

WHITE, C.J., Criminal Procedure Code, were in fact a continuation of the former proceedings under the Land Acquisition Act.

WALLS,
MILLER,
SANKARAN-
NAIR AND
PINNEY, JJ.
I do not interpret the decision in the case of *Rahimadulla Sahib*(1) to mean that the final order under section 476, Criminal Procedure Code, must issue at once. What I understand by that decision is that the Court must commence to take action under section 476, Criminal Procedure Code, promptly. The final order may possibly be delayed by necessary enquiries for some time.

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My reply therefore to the reference must be that the principle of the decision in *Rahimadulla Sahib* was correct, and that I am unable on the facts set forth to state whether the District Judge acted without jurisdiction in the present instance.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Sankaran-Nair.

1908.
August 25,
26, 27.
September
2, 9, 22.

VENKATACHELLA CHETTIAR AND OTHERS (PLAINTIFFS),
APPELLANTS,

v.

SAMPATHU CHETTIAR AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

Evidence Act, Act I of 1872, ss. 123, 124, 162—Income-tax Act, II of 1886, s. 38 and rule 15—Statements made before income-tax officer not privileged under s. 123 or 124 of the Evidence Act—And not exempt from disclosure by s. 38 of the Income-tax Act and rule 15 of the rules.

Statements made and documents produced by assesses before income-tax officers for the purpose of showing the income of such assesses do not refer to matters of State, and are not privileged under section 123 of the Indian Evidence Act. The Collector, when summoned to produce such documents by the Court, is bound to produce them, and the Court is empowered under section 162 of the Evidence Act to inspect them to decide on the validity of any objection to their admissibility in evidence.

Section 38 of the Income-tax Act and rule 15 of the rules framed thereunder only forbid public servants to make public or disclose any information

(1) (1908) I L.R., 31 Mad., 140.

* Original Side Appeal No. 25 of 1907.

contained in such documents. The prohibition, however, does not extend to evidence given in Courts of Justice.

Under the Income-tax Act the Collector can compel the production of documents and attendance of witnesses. Documents produced and statements made under process of law cannot be said to be made in 'official confidence' within the meaning of section 124 of the Evidence Act and they are not privileged under that section.

Lee v. Birrell, (1813, 3 Camp, 337), referred to.

Jadobram Dey v. Bulloram Dey, (1899, I.L.R., 26 Calc., 281), referred to.

In re Joseph Hargreaves, (1900, I.Ch., 347), distinguished.

APPEAL from the judgment and decree of Mr. Justice Boddam in Civil Suit No. 64 of 1906.

This case is reported solely on the question whether Courts can compel the production of documents and statements produced or made by assesses before the Collector of Income-tax, and whether such documents and statements are privileged under section 123 or 124 of the Evidence Act.

The facts necessary for this report are sufficiently set out in the judgment.

The Hon. the Advocate-General, *T. V. Seshagiri Ayyar*, *V. Masilamani Pillai* and *T. V. Muthukrishna Ayyar* for appellants.

The Hon. Mr. *V. Krishnaswami Ayyar*, *V. V. Srinivasa Ayyangar* and *C. P. Ramaswami Ayyar* for first respondent.

JUDGMENT.—We are of opinion that the learned Judge is right in dismissing the suit. It is not shown that the vendees under exhibit A were trustees or purchased the property as representatives of any class of persons. There is no evidence to prove the letting to Rangiah, the grandfather of defendants Nos. 1 and 2, and his brother Ramaswami Chetti in the year 1860. There is no lease nor any accounts produced by the plaintiffs to prove any payment of rent by them till 1875 when it is alleged they were appointed trustees. The evidence of their appointment as trustees in that year is quite unreliable. The temple records have not been produced to prove any trust. In the course of the Insolvency proceedings the property was claimed by the defendants as their own and yet nothing was done to enforce the trust. It is proved on behalf of the plaintiffs that this property was excluded from partition and the defendants carried out certain festivals in this temple and certain other temples; contributions also appear to have been levied from certain shopkeepers for this purpose and it appears probable therefore that the defendants'

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WHITE, C.J., share consisted of at any rate some portion, if not the whole, of the
 AND income derived from this shop. But the contributors are shown
 SANKARAN- not to have formed a defined class, the festivals were uncertain,
 NAIR, J. and the defendants' contribution is not shown to have been a
 VANKATA- certain or ascertainable amount, for enforcement of payments.
 CHELLA On this evidence therefore we are unable to hold that there was
 CHETTIAR v. a trust which could be enforced by the plaintiffs or at their
 SAMPATHU instance or that the defendants are trustees. It was then argued
 CHETTIAR. before us that the learned Judge was wrong in declining to admit
 in evidence certain statements alleged to have been made by one
 of the defendants in respect of the plaint property during certain
 inquiries before the Income-tax Deputy Collector. The Deputy
 Collector was summoned to produce the documents in appeal, and
 the Advocate-General represented to us that under instructions
 from the Local Government the Deputy Collector declines to
 produce them. He contends that, under section 38 of the Income-
 tax Act and rule 15 of the rules framed by the Government of
 India with reference thereto, the Collector is prevented from
 disclosing the particulars of those documents, and that they are
 communications made to the Collector in official confidence the
 disclosure of which in his opinion would be prejudicial to public
 interests, and that they are therefore inadmissible under section
 124 of the Indian Evidence Act. It was also contended before
 Mr. Justice Boddam that they related to affairs of State and were
 therefore inadmissible under section 123 of the Evidence Act. As
 the question is one of general importance and the Advocate-
 General desires to obtain an authoritative ruling on the point, we
 proceed to give our reasons for our conclusions. Section 162 of
 the Indian Evidence Act runs thus:—"A witness summoned to
 produce a document shall, if it is in his possession or power, bring
 it to Court notwithstanding any objection which there may be to
 its production or to its admissibility." The words are quite clear
 and the Deputy Collector is bound to attend with the documents.
 He was therefore wrong in declining to bring them to Court.
 Having brought them to Court, he is entitled to raise his objections
 to their production or admissibility, and under the same section
 "the validity of any such objection shall be decided on by the
 Court" and for the purpose of deciding on the validity of the
 reason that may be offered for withholding them, the Court
 may receive evidence. The returns submitted to an Income-tax

