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applies. It perhaps may seem a hard case on the appellants before us, but there is no escape from it. Certainly there is no escape from it in the suggestion of occupancy right. It is made for the first time in this Court.

We must, therefore, dismiss the appeal with costs.

G. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Mookerjee and Newbould JJ.

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 Aug. 11.

NIKUNJA RANI CHOWDHURANI

v.

SECRETARY OF STATE FOR INDIA.*

Penalty—Court Fees Act (VII of 1870) s. 19 E—Scope of the section—Suit to recover penalty by Secretary of State, maintainability of—Decision of Revenue authority—Jurisdiction of Civil Court.

Unless there is a statutory bar, a suit is maintainable by the Secretary of State for India in Council for recovery of a penalty lawfully imposed.

A Civil Court has no jurisdiction to review the decision of a Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue authority is *ultra vires*, if he has not followed the procedure prescribed by the statute which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognize.

Manekji v. Secretary of State for India (1) followed.

* Appeal from Appellate Decree, No. 637 of 1912, against the decree of A. R. Edwards, Additional District Judge of Faridpur, dated Feb. 8, 1912, affirming the decree of Behari Lal Chatterjee, offg. Subordinate Judge of Faridpur, dated Aug. 9, 1910.

(1) (1896) Bom. P. J. 529.

Section 19 E of the Court Fees Act, 1870, contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. It further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be.

A.-G. v. Freer (1), *Bradlaugh v. Clarke* (2), *Cawthorne v. Campbell* (3), *In the goods of Onda Bibee* (4), *In the goods of Stevenson* (5) referred to.

SECOND APPEAL by Nikunja Rani Chowdhurani (executrix to the estate of Kailash Chandra Chowdhury), the defendant.

The facts are shortly these. The defendant applied for probate of will of her deceased husband, Kailash Chandra Chowdhuri, to the District Delegate of Faridpur and assessed the value of the estate left by her husband at Rs. 78,112-14-1 pie. Usual notice was issued to the Collector of Faridpur by the Court under section 19 (4) of the Court Fees Act. On the receipt of the notice by the Collector, an enquiry was made as to the value of the properties and the valuation was ascertained to be Rs. 1,69,125-15 annas. On the 10th of December 1908, the defendant was asked by the Collector to amend the valuation and to show cause why undervaluation was made. The Collector further informed the District Delegate as to the amendment of the valuation, but was informed that the probate had already been issued to the defendant on the valuation made by her for which court-fees amounting to Rs. 1,563 had been realized from her on the 28th of August 1908. On the 2nd of January 1909, the defendant appeared before the Collector with a petition praying for amendment of the valuation and depositing the deficit court-fees to the value of Rs. 1,821. The petition was supported by an affidavit. The Collector submitted through the Commissioner all the papers to

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(1) (1822) 11 Price 183.

(3) (1790) 1 Anst. 214.

(2) (1883) L. R. 8 A. C. 354.

(4) (1899) 1. L. R. 26 Calc. 407.

(5) (1902) 6 C. W. N. 898.

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the Board of Revenue for orders under section 19 E of the Court Fees Act. The Board of Revenue directed by its order, dated the 4th of July 1909, levy of full court-fees and further penalty of double such court-fees which amounted to Rs. 6,768. This suit was for recovery of that sum of Rs. 6,768 by the Secretary of State through the Collector of Faridpur. The plaint was filed on the 11th of December 1909. Previous to the institution of the suit, the defendant moved the Board of Revenue which reduced the penalty to half, *i.e.*, Rs. 3,384. The plaintiff, thereupon, amended the plaint for recovery of Rs. 3,384.

The Subordinate Judge of Faridpur decreed the suit with costs. The defendant then appealed to the District Judge of Faridpur who dismissed the appeal with costs. Hence this second appeal.

Sir Rashbehari Ghose (with him *Babu Dwarka Nath Chuckerburty* and *Babu Chandra Kanta Ghose*), for the appellant, attacked the judgment on three grounds: (i) that the suit was not maintainable; (ii) that the fine imposed was imposed in contravention of the statute under which the Board acted; (iii) that the penalty was personal and was not recoverable from the estate.

