

1925

SRIPATI
DATTA
v.
BIBHUTI
BIBUSAN
DATTA.

GRAHAM J.

appointment rested no longer exists, and with the withdrawal of the consent it may be argued that the justification for retaining him as receiver disappears.

For the reasons stated, while I am of opinion that the appeal is competent, I hold that no case has been made out on the merits which would justify us in interfering. The appeal, therefore, fails and must be dismissed with costs. The hearing fee is assessed at five gold mohurs to the plaintiffs, three gold mohurs to the defendant No. 6 and two gold mohurs to the defendant No. 7.

NEWBOULD J. I agree.

S. M.

Appeal dismissed.

ORIGINAL CIVIL

Before Page J.

1925

Aug. 20.

WEST LAIKDIH COAL CO., LTD., *In the matter of**.

Cess—Right of the Crown to recover arrears of cess—Cess Act (IV of 1880), s. 98—Bengal Public Demands Recovery Act (III of 1913), ss. 3 (6), 4, 14—The Companies Act (VII of 1913), ss. 171, 232.

The effect of s. 171 of the Companies Act of 1913 is to leave intact any right to recover debts due to it which the Crown may possess in virtue of its prerogative.

In re Henley & Co. (1) and *In re Oriental Bank Corporation* (2) followed.

The Secretary of State v. The Bombay Landing and Shipping Co., Ltd. (3) referred to and discussed.

* Original Civil Jurisdiction.

(1) (1878) 9 Ch. D. 469.

(2) (1884) 28 Ch. D. 643.

(3) (1868) 5 Bom. H. C. R. 23.

This was an application on behalf of the West Laikdih Coal Co., Ltd., which is in liquidation, for an order that the Cess Deputy Collector of Manbhum be restrained from levying execution against the property of the company to recover arrears of cess due to the Crown. The arguments appear from the judgment.

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Mr. B. C. Ghose, for the liquidator.

The Acting Advocate-General (Mr. B. L. Mitter),
for the Cess Officer, Manbhum.

PAGE J. This motion raises an important question as to the right of the Crown to recover arrears of cess from a company in liquidation. The West Laikdih Coal Company, Limited, is in liquidation, and arrears of cess are due from the company to the Crown. The Deputy Collector of Manbhum, within whose district the colliery is situated, is desirous of proceeding to recover the arrears of cess due from the company, and this motion is "for an order that the Cess Deputy Collector, Manbhum, be restrained from levying execution against the property of the company, and for such further or other order as the nature of the case may require."

Now, by section 98 of the Cess Act (IX of 1880)

"every amount due, or which may become due to any Collector under the provisions of this Act in respect of any arrears of cess.....may be realised by such Collector by any process provided by any law for the time being in force for the realisation of public demands."

By section 3, sub-section (6) of the Bengal Public Demands Recovery Act (III of 1913):

"'Public demand' means any arrear or money mentioned or referred to in Schedule 1",

and by Schedule I (4) (ii) a public demand includes:

"any money which is declared by any enactment for the time being in force to be recoverable as arrears of a demand or public demand, or as a demand or public demand".

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By section 4 of the Act :

" When the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due, and shall cause the certificate to be filed in his office."

Section 14 prescribes the various modes in which the certificate is to be executed.

It is provided, therefore, that the Crown shall possess a special method of recovering the arrears of cess due from the West Laikdih Coal Company, Limited. It is urged, however, on behalf of the company that the right of the Crown to recover debts due to it is restricted by the provisions of the Companies Act (VII of 1913). It is to be observed that no express restriction of the rights of the Crown is to be found in the Act. But it is contended that the Crown is made amenable to the provisions of the Companies Act by reason of sections 171 and 232. By section 232 any attachment put into force without the leave of the Court after the commencement of the winding up is void. By sub-section 2 of section 232 it is provided that "nothing in this section applies to proceedings by the Government."

I have, therefore, to consider the position of the Government without reference to section 232. But before I do so I desire to refer to a case decided by Couch C. J. and Mr. Justice Westropp, *The Secretary of State in Council of India v. The Bombay Landing and Shipping Company, Limited* (1). One of the questions in that case which fell for determination was whether, notwithstanding the liquidation of the company, the Crown was entitled to proceed by way of suit to recover moneys due from the company to the Government. The Companies Act then in force was the Act of 1866, and the section in the Act corresponding

(1) (1868) 5 Bom. H. C. R. 23.

to section 232 of the present Act was section 183. It is to be observed that section 183 does not contain the sub-section exempting the Government from its provisions which is to be found in section 232. Nevertheless, it was held that the prerogative of the Crown was not affected by the Companies Act of 1866, and Mr. Justice Westropp, as he then was, in the course of his judgment stated that :

“The Crown is not, either expressly, or, as we think, by implication, bound by the Indian Companies Act (X of 1866). That Act has not worked any alteration of ownership in the property against which the Advocate General, on behalf of the Secretary of State, seeks execution.”

I now turn to section 171 of Act VII of 1913 for the purpose of ascertaining whether the provisions of that section in any way restrict the prerogative of the Crown. In my opinion, this section in no way affects the rights which *alimite* the Crown possesses in virtue of its prerogative. In support of this view I pray in aid the case of *Secretary of State in Council v. The Bombay Landing and Shipping Co. Ltd.* (1), to which I have referred, for section 108 of the Act of 1866 corresponded with section 171 of the present Act. I also desire to call attention to two decisions of the High Court in England. *In re Henley & Co.* (2) a question arose similar to that which is in issue on this motion, and the Court came to the same conclusion as that to which I arrive in this proceeding. Brett, L. J., in the course of his judgment laid down the rule broadly :

“There are two prerogatives of the Crown bearing upon this question. The first is, that the Crown is not bound by a statute in which it is not specially mentioned. Therefore the Crown is not bound by the Companies Act. It follows that, this being clearly a debt for which the Crown can distrain, its power of distress is not taken away by the Act, and it can proceed to distrain in this case.”

(1) (1868) 5 Bom. H. C. R. 23.

(2) (1878) 9 Ch. D. 469.

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And Cotton, L. J., added :

“In general, the Crown is not bound by a statute unless expressly mentioned, or referred to by necessary implication.”

This case was referred to and followed in *In re Oriental Bank Corporation* (1). Chitty J. in giving judgment observed :—

“It is settled law that on the construction of the Companies Act, 1862, the Crown is not bound; the Crown not being named, and there being no necessary implication arising from the Act itself by which the Crown’s prerogative is affected or taken away. That is the short statement of the decision of the Court of Appeal in the case of *In re Henley & Co.* (2) In that case there were two prerogatives brought into question—the one was the prerogative of the Crown, when assets had to be administered, to priority over the subject. It was held that that prerogative was not taken away. The other was the prerogative which the Crown, not being bound by the statute, had, notwithstanding the statute, to issue process. That was also held not to be taken away.”

In my opinion, the effect of section 171 is not to restrict any of the rights to recover debts due to it which the Crown may possess in virtue of its prerogative. It is clear that the Crown did possess the right to recover these arrears of cess in the manner which I have stated, and it follows, therefore, that this motion to restrain a representative of the Crown from putting in force the powers which the Crown undoubtedly possesses is misconceived and must be dismissed with costs. The liquidator will recover his costs out of the estate.

Attorneys for the liquidator : *Khaitan & Co.*

Attorney for the cess officer : *G. C. R. Taylor.*

B. M. S.

(1) (1884) 28 Ch. D. 643.

(2) (1878) 9 Ch. D. 469.