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heading is an announcement to the effect that after 60 days interest will be charged. But at the end of their reference the learned Judges speak of this bill heading as if it were the suit contract. The bill is not a contract and its wording does not import a period of credit for the payment of the price. "Thavanai" is a colourless expression meaning only "period." In itself it has no more significance than the Latin word "per." It does not in itself convey the idea of credit. I agree with my learned brother that any particular sense in which the word may have been used must be proved *aliunde*. I would answer the reference of the Small Cause Court in the above terms.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Jackson.

1924, August 27.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), APPELLANT,

v.

V. K. RAMANUJACHARIAR AND FIVE OTHERS (PLAINTIFFS), RESPONDENTS.*

Madras Revenue Recovery Act (II of 1864), sec. 58—Ryotwari land settled and assessed as dry for thirty years—Resettlement during that period as wet and demand of increased assessment—Suit for declaration of illegality of demand, maintainability of.

When once ryotwari lands are classed as dry under a settlement for a period, say, thirty years, they cannot during that period be reclassified as wet and a demand by the Government of increased assessment on that footing is illegal and *ultra vires*; and a suit to declare such assessment illegal and *ultra vires* and for the recovery of the increased amount levied is not barred

* Second Appeals Nos. 1352 to 1357 of 1921.

by section 58 of the Revenue Recovery Act. *Prasad Row* v. *Secretary of State for India*, (1917) I.L.R., 40 Mad., 886 (P.C.), followed.

SECOND APPEALS against the decrees of R. A. JENKINS, District Judge of Chingleput, in Appeal Suits Nos. 396 to 401 of 1919, preferred against the decrees of A. P. P. SALDANHA, District Munsif of Poonamallee, in Original Suits Nos. 468 to 470 and 503 to 505 of 1918, respectively.

The facts are given in the judgment.

T. R. Venkatarama Sastriyar (*Advocate-General*) with *K. Jagannatha Ayyar* for appellant.—Achukattu lands are dry lands which are cultivated wet by the raising of ridges and catching the water and detaining it for wet cultivation. Those lands the cultivation of which with the aid of achukattus or ridges did not affect the water-supply of the public tanks were registered "manavari" (rain-fed) and charged at a rate higher than ordinary dry but lower than the wet lands. Objectionable achukattus, i.e., those that affected the water-supply of the tanks were directed to be registered dry as they ought to be cultivated dry, with a direction that if they were cultivated wet with the aid of achukattus or ridges they ought to be dealt with in accordance with the district practice, so as to prevent such improper cultivation. Irrigation cess was imposed in accordance with the practice but the Government held it incorrect to charge water-cess but directed a charge of wet rate on the lands. There is no contract at all between the ryot and the Government. The settlement did not fix a rate which will last for the period. The very provision about district practice shows that the dry rate was not fixed for these lands. The fixing of wet rate was not prevented by the terms of the settlement and so the remarks in *Prasad Row* v. *The Secretary of State*

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for India(1) which are *obiter* are inapplicable to this case. The power to fix and levy land revenue is based on the prerogative right of the Crown and cannot be questioned in Courts; see *Secretary of State* v. *Veeran Reddi*(2), *Secretary of State for India* v. *Venkatapathi Raju*(3) and section 58, Revenue Recovery Act. The settlement provides for changing classification in some cases and this case was therefore rightly dealt with by the Government by changing the classification of the land into wet.

A. Krishnaswami Ayyar (with *K. Gopalaratnam* and *P. Narasimha Achariyar*) for respondents.—The practice of the district as to imposition of water-rate was declared to be illegal. The Government cannot do indirectly (i.e., by reclassifying these lands as wet) what it is prohibited from doing directly. Increase of amount during the period of settlement is illegal; see *Prasad Row* v. *The Secretary of State for India*(1). The remedy for the Government is only by legislation.

JUDGMENT.

JACKSON, J.

JACKSON, J.—Appeal from the decree in A.S. No. 396 of 1919 on the file of the District Court of Chingleput—Original Suit No. 468 of 1918 on the file of the Court of the District Munsif of Poonamallee.

The plaintiff is a ryot holding certain lands which at the last revenue settlement in Chingleput district were assessed as dry. Since then, the assessment has been enhanced under orders of the Board of Revenue and the plaintiff has brought this suit against the Secretary of State for India for a declaration that such enhancement is illegal, for the recovery of the amount so levied, and for a permanent injunction restraining the defendant from levying such enhanced rates in

(1) (1917) I.L.R., 40 Mad., 886 (P.C.). (2) (1910) 20 M.L.J., 869.
(3) (1912) 23 M.L.J., 746.

future. The original Court and first Court of Appeal have decreed the suit as prayed for by the plaintiff and the defendant brings this Second Appeal.

