APPELLATE CIVIL.

Before Edgley J.

SUPRAKASH DAS

v.

INDIAN TEA LICENSING COMMITTEE.*

1939

April 27.

Procedure—*Appeal—Parties—Appeal from Tea Licensing Committee—Indian Tea Control Act (VIII of 1938), s. 7(2).*

When an appeal is taken to a judicial tribunal against the order of an administrative body, such as the Indian Tea Licensing Committee, it is essential that that body should be made a respondent to the appeal in order that they may be afforded an opportunity to support their order by adducing such evidence as they may consider necessary for this purpose and with a view to a proper adjudication on legal evidence of the matter in dispute between the administrative body concerned and any person who may be aggrieved by an order made by that body in the exercise of its statutory functions.

Corporation of Calcutta v. *Sheikh Keamuddin* (1); *Corporation of Calcutta* v. *Jalajbasini Debi* (2); *The Queen* v. *Pilgrim* (3); *Whiffen* v. *Malling* (4); *Tynemouth Corporation* v. *Attorney General* (5) and *Evans* v. *Justices of Conway* (6) relied on.

APPLICATION by the appellant.

The applicant, Suprakash Das, is the owner of the Mahalaxmi Tea Estate in the district of Darrang in Assam. For the year 1938-39, the petitioner was allotted a crop basis of 81,913 lbs. by the respondent Committee. Against this allotment the applicant has appealed.

Further, he applied to the respondent Committee, under s. 14(*3*) of the Indian Tea Control Act, 1938, for redetermination of the crop basis, allotted to him,

*Applications in Appeals from Original Orders, Nos. 46 and 54 of 1939.

(1) (1927) 31 C. W. N. 1040.
(2) (1927) 32 C. W. N. 373.
(3) (1870) L. R. 6 Q. B. 89.
(4) [1892] 1 Q. B. 362.
(5) [1899] A. C. 293.
(6) [1900] 2 Q. B. 224.

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on the ground of special hardship, but such application was rejected by the respondent Committee. The petitioner has also appealed against that order of rejection.

In both appeals, the Indian Tea Licensing Committee were made parties. The present application is for striking out the name of the Committe from the appeals, on the ground that they are not necessary parties.

Probodh Kumar Das, *Apurba Charan Mukherji* and *Provat Kumar Sen Gupta* for the applicant. The Tea Licensing Committee cannot be respondents in these appeals, as they are a mere statutory body who have no interest in the subject-matter of the appeal.

Bose, Standing Counsel, *Clough* and *Fanindra Mohon Sanyal* for the respondent Committee.

The Act makes it clear that the Tea Licensing Committee is an administrative body. When an appeal is preferred against an order of the Committee, it is necessary that the Court should be able to decide whether the appellant has any real cause for grievance. This would only be possible if the Committee has a chance of adducing necessary evidence in order to support their order appealed against.

The position of the Committee is similar to the position of the Deputy Executive Officer of the Calcutta Corporation, under the Calcutta Municipal Act, 1923, which provides for an appeal to the Court of Small Causes. In such appeals the Corporation has been held to be a proper respondent. *Corporation of Calcutta* v. *Sheikh Keamuddin* (1); *Corporation of Calcutta* v. *Jalajbasini Debi* (2).

These appeals under the Indian Tea Control Act are exactly analogous to appeals from orders of the

(1) (1927) 31 C. W. N. 1040. (2) (1927) 32 C. W. N. 373, 386.

Licensing Justices in England, who are held to be proper respondents. *The Queen* v. *Pilgrim* (1); *Whiffen* v. *Malling* (2); *Tynemouth Corporation* v. *Attorney General* (3); *Boulter* v. *Kent Justices* (4); *Evans* v. *Justices of Conway* (5).

Das, in reply. The cases cited do not apply to this case. The Tea Licensing Committee's function is judicial and they cannot be respondents.

