the present case takes the same view. That being so, I think it would be quite wrong for me to give expression to any opinion that might tend to unsettle the former decision of this Court, or give any encouragement to its challenge in other cases. The expressions used in the Privy Council in *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi*(1) were not really necessary to the decision and I think if the decision in *Kakerla Chukkamma* v. *Kakerla Punnamma*(2) is to be challenged, it must be challenged elsewhere than in this Court. The appeal fails and is dismissed with costs. I agree with the order proposed in my Lord's judgment.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Bakewell.

A. M. ROSS (AUTHORIZED AGENT OF CERTAIN TEA COMPANIES AND LABOUR ASSOCIATIONS IN ASSAM) (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), RESPONDENT.*

1915. April 19, 20 and 29.

19 M.L.T. 280

Secretary of State in Council, suit against, in respect of illegal order of District Magistrate under Assam Labour and Emigration Act (VI of 1901), sec. 91, and also for alleged defamation in a Government Order—Damage, remoteness of—Liability of defendant under the Government of India Act (I of 1858)—No liability, on the ground that the order was made in the course of employment, and that the acts were done by Government servants in the exercise of statutory powers—Alleged ratification by the Local Government—Government Order—Absolute privilege—Absence of malice.

Suit by the plaintiff, who represented the Assam Labour Supply Association in Ganjam and other districts, against the Secretary of State for India in Council for damages in respect of two orders of the District Magistrate of Ganjam suspending and dismissing one T.S., the local agent of the Association in Ganjam, and closing his depot to recruiting under the Assam Labour and Emigration Act (VI of 1901), whereby the plaintiff was prevented from earning from the members of the association his commission of seven rupees for each labourer sent to Assam; and for an alleged libel on the plaintiff in an order passed by the Governor-in-Council on appeals by the plaintiff and others against the aforesaid orders, in which it was stated that the plaintiff's own conduct was not altogether above suspicion,

(1) (1876) I.L.R., 1 Mad., 174. (2) (1914) 28 M.L.J., 72.

* Original Side Appeal No. 32 of 1913.

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Held by the Court on appeal (affirming the judgment of WALLIS, J., on the Original Side) that: (1) As the action of the Collector and District Magistrate who was found to have acted without any malice was not directed against the plaintiff, but only against others and as the injury to the plaintiff, if any, was not the direct consequence of the Collector's act but was only very remotely connected with it, the plaintiff had no cause of action; and (2) The Governor-in-Council was not liable for the publication of the defamation as the same was done on a privileged occasion, i.e., in the course of its official duties.

Held further, by SADASIVA AYYAR, J.—(*a*) Even the Collector and District Magistrate was not personally liable as he only did his duty imposed on him by the statute [viz., section 22, clause (3) of Assam Labour and Emigration Act (VI of 1901)]; and (*b*) as in doing so he was not the agent of the Government and as the act was not done on Government's behalf, the Government could not ratify the same, nor could Government be liable even if it had ratified the same.

Held further, by BAKEWELL, J., that so far as the plaintiff was concerned, as he was neither an employer nor his agent, he was, according to the Act, carrying on an illegal business and his suit was liable to be dismissed also on this ground.

APPEAL from the judgment of WALLIS, J., in Civil Suit No. 51 of 1911.

The facts of the case are fully set out in the original judgment of WALLIS, J., in *Ross* v. *Secretary of State*(1), and in the second paragraph of the judgment of Mr. Justice SADASIVA AYYAR on appeal, for which, see below.

C. P. Ramaswami Ayyar, *A. Krishnaswami Ayyar* and *M. Subbaraya Ayyar* for the appellant.

The Honourable *Mr. F. H. M. Corbet*, *Advocate-General* and *W. Barton* for the respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The plaintiff is the appellant. So far as this suit (which is brought to recover damages against the Secretary of State for India in Council) is based upon the suspension and dismissal of Rama Sastri (a "local" agent of the Assam Planters) by the Collector and District Magistrate of Ganjam, the plaintiff gave up his contention that such suspension and dismissal were wrongful.

