ORIGINAL CIVIL.

Before Panckridge J.

1938

Aug. 11, 12, 15, 16, 22.

THIN YICK

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.*

Revenue—Act ordered or done in the collection of revenue—Jurisdiction—Confiscation of goods under the Sea Customs Act, 1878—Order of the Chief Customs-authority or the Governor-General in Council made under the Act, if can be questioned in civil Courts—Government of India Acts (5 & 6 Geo. V, c. 61; 6 & 7 Geo. V, c. 37; 9 & 10 Geo. V, c. 101; 14 & 15 Geo. V, c. 28), s. 106(2)—Sea Customs Act (VIII of 1878), ss. 188, 191.

Several packages of goods, alleged to be dutiable, which arrived in Calcutta by sea from abroad were seized and confiscated under s. 167, No. 36 of the Sea Customs Act, 1878, on the charge that the owner of the goods, with a view to defraud the revenue, attempted to remove the goods from the custom-house without paying any duty on them. Thereupon the owner of the goods brought a suit in the High Court in its Original Jurisdiction against the Crown in which he claimed a declaration that the seizure and confiscation were illegal and also the recovery of goods or their value.

The Government of India Act by s. 106(2) provides as follows: The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage or practice of the country or the law for the time being in force.

Held that s. 106(2) of the Government of India Act was a bar to the suit.

C. Govindarajulu Naidu v. *Secretary of State for India in Council* (1) relied upon.

Ford Motor Company of India, Ltd. v. *Secretary of State* (2) and *Vacuum Oil Company* v. *Secretary of State for India in Council* (3) distinguished.

Held, further, that the words "according to the usage and practice of "the country or the law for the time being in force" in sub-s. (2) of s. 106 which purport to qualify the words "any act ordered or done in the collection "(of revenue)" in the sub-section, does not empower the Court to examine the circumstances of a case in order to ascertain whether the act ordered or done by the revenue authorities was lawful, or whether there was any irregularity in the procedure followed by them or any error in the decision reached by them, unless it is alleged that the act in question was ordered or done by such authorities *mala fide*.

Best and Co., Ltd. v. *Collector of Madras* (4) relied upon.

*Original Suit No. 2025 of 1936.

(1) (1926) I. L. R. 50 Mad. 449.
(2) I. L. R. [1938] Bom. 249; L. R. 65 I. A. 32.
(3) (1932) I. L. R. 56 Bom. 313; L. R. 59 I. A. 258.
(4) [1919] A. I. R. (Mad.) 715.

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An order made under s. 191 of the Sea Customs Act, 1878, by the Governor-General in Council modifying an order made under s. 188 of the Act by the Chief Customs-authority, can in no case be questioned in Civil Courts, except possibly an order which while purporting to be made under s. 191 is clearly outside the section, such as, an order enhancing a penalty.

TRIAL OF ISSUES as to jurisdiction of the Court and maintainability of the suit.

The facts material for this report appear sufficiently from the judgment.

The Advocate-General, Sir Asoka Roy, and *S. R. Das* for the Crown. This is a suit the subject-matter of which concerns the revenue or concerns some act ordered or done in the collection of revenue. The mode of collection of revenue in this particular case is prescribed by ss. 86, 87 of the Sea Customs Act, 1878. The order of confiscation, complained of, was made under s. 167, No. 36 of the Act for the purpose of collection of revenue. Section 106(*2*) of the Government of India Act is a bar to such a suit: *Best and Co., Ltd.* v. *Collector of Madras* (1); *C. Govindarajulu Naidu* v. *Secretary of State for India in Council* (2); *H. M. and D. H. Bhiwandiwalla & Co.* v. *Secretary of State* (3).

The suit is, furthermore, not maintainable in a civil Court by reason of ss. 188, 191 of the Sea Customs Act. By those sections the legislature prescribed a particular remedy for those who considered themselves aggrieved by an order made under the Act by an officer of Customs. The remedy was an appeal to the Chief Customs-authority against such order and then an application to the Governor-General in Council for revision of the order passed in appeal by the Chief Customs-authority. That remedy is the only remedy which can be pursued, and the jurisdiction of the civil Courts must be taken to have been ousted: *Ramachandra* v. *Secretary of State for India in Council* (4); *Bhaishankar Nanabhai* v. *Municipal Corporation of Bombay* (5).