The suit should be dismissed on the ground that the estate of the Testator is not liable for the fine. The fine has been imposed under section 19 E of the Court-Fees Act, and the Court has to determine whether the Board did or did not act in conformity with the law. 19 A and 19 E refer to two different stages. The stage contemplated by 19 E of the Court-Fees Act was never reached and hence there could be no fine. There is no precedent for such a suit. Such suits in England are by way of information by the Attorney-General. The requirements of the section were not complied with.

The fine is imposed upon the executrix. It has been imposed because she has not disclosed the true value of the estate which came into her hand. It is a fine. It is a penalty. There is no law under which you can punish a third person as an offender. Besides the beneficiaries might be infants, as they are in this case. The valuation was amended in this case. There the proceedings ended or should have ended. As soon as my client accepted the valuation of the Collector there was an end to the proceedings.

The Senior Government Pleader (Babu Ram Charan Mitra), for the respondent. The initial mistake was to issue probate without receiving the Collector's report. I see there is a minor concerned in this case. I cannot support this case on the merits.

MOOKERJEE AND NEWBOULD JJ. This is an appeal by the defendant in a suit for recovery of penalty imposed on her under section 19 E of the Court Fees Act, 1870. The facts material for the determination of the questions of law raised before us, are undisputed, and lie in a narrow compass. The appellant applied for probate of a will executed by her husband, Kailash Chandra Choudhury. Thereupon notice was issued to the Collector of Faridpur under sub-section (1) of section 19 H of the Court Fees Act. As no reply was received from the Collector, probate was issued to the petitioner on the 28th August 1908, on payment of Rs. 1,563, the duty payable upon her valuation of the estate. On the 10th December 1908, the Collector of Faridpur, who had meanwhile communicated with the Collector of Backergunge where some of the properties were situated, held that the value of the estate was Rs. 1,69,123 and not Rs. 78,122 as stated by the petitioner in her application for probate. He accordingly directed the petitioner to amend the valuation and to

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explain the cause of under-valuation. Notice was served upon her on the 15th December 1908. On the 2nd January 1909, she presented a petition to the Collector in which she stated that the valuation as made by her agents and accepted by her in good faith, was correct, as the majority of the properties were small shares in various estates and could not fetch large values. She added, however, that she had no desire to litigate the matter and deposited Rs. 1,821, the additional fee payable on the hypothesis that the valuation of the Collector was correct. On the 16th January 1909, the Collector recommended to the Commissioner that the additional sum might be accepted, and the probate amended. This was endorsed by the Commissioner and submitted by him to the Board of Revenue for sanction. The Board, however, on the 4th July, 1909, directed that double the fee payable, that is, Rs. 6,768 be levied as penalty from the petitioner under section 19 E of the Court Fees Act. This order, made without any notice to the petitioner, was communicated to her on the 15th August 1909. On the 11th September 1909, she petitioned to the Board to reconsider the matter, but during the pendency of her application for review, the Collector instituted the present suit on the 11th December 1909 for recovery of Rs. 6,768. On the 16th January 1910, the Board, on review, reduced the penalty to Rs. 3,384. On the 8th August 1910, the plaint was amended and the claim was reduced to that sum. The defendant resisted the claim substantially on three grounds, namely, *first*, that the suit as framed was not maintainable; *secondly*, that the penalty had not been imposed in accordance with statutory provisions, and consequently could not be recovered; and, *thirdly*, that even if the penalty was recoverable, no decree could be made against the estate in her hands. The Subordinate

Judge overruled these contentions and decreed the suit. Upon appeal, that decree has been affirmed by the District Judge. The present appeal was summarily dismissed under rule 11 of Order XLI of the Code by Brett and Sharfuddin JJ. The appellant then applied for review of judgment and obtained a Rule. After the retirement of Brett J., the Rule was made absolute by Sharfuddin J., on the ground that important questions of law were involved in the appeal. The appeal has now come up before us for final disposal, and on behalf of the appellant the three grounds urged in the primary Court in answer to the claim have been reiterated.