The lands in question are of the sort described as "achukattu." They are surrounded by high bunds which in the wet season retain sufficient water for raising a paddy crop. At the settlement in 1909, the bulk of these lands was classified as "manavari" or "rain-fed" and charged rather more than ordinary dry, and less than ordinary wet. But a certain number lying within the catchment area of tanks were held to be objectionable as interfering with the supply of water, and these were still classed as ordinary dry. Had they too been transferred to "manavari," Government would practically have conceded the claim of these lands to enjoy additional water facilities, when that claim was held to be objectionable. The G.O. No. 2240, Revenue, dated the 14th August 1909 (page 36 of the printed documents) lays down that those which lie so close to the foreshore of a Government tank as materially to interfere with its supply should be entered in a special list and left to be dealt with by the Collector in accordance with the existing district practice as embodied in G.O. No. 573, Revenue, dated 24th June 1905. In this G.O. (page 17 of the printed documents) the procedure enjoined is that water-rate should be charged if the achukattu intercepts water which would otherwise flow into a Government irrigation work. Accordingly in the settlement notification, dated June 1, 1910, Exhibit A (at page 45 of the printed documents) it is declared that achukattus which materially interfere with the supply of a Government irrigation work will be retained as ordinary dry, and will be dealt with by the Collector in accordance with the practice obtaining in the district.

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The Collector proceeded to levy water-rate upon these lands, and several appeals were preferred to the Board of Revenue. The Board acting under confidential instructions from Government ruled that such water-rate was not leviable under the Irrigation Cess Act, but that the lands concerned were, in accordance with the orders of Government, liable to enhanced assessment. An appropriate enhancement would be the difference between the wet and dry rates.

"The water rates levied will be refunded, but an enhanced assessment will be charged for the wet 'achukattu' cultivation and this should be the corresponding wet assessment minus the dry assessment already levied—Exhibit I (page 49 of the printed document)."

In conformity with this resolution the Collector enhanced the rates on the plaintiff's lands as set forth in paragraph 7 of the plaint.

The point for determination is whether such enhancement is legal.

The defendant contends that the provision in the notification, Exhibit A, "will be dealt with by the Collector in accordance with the practice obtaining in the district" allows a large discretion. The practice, no doubt, was to charge water-rate if a paddy crop was raised; but since such charges are not rightly leviable under the Irrigation Cess Act, an enhanced assessment practically amounts to the same thing, and can be described as "in accordance with the practice obtaining in the district." The short answer is that such practice never did obtain nor could obtain. Once a settlement has been duly notified by Government, the Collector acting under the orders of the Board of Revenue cannot vary the rates of assessment. The defendant relies upon paragraph 36 of the notification, Exhibit A:—

"The thirty years' limit does not apply to lands the irrigation of which may be improved by Government subsequent to the settlement nor to lands which may be converted from dry to wet or 'manavari'."

Conversion here of course refers to physical conversion. It does not mean that Government reserve to themselves the right at any time to convert the classification of a land as dry to one of wet. If that were so, there would have been no settlement.

It is claimed, however, apart from the notification that Government are at liberty to revise any assessment within the settlement period of thirty years (4th ground of appeal, *et seq.*). But in the light of the Privy Council ruling in *Prasad Row* v. *The Secretary of State for India*(1) this claim was not seriously pressed in argument. The Judicial Committee rules that

"the annual payment is incapable of increase during the period for which the settlement is made"—page 897.

It is useless to say that for all practical purposes the enhanced assessment is the same as the water-rate or to urge that if the settlement is allowed to stand unrevised, unobjectionable achukattus classed as "manavari" will actually pay a heavier assessment than objectionable achukattus which are classed as dry. An executive act may be based on logic and commonsense and yet be none the less illegal. The finding of the lower Courts must be upheld that when once these lands have been assessed as dry at the revenue settlement, they cannot within the period of thirty years during which that settlement remains in force be reassessed as wet. Such assessment being illegal and *ultra vires*, the plaintiff is not debarred from bringing this suit by the provisions of section 58 of the Revenue Recovery Act.

The appellant further complains that no decree should have issued in regard to the collections for fasli

(1) (1917) I.L.R., 40 Mad., 886 (P.C.).

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1326 for which no notice was given and no injunction should have been granted. In cases of this sort, Government does not resort to technicalities and may be trusted to see that justice is done in regard both to fasli 1326 and to subsequent faslis. There is no necessity therefore to modify the decree of the lower Appellate Court as regards fasli 1326, nor any need to grant an injunction. The decree therefore will contain no injunction and is otherwise confirmed. The appeal in the main fails. Appellant will pay costs of the respondent in this appeal.

The other Second Appeals Nos. 1353 to 1357 of 1921 follow with costs to respondents.

DEVADOSS, J. DEVADOSS, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Reilly.

1924, August 21.

KATTAMANCHI KRISHNA REDDY (SECOND DEFENDANT), APPELLANT,

v.

THOTA RAMAKRISHNAYYA SETTY (PLAINTIFF), RESPONDENT.*

Madras Regulation X of 1831, sec. 2—Sale of minor's property for arrears of revenue—Minor taking property by survivorship whether protected by the Regulation—"Regular course of inheritance," construction of—Minor owner, not registered, whether protected by the Regulation—Madras Revenue Recovery Act (II of 1864), sec. 63—Saving of Regulation X of 1831, under section 63 of the Act, whether applicable to minor owners, not registered as landholders.

Section 2 of Madras Regulation X of 1831, prohibiting the sale of property of minors for arrears of revenue, applies to cases of minors who take the property by survivorship.

The provisions of section 63 of Madras Revenue Recovery Act (II of 1864), saving the operation of Regulation X of 1831,

* Appeal No. 140 of 1923.