(1) [1919] A. I. R. (Mad.) 715.
(2) (1926) I. L. R. 50 Mad. 449.
(3) [1937] A. I. R. (Mad.) 536.
(4) (1888) I. L. R. 12 Mad. 105, 108.
(5) (1907) I. L. R. 31 Bom. 604, 609.

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P. B. Mukharji and *R. Goho* for the plaintiff. Section 106(2) of the Government of India does not bar this suit. Here the matter complained of is the confiscation which is not a matter concerning the revenue but rather concerning an act ordered or done in the collection of revenue. The confiscation, therefore, must under the sub-section be according to the usage and practice of the country or the law for the time being in force: Strange's Notes on Madras Cases, p. 135 and s. 20 of the Government of India Act. The law in force at the time is the Sea Customs Act and the principles of natural justice. The confiscation, in this case, has not been according to such law. The item of s. 167 of the Sea Customs Act under which the plaintiff was charged was not the item under which the final order of confiscation was made. See the allegations in the plaint which must be taken as true for the purposes of the trial of the issue as to jurisdiction.

In the two recent appeals before the Privy Council, *viz.*, *Ford Motor Company of India, Ltd.* v. *Secretary of State* (1) and *Vacuum Oil Company* v. *Secretary of State for India in Council* (2), from the decisions of the Bombay High Court in its original jurisdiction in suits which undoubtedly concerned the revenue or its collection, it was never suggested that s. 106(2) of the Government of India Act was a bar to the suits. And it cannot be assumed that the Privy Council decided the appeals upon a waiver of the question of jurisdiction, for a waiver of or consent on the question of jurisdiction cannot give the Court jurisdiction, if in fact it has no jurisdiction: Mulla's Code of Civil Procedure, 10th ed., p. 125. It must follow from these two decisions that the present suit is competent.

The setting up by an Act of a special remedy—like the appeal to the Chief Customs-authority or an

(1) I. L. R. [1938] Bom. 249; L. R. 65 I. A. 32.

(2) (1932) I. L. R. 56 Bom. 313; L. R. 59 I. A. 258.

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application to the Governor-General in Council under the Sea Customs Act—does not by itself oust the jurisdiction of civil Courts: *Mask & Co.* v. *Secretary of State* (1); *K. Tulsiram* v. *Chairman, Municipal Council, Madura* (2); *Ganesh Mahadev Jamsandekar* v. *Secretary of State for India in Council* (3); *Ramaswami Goundan* v. *Muthu Velappa Gounder* (4). The Sea Customs Act by s. 198, in particular, preserves the right of suit against officers of Customs. Where the Act wanted to bar a suit, it said so expressly as in s. 181-C. Therefore, proceedings under s. 167, Nos. 36, 37, 38 remain questionable in civil Courts.

The Advocate-General in reply. After the words of s. 106(2) received the interpretation it did in cases like *C. Govindarajulu Naidu* v. *Secretary of State for India in Council* (5), Parliament used the same words again in s. 226(1) of the Government of India Act, 1935. Parliament must be presumed to have adopted that interpretation for those words.

Cur. adv. vult.

PANCKRIDGE J. This suit has been set down for the trial of the issue whether this Court has jurisdiction to entertain it.

In December, 1934, two consignments of goods arrived in Calcutta by sea per S.S. "Hosang" for the plaintiff. A person named Achan was the plaintiff's authorised clearing agent. One consignment consisted of sixty-six packages, and I will call it the "A" consignment; the other consignment consisted of thirty-five packages, and I will call it the "B" consignment. There was a bill of entry in respect of the "A" consignment which showed that the packages bore no marks: it also showed that there were no silk goods among the contents.