The remaining facts on which the claim is founded are (*a*) that the Collector and District Magistrate on the 12nd February 1910 closed a labour-recruiting depot at Berhampur, that recruiting depot having been intended for the accommodation of coolies recruited on behalf of certain Tea Planting

(1) (1914) I.L.R., 37 Mad., 55.

Associations in Assam of which associations the plaintiff had been appointed as agent; (b) that the Governor in Council by a Government Order, dated 12th October 1910, ratified and confirmed the Collector's order closing the depot till that date; (c) that the Government on the said 12th October 1910 in the said order made the defamatory remark that "the conduct of Mr. Ross (the plaintiff) was not wholly above suspicion" in the matter of the irregularities committed by the local agent, T. S. Rama Sastri, on account of which irregularities Rama Sastri's license as local agent was cancelled by the Collector and District Magistrate.

The learned CHIEF JUSTICE who tried this case on the original side dismissed the suit making certain observations in his judgment which observations might be stated as follows,—using in great part the words of the learned CHIEF JUSTICE :—

(1) The Collector's order of February 1910 closing the depot to recruiting by the garden sardars working under the Assam Labour and Emigration Act VI of 1901 on behalf of the Assam Planting Associations was ultra vires.

(2) The Secretary of State in Council is not legally liable for the tortious acts of the Collector of Ganjām or of the Governor of Madras in Council. If section 416 of the old Civil Procedure Code really laid down that the Secretary of State can be made liable for the tortious acts of a local Government or of an officer of that Government notwithstanding that the East India Company would not have been liable for such acts that section is ultra vires of the Indian legislature as opposed to the provisions of the Indian Councils Act of 1861. If the decision in *Vijayaraghava* v. *Secretary of State for India*(1) holds otherwise, it is no longer an authority as opposed to the Privy Council decision in *Moment* v. *The Secretary of State*(2). See also *Shivabhaja* v. *Secretary of State for India*(3). In *Dhackjee Dadaji* v. *The East-India Company*(4), Sir ERSKINE PERRY held that the only ratification which would bind the company was a ratification by the Court of Proprietors itself. This is not a case in which a petition of right would lie against the Crown. Hence this action against the Secretary of State

(1) (1884) I.L.R., 7 Mad., 466. (2) (1912) I.L.R., 40 Calc., 391 (P.C.).
(3) (1904) I.L.R., 28 Bom., 314. (4) (1843) 2 Morley's Digest, 307.

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who is not alleged to have himself ratified the Collector's acts or the Local Government's acts cannot lie.

(3) In *Tobin* v. *Reg.*(1) it was held that independently of the doctrine that the King can do no wrong, the Crown could not be made liable for the action of a Government servant purporting to act under a statutory power conferred upon him because the action of a Government servant purporting to exercise a statutory power cannot be held to be an act done as an agent of the Crown—see *Shivabhaja* v. *Secretary of State for India*(2). There can be no ratification by the principal of such an act, as such an act was not done on behalf of the principal.

(4) As regards the alleged libel by the Madras Government, the Secretary of State (defendant) is not liable for reasons already stated as the publication of the libel was not (*a*) made under the orders of the Secretary of State, or (*b*) made on his behalf and ratified by him—see *Jehangir* v. *Secretary of State*(3).

(5) In *Grant* v. *The Secretary of State for India in Council*(4), it was held that the Secretary of State was not liable for the publication of an alleged libel in the *Fort St. George Gazette* as, at all events, the libel was not alleged to have been published maliciously and without reasonable and probable cause: see also *Chatterton* v. *The Secretary of State for India in Council*(5).

In the decision of this appeal, I shall confine myself to the following questions on which we have heard arguments from the appellant's learned vakil, Mr. C. P. Ramaswami Ayyar:—

(1) Whether the Collector's act in closing the plaint depot gave a cause of action to the plaintiff against the Government.

(2) Whether even the Collector and District Magistrate of Ganjām who passed the order closing the depot is liable to the plaintiff.

(3) Whether assuming that the remark in the Government Order referred to in the plaint is libellous and was published, the statement is privileged and the Governor in Council cannot be made liable for making and publishing that statement.

