall* determine what persons are chargeable.

Babu Jogendra Nath Mukherji, in reply.

JENKINS C. J. This is a suit brought by Mr. A. H. Forbes who is described as executor to the estate of the late A. J. Forbes, against the Secretary of State for India in Council, and the prayer of the plaint is for a declaration that, as executor to the estate of the late A. J. Forbes, the plaintiff is not liable to pay income tax in respect of any income of the said estate and that the said Collector, in realizing the sums paid to him, acted without jurisdiction, and for a decree for the sum of Rs. 912-3-3 being the amount realized, with interest.

To succeed in this suit it is incumbent on the plaintiff to show that the payment had been made by him under coercion. It is unfortunate that there was no direct issue on that point. Nor has our attention been drawn to any finding of fact as to this; but it

may be assumed for the purposes of this case that there was coercion within the meaning of Section 72 of the Contract Act as interpreted by the Privy Council case in *Kanhaya Lal v. National Bank of India, Ltd.* (1).

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What then is the ground on which this declaration is sought? This has not been made clear to us in the course of the argument.

The case turns upon the Income Tax Act (II of 1886), which is described as "An act for imposing a tax on income derived from sources other than agriculture." The preamble is in these terms, "Whereas it is expedient to impose a tax on income derived from sources other than agriculture; it is hereby enacted as follows." Then there is a definition of *income* as being income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf." Chapter II of the Act deals with the liability to tax, and it commences with section 4 which provides that subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April, 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor-General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule." Section 5 provides for certain exceptions and enacts that nothing in section 4 shall render

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liable to the tax the several sources of income there indicated. It is not suggested that the income with which we are now concerned comes within any one of those exceptions. But the argument would appear to be that though that which has been taxed is '*income*', still because the recipient is an executor no tax is payable. There is no provision in the Act which authorises such a view. There is an exemption provided in favour of those whose income does not reach a certain amount: but apart from that there is no personal exemption of which an executor as such could take advantage. Chapter II merely deals with the liability of the subject matter to tax. Chapter III deals with assessment and collection, the natural sequel to the general liability imposed by Chapter II. It deals with *income* under four heads which correspond with the four sources of income set forth in the second schedule to the Act. The first source of income is *salaries* and *pensions*, second—Profits of Companies, third—Interest on Securities, and fourth and last—other sources of income. For the purpose of the argument before us it has been assumed that the income with which we have to deal comes under the last of these four heads. While it is provided with regard to the first three classes of income that the tax shall be deducted or be paid as expressly indicated, the wider class of incomes coming under clause D was not capable of such simple treatment: and so we find it is provided by section 14 that "the Collector shall, from time to time, determine what persons are chargeable under Part IV, and the amount at which every person so chargeable shall be assessed." Apart from that there is no indication within or without the Act of the person who is chargeable in respect of *other sources of income*, and it will be noticed that it is the Collector who shall determine what persons are

chargeable in respect of these *other sources of income*. It may be that there is a limitation placed upon the Collector's decision by the words of section 15 which clearly indicate, as common sense indeed would determine; that the person chargeable is the person to whom the income accrues. All that appears very simple and in this case it has been observed by the Collector, who has come to the conclusion that the subject matter with which he was dealing was *income*, as admittedly it was and so was subject to tax. He further determined that the plaintiff, being the person to whom the income accrued, was the person chargeable under Part IV. In so determining he was exercising a jurisdiction that was clearly vested in him by the Act, and I cannot see how it can be said that he purported to exercise a jurisdiction which he did not possess and so did not make an assessment under the Act.

It has been argued before us that sections 20 to 23 throw a flood of light on the case favourable to the plaintiff. I fail to see it. They deal with a special class of cases and principally of persons who by incapacity arising from some personal defect or non-residence are unable to be approached and dealt with directly, and the sections provide that trustees, guardians, committees, agents and so forth may be dealt with in their places. They further make a special provision for receivers or managers in whom no property vests and also the Court of Wards, Administrators-General and Official Trustees. But if it be argued from this that it affords an indication that income accruing to an executor under the will of a testator is not liable to be taxed, I am of opinion that the argument has no value and no force. I have indicated my views to the effect that this is *income* which is liable to be taxed within the meaning of the

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Act. I have also shown that the Collector has determined that the plaintiff is a person chargeable and that in so doing he acted within the limit of his jurisdiction. That being so, it appears to be a case where, according to section 39, it is right to say that the suit does not lie. It has, therefore, been rightly dismissed by the lower Court, and we dismiss the appeal with costs.

N. R. CHATTERJEA J. I agree.

S. M.

Appeal dismissed.

CRIMINAL REVISION.

Before Sharfuddin and Taunon JJ.

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MANIPUR DEY

v.

BIDHU BHUSHAN SARKAR.*

Public Nuisance—Unlawful obstruction to public way—Bona fide question of title—Duty of Magistrate to determine the question—Criminal Procedure Code (Act V of 1898), ss. 133, 137.

Per SHARFUDDIN J. When a party, against whom an order under s. 133 of the Criminal Procedure Code is contemplated, appears and raises the question that a pathway, alleged to have been unlawfully obstructed, is not a public but a private one, the Magistrate should not only decide whether it is public or private, but he should determine whether the claim is *bona fide* or a mere pretence set up only to oust the jurisdiction of the Court. If he finds that the claim is a mere pretence, he may proceed to pass a final order; but if he finds that the claim, though not substantiated, has been raised *bona fide*, he should stay his hand and refer the party to the Civil Court, and if the party does not have recourse to such Court

* Criminal Revision No. 595 of 1914, against the order of M. Smither, Sessions Judge of Dacca, dated March 13, 1914.