(1) [1938] A. I. R. (Mad.) 608.
(2) (1931) I. L. R. 55 Mad. 298, 309-311.
(3) (1918) I. L. R. 43 Bom. 221.
(4) (1922) I. L. R. 46 Mad. 536, 545.
(5) (1926) I. L. R. 50 Mad. 449.

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On December 14, 1934, seven packages were seized by the Custom-house authorities, of which one was subsequently released. As regards the remaining six, the Custom-house authorities assert that they were seized in the public street outside the Custom-house, whither the plaintiff's agent had caused them to be removed. The plaintiff's case is that they were still within the precincts of the Custom-house, awaiting examination. When the packages were examined they were found to contain dutiable silk goods of considerable value. The packages were admittedly part of the "B" consignment, and the Custom-house authorities suggest that what the plaintiff's agent was doing was attempting to remove them without paying duty, under cover of the bill of entry relating to the "A" consignment, the contents of which were either not dutiable at all, or only dutiable to a trifling extent.

Subsequently, the plaintiff received a notice to show cause why the goods in the packages which had been seized should not be confiscated and a penalty imposed on him under s. 167, Nos. 37(*c*) and 38 of the Sea Customs Act, 1878. An enquiry followed, and on July 11, 1935, the second defendant, in his capacity as Collector of Customs, passed an order for confiscation of the goods under s. 167, No. 37 of the Act, subject to a redemption penalty of Rs. 3,500, and imposed a penalty of Rs. 4,000 under s. 167, No. 38.

Section 167 creates certain offences against the Act, and provides the maximum punishments for committing them. Under item 37(*c*) of the schedule to the section, if it be found, when any goods are entered at, or brought to be passed through, a Custom-house, either for importation or exportation, that the contents of such packages have been misstated in regard to sort, quality, quantity or value, such packages together with the whole of the goods contained therein, shall be liable to confiscation. Under item 38, if, when goods are passed by tale or by package, any omission or misdescription thereof

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tending to injure the revenue be discovered, the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of the duty which might have been lost.

It is not disputed that the order was one which under s. 182 of the Act the Collector of Customs had power to make. That section is a part of Ch. XVII of the Act, which is headed "Procedure relat-"ing to Offences, Appeals, *etc.*".

Section 188, which is part of the same chapter, gives to any person deeming himself aggrieved by any decision or order passed by an officer of Customs under the Act, a right of appeal to the Chief Customs-authority. The plaintiff appealed under this section to the Central Board of Revenue, but on October 2, 1935, the Board dismissed the appeal.

With regard to these orders the plaintiff states that they were altogether void, invalid, illegal and inoperative, and not binding on him. No offence under s. 167, No. 37 or 38 of the Sea Customs Act had been committed. Alternatively, no offence under such sections or either of them had been committed by the plaintiff. Prior to the passing of the Collector's order the plaintiff had not been charged with any offence under either of such sections, nor had he been called upon to meet or answer any such charges. Further, there was no, or alternatively no proper, adjudication arrived at in the manner provided by the Sea Customs Act; and the proceedings were not conducted in accordance with the principles of natural justice.

Under s. 191 of the Act the Governor-General in Council may, on the application of any person aggrieved by any decision or order passed under the Act by an officer of Customs or Chief Customs-authority, and from which no appeal lies, revise or modify such decision or order. The plaintiff petitioned the Governor-General in Council under this section, and on March 2, 1936, the Governor-General

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in Council modified the Collector's decision by setting aside the penalty, although he upheld the order for confiscation. The Governor-General's order stated that he was satisfied that the goods were removed from the Custom-house with the intention of defrauding the revenue. He was of opinion, however, that the facts did not fall under No. 37 or 38 of s. 167, and that the imposition of a penalty under No. 38, was, therefore, not justified. In upholding the order for confiscation he stated that it should have been passed under s. 167, No. 36 which provides that if after any goods have been landed, and before they have been passed through the Custom-house the owner removes or attempts to remove them, with the intention of defrauding the revenue, such goods shall be liable to confiscation.