EDGLEY J. The petitioner in connection with these applications is the appellant in appeals Nos. 46 and 54 of 1939, which have been preferred to this Court under s. 7(2) of the Indian Tea Control Act (VIII of 1938) against certain orders of the Indian Tea Licensing Committee. He asks that the name of the Indian Tea Licensing Committee as respondent may be deleted from the memorandum of appeal in each case, on the ground that he claims no relief against the Committee which should, therefore, be regarded as an unnecessary party to either appeal.

The term "respondent" has been defined in Wharton's Law Lexicon as "a party answering in a "suit whether for himself or another; the defendant "in an appeal." The definition of "respondent" contained in Mozley & Whiteley's Law Dictionary is "a party called upon to answer a petition or an "appeal." The question, therefore, arises whether, for the purpose of enabling this Court to decide these appeals, it is necessary that the Committee should be afforded an opportunity to answer the contentions raised in appeal by the appellant.

In order to see whether or not the Indian Tea Licensing Committee should be regarded as a necessary respondent in these appeals regard must be had to the nature of the functions with which they are

(1) (1870) L. R. 6 Q. B. 89, 95.
(2) [1892] 1 Q. B. 362.
(3) [1899] A. C. 293, 307.
(4) [1897] A. C. 556.
(5) [1900] 2 Q. B. 224.

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vested under the provisions of the Indian Tea Control Act. This Act, according to its preamble, is—

> An Act to provide for the control of export of tea from, and for the control of the extension of the cultivation of tea in, British India.

Chapter I of the Act provides for the constitution of the Committee and their most important functions are described in Chaps. II and III. Two of their functions under Chap. II relate to the determination of the crop-basis of tea estates and to the re-determination of such crop-basis and it is against the orders passed by the Committee in reference to such matters that appeals Nos. 46 and 54 of 1939 are directed. From the provisions of the Act it is clear that the Committee cannot be regarded as a "Court" which arrives at a decision upon legal evidence adduced before it by parties to a dispute. The Committee appears, on the other hand, to be an administrative body empowered to make certain decisions on such materials as may be available to them in order to enable them to control the export of tea and the extension of the cultivation of tea. They are a body which has been set up by Government for the purpose of protecting certain public interests. In the performance of their statutory functions, disputes may arise between the Committee and the owners of tea estates and it is, in order to provide that such disputes may be decided by an impartial judicial authority, that a right of appeal has been granted by s. 7(*2*) of the Indian Tea Control Act against the administrative decisions of the Committee. In view of the nature of the order, against which an appeal under the Indian Tea Control Act may be brought to this Court by an aggrieved party, it is obviously the intention of the legislature that this Court should be in a position to ascertain whether an appellant has any legitimate grievance with reference to the order against which his appeal is directed. It is only possible for this Court as a judicial tribunal to arrive at a proper conclusion in such a matter by recording such evidence as may be available in connection with the matter to which the order of the Indian Tea

Licensing Committee relates. It would be impossible for the High Court to reach a correct decision by recording merely such evidence as might be adduced by the aggrieved party and it would obviously be necessary also to allow the Indian Tea Licensing Committee, in support of their order, to adduce such evidence as they might consider necessary. It follows, therefore, that, by reason of the fact that a right of appeal has been granted under s. 7(2) of the Act in respect of orders made by the Indian Tea Licensing Committee, such procedure must be followed by this Court with reference to these appeals as will enable this Court to give effect to the intention of the legislature. The intention seems to be that the Committee and any party aggrieved by an order passed by them under the statute should be brought before this Court as ordinary litigants, with a view to the proper and legal adjudication of any dispute which may have arisen between them. When both parties have come before the Court, it is necessary for the Court to give such directions as may be required for a proper determination of the points at issue between the parties. With this object in view, certain directions have been given in such appeals as have been filed in this Court under the provisions of the Indian Tea Control Act (VIII of 1938) in order to ensure that these matters shall be heard on legal evidence and, as far as possible, in accordance with the procedure followed in connection with the trial of original suits in this Court. It is clear that there can be no proper determination of these matters in the absence of the Committee and the only party who will be in a position to justify and support the order of the Committee will be the Committee themselves. In these circumstances, I consider that the Committee must be regarded as an essential party to an appeal under this Act, and that an appellant, who wishes to appeal, should be required to name the Committee as a respondent in his appeal.