There can be no doubt that the Collector (and District Magistrate) in ordering the closing of the depot intended to use the

(1) (1864) 33 L.J.C.P., 199 at p. 210.
(2) (1904) I.L.R., 28 Bom., 314 at p. 325. (3) (1903) 6 Bom. L.R., 131.
(4) (1877) 2 C.P.D., 445 at p. 453. (5) (1895) 2 Q.B., 189.

powers given to him by section 22, clause (3) of the Assam Labour and Emigration Act VI of 1901. That clause says: "Where the Superintendent" (in this case the Collector and District Magistrate) "considers that any depot is unhealthy or has become unsuitable for the purpose for which it was established he may, by order in writing, prohibit the use of the depot for the reception and lodging of labourers."

I am clear that the Government cannot be made liable for illegal orders made by the Collector and District Magistrate purporting to use the powers given by the Statute Law, the authority of *Tobin* v. *Reg.*(1), followed in *Shivabhaja* v. *Secretary of State for India*(2), being, in my opinion, almost conclusive on this point. The District Magistrate who purported to use the powers given by the Statute Law cannot be treated as the Agent of the Government of Madras nor can the Government ratify that act so as to make itself liable for that act, because the act was not done on its behalf and the Government cannot be treated as a principal and the District Magistrate as its agent when the latter purported to exercise statutory powers. "When the duty to be performed is imposed by law" on the agent . . . . "the employer is not liable for the wrong done by the agent in such employment." See *Tobin* v. *Reg.*(1) and *Nireaha Tamaki* v. *Baker*(3). Before leaving this part of the case, I might finally add that on the highest grounds of public policy, the Government should not be made liable for the tortious acts of its agents or servants except probably for acts done in the course of those kinds of transactions which even an ordinary private mercantile firm can enter into. This, namely, the civil irresponsibility of Government "for tortious acts" of its agents has been assumed as undoubted law in *Rogers* v. *Rajendro Dutt*(4), and though it may be argued that the observation was obiter, the obiter of the Privy Council expressed through the mouth of that most eminent jurist, His Lordship the Right Honourable Dr. LUSHINGTON, ought, I think, to be followed by this Court.

I am further of opinion that the District Magistrate himself even in his personal capacity cannot be made liable to the plaintiff for the order made by him to close the depot, though

(1) (1864) 33 L.J.C.P., 199 at p. 210.
(2) (1904) I.L.R., 28 Bom., 314 at p. 325.
(3) (1901) A.C., 561 at p. 575.
(4) (1860) 8 M.I.A., 103 at p. 131.

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it was an illegal order. I shall assume that the depot was a place which was provided not only by the local agent [who was bound to provide such a depot under clause (8) of rule 11, made by the local Government in exercise of the power conferred on the Governor in Council by section 91, clause (*b*) of the Assam Labour and Emigration Act] but that that same depot was also the depot provided by the Planters' garden sardars under section 62, clause (1) of Act VI of 1901. The illegal order of the District Magistrate affected directly only the local agent and then it affected the garden sardars; the local agent's license having been properly cancelled, he had no cause of action against the District Magistrate. Assuming that the sardars and even the plaintiff's employers whose labour supply was cut off are entitled to sue the Collector and District Magistrate for damages, they have not brought any suit. It is the plaintiff who has lost his expected commission as agent that has brought this suit. No malice or fraud or deceit is alleged as against the Collector and District Magistrate. Has an agent a right to bring a suit for recovery of damages incurred by him against a person who illegally prevented his principal's garden sardars from taking their coolies to the Emigration depot if the tort-feasor is not proved guilty (*a*) of personal malice directed against the agent or of fraud or deceit, or (*b*) if it is not proved that his object was to injure the plaintiff's legal right (to receive commission from his employers for coolies sent through the depot)? The Collector and District Magistrate was under no obligation created by contractual, statute or any other law to the plaintiff in the plaintiff's individual capacity. The Collector's action in closing the depot was passed against the local agent directly and indirectly against the garden-sardars and still more indirectly against the planters. So far as that action affected the plaintiff's pocket, it did so in the third or fourth degree of remoteness, so to say. Passages from some of the judgments in the well-known cases of *Lumley* v. *Gye*(1), *South Wales Miners' Federation* v. *Glamorgan Coal Company*(2) and *Quinn* v. *Leathem*(3) might be quoted (and they are usually quoted in those cases where a person who is not directly affected by an

(1) (1853) 2 E. & B., 216. (2) (1905) A.C., 239.
(3) (1901) A.C., 495 at p. 510.

the facts that the plaintiff has been carrying on an illegal business, and that his complaint is that the defendant and his agents have interrupted its course and prevented him from reaping its profits. I am of opinion that this suit might have been dismissed on the ground that the plaintiff has no right of action in respect of an illegal business.