The plaintiff challenges the legality of this order, and he states that no offence under s. 167, No. 36 had been committed, that he had never been charged under s. 167, No. 36 nor had he been called upon to meet or answer any such charge. Further, there was no, or alternatively no proper, adjudication arrived at in the manner provided by the Sea Customs Act, and the proceedings were contrary to the principles of natural justice. A declaration that the orders for confiscation were illegal is asked for, and there are also prayers for return of the goods, or for a decree for their value.

The issues which I have now to try are raised by paras. 4 and 10 of the written-statement of the Secretary of State:—

Paragraph 4. The decision of the Chief Customs-authority as modified by the Governor-General in Council is final and binding upon the plaintiff and is not liable to be challenged or impugned by any suit or proceedings.

Paragraph 10. This Court has not and cannot exercise any original jurisdiction in respect of the subject-matter of the suit inasmuch as the same concerns the revenue or the collection thereof.

I will first deal with the issue raised by para. 10.

The history of the law on the point begins with the practical difficulties occasioned by the fact that

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the Supreme Court claimed to exercise jurisdiction in respect of acts done by the servants of the East India Company in collecting the revenues of Bengal, to which the Company was entitled by virtue of the grant of the *Dewâni*. As its preamble indicates, 21 Geo. III, c. 70 was passed by Parliament for the purpose of preventing the interference of the Supreme Court in revenue matters. Section 8 of that statute provides that the Court shall not have or exercise any jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor-General and Council. Parliament has since seen fit to impose similar limitation upon the jurisdiction of the Original Side of the High Courts.

It is true that there was no such provision in the 24 & 25 Vict., c. 104 (the High Courts Act, 1861), nor in the Letters Patent issued under it. Indeed it appears from para. 17 of the Secretary of State's despatch of May 14, 1862 that he considered that the restrictions on the jurisdiction of the Supreme Court enacted by 21 Geo. III, c. 70 did not apply to the High Courts established by Letters Patent under the Act of 1861. Moreover, in 1876, in *Collector of Sea Customs, Madras* v. *Punniar Chithambaram* (1), a majority of the Court held that a similar restriction contained in the Charter of 1800 establishing the Supreme Court of Madras did not operate to exclude suits against revenue-officers for acts done *ultra vires*, from the jurisdiction of the Madras High Court.

This question is, however, academic in view of s. 106(*2*) of the Government of India Act and s. 226(*1*) of the Government of India Act, 1935. These sub-sections run as follows :—

106(2), The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(1) (1874) I. L. R. 1 Mad. 89.

226(*1*). Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

It is admitted that for the purposes of the present case the sub-sections may be regarded as identical.

As the Advocate-General points out there is direct authority on the matter in Madras: *C. Govindarajulu Naidu* v. *Secretary to State for India in Council* (1). In that case certain goods belonging to the plaintiff were seized by the Customs authorities, and the Collector of Customs ordered confiscation and sale of the goods on the ground that they had been smuggled into British India and had not paid duty. After an unsuccessful appeal to the Governor-in-Council the plaintiff sued the Secretary of State on the ground that what was done amounted to a wrongful conversion of his goods. Though the orders complained of were not made under the Sea Customs Act the principles were the same as those applicable in the present case. Coutts Trotter C. J. and Beasley J. both held that s. 106(*2*) of the Government of India Act was a bar to the suit on the Original Side of the Madras High Court. Coutts Trotter J. said (1):—

Finally the point is taken on behalf of the Secretary of State that this is a matter affecting the revenue and that s. 106(*2*) of the Government of India Act covers the matter. On that subject, I have nothing to add to what I said in my own considered judgment in *Best and Co., Ltd.* v. *Collector of Madras* (2), where I had to consider all the decisions affecting this matter and came to the conclusion that, however antiquated the section is and however useless according to present conditions, so long as it was allowed to stand in the statute book it must be given effect to and the effect is this, that in matters affecting the revenue the Original Side of this Court and that side alone is debarred from interfering in revenue matters. The section came to birth, nearly a hundred years ago, when there was a conflict of jurisdiction between the Sudder Courts and the High Courts. That conflict has utterly vanished and there is no justification whatever for preserving this antiquated fossil on the statute book; but there it is, and so long as it is there we have to abide by it. I am quite clear that this is a matter affecting the collection of revenue though it be in the nature of a penalty and that therefore this Court has no jurisdiction to entertain the suit on that ground.