Those appeals which bear the closest resemblance to appeals under s. 7(2) of the Indian Tea Control

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Act (VIII of 1938) are those which lie to the Court of Small Causes in assessment matters against the decision of the Executive Officer or the Deputy Executive Officer of the Calcutta Corporation under s. 141 of the Calcutta Municipal Act, 1923. With regard to such appeals it was held by this Court in the case of the *Corporation of Calcutta* v. *Sheikh Keamuddin* (1) that—

> Upon principle and upon authority the functions of the Executive Officer under ss. 127 to 140 of the Calcutta Municipal Act are those of an administrative and not of a judicial officer.

In dealing with these appeals in the case of the *Corporation of Calcutta* v. *Jalajbasini Debi* (2), Sir George Rankin C.J. observed that—

> The appeal which is given to the Court of Small Causes by the Calcutta Municipal Act is really a proceeding by which an administrative act is challenged before a judicial tribunal. It is quite clear that it is intended that it should not be treated as an ordinary appeal from a civil Court, but is an occasion on which the party complaining must have an opportunity of adducing evidence if he wants, to show that the decision of which he complains is wrong.

In the two cases cited above it appears that the Corporation of Calcutta were made parties to the appeals, apparently on the ground that the officer, against whose decision the appeals had been taken to the Court of Small Causes, was the agent of the Corporation and, this being the case, the Corporation should be allowed in the public interest an opportunity to support the order recorded by the Chief Executive Officer.

Cases which in England are of a similar nature are appeals to the Quarter Sessions against the orders of Licensing Justices. In the case of *The Queen* v. *Pilgrim* (3), it was pointed out by Lush J. that :—

> Generally speaking, on appeal to the quarter sessions the justices are not limited to the evidence before the petty sessions, but they have to hear the whole matter *de novo*, and the issue is the same, and the justices are put in the same position as the justices in the court below.

(1) (1927) 31 C. W. N 1040, 1042. (2) (1927) 32 C. W. N. 373, 386.
(3) (1870) L. R. 6 Q. B. 89, 95.

In a similar case, *viz.*, *Whiffen* v. *Malling* (1) which came before the Court of Appeal in 1891, it was held that an appeal to the Quarter Sessions from an order of the Licensing Justices amounted to a rehearing and not to a simple appeal, and that the Court of Quarter Sessions had a right to hear fresh evidence, though they would be confined to the same objections which had been raised before the Licensing Justices. In this connection, in the case of the *Tynemouth Corporation* v. *Attorney General* (2), Lord Davey, in discussing the case of *Boulter* v. *Kent Justices* (3), observed :—

> Proceedings in an appeal from the justices sitting at a licensing meeting are still regulated by the Licensing Act, 1828, and not by the Summary Jurisdiction Act. If so, I think that an objector before the licensing meeting has no right to appear and be heard on the appeal to quarter sessions. The only proper respondents to the appeal are the justices themselves, who are served and may appear in the interests of the public to support their own decision.

The necessity for making the Licensing Justices parties to appeals to the Quarter Sessions is further emphasised by the judgment of the Court of Appeal in the case of *Evans* v. *Justices of Conway* (4), in which reference is made to certain circumstances in which the burden of proof would lie upon the justices themselves to show that a license should not be granted.

Having regard to the principles laid down in cases cited above it seems to me clear that, in a case of this nature, when an appeal is taken to a judicial tribunal against the order of an administrative body, such as the Indian Tea Licensing Committee, it is essential that that body should be made a respondent to the appeal in order that they may be afforded an opportunity to support their order by adducing such evidence as they may consider necessary for this purpose and with a view to a proper adjudication on legal evidence of the matter in dispute between the administrative body concerned and any person who

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may be aggrieved by an order made by that body in the exercise of its statutory functions. It follows, therefore, that these applications must be rejected with costs which will be assessed as of Chamber applications on the Original Side of this Court. One set of costs will be allowed for both the applications. The costs may be realised in accordance with the procedure followed on the Original Side of this Court in connection with the recovery of costs. Certified for counsel.

Applications rejected.

S. M.