

APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Munro.*THE REGULATION COLLECTOR OF UTHUMALAI
v. ESTATE (COUNTER-PETITIONER), APPELLANT.

v.

SUBBIER (CLAIMANT-PETITIONER), RESPONDENT.*

Court of Wards Act (Madras)—Act I of 1902 and rule 3 and 7 of rules framed thereunder—Regulation Collector, power of, to reject claim as barred.

Where, under the provisions of the Court of Wards Act and the rules framed thereunder, a Regulation Collector and a Decree Collector have been appointed and a claim is duly presented to the former before the expiry of the period prescribed for enforcing the same by a civil suit, he cannot by keeping such claim pending before him until a suit on it would be barred, subsequently refuse to pay it on the ground that it is barred by limitation.

In such cases, the claimant can obtain an adjudication of the Courts on his claim without resorting to a civil suit.

When the Regulation Collector is called on by the Decree Collector under rule 3 of the rules to 'furnish him with full particulars of all claims notified to him,' it is his duty to 'thereupon furnish him (the Decree Collector) with such particulars.'

If the claim was disputed, it was the duty of the Decree Collector under rule 7 to refer the matter to the Civil Court and the matter that could properly be referred will be whether the claim was legally enforceable *at the time it was presented to the Regulation Collector*. If the Court decides that it was so enforceable, the Decree Collector was bound to place it on the list and proceed to discharge it according to the provisions of the Act and the rules.

The reference to the Civil Court is not to be regarded as the institution of a suit and section 4 of the Limitation Act will not apply.

Semble, where no Decree Collector is appointed, the party whose claim is disallowed by the Court of Wards, will have no remedy, but to file a civil suit. The provisions of section 4 of the Limitation Act will then apply and the exclusion of the time during which the claim was pending before the Regulation Collector cannot be claimed under section 14 of the Limitation Act.

THE Zemindary of Uthumalai was placed under the superintendence of the Court of Wards and a Regulation Collector was appointed under the Court of Wards Act. The Regulation Collector published a notification under the Act calling on claimants to submit their claims, and within six months of the

* Civil Miscellaneous Second Appeal No. 62 of 1907, presented against the order of C. G. Spencer, District Judge of Tinnevely, in Civil Miscellaneous Appeal No. 5 of 1907, presented against the order of P. Aiyasami Mudaliar, District Munsif of Ambasamudram, in Miscellaneous Petition No. 3207 of 1906.

1908
March 19, 20.*
April 30.
May 6.

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notification, *i.e.*, in December 1901 the claimant notified his claim. The claim was for remuneration in respect of legal services rendered in 1900 and was not barred at the time it was presented. Before the claim was presented a Decree Collector was appointed who, in September 1902, called on the Regulation Collector to give particulars of all claims notified to him. Particulars of this claim were not sent to the Decree Collector, but the Regulation Collector kept it pending before himself till the end of 1903 and then disallowed it on the ground that it was barred by limitation and his decision was upheld by the Court of Wards.

This decision being disputed by the claimant, the Decree Collector made a reference to the District Munsif under rule 7 of the rules.

The District Munsif decreed in favour of the claimant on the ground that, under section 14 of the Limitation Act, the time during which the claim was pending before the Regulation Collector, ought to be excluded in computing the period of limitation.

On appeal, his decision was supported but on different grounds. The material portion of the judgment on appeal is as follows :—

“Section 14 (Limitation Act) does not apply, because, it cannot be said that the Court of the Regulation Collector was a Court unable to entertain the suit, I have also perused the *ex parte* decision of the Subordinate Judge, in Miscellaneous Petition No. 219 of 1906, in which in dealing with a similar claim he came to an opposite conclusion from that arrived at here by the District Munsif. He had regard to section 41 of Act I of 1902, and he held that claimants were not precluded by the Act from pursuing their remedies in the ordinary Court. He remarked that it was nowhere laid down that the time taken up by the Regulation Collector in adjudicating upon claims should be excluded in computing the period of limitation. The Advocate-General is stated to have pronounced an opinion which I have not seen.

My view is this. No question of limitation arose at all in the Regulation Collector's Court. He was there to administer the law as laid down in Act IV of 1899 or Act I of 1902 under which he was proceeding. He should have been content to see that the claim was in time when it was presented in his Court. It was not for him to speculate whether the claim would have been time-barred if it had been made to some other Court, acting under some

other law which he was not administering on the date that he chose to pronounce his award or any other arbitrarily fixed date. Reading sections 37 to 47 of Act I of 1902 and the rules framed by the Local Government under section 45 of the Act which have the force of law and are contained in the appendix to the Board's Standing Orders, I perceive that the procedure of the Regulation Collectors and of the Civil Courts to which disputed claims are referred under rule 7 is intended to be all of one piece. A separate law of limitation does not apply to the different Courts. Thus, if claims are in time when presented to the Regulation Collector, no provision of the Court of Wards Act or the Limitation Act can make them barred."