(1) (1926) I. L. R. 50 Mad. 449, 455. (2) [1919] A. I. R. (Mad.) 715.

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Beasley J.'s view was as follows (1) :—

It is contended by the defendant that this is a matter concerning the revenue or concerning an act done in the collection thereof; and it is not out of place in this connection to mention what is done with goods seized and confiscated. They are sold and the proceeds go to the Customs. Part of the revenue of the country is derived from the customs and the collection of the customs is a collection of part of the revenue of the country and I am prepared to hold that the sale of seized and confiscated goods and the taking by the customs-authorities of those proceeds is the collection of customs and therefore of revenue. It is admitted by Mr. Narasimha Ayyar that penalties in the shape of double or treble duties imposed on smuggled goods would be revenue. Yet he contends that the money derived from the sale of seized or confiscated goods is not. I cannot myself see any distinction whatever. I may conjecture that one of the objects of the sale is to recoup the customs for the unpaid duty which, had it been paid, would have been revenue. But there is another obvious reason for this penalty and it is this : persons who bring dutiable goods into the country are required to declare their possession of them and to pay the proper duty which is then collected from them and becomes part of the revenue of the country. That is clearly the collection of revenue. If, however, persons smuggle dutiable goods into the country they prevent the collection of the duties and so the revenue. The object of the seizure and confiscation is two-fold, to punish the offender and to deter others from preventing or hindering the collection of revenue ; and it seems to me impossible to hold that the seizure and confiscation of smuggled goods is not an act ordered or done in the collection of revenue, as it is obviously designed to facilitate the collection of customs and therefore the revenue.

The decision in *Alcock Ashdown and Company, Limited.* v. *Chief Revenue Authority of Bombay* (2) has in my opinion no application to this case. That case dealt with a mandamus to the income-tax officer to make an assessment and was a matter which was merely a preliminary towards the assessment of the assessee. The acts complained of in this case were not in any sense preliminary but in my view directly related to the collection of customs. I may add that the question as to whether or not s. 106 (2) of the Government of India Act does prohibit the exercise by this Court of its original jurisdiction in revenue matters has been decided by the learned Chief Justice in *Best and Co., Ltd.* v. *Collector of Madras* (3) and he there decided that the section was an express prohibition against the exercise of such powers. I need not say more than that I entirely agree with his judgment and with the reasons he gave therein.

Mr. Mukharji, who has argued the plaintiff's case with great ability, has drawn my attention to two decisions of the Privy Council : *Ford Motor Company of India, Ltd.* v. *Secretary of State for India in Council* (4) and *Vacuum Oil Company* v. *Secretary of State for India in Council* (5). Both the suits were instituted on the Original Side of the High Court of

(1) (1926) I. L. R. 50 Mad. 449, 460.
(2) (1923) I. L. R. 47 Bom. 742 ; L. R. 50 I. A. 227.
(3) [1919] A. L. R. (Mad.) 715.
(4) I. L. R. [1938] Bom. 249 ; L. R. 65 I. A. 32.
(5) (1932) I. L. R. 56 Bom. 313 ; L. R. 59 I. A. 258.

Bombay, and in both of them the plaintiffs sued to recover duty said to be overpaid. In *Vacuum Oil Co.'s* case the trial judge made a decree in the plaintiff's favour which was reversed on appeal. The Judicial Committee, however, set aside the decree of the appellate Court dismissing the suit, and restored the decree passed by the trial Judge. In *Ford Motor Co.'s* case the Judicial Committee upheld the decree of the appellate Court dismissing the plaintiff's suit. Both the cases turned on the construction of s. 30 of the Sea Customs Act, 1878. Mr. Mukharji argues very pertinently that it was never suggested that either suit was incompetent and that from the fact that in one of them the decree obtained by the plaintiff was restored it follows that the Judicial Committee must have considered that the Original Side of the Bombay High Court had jurisdiction to try it.