Collector, any statements made before him or any orders that may be made by him do not refer to matters of State and neither the Advocate-General nor Mr. V. Krishnaswami Ayyar on behalf of the defendants has contended that they are exempt from production under the terms of section 123 of the Indian Evidence Act. Under the same section, *i.e.*, 162, besides taking evidence to decide the question of admissibility "the Court may also inspect the document unless it refers to matters of State," and as the documents aforesaid in the custody of the Income-tax Collector do not refer to matters of State the Court is also entitled to inspect them. The Collector's objection to such inspection cannot be upheld. The next question is whether they are admissible in evidence. Under section 38 of the Income-tax Act II of 1886 the Governor-General in Council may make rules for preventing any disclosure, and by rule 15 all public servants are forbidden to make public or disclose, except for the purpose of the working of the Act, any information contained in documents produced or delivered with respect to assessments under Part IV of the second schedule of the Act, *i.e.*, produced for the purpose of showing the income of the assessee. In an old case (*Lee v. Birrell*(1)) decided in 1813, it was held by Lord Ellenborough that, notwithstanding the oath administered under the statute to a Collector of the property tax that he will not disclose anything he learns in that capacity except with their consent or by virtue of an Act of Parliament, he is bound when summoned as a witness to produce the books in his possession as there is no reference in the statute or the oath about evidence to be given in a Court of Justice and give evidence of facts within his knowledge. The learned Advocate-General contended that the decision was not right, and was opposed to the Statute itself—46 Geo. III, chap. 65, schedule (F), which contained by implication a prohibition against giving evidence in a Court of Justice except in certain cases of prosecution for perjury. But the decision has not been dissented from in the English Courts, and is treated as authoritative in the text books. The same principle was followed in 1863 by Scotland, C.J., who compelled the production of income-tax schedules, though the objection was taken by the officer who appeared (*Reg v. Kakatashkam*(2)) Mayne's 'Criminal Law of India,' 3rd edition, p. 91.

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(1) (1813) 3 Camp., 337.

(2) (1863) 2 Mad. Sessions.

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With reference to this rule itself under the Income-tax Act, Jenkins, J., took the same view following the above decisions in *Jadobram Dey v. Bulloram Dey*(1). The same conclusion was arrived at by Subrahmania Ayyar, J., in the recent Arbuthnot's Insolvency Proceedings when he compelled the production of income-tax returns. The case *In re Joseph Hargreaves*(2) turned upon section 115 of the Companies Act, 1862, which left it to the discretion of the Judge to order the production of certain documents including the balance sheets of the company delivered to the surveyor of taxes for the purpose of assessment of income-tax. We have no such discretion given to us under the Income-tax Act. But it was contended by the learned Advocate-General that in these decisions the effect of section 124 of the Evidence Act has not been considered. Section 124 is in these terms: "No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure." We agree with the Advocate-General that once it appears that a communication to a person was made in official confidence, it is left to him and not to the Courts to decide whether public interests would suffer by the disclosure, and the Courts have no power to compel production if he considers such production prejudicial to public interests. But it is a prerequisite that the communication must have been made to him in "official confidence," and, as already pointed out, it is left to the Court under section 162 of the Indian Evidence Act to decide the question and for that purpose it is also open to the Court to inspect the document. It was argued by the Advocate-General that the income-tax records may contain confidential matters and it is of great importance that persons should be able to be certain that any statements which may be made by them for the purpose of income-tax should in no case be disclosed, and as these statements must have been made in that belief they must be held to have been made "in official confidence" and it would not be right to insist upon the production of the documents or to receive them in evidence. In support of this argument section 38 of the Income-tax Act and rule 15 already referred to were relied upon. We are unable to accept this view. Though the cases do not refer to section 124 of the

(1) (1899) I.L.R., 26 Calc., 281 at p. 284.

(2) (1900) 1 Ch., 347.

Evidence Act, they, in effect, decide that provisions of the Income-tax Act do not preclude the production of these documents in a Court of Justice, and any person therefore submitting any return could rely only upon the official not disclosing the information to other persons otherwise than in Court of Law. Further, on reading the sections of the Income-tax Act, it appears to us, that the rule 15 was intended for the guidance of the income-tax officers and not to preclude any evidence being given in a Court of Justice. The orders of the Collector under section 14 or section 26 of the Income-tax Act determining the amount of the income-tax payable it is clear, are not privileged documents under section 124 of the Indian Evidence Act as they are not communications made to him. This is a strong argument against the privilege claimed for the returns or statements on which such orders are made: under section 28 of the Income-tax Act the Collector can compel the production of documents and enforce the attendance of witnesses. It is difficult to say that documents produced or statements made under process of law can be said to be made in official confidence. They have to be made even if, in fact, no confidence is reposed in the official by the person who makes the statement. We are, therefore, of opinion that neither the provision of the Income-tax Act, nor the sections of the Evidence Act support the contention of the Advocate-General. We have accordingly called for the production of those papers. On a perusal of those documents it appears to us, however, that they do not advance the plaintiff's claim and there is nothing in those papers in any way inconsistent with the conclusion formed upon the other evidence.

We accordingly dismiss the appeal with costs.

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