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The Regulation Collector appealed to the High Court.

Mr. C. F. Napier for appellant.

T. V. Seshagiri Ayyar and T. V. Muthukrishna Ayyar for respondent.

JUDGMENT.—This appeal relates to a claim duly preferred to the Regulation Collector of the Uthumalai Estate for a sum due to the claimant by the estate. The claim was made within six months of the publication of a notification under section 30 of Regulation V of 1804 as amended by Madras Act IV of 1899, and, at the time when it was made in December 1901, its recovery by suit in a Civil Court was not barred by the Limitation Act.

A Collector for the purpose of executing decrees which were in force against the Estate, generally called a Decree Collector as apposed to a Regulation Collector, was appointed on the 20th September 1901.

A new Regulation Collector was appointed on the 30th October 1901, and, as already stated, the present claim was made to the Regulation Collector on the 1st December 1901. On the 17th September 1902 the Decree Collector called on the Regulation Collector under rule 3 of the rules framed under the Act, "to furnish him with full particulars of all claims notified to him under section 30." It was the duty of the Regulation Collector to "thereupon furnish the (Decree) Collector with such particulars" and to state in regard to such claim whether it was allowed or disallowed in whole or in part. This, however, the Regulation Collector did not do. So far as appears from the record he kept the claim pending before him until 1904, and then refused to pay it on the ground that a suit for its recovery had become barred at

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the end of 1903, though admittedly a sum of Rs. 255-8-0 was legally due and recoverable when the claim was made in 1901. His decision was upheld by the Court of Wards, and the Regulation Collector then reported to the Decree Collector that he had disallowed the claim as time-barred.

The Decree Collector then, under rule 7, referred the matter to the Civil Court for decision, and both the District Munsif and the District Judge held that there was no bar by limitation. It is against this order of the Courts that the present appeal is made.

The construction of the Act and of the rules framed under it, are not free from difficulty, but we think it is clear that there is no bar by limitation in this case.

This is not a case in which no Decree Collector was appointed, but only a Regulation Collector. In such a case, if the claim was disallowed by the Regulation Collector and the Court of Wards, the claimant would have no remedy except to file a suit in the Civil Court as contemplated in section 40 of the Act. If such a suit were instituted, no doubt section 4 of the Limitation Act would bar it unless it were instituted within the time allowed by law, and the time during which the claim was pending before the Regulation Collector could not be excluded since there is no provision in the Act for the exclusion of such time, and section 14 of the Limitation Act cannot be relied on to justify the exclusion, since it cannot be said that the Regulation Collector is "a Court which from defect of jurisdiction was unable to entertain" the claimant's suit. Provision for the exclusion of such time seems to be obviously required for the protection of both wards and claimants, for, in the absence of such a provision, each prudent claimant will have to file a suit in the Civil Court before his claim is barred even though the Regulation Collector may be eventually prepared to discharge it.

The present, however, is not a case of this kind. There is no suit in the Civil Court, and there is no need for any such suit in order to obtain the decision of the Courts on the validity of the claim. Here both a Regulation Collector and a decree Collector were in existence before the claim was made. The claim was therefore bound to be placed before the Civil Court for decision unless the decree Collector was prepared to pay it. The only question in regard to limitation that could properly be placed before the Civil Court was whether the claim at the time that it

was made to the proper authority under the Act was or was not one that was irrecoverable at law. If it was not irrecoverable when made, and if the sum was then otherwise legally due it was the duty of the Decree Collector to admit the claim and to discharge it to the extent of assets in his hands and with due regard to the provisions of the Act relating to the discharge of proved debts. If the Decree Collector was in doubt, or if the Regulation Collector, on behalf of the Estate disputed the claim, it was the duty of the Decree Collector to refer the matter for the decision of the Civil Court and to be guided by its decision. The reference by the Decree Collector to the Court is not to be regarded as the institution of a suit in the Court by the claimant as plaintiff, against the Regulation Collector as defendant. It is a reference made to the Court under a special provision of law and therefore section 4 of the Limitation Act has no application. The question that could properly be referred is whether the claim, was legally enforceable at the time when it was made to the Regulation Collector, not whether it was legally enforceable on some subsequent date arbitrarily fixed by the Regulation Collector. There is no ground for the contention that it is open to the Regulation Collector to keep the claim pending before him until a suit on it would be barred and then to refuse to pay it on the ground that it had become barred. We dismiss the appeal with costs.

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