The Advocate-General has not attempted to argue that these two suits were not matters "concerning the "revenue", but he says that as the point was not raised, Government must be taken in each case to have deliberately waived it with a view to obtaining an authoritative and final decision on the question of construction. In the report of *Ford Motor Co.'s* case in 42 C. W. N. it is stated at p. 258 that it was agreed that the defendant would waive "certain "technicalities" with a view to a speedy decision of the case. Whether one of them was the question of jurisdiction I have no means of saying.

It must be borne in mind, however, that cases are only authorities for what is actually decided, and not for propositions which appear to follow logically therefrom.

I feel, I cannot, from the fact that the Privy Council restored a decree made on the Original Side of the High Court of Bombay, draw an inference that it thereby decided that the suit was competent, when the question of jurisdiction was not in issue.

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Mr. Mukharji next submits that this is not a matter concerning the revenue, but rather concerning an act ordered or done in the collection thereof—a submission, which I am disposed to accept.

He then argues that the jurisdiction of the Court is only ousted if such an act be ordered or done according to the usage and practice of the country, or the law for the time being in force. Therefore, he says, the Court must examine the circumstances to see if the action of the authorities was lawful, because, if it was not lawful, the section does not protect it. A similar argument was unsuccessfully urged in *Best and Co., Ltd.* v. *Collector of Madras* (1), a case in which the plaintiffs sued for a declaration that an agreement made between the parties with reference to the liability of the plaintiffs for income-tax was binding on the defendant. The defendant repudiated the agreement because he took the view that in consequence of subsequent legislation it was no longer effective. Coutts Trotter J. held that s. 106(2) of the Government of India Act was a bar to the suit. In dealing with the argument now advanced the Court observed (1):—

> Mr. Grant took the further point that the fetter on my jurisdiction was only with regard to "acts ordered or done in the collection of the revenue "according to the usage and practice of the country or the law for the time "being in force," and he says, "if you go into the facts, on the merits you "will find that my contention is well founded, that this was an illegal "repudiation of the agreement." That contention, I think, was disposed of as long ago as 1848 in a judgment of their Lordships of the Privy Council in the case of *Spooner* v. *Juddow* (2). In that case the Court put a construction on a protective statute of this kind, which, so far as I know, has never been departed from, and it is put in much clearer words than I can put it, by Lord Campbell in giving their Lordship's opinion at p. 379 of the report. What he says is this: "The point, there-"fore, is, whether the exception of jurisdiction only arises where the "defendants have acted strictly according to the usage and practice of the "country, and the Regulations of the Governor and Council. But upon "this supposition the proviso is wholly nugatory: for if the Supreme "Court is to enquire whether the defendants in this matter concerning the "public revenue were right in the demand made, and to decide in their

(1) [1919] A. I. R. (Mad.) 715, 716. (2) (1850) 4 M. I. A. 353.

"favour only if they acted in entire conformity to the Regulations of the "Governor and Council of Bombay, they would equally be entitled to suc- "ceed, if the statutes and the charters contained no exception or proviso "for their protection. Our books actually swarm with decisions putting "a contrary construction upon such enactments, and there can be no rule "more firmly established, than that if parties *bonâ fide* and not absurdly "believe that they are acting in pursuance of statutes, and according to "law, they are entitled to the special protection which the legislature "intended for them, although they have done an illegal act." It is not suggested in this case that the Collector of Madras or the Secretary of State acted *malâ fide* or purported to seek the protection of the statute with the full knowledge that all that was being done was to commit a mere act of aggression. Whether they were right or wrong, they thought clearly and honestly that they were taking advantage of the provisions which the statute allowed them to take advantage of, in terminating this agreement. I am, therefore, compelled to hold that this Court had no jurisdiction to entertain this suit.

I think similar observations are applicable to the case before me.

None of the very vague statements in the plaint amount to an averment that the Collector of Customs directed the confiscation of the goods *malâ fide*, or in the exercise of powers conferred on him by Sea Customs Act in circumstances to which, he knew, the provisions of the Act were not applicable.