As regards the first objection, namely, that the suit is not maintainable, we are of opinion that there is no foundation for it. Assume that the penalty has been rightly imposed; there must be some method for its recovery. A suit for its recovery is not barred either explicitly or impliedly. There is no provision in the law for recovery of the penalty by summary process, as section 19 E is not mentioned in sub-section (1) of section 19 J. But even if a summary remedy had been provided, it would not follow that the Crown was not entitled to the ordinary remedy by a suit, which is open to all its subjects. In England, where the Crown claims sums due to it by way of penalty or otherwise, the recovery may be had by information: *A.-G. v. Freer* (1), *Bradlaugh v. Clarke* (2), *Cawthorne v. Campbell* (3). We feel no doubt that unless there is a statutory bar, a suit is maintainable by the Secretary of State for India in Council, for recovery of a penalty lawfully imposed.

As regards the second objection, namely, that the penalty has been imposed in contravention of the

(1) (1822) 11 Price 183.

(2) (1883) L. R. 8 A. C. 354.

(3) (1790) 1 Anst. 205, 214.

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statute and is consequently not recoverable, the question has been raised, whether it is open to the Civil Court to determine the matter. The decision in *Manekji v. Secretary of State for India* (1) shows that a Civil Court has no jurisdiction to review the decision of a Revenue authority on the ground that the valuation had been incorrectly made, or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue authority is *ultra vires*, if he has not followed the procedure prescribed by the statute which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognize. We must consequently determine whether the imposition of the penalty in the case before us was *ultra vires*.

Section 19 (1) of the Court Fees Act contemplates the pre-payment of duty before an order for grant of probate is made: *In the Goods of Omda Bibee* (2). In the case before us, this appears to have been done. A notice was thereupon issued to the Collector under section 19 H to enable him to test the valuation. As no communication was received from him, the Court issued the probate. Subsequently, the Collector called upon the petitioner to amend the valuation under sub-section (3) of section 19 H. The applicant for probate did not accept the valuation made by the Collector. She maintained, on the other hand, that the original valuation made by her was not inadequate, but with a view to avoid expense and litigation, she deposited the excess sum demanded. The Board of Revenue, thereupon, proceeded to impose a penalty on the applicant under section 19 E. In our opinion,

(1) (1896) Bom. P. J. 529.

(2) (1899) I. L. R. 26 Calc. 407.

section 19 E had no application in the events which had happened. As pointed out in the case of *Manekji v. Secretary of State* (1), section 19 E contemplates an application on the part of the person who had taken out probate and produces the same to be duly stamped. There was no such application in the present case. The section further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be. In the present case, there was no determination of the valuation by the Probate Court; there was, on the one hand, an estimate by the petitioner, there was, on the other hand, an assessment by the Collector which was not accepted as correct by the applicant; indeed, she disputed the correctness of the grounds for the higher assessment. There was, consequently, no room for the application of section 19 E. If it was intended to take proceedings under section 19 E, as the petitioner disputed the correctness of the assessment by the Collector, the Court should have been moved for an enquiry into the true value of the assets under section 19 H; and if the Collector had adopted such a course, it would have been incumbent upon him, as explained in the case of *In the goods of Stevenson* (2), to make out a case for enquiry upon definite facts. No such step was, however, taken, possibly for the reason that the Collector was of opinion that no penalty should be imposed. But whatever the reason might be, it is plain that there was no compliance with the statutory requirements, and that the contingency contemplated in section 19 E had not arisen. Nor was action taken under section 19 G which is moulded on section 43 of 55 Geo. III, Ch. 184, and section 122 of 56 Geo. III Ch. 56. We may here point out the reason why section 19 J, which prescribes the mode of recovery

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of penalties, makes no mention of section 19 E. In a case where that section is properly applicable, the petitioner is entirely in the hands of the chief controlling Revenue authority, who is at liberty to refuse to stamp the probate till the penalty has been paid; no occasion can consequently arise for recovery, by summary process or by suit, of the penalty imposed under section 19 E. We are of opinion that the action of the Board of Revenue was entirely misconceived, and that the imposition of the penalty under section 19 E was *ultra vires*. There is thus no legal foundation for the claim.

As regards the third objection, namely, that the penalty is personal and is not recoverable from the estate, we need only say that it raises a question of first impression and of some nicety, which need not be determined in view of our decision on the second objection.

The result is that this appeal is allowed, the decree of the District Judge reversed and the suit dismissed with costs in all the Courts.

S. K. B.

Appeal allowed.