If the plaintiff's contentions were correct and he should be considered to be in the position of an employer I am still of opinion that he has no remedy. His vakil has abandoned the first part of the case, the suspension and subsequent dismissal of the local agent, and has relied upon, the closing of the plaintiff's depot, and the latter act did not result in any direct damage to the plaintiff or his employers. The plaintiff has not shown that the garden sardars could not accommodate their labourers in other suitable places, and could not register their coolies with the Government registering officers, and that the business of his employers could not be carried on without using this building, and the evidence goes to show that the stoppage in the flow of emigrants resulted from the plaintiff's attempt to continue the system of registration by a "local agent" and the resistance thereto of the District Magistrate. The latter's power of appointing local agents is discretionary [section 64 (1)], so that the plaintiff could not base his claim upon a refusal to appoint. It has not been shown that the District Magistrate was aware of the terms of the contract between the plaintiff and his principals, or of the manner in which a stoppage of the flow of emigrants would injure the plaintiff. The only evidence on this point appears in Mr. Macmichael's cross-examination; "*Q.* You know that by this order (that is to close the depot) you would not only be causing loss to these tea associations but also to Mr. Ross personally? *A.* I knew in a general way that Mr. Ross was commonly interested. *Q.* And therefore that he would be financially a loser by this order? *A.* Probably."

The District Magistrate cannot be presumed to have known that the plaintiff was remunerated in a manner which suggests an active recruitment of labourers by him, and an infringement of the provisions of the Act. The doer of an unlawful act is liable for its ordinary consequences, but not for consequences which he did not and could not reasonably be expected to

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foresee—*Sharp* v. *Powell*(1); and I am of opinion that the District Magistrate could not be expected to foresee that his act in closing the depot would result in so injuring the business of the plaintiff's principals that further damage would result to the plaintiff himself. The observations of Lord PENZANCE in *Simpson* v. *Thomson*(2) relate to a negligent act but indicate the manner in which the Court will limit the liability of a tort-feasor.

I am of opinion that the plaintiff has failed to show that the damage complained of was the consequence of the Magistrate's act, and that in any case it is too remote to give a cause of action.

I agree with the judgment of the learned CHIEF JUSTICE with respect to the claim for damages for defamation and with the order proposed by my learned brother.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

1915. April 30.

RANGASAMI AYYANGAR (DIED) (REPRESENTED BY RAMANUJA AYYANGAR, MINOR, THROUGH HIS NEXT FRIEND LAKSHMI AMMAL (DEFENDANT)), APPELLANT,

v.

SOURI AYYANGAR (PLAINTIFF), RESPONDENT.*

Indian Evidence Act (I of 1872), sec. 92, cl. (a)—Mistake in sale-deed to the defendant resisting suit for possession—Specific Relief Act (I of 1877), sec. 31—Plea of mistake without previous rectification of sale-deed, maintainability of.

The combined effect of section 92, clause (*a*) of Indian Evidence Act (I of 1872) and of section 31 of Specific Relief Act (I of 1877), is to entitle either party to a contract whether plaintiff or defendant to protect his right by proving a mistake in a written contract, as *e.g.*, in this case, a mistake in the description of the property sold by giving a wrong survey number to the same. The facts that the party who is obliged to prove the mistake happens to be a defendant in the suit resisting a claim for possession of that property and that he has not previously obtained a rectification of his sale-deed are no bar to the advancement of the plea.

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(1) (1872) L.R., 7 C.P., 253. (2) (1877) L.R., 3 A.C., 279 at p. 289.

* Second Appeal No. 803 of 1914.