In my opinion, no irregularity of procedure and no error in the conclusions arrived at, can *per se* exclude the application of the Government of India Act.

I, accordingly, accept the reasoning in the Madras decisions to which I have referred, and I hold that this is a suit which the Original Side of this Court has not jurisdiction to entertain.

The issue raised by para. 4 of the written-statement must also, in my opinion, be decided in the defendant's favour.

It is a well known principle that where a statute creates a duty or imposes a liability and prescribes a specific remedy in case of neglect to perform the duty

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or discharge the liability, no remedy can be taken but the particular remedy prescribed by the statute. Lord Esher M. R. observed in *The Queen* v. *County Court Judge of Essex and Clarke* (1) "where the "legislature has passed a new statute giving a new "remedy, that remedy is the only one which can be "pursued". In my view, the legislature intended that the sole remedy open to those who were aggrieved by a decision or order passed by an officer of Customs under the Sea Customs Act should be an appeal to the Chief Customs-authority as provided by s. 188. The matter is, I think, placed beyond doubt by the concluding words of the section: "Every order "passed in appeal under this section shall, subject to "the power of revision conferred by s. 191, be final". I have been referred to *H. M. and D. H. Bhiwandiwalla & Co.* v. *Secretary of State* (2)—a decision of Gentle J., of the Madras High Court, in which he takes this view of the effect of s. 188 and I find myself in entire agreement with him.

It would be contrary to all principles to permit the plaintiff, after he has unsuccessfully agitated his grievances before the statutory appellate authority, to seek the assistance of the Court.

I have had before me an admitted brief of the documents in the case. A perusal of it produces a conviction in my mind that at every stage the representations of the plaintiff received careful consideration, and that the conclusions of the Collector and of the Central Board of Revenue were arrived at in good faith. What is, however, more important is that learned counsel for the plaintiff was constrained to admit that although he was prepared to criticize the conduct of the proceedings before the Collector, he could not point to anything improper or unjudicial in the manner in which the Board of Revenue exercised the jurisdiction conferred on it by s. 188.

(1) (1887) 18 Q. B. D. 704. (2) [1937] A. I. R. (Mad.) 536.

The order passed by the Governor-General in Council under s. 191 of the Act can be briefly dealt with. I incline to the view that orders made under this section can in no case be questioned in the civil Courts, except possibly orders which while purporting to be made under it are clearly outside it. An order by the Governor-General in Council enhancing a penalty, would, in my opinion, possibly be such an order. Generally speaking, however, what the section contemplates are revisional orders of an executive character.

It should be pointed out that the order of confiscation is the order of the Collector and not the order of the Governor-General in Council. It is true that in upholding it, the revising authority expressed the opinion that it should have been made under s. 167, No. 36 and not under s. 167, No. 37. This observation has enabled the plaintiff to argue that his goods had been confiscated in respect of an offence with which he was never charged.

Although, it is true, that the original notice to show cause only referred to s. 167, No. 37 and s. 167, No. 38, an examination of the record of the proceedings shows that his grievance in this respect is illusory. On October 11, 1935, a lengthy memorial was submitted to the Finance Department of the Government of India on the plaintiff's behalf in support of his application under s. 191. The first fifteen paragraphs of the memorial dealt with the facts. Two paragraphs follow which contain submissions as to the law applicable if the revising authority is in agreement with the Board of Revenue on the facts. These submissions are to the effect that the offence shown, if the facts are held to be established, is one under s. 167, No. 36. To quote the memorial "Further if s. 167, No. 36 does not fit the case 'under enquiry like a glove, what case will it fit?" It is ridiculous for the plaintiff to complain that the Governor-General in Council accepted his submission

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of law and accordingly set aside the penalty imposed by the Collector.

I hold that this suit must be dismissed with costs, because the Court lacks jurisdiction to entertain it for the reasons set out in paras. 4 and 10 of the written-statement of the Secretary of State.

Suit dismissed.

Attorney for plaintiff: *M. N. Sen.*

Attorney for defendant: *Susil Chandra Sen.*

